



Effective Negotiation

Third edition

*From research
to results*

Ray Fells

CAMBRIDGE

EFFECTIVE NEGOTIATION

Third edition

From research to results

Effective Negotiation provides a distinctive approach to the task of reaching an agreement through negotiation. Drawing on his extensive teaching and research experience, Ray Fells describes the key elements of any negotiation – including reciprocity, trust, power and ethics – and explains the core tasks involved in reaching an agreement: information exchange, solution seeking and concession management. It covers the mediation process, negotiating on behalf of others and negotiating across cultures, as well as managing negotiations in the workplace and in the business context.

This third edition has been thoroughly updated with the latest research and new practical examples, and has a greater focus on how negotiators can develop their personal skills and how, by becoming reflective practitioners, they can manage their negotiations more effectively.

The companion website at www.cambridge.edu.au/academic/effective offers a full set of lecturer resources, including PowerPoint summaries, negotiation role-plays and expanded case material with extensive teaching notes based on the text.

Effective Negotiation remains an essential resource for students and professionals in the fields of business and management, law, human resource management and employment relations.

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CAMBRIDGE
UNIVERSITY PRESS



477 Williamstown Road, Port Melbourne, VIC 3207, Australia

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107578647

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First published 2010

Second edition 2012

Reprinted 2013, 2014

Third edition 2016

Cover designed by Tanya De Silva-McKay

Typeset by Integra Software Services Pvt. Ltd

Printed in Singapore by Markono Print Media Pte Ltd

A catalogue record for this publication is available from the British Library

A Cataloguing-in-Publication entry is available from the catalogue of the National Library of Australia at www.nla.gov.au

ISBN 978-1-107-57864-7 Paperback

Additional resources for this publication at
www.cambridge.edu.au/academic/effective

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Preface

This new edition continues my original purpose of helping the reader to understand the dynamics of the negotiation process and to be able to negotiate more effectively. In order to achieve this, a number of important changes have been made.

First, there is more of a focus on you, the negotiator. In [Chapter 2](#), the notion of being a ‘reflective practitioner’ in negotiation is introduced. This is the principle that reflecting on what we have done enables us to learn for the future. However, as negotiators, we can take this skill a step further and learn to be reflective *while* we are negotiating. We can learn to read the dynamics of the negotiation better, and so manage it more effectively.

The two chapters on phases and negotiation scripts in the previous edition have been streamlined into one, more focused chapter, and this is now followed by the chapter on being strategic, which is placed prior to the chapters on the three core negotiation tasks. The chapter that explores how we negotiate on behalf of others has been split into two chapters: [Chapter 9](#) deals with the problems of constituency and collectivity, while the challenges of negotiating in the workplace and business contexts are now covered more fully in [Chapter 12](#). There is now an entire chapter on mediation, which is growing in importance as a dispute-resolution process, although the focus is still on what negotiators can learn rather than on how to become a mediator.

Throughout this new edition, I have drawn on recent research findings and have consistently sought to apply the research to a practical

context. To this end, there is more analysis of cases of negotiation to help consolidate the links between research and practice. The skills tips, negotiation tools and lists of helpful advice remain important features of the text.

I trust that this new edition will not only inform you about how negotiations work, but also encourage you to go out and negotiate.

Ray Fells, 2015

Acknowledgements

My thanks go to all my many MBA students in various parts of the world who, over the years, have made me think about the best way to explain how a negotiation ‘works’.

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1

Why isn't negotiation straightforward?



This chapter explores some of the complexities of negotiation. After reading the chapter, you should be able to:

- appreciate the pervasiveness of negotiation, and why negotiation is so important
- be aware of some of the practical implications that arise from the complex process of negotiation
- have a working definition of negotiation that can be used to prepare for and review your negotiations.

We negotiate a great deal – far more than we realise. Sometimes it goes smoothly, and sometimes it seems difficult. While there is much advice around about how to negotiate and be a winning negotiator, our actual experience does not seem as straightforward as books suggest. Why? Because negotiation is a complex process. This book grapples with

these complexities while recognising the idiosyncrasies of both the negotiation process and the negotiator.

This opening chapter explores some core complexities of negotiation and provides a foundation for later chapters. Although this book will focus on the business context, the principles and skills can be applied in other contexts, such as interpersonal negotiation, sales or when resolving legal, environmental and social issues. Very few people are employed solely as professional negotiators; for most of us, it is just an integral – perhaps unrecognised – part of our job. [Figure 1.1](#) shows a map developed from an exercise conducted in a company to identify who has to negotiate with whom over what. It shows that negotiation is deeply entrenched throughout an organisation as a way of getting things done. Even this map does not show the full complexity of the internal negotiations – particularly in the production stage, in which managers and supervisors are constantly negotiating with each other over scheduling and the use of resources.

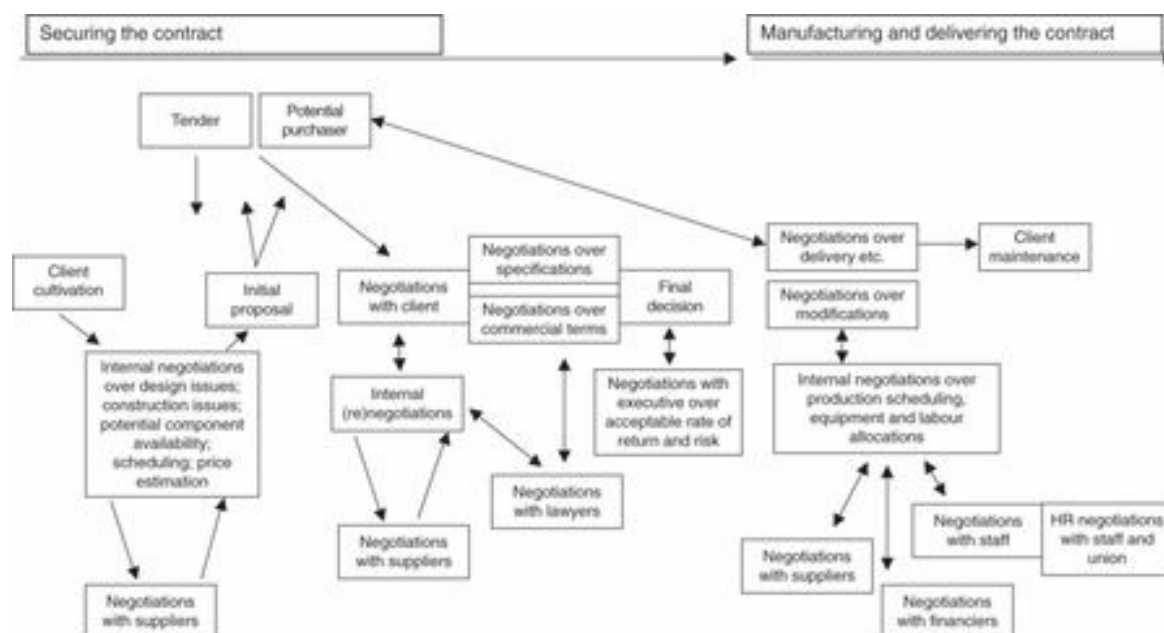


Figure 1.1 A map of negotiations within and around an engineering fabrication company

The advice offered in this book, which is based on good research, is pragmatic, and recognises the difficult contexts within which negotiations take place. [Box 1.1](#) lists five recommendations that are at the heart of the many suggestions that emerge throughout the ensuing chapters. These are not five keys to success, but are offered – along with the rest of the book – with the aim of guiding the reader’s progress towards being a better negotiator.

Box 1.1 Advice to negotiators: an up-front summary

Be pragmatic – negotiation is messy.

Negotiation, like politics, is the art of the possible.

Remember at all times: negotiation is two-sided.

Others can make choices too.

Be inquisitive and acquisitive.

Always ask ‘Why?’, ‘What if?’ and ‘Can we get a better outcome than this?’

Create a new script.

Be confident in managing the process, but be prepared to improvise.

Treat others with respect.

This is the only golden rule.

What is negotiation?

It may seem academic to start with a definition, but to do so highlights a number of key points about negotiation that provide some preliminary but important practical insights.

Negotiation is a process by which two parties with differences that they need to resolve try to reach agreement through exploring options and exchanging offers – and an agreement.



People negotiating

First, negotiation is a process – a sequence of activities, perhaps with an underlying pattern. It is not a single event: choices are made along the way. It is not mechanical or deterministic: the choices negotiators make affect how agreement is achieved and what that agreement will be. The process of negotiation and how to manage it effectively will be explored in [Chapter 4](#).

Second, two parties are needed for a negotiation. However, having more than two parties does not alter the fundamental duality of the process. [Chapter 9](#) examines how a negotiation becomes more complex when constituencies or other parties have an interest in the outcome of the negotiation, and [Chapter 11](#) considers the impact of cultural differences. [Chapter 12](#) explores workplace and business negotiations.

Third, there must be differences. If there were no differences, there would be no need to negotiate; however, because there are, we can expect some conflict and competition. The task of unravelling differences is examined in [Chapter 6](#).

The parties must need to resolve their differences. It is this need that generates cooperation between the parties. The need to settle differences also helps negotiators to understand their interdependence and their power – the crucial question of who needs who the most. This important aspect of negotiation is explored in [Chapter 5](#).

That negotiation involves trying to reach agreement suggests negotiators might not always succeed, and also that reaching a good agreement takes some effort. If an agreement is easily reached, then it is probably not a good negotiation; it is likely that some value has been left on the negotiating table.

There are two broad ways by which agreements can be reached. First, the negotiators can explore possibilities and develop options that might resolve the issue. This is the creative aspect of negotiation, and it is how negotiators add value. Various ways of doing this are explored in [Chapter 7](#). Second, and more commonly, negotiators can exchange offers around and between their stated positions, which involves compromise and can be competitive. Competitive negotiation and offer strategies are discussed in [Chapter 8](#).

Finally, negotiations result in an agreement, which might be an agreement to walk away. The notion of ‘agreement’ sounds positive, but nothing about negotiation guarantees that an agreement is a positive outcome; the parties might agree, but only reluctantly. While the focus of a negotiation is on reaching agreement, the most important aspect of any negotiation is not the agreement itself, but how it is implemented. The agreement is only a part of the outcome of any negotiation.

Some initial practical implications

The above definition shows some of the complexities inherent in any negotiation, and why the process is not straightforward. First, negotiation is a mix of competitiveness and cooperation. Some aspects of the process will generate competitive interactions while others will require cooperation if agreement is to be reached. This is why negotiation is regarded as a ‘mixed-motive’ interaction (Schelling [1960](#), p. 89); competitiveness exists because each negotiator is standing in the way of the other achieving their goal. At the same time, though, cooperation is needed because without the other’s help neither will achieve anything at all. Managing this mix of competitiveness and cooperativeness can be a challenge.

Second, negotiation is about an issue – what the differences are between the parties – as well as being a process – how the parties will try to resolve their differences. Therefore, negotiators have to manage both the issue and the process to achieve a good outcome.

Third, negotiation involves choice. Negotiators are constantly faced with choices throughout the negotiation. They have to balance cooperation and competitiveness. They face choices about how to deal with the issue and must choose how best to manage the process. These choices flow through into actions and reactions. This issue–process–action distinction will recur throughout this book.

Issue–process–action also forms the basis for a practical skills tip for negotiators. When a negotiation starts to get a bit difficult, it is easy to become unsettled and begin making unwise decisions, which can often result in an unnecessary concession. It is important for a negotiator to think about both the issue and the process before deciding what to do next. There are three useful questions to ask that will help the negotiator to be

systematic rather than hasty. Putting issue–process–action at the top of a notepad is a good visual reminder to a negotiator to be analytical rather than reactive, particularly when a negotiation is getting difficult.

Negotiation skills tips

Three useful questions to ask

Regularly check the state of play in your negotiation:

- On the issue: What is this really all about?
- On the process: What is going on here?
- On action: What do I do next?

Although negotiators constantly make choices about what to do and how they would like the negotiation to proceed, they do not have control over what actually happens. This is because of the fourth important point about negotiation: negotiation is two-sided. This fundamental and obvious point is often ignored by negotiators when they plan and implement their strategies. Yet ignoring the other party is a mistake made even by effective negotiators (Sebenius [2001](#)). As an example of the two-sidedness of negotiation and the fact that the *other* party has choices too, Wang, Northcraft and van Kleef ([2012](#)) found that anger expressed by a negotiator led to the other negotiator making concessions – the desired result. However, concessions were not inevitable and, as well as making a concession, negotiators often chose to retaliate. We must always consider the choices the other party has when deciding our own strategy and tactics.

Fifth, although the definition of negotiation offered earlier is neat and succinct, and has an inherent logic, the process it seeks to define is messy. The parties' differences may not become clear until well into a negotiation. The pressures to resolve their differences will probably change during the negotiation. Negotiators might try to exchange offers before exploring for options; it may be not until they start to trade offers that they finally clarify

their real differences. Entering into a negotiation with a good understanding of the process will help to reduce the messiness, but negotiation will never be entirely straightforward.

The mix of competitiveness and cooperation, and of issue and process, can be demonstrated in an example that also shows negotiator choice and negotiation's two-sidedness ([Table 1.1](#)). Put all these together and it is clear that negotiation is messy. For example, Anne-Marie needs to buy a new car within a fixed price bracket. She has found the car she would like but, as always, the asking price is too high, so she states her price and insists that this is all she is willing to pay. In doing this, she is being competitive. If she spent a bit more time explaining her circumstances, then this would be a more cooperative approach to the issue.

Table 1.1 Negotiation in practice is messy

	Competitive	Cooperative
	Insisting on a particular outcome that will address your main concerns:	Insisting on your main concerns:
Issue	'I want to buy the car but will pay only \$10 000 for it; I will not offer you more.'	'I want to buy your car but obviously the impact on my budget is important too. I am limited in my finances. I would not be able to make the repayments on a larger loan.'
Process	Interrupting the other	Showing understanding

negotiator to explain
your concerns:

of their main concerns:

‘I advertised the car for
\$12 500. It has very
low ... ’ [interrupting]
‘I want to buy your car
but obviously the
impact on my budget is
important too. I am
limited in my finances
... ’

‘I can appreciate that
you now need a larger
car for work and that’s
going to be more
expensive. That’s why
you’ve set the selling
price at \$12 500.’

If, however, she chooses to interrupt the seller to explain why she cannot pay more, then she may be making the process competitive – the seller may react poorly to being interrupted rather than responding to what Ann-Marie actually said. A helpful thing – explaining one’s concerns – risks becoming unhelpful if done in the wrong way or at the wrong time.

Negotiation in practice

Analysing baseball ticket negotiations

Negotiation is a process by which

two parties

(1) Frank and Ray, (2) the ticket scalper

(though there were also other buyers and sellers in the vicinity)

with differences

we wanted the best (lowest) prices for good tickets.

he wanted to sell all his tickets for the highest possible price.

that they need to resolve

we had some things in common; we needed to buy, he needed to sell

(but whether we needed to buy from him, or whether he needed to sell to us depended in part on the other buyers and sellers)

try to reach agreement

It took several attempts to set up a deal.

through exploring options

there was not much scope for creativity in this buy–sell negotiation.

and exchanging offers

street trading.

and an agreement

a deal was reached; we got to see the game.

A full account of the Baseball case is available at
www.cambridge.edu.au/academic/effective

Being a systematic negotiator

One way to manage this complexity and messiness is to be systematic in trying to appreciate what is going on in a negotiation. [Chapter 4](#) explores how to read a negotiation in more detail, but the definition provided earlier in this chapter is a good starting point. The definition isn't just 'academic', but can be used to describe a negotiation, this being a first step towards understanding what is going on when you are involved in one. As an example, the author was once involved in an interesting negotiation to buy some tickets to a baseball match. The core elements of the negotiation are shown in the Negotiation in Practice example above.

The brief description of how we got the baseball tickets shows how the definition can be used to identify the main elements of a negotiation. In fact, the definition can also be used to give some structure to the task of preparing for a negotiation. Having a structure will help counter the tendency of tunnel vision whereby a negotiator places undue emphasis on one aspect (perhaps the need to reach agreement quickly) without considering other aspects that may also be important (see [Chapter 5](#) for some other aspects of preparation). The definition of negotiation has been expanded to form a preparation checklist (see [Negotiator Tool Kit](#)), the first of a number of practical negotiator tools that will be found throughout this book.

Negotiator tool kit

A preparation checklist

Preparation is vital in any negotiation. Use these questions to start your preparation for a forthcoming negotiation.

Two parties

Who are the parties involved?

Are there any constituencies in the background?

Is anyone being left out of the negotiations?

Can we usefully change the structure of the negotiation?

with differences

What are the conflicts of interest?

Where are they coming from?

What do we really want from these negotiations? Why?

What don't we know about the negotiations that we would really like to know?

that they need to resolve

What are the alternatives to reaching an agreement for us? For them?

Who might need whom the most?

try to reach agreement

How will the negotiations be handled?

How might trust and reciprocity be developed?

through exploring options

What are some possible creative solutions?

and exchanging offers

How will any closing tensions be managed?

and an agreement

What will a good agreement look like?

Are there any other negotiations that are consequent on this one?

A second way in which a negotiator can be systematic is by getting into the practice of reviewing their negotiations. Since any negotiation is less than straightforward, it always gives a negotiator the opportunity to learn and improve. This action–reflection model is where real learning can take place. Similarly, comparing negotiations provides good insights into ways to improve one’s negotiating (Gentner, Loewenstein & Thompson [2003](#)). So, just as the definition of negotiation provides us with a preparation checklist, it can also be developed into a review checklist. (This will be found in [Chapter 2](#), which explores the idea of becoming a reflective practitioner.) Using a similar approach to both prepare for a negotiation and review it afterwards will help you to be more systematic, and so improve your effectiveness.

The DNA of negotiation

What makes a negotiation work? There are several elements that might be regarded as the DNA of negotiation – elements that are hard-wired into the process of reaching an agreement. They are integral to the strategies that negotiators can employ, and so need to be understood in order to manage the process more effectively. These elements can be used, but they can also be abused.

Describing negotiation in terms of DNA creates an image that helps our understanding of the process. The DNA helix represents two parties who seem to be jostling for position, yet are inextricably linked – an indication of the competitiveness and yet cooperation inherent in any negotiation. The twists reflect the fact that negotiation is not straightforward. The links between the two strands of the DNA can be viewed as the key elements that give life and structure to a negotiation – reciprocity, trust, power, information exchange, ethics and outcome.

Reciprocity is a feature of many social interactions, including negotiation. What one party does tends to be matched or reciprocated by the other. This does not happen all the time, but it does occur often enough to influence the pattern and progress of the negotiation. It is an aspect of the process that can be managed.

Trust is an expectation that the other party will act in a beneficial rather than exploitative way. A lot of emphasis is placed on building trust – particularly when trying to create a cooperative negotiation – but trust is easily over-estimated, and is fragile. Thinking about trust leads to thinking about the behavioural ethics involved in negotiation.

Another important feature of a negotiation is power. Paradoxically, this has a great deal to do with the potential consequence if the parties

were not negotiating. The power that negotiators have relates to the alternatives open to them – ways other than negotiation to achieve their desired objectives. Negotiation can be viewed as a process whereby the alternatives that negotiators think they have are changed.

The lack of power, reflected in concern about having only a poor alternative, brings negotiators to the negotiating table and keeps them there. The level of trust between the parties determines the quality of the agreement they will then achieve. To a large extent, this trust is built through reciprocity.

Information – or more often the lack of it – is central in reaching an agreement, and so forms another link in the negotiation DNA. No matter how much negotiators prepare, there are always things that they do not know (but wish they did). Many strategies and tactics are designed to improve the negotiators' understanding of what is and is not possible as an outcome. Because of this, negotiation can be viewed as a process of information exchange – particularly information about possible solutions on the one hand and walk-away alternatives on the other.

Finally, as suggested in the definition of negotiation, the reason for entering into a negotiation is to reach an agreement, so the outcome is another part of negotiation's DNA. The better the negotiation, the better the outcome. Negotiators are often encouraged to achieve a win-win agreement, but the notion of a win-win agreement is not as clear (or as achievable) as we would like to think.

None of these elements – reciprocity, trust, ethics, power, information and outcome – are clear-cut; nor are they mechanistic or precise. This is why negotiation is complex, relatively difficult and unpredictable. To be a good negotiator means having a practical understanding of a negotiation's DNA, which helps a negotiator to manage the process while recognising that all the uncertainty and difficulties can never be eliminated.

DNA imagery has its limitations: the two strands never meet, perhaps signifying that the parties never reach agreement. That said, having an image or script that resonates with the key aspects of the negotiation creates a mental framework to help a negotiator guide the process to an agreement. A visual image sometimes has more life than a carefully formulated definition, such as that presented at the start of this chapter. The DNA image (see [Chapter 2](#)) is just one of several that appear throughout this book to help the reader's practical understanding of negotiation.

Discussion questions

- 1** Why do negotiators tend to forget that negotiation is two-sided?
What might be some consequences of a one-sided approach to negotiation?
- 2** Draw a negotiation map of your organisation or of your interpersonal interactions and negotiations over the past two weeks.
- 3** Use the definition to analyse a recent negotiation.
- 4** What other images might be used to describe negotiation?

2

The DNA of negotiation: the negotiators



The focus of this chapter is on you, the negotiator. After reading the chapter, you should be able to:

- assess the effect of personality and bias on how negotiations are conducted
- understand how to manage emotion in a negotiation
- develop ways to manage ‘difficult’ negotiators
- appreciate the effect that gender may have on the ways in which people negotiate
- understand what it means to become a reflective practitioner.

[Chapter 1](#) suggested that negotiation is like DNA where the two strands are entwined together and are given life and character by a number of critical links. The DNA imagery of negotiation is that the two strands are the two parties and the links are critical elements that are hard-wired

into the process, without which negotiation won't happen. This chapter will focus on the two strands of our negotiation DNA, the parties, while [Chapter 3](#) will look more closely at the links that shape the negotiation: reciprocity, trust, power, information exchange, ethics and outcome.



Parties to the negotiation

The two strands of our negotiation DNA represent the two parties, each with its objectives and priorities. Most business negotiations are conducted by negotiators acting on behalf of organisations, so even when these negotiations are one on one, the shadow of the organisation is often in the background. When thinking about a party to a negotiation, it is important to consider the interactions between that party's negotiators and those they represent. These intraparty dynamics are explored in [Chapter 9](#).

But what of the individual negotiator? One reason why negotiation is characteristically messy is that people are different. We each try to do things in different ways and react differently to what is happening around us or to us. Our personality impacts on how we negotiate. But how much?

Do I make a difference?

As we get older, our personalities become more set, so it would be of little help to learn that a personality different from ours is necessary for effective negotiation. Fortunately, attempts to identify the impact of personality on negotiation effectiveness have not found any significant, practical effects (Bazerman et al. [2000](#)). While we do have some information about how we can develop a particular way of defining problems or reacting to conflict, more research is needed (Sandy, Boardman & Deutsch [2000](#)). It seems that some of the structural and dynamic aspects of negotiation tend to moderate the effects our personality might have.

Nevertheless, we cannot excuse our personality and behave just as we wish. Nor can we rely on our personality as a substitute for becoming more competent. Negotiators need to be smart (Fulmer & Barry [2004](#)). There is evidence that cognitive ability (the ability to analyse and plan) and perspective-taking ability (being able to discern and understand a point of view other than your own) can both help a negotiator to manage a negotiation more constructively (Barry & Friedman [1998](#); Kemp & Smith [1994](#); Kurtzberg [1998](#)). The ability to perceive and manage emotions in oneself and in others – emotional intelligence – also contributes to a negotiator's effectiveness (Barry, Fulmer & Van Kleef [2004](#); Foo et al. [2004](#)).

The advice of the Greek philosopher Plato to know thyself is useful for negotiators (Deutsch [1990](#); Raiffa [1982](#)). It helps us to understand how we might approach the task of negotiation, how we might react and what effect we are likely to have on other negotiators. This self-awareness can be instructive, and while it may not alter who we are, it might help us

change what we do. Being aware of those events in a negotiation that might cause us to be anxious or angry, for example, gives us an opportunity to plan what to do – perhaps to summarise, repeat our main points or openly reflect on our feelings.

Our personality may not have a determining impact on negotiations, but how we approach a negotiation certainly does. Unfortunately, the way we think sometimes hampers effective negotiation. We have a tendency to regard issues as win–lose situations even when they are not (Bazerman & Neale [1983](#); Pinkley, Griffith & Northcraft [1995](#)). This can lead to an understanding of negotiation as a game or contest in which there are winners (us) and losers (them). This shapes our whole approach to the task of negotiating. It means that we tend to view negotiation as having a completely competitive script, so we act accordingly. When, for example, negotiators know the walk-away point of the other party, they tend to open competitively, placing a high offer that seeks to claim the bulk of the available value (Buelens & Van Poucke [2004](#)). Negotiators tend to make high demands when the other negotiator has made a low one (Pruitt & Syna [1985](#)).

Given the power of reciprocity – which is particularly strong if we have come to the negotiation with a reputation for competitiveness (Tinsley, O'Connor & Sullivan [2002](#)) – our level of competitiveness is often matched by the other party. This then reinforces our (mistaken) belief that negotiations are necessarily competitive, and that the only way to get a good outcome is to be more competitive than your opponent. The negotiators then fail to see what opportunities there might be for joint gain, and often end up losing (Thompson & Hastie [1990](#); Thompson & Hrebec [1996](#)). In fact, research suggests that self-oriented competitive bargainers do not fare well (Beersma & De Dreu [1999](#); De Dreu, Weingart & Kwon [2000](#); Schneider [2002](#)). Even if negotiators who are only interested in their

own outcome try to engage in cooperative strategies, they cannot do so consistently enough to reap the benefits from true cooperation (Kern, Brett & Weingart [2005](#)).

Related to this is a tendency to attribute greater differences to situations than actually exist (Robinson et al. [1995](#)). This can be reinforced by a tendency to stereotype others, and thus expect them to behave in a particular way. It is not surprising that if we think negotiation is a win–lose affair, and we believe that the other party is extreme in their demands, we will draw on a competitive rather than a cooperative stereotype. These biases can also prejudice cross-cultural negotiations. When negotiating with someone from China, say, we might instinctively assume that we are negotiating with a Sun Tzu strategist rather than a Confucian gentleman (Fang [1999](#)).

A bias towards a win–lose view of negotiation frames both our preparation and our interpretation of the other party's words and actions. The author and a colleague in the United States asked their students to undertake a negotiation over the internet. One of the virtues of online negotiating is that it provides a full transcript. As part of their reflection, the Australian students commented on how competitive the Americans were, providing quotes from the text to support their view. Closer examination of the transcript revealed that the Australian students had used the same language. Incidentally, the American students made the same critical comments about the Australian negotiators, while again doing the same things themselves.

Researchers have discovered a long list of cognitive, emotional and motivational effects on the way negotiators approach their task (Thompson, Neale & Sinaceur [2004](#)), some of which are listed in [Box 2.1](#). They don't make for good reading! They are examples of what Sebenius ([2001](#)) calls 'skewed vision', but the difficulty for people with skewed

vision is that they don't know they've got it because to them everything seems straight!

Box 2.1 Some biases of negotiators

Over-confidence

- We think others – for example, an arbitrator – are going to judge in our favour.
- We think that our coercive tactics will work on the other party but theirs will have no effect on us.
- That is why we don't give much attention to information exchange and why we make fewer concessions because we think our best alternative to a negotiated agreement (BATNA) is better than it probably is.

Fixed-pie perception

- We tend to view our positions and interests as being diametrically opposed.
- That is why we enter a negotiation competitively and also devalue any concessions the other party might make. (We also do this because we don't really understand their situation.)

Anchoring

- We tend to give greater weight to early information or positions, particularly if the information is clear.
- That is why we get stuck defending a position that is untenable.
- And why it is easier to negotiate around positions than interests.

Extremism

- We tend to think that the other party's positions are more extreme than they are.
- That is why we expect the other party to make more concessions and to devalue any concessions they make – they should not have been holding their position in the first place!

Illusion of transparency

- We tend to think that others can understand us and discern our motives more than they actually can.
- That is why we stay stuck in our positions and don't do much to create a bridge of understanding between the parties (because that understanding is presumed).

Knowledge of other

- We tend to ignore how the other party might be thinking, or why, and attribute their behaviour to them rather than their situation.
- That is why we are not very good at predicting the effect our strategy and tactics will have on the other party.

Developed from Thompson, Neale & Sinaceur [2004](#)

How can we counter innate bias? First, biased thinking can emerge from a lack of critical thinking. Ensure that those within your negotiating team who suggest a contrary perspective are always given scope to express themselves. If negotiating alone, talk through your preparation with someone you trust, who is prepared to challenge your thinking. Second, biases and prejudices can stem from our ignorance of the other party.

Ensure that full attention is given to the perspectives of the other party, taking time to understand, as best you can, their situation and their motivations. Third, as some of these biases are going to lead to negotiation difficulties and poor outcomes, we might usefully learn from our mistakes by reflecting on our own negotiation performance. However, when doing this we do need to be aware that the very biases that caused the weaknesses in the negotiation will affect the reflection process, and will encourage us to explain away our faults. It helps to get a second opinion.

Finally, as suggested earlier in the chapter, know thyself. We can be more alert to our biases and prejudices if we understand how we act and react, particularly when under pressure, so it is important to have a realistic assessment of our own approach to negotiation. This can be done by seeking wise counsel and by reflecting on our own negotiation performance.

There are many useful self-evaluation tools. The Thomas–Kilmann Conflict Mode Instrument (Shell [2001](#)) enables negotiators to make an assessment of their preferred style, which relates to the Dual Concerns Model (see [Chapter 5](#)). Robinson, Lewicki and Donahue ([2000](#)) have developed a Self-reported Inappropriate Negotiation Strategies (SINS) scale, which enables a negotiator to check out their ethical standpoint (and practice). Salacuse ([1998](#)) provides a list of 10 negotiation factors that he suggests can be used to assess other cultural approaches to negotiation (see [Chapter 11](#)), but they can equally be used for a self-assessment. These include whether you prefer a formal or informal style when negotiating, and whether you tend to be affected by time pressure.

Deutsch ([1990](#)), whose advice we are following to know thyself, suggests that negotiators can evaluate themselves across six dimensions. These are based on characteristics shown by negotiators and can be made into a useful self-reflection checklist ([Box 2.2](#)). Each characteristic may be

appropriate in a particular situation, but we normally tend towards one end or the other of each dimension, so completing the checklist gives an indication of how we would normally react. It is important to understand this for two practical reasons. First, if on reflection we realise that, for example, we always shy away from conflict, then this may be an issue we have to address. Second, given that negotiation is two-sided, we may realise that the other negotiator prefers to operate towards the opposite end of a dimension. They may take a loose approach, whereas we like to be organised. If this is so, then we will have to allow for that.

Box 2.2 A self-reflection checklist

Although you may react differently depending on the circumstances, what sort of approach to negotiation do you prefer?

Conflict avoidance

denial, suppression,
postponement

Hard

able to maintain an
unyielding stance on an
issue

Rigid

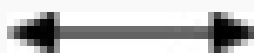
Excessive involvement in conflict

macho attitude;
seek conflict to
demonstrate your
ability

Soft

reluctant to fully
express stance or
opinion; seek to
agree

Loose



seek control through
setting agenda; dislike
flexibility



seemingly
unprepared;
flexible and resist
organisation and
control

Intellectual

issues are intellectual
challenges



Emotional

issues seen in
emotional
or people-related
perspectives

Escalating

any conflict is major,
needing a significant
response

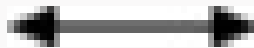


Minimising

any conflict
situation is not
seen as serious

Compulsively revealing

readily prepared to reveal
thoughts and feelings,
often bluntly



Compulsively concealing

information;
reactions are
guarded

Ways of thinking: why is this happening?

As we will see later in the chapter, a negotiator needs to understand what is going on around them in a negotiation. Not only do we need to know what is happening; we also need to have some idea as to why it is happening. [Chapter 11](#) includes a framework developed by Brett and Gelfand (2006) ([Table 11.6](#)), which they use to identify cultural differences. One of the dimensions is ‘attribution’ – where we look for reasons why an event occurred. We can take one of two approaches as we look to attribute a cause to an event. First we can look to the person’s disposition as the cause. If a person is late for a meeting, we might think, ‘Bill is late. He’s just not reliable’, and in doing so we have attributed the cause of the event – being late – to Bill and his character. We probably won’t then think too much of what Bill contributes as the meeting progresses. On the other hand, we might think ‘Bill is late. The lift up from the floor he works on was busy when I was coming to this meeting.’ Here we are speculating that the reason for Bill’s lateness was situational, outside of his control. The truth may be that Bill is unreliable, or that the lifts were busy (or both), but we have already formed a judgement without really knowing.

As part of an attempt to ‘know thyself’, we might find upon reflection that we tend to take either a dispositional or situational approach in our first look for an answer to the question, ‘Why is this happening?’ Our thinking will shape how we react (see [Table 2.1](#)). [Table 2.1](#) also provides another example of how we might answer a ‘Why?’ question about our own performance – if it has gone well, we take the credit; if it hasn’t, then the fault lies elsewhere.

Table 2.1 Attributions: What do we think is causing this?

	Dispositional attribution	Situational attribution
Why are they taking time to provide us with this information?	<p>They are not very organised.</p> <p>They are playing competitive games.</p>	It is a lot of data to collect; it is their busy sales period.
Why are they not conceding to our requested price cut?	<p>They are stubborn.</p> <p>They don't have a grasp on reality.</p>	Maybe the price we are offering doesn't give them any profit margin at all.
Why is she getting so angry?	She flies off the handle at every opportunity.	This issue may be really, really important to her.
<p>Why did this negotiation go well?</p> <p>Why did I get a good result?</p>	I negotiated well; I was firm but fair.	
<p>Why did this negotiation go poorly?</p> <p>Why was it not a good</p>		They played hardball and exploited the situation.

outcome?

Managing the use of personality and emotion in negotiation

Can personality or emotion be used as a tactic? Can the other party's perceived weaknesses be used to our advantage? Even the phrasing of the question conveys a competitive orientation that is probably not helpful to the negotiation. Use of a typical personality tactic would be to get the other negotiators annoyed, causing them to lose their temper and so reveal some critical information or make an unwarranted concession. However, because negotiation is two-sided and messy, the hoped-for results of any tactic are not guaranteed. If the other negotiators control their annoyance and reciprocate the personality tactic with one of their own, are you sure you can hold your temper and not do the very things you were hoping to entice from across the negotiating table?

We are not robots, so we will show our feelings during the course of a negotiation. If we are completely controlled and wooden or poker faced, then this will probably heighten the suspicion of the other party. Our emotions serve a useful purpose in establishing social relationships (Keltner & Haidt [1999](#)) and shaping how issues are understood (Martinovski & Mao [2009](#)), so they are important in negotiation. If we come to a negotiation with a positive attitude – that we *will* find a solution – this will engender a similar positive attitude in response (the 'be friendly' rule; see [Box 3.1](#) in Chapter 3). It is a fine balance. If we are too concerned to work together to find an outcome, then we will find – paradoxically – that we will often fail to find the best solutions (see [Chapter 5](#) for why this is so), and if the negotiations turn competitive, we give away concessions (Amanatullah, Morris & Curhan [2008](#)). Similarly, continually emphasising how well the negotiations are going will cause the other negotiator to wonder whether they are giving away too much and

need to toughen up (van Kleef, De Dreu & Manstead [2004a](#)). This is a reminder of the risks of using emotion as a tactic. For any tactic to work, it must be accurately understood by the other negotiator (Kopelman, Rosette & Thompson [2006](#)). We should not presume that it always will be understood.

Expressing anger to draw out a concession is one effective tactic used by negotiators (Sinaceur & Tiedens [2006](#); van Kleef, De Dreu & Manstead [2004b](#), [2006](#)), but the research also shows that this strategy has its limitations. Negotiators make fewer concessions to anger if they are more focused on understanding the situation, if they are under time pressure or if they feel more powerful. This is why the three useful questions to ask (see [Chapter 1](#)) are a helpful counter to an angry negotiator tactic. They help the negotiator to stay focused on the issue and where the negotiation is heading, and so give a cognitive rather than an emotional response to the anger tactic. The three useful questions will also help to counter negotiators who employ a tactic explored by Sinaceur, Maddux et al. ([2013](#)). They found that when negotiators switched from being angry to being happy and back, they created a sense of unpredictability that resulted in the other negotiator feeling in control, and leading them to make concessions. This can be countered by having a good sense of process. (We will look more closely at process in [Chapter 4](#) and how it works out in practice in [Chapters 6, 7 and 8](#).)

Since showing anger seems to work, we might be tempted to feign it. This could work, but it is when the other negotiator recognises the anger as genuine that concessions are made (Côté, Hideg & van Gleeef [2013](#); Tng and Au [2014](#)). Anger – even genuine anger – eats away at trust, which does not help the negotiation. The level of trust will be lower still if it is discovered later in the negotiation that the anger was not genuine. If a negotiator is genuinely angry about an issue or an offer, then it is better to

direct that anger to the issue or offer rather than to the person (Lelieveld et al. [2011](#)). However, a negotiator who is disappointed should show their disappointment towards the person making the offer, and so make them feel guilty (and thus cause them to make a concession) rather than express their disappointment about the offer itself. Conveying disappointment is generally more constructive than conveying anger (Wubben, de Cremer & van Dijk [2009](#)).

Finally, we should note that although some negotiators do shout, throw things and storm out of meetings, for the most part ‘anger’ is more restrained – although it nevertheless may still be deeply felt. Recognising the depth of feeling held by the other party is an important skill. The signs may simply be an increase in tension – sharper voices, more interruptions, dismissive comments and sighs of exasperation may all be indications that the emotional pressure is building.

While we may choose not to use emotion as a deliberate tactic, we are still likely to react emotionally to statements or events in a negotiation. If we get frustrated that the issue is not being resolved, or with what the other party is doing – such as making offers they know you can’t accept – then expressing how we feel can have a positive effect (Rackman & Carlisle [1978](#)). The statements must be about the issue, and should not overflow into statements about the other person. Compare the statement, ‘I don’t see where this negotiation is heading. I thought I made it clear why I cannot accept that sort of offer’ with ‘How can you keep putting that offer on the table? You know I’m going to reject it.’ The first relates to the negotiator’s frustration with both the issue and the process. The second has transferred the frustration to the other negotiator, and is more liable to invoke an emotional response from across the table.

Negotiation in practice

Too emotional to listen

A business owner was looking to sell the business he had been running for more than 15 years. A business consultant engaged to help him through the sales process found a number of potential purchasers, and separate meetings were arranged with each of them. The consultant endeavoured to help the owner prepare for the meetings. However, once into the first meeting, the owner would not stop talking. Even though he had firmly decided to sell, his emotional involvement in his business got in the way of the important task of finding out why the potential purchaser was interested in buying it. The consultant ran the next meeting.

But what if the other negotiators are emotional, speaking a lot, interrupting, and speaking loudly, quickly and in an unstructured and exaggerated manner? Negotiators use emotional outbursts as a tactic because they feel deeply about an issue and so get carried away, because someone pushed a trigger or simply because it works for them. Some ways to deal with this are listed in [Box 2.3](#). Remember, though, that we might well be showing our emotions too. Female negotiators seem to react less to statements that might trigger an emotional response (typically, anger or frustration) because they view negotiation in relationship terms, given that emotion is part of a relationship (Schroth, Bain-Chekal & Caldwell [2005](#)). For male negotiators, emotion gets in the way of fixing the dispute, so they react to it more.

Negotiation skills tips

Dealing with emotion

Don't let emotion get in the way of a good outcome:

- Treat people with respect.
- Treat yourself with respect.
- Reflect on what others are saying.
- Seek to manage the process, not the people.

Box 2.3 Dealing with emotion in negotiation

Treat people with respect

- Listen; show you are trying to understand.
- Allow for exaggeration.
- Don't use put-downs.
- Don't challenge people's statements.

Treat yourself with respect

- Don't get angry or frustrated.
- Retain your belief that you *can* find a good solution.
- Restate what you want to achieve (but don't press others to agree).
- State your own feelings too – but briefly.

Reflect on what others are saying

- Recognise the emotional component.
- Build on their statements about the substantive issues.

Seek to manage the process

- Talk about where the present dynamic is leading.
- Suggest alternative ways of interaction.

Negotiating with ‘difficult’ negotiators

Some negotiators are just ‘difficult’ to deal with. As we have seen, we can attribute this to them being the type of person they are, or we can attribute it to their situation. Or perhaps they are being ‘difficult’ because they think it will get them the best result. [Table 2.2](#) lists some of the things negotiators do that are difficult to handle. (We – of course – never do any of these things!)

Table 2.2 Things ‘difficult’ negotiators do

- Being constantly critical of what is being said, particularly of minor points of detail or procedure, or always looking for the worst possible interpretation or implication (notwithstanding their protestations that they are ‘only trying to explore *all* the possibilities’)
- Using personal put-downs, moralising and attributing blame
- Attempts at amateur psychology (‘the only reason you are taking such a hard line is to compensate for not getting your own way in last week’s scheduling meeting’)
- Constantly interrupting or digressing
- Exaggerating
- Bringing in new issues, or issues from the past which have been dealt with
- Having the only answer
- Asking so many questions that it becomes like an interrogation
- Putting all that has been written about being assertive into practice in one go

- Applying time pressure ('I'm very busy. Can't we wrap this up quickly?')
 - Playing the emotional or gender card
-

As always, good preparation can help – particularly if you have met with a negotiator before and they proved to be 'difficult' on that occasion. Before a negotiation, consider what might happen if the negotiation process does not go as well as it should. Being 'primed' does reduce the impact of the other negotiator's unwelcome behaviour when it occurs (Denson & Fabiansson [2011](#)). As part of this priming, it is important to develop a plan, such as, 'When he starts using personal put-downs then I will let him finish but then restate my core point.'

We also need to consider whether there is anything we might have done to contribute to or provoke the behaviour – although, as we have seen, we shouldn't internalise this too much as we might feel we are to blame and so make an unnecessary concession. Nor should we try to appease the person by making a concession or feel that we must come up with a new solution to 'move the negotiations forward' – it is likely that your new proposal will not be good enough for the other, difficult negotiator, no matter how good it really is. It is more important to remain focused on the issue about which you are negotiating, and to have a clear idea of the process you should be following (refer to [Chapter 1](#) again for those useful questions).

Does gender make a difference in negotiation?

When considering the effect of gender on negotiation, we face the same problem as we do with personality: there are no definitive links between gender and negotiation behaviour. It is more the case that the situation influences how negotiators approach their task, particularly in shaping their expectations and goals (Kray & Babcock [2006](#)). As a simple but important example, if society conditions us to believe that it is acceptable for women to earn less than men, then a woman going for a job probably does not expect to earn as much, so just accepts what is offered at the job interview. Professional background matters too. Being a lawyer, for example, shapes one's approach to negotiation more than one's gender (Feidakis & Tsaoussi [2009](#)).

Women do seem to place more emphasis on social relationships than men, but they are expected to by society. Women will tend to negotiate in the way that is expected of them – that is, generally, to be ‘nice’ rather than ‘tough’ (Babcock & Laschever [2003](#); Kray & Thompson [2005](#)) – but for the same reason will toughen up and be more successful if negotiating on behalf of others (Amanatullah & Morris [2010](#)). Bowles, Babcock and McGinn ([2005](#)) also found that gender differences lessened as the negotiation context became more structured – the task ‘squeezed out’ the stereotypical expectations – but if the negotiation task involved concern for others (for example, negotiating on their behalf), then the gender effect was triggered to good effect. The fact that women are more relieved than men when their first offer is accepted (Kray & Gelfand [2009](#)) again suggests that women prefer a relationship rather than substantive outcome. They will be wary, too, of negotiating assertively because of the anticipated backlash (Amanatullah & Morris [2010](#); Tinsley et al. [2009](#)).

Negotiation in practice

Oops!

At the start of a typical Japan–US business negotiation, held at the Japanese company's offices, the personal assistant of the host CEO approached the only woman in the American team and politely asked whether the hospitality arrangements that had been laid on for the day were satisfactory. There was considerable embarrassment when the two negotiating teams sat down across the table. The American woman sat opposite the CEO – she was not the negotiating team's PA, but its lead negotiator.

Negotiations do not occur in isolation, but – particularly within organisations – are part of a broader 'negotiated order' (Strauss [1978](#)) where the role expectations of the organisation provide a context that shapes how individuals approach the task of resolving differences (Kolb & McGinn [2009](#)). Male negotiators are seen as being more flexible between competitive and cooperative strategies, and this accounts for some of their negotiating success. Women tend to stick to being cooperative but the reason for this – at least in an organisational context – is that men tend to have more status, and therefore more options open to them (Miles & Clenney [2010](#)). Again this is a contextual not gender-based explanation.

So there is no reason for men to feel superior or for women to feel they have to negotiate like men to be successful (which incorrectly presumes that men, however they negotiate, are successful). The socialisation of roles by gender should not be allowed to hide the fact that both sexes are equally competent at negotiating. Female negotiators are seen as being more cooperative, by which is meant that they show more

concern for others and make lower demands (Walters, Stuhlmacher & Meyer [1998](#)). When this is the case (as we will see from our strategy analysis in [Chapter 5](#)), it is not surprising that women don't get such good outcomes, but when they have set the same goals as men, they do just as well (Calhoun & Smith [1999](#)). Having status and legitimacy helps improve outcomes (Amanatullah & Tinsley [2013](#)), as does being conscious of one's power position (Hong & van de Wijst [2013](#)). Men tend to assume these more than women, so women negotiators need to think more than men about to how to shape their negotiation arguments around the task, their role in it and their competency without being individualistic: 'My divisional manager has given me the job of sorting out these production delays. We've sorted many of them but there are still some issues with the late supply of some raw materials. I need to work with you to find the best low-cost solution ...' Again, men would do well to adopt this sort of approach rather than just put their solution on the table and expect to persuade everyone to agree with it.

Women might challenge the definition of negotiation in [Chapter 1](#) because of its task orientation. Halpern and Parks ([1996](#)) found that female negotiators defined a situation more broadly than their male counterparts, such as considering who might be affected in the future, reflecting a more relationship-driven motivation. Following from this, the ensuing discussion might be viewed more as an opportunity to talk through a problem than a negotiation to fix it. This leads to a more collaborative perspective and less use of confrontational tactics. Women will exchange information, but only to understand the situation better rather than to secure a good outcome for themselves (Deal [2000](#)). Negotiation is less clearly separated from other conversations (Kolb & Coolidge [1991](#)), with one consequence being that women can find themselves in situations where men are negotiating but they are not doing so themselves.

We might presume to give some gender-specific advice for when you are negotiating with someone of the opposite sex. Male negotiators should look at the broader perspective and include other people's concerns, while backing off from making threats or using sarcastic humour. Female negotiators should raise their expectations through good research and not let their goals become diluted for the sake of others achieving theirs. This is not specifically gender-related advice; it is useful advice for all negotiators, no matter with whom they are negotiating. Again, self-reflection is important, as is taking a strategic approach.

Negotiation skills tips

Negotiating with the other gender

- Look for similarities, not differences.
- Female negotiators: check whether your goal is high enough.
- Male negotiators: check whether you might lose by winning.

Other-directedness

One more brief but very important point can be made about the strands of negotiation DNA. There are two strands to a DNA. The definition of negotiation ([Chapter 1](#)) is that ‘negotiation is a process in which two parties ...’ There will always be somebody sitting across the negotiating table or at the other end of the internet connection. This is so obvious that we tend to forget it. Our thinking becomes egocentric and linear, but throughout this book we will see that the other party has choices too – hence the advice in [Chapter 1](#) to remember at all times that negotiation is two-sided. We can call this an ‘other-directed’ mindset, one that involves always deliberately taking the other party’s possible reactions into account. [Table 2.3](#) offers two common examples of one-sided and other-directed thinking. The approach in both examples may be the right one – as we will see, to focus on interests first is a wise strategy. The difficulty lies with the presumption that the other party will follow a similar approach, not recognising that they also have choices. They may feel that working through a document is the best way to resolve outstanding issues. If this happens without being anticipated, our negotiator – who, rightly, wants to follow an interest-based approach – can easily become frustrated that the other party is not negotiating ‘properly’, and this will colour their judgements and reactions. The negotiations can become competitive because of this.

Table 2.3 Examples of one-sided and other-directed thinking

One-sided thinking	Other-directed thinking
--------------------	-------------------------

We have a good BATNA so we will tell them that our price is non-negotiable.

Unstated: They will quickly realise that they have to accept our price.

What if – for whatever reason – they do not accept our price? What else can they do?

How will we react if they don't do what we expect and concede to our price?

When we get into the negotiation, we need to explore our interests first and then move on to possible solutions. We will hold back on giving our proposals until we've uncovered all the interests.

Unstated: They will also adopt the interest-based approach.

What if the other party presents a proposal at the outset and insists on going through it in some detail?

Consequently, a core principle for negotiators is always considering everything from the other party's perspective. This does not mean conceding to accommodate them; it means always explicitly considering what the other party's options are – the decision they *may* take rather than just the one you *want* them to take.

Negotiation in practice

Not remembering that negotiation is two-sided

Logistics Co. had successfully provided services to one division of a chemical company for many years. It learned that a new division in that company was looking for logistics services, so the sales leader from Logistics Co. put in a quote for the work comparable to the price negotiated with the other division. When he visited the procurement manager of the new division, he was surprised (as he later recalled) when he learned, very early in the conversation, that the procurement manager was seeking a range of bids. The sales leader had thought he had the inside running because of the successful relationship between the two companies. Not having thought through any alternative scenarios, he didn't have a response to the procurement manager's insistence that the quote be reduced by 10 per cent. His subsequent offer of a 5 per cent reduction was acceptable to the procurement manager and the contract was secured. The other division of the company then demanded a 5 per cent cut from him too.

Becoming an effective negotiator

While we might become more alert to possible ways of handling difficult situations, we must always remember that negotiation is two-sided, and so keep examining our own approaches and behaviours.

We may not be able to change who we are, but we can change what we do, and so improve our negotiating and become more effective. There are three elements to improving our effectiveness: envisioning what a good negotiator looks like; becoming a reflective practitioner; and committing to continue learning about how we function as a negotiator.

How might we recognise a good negotiator?

As part of any plan to improve, we should set ourselves high standards. To help establish a benchmark for our negotiating, this part of the chapter anticipates what you will read about negotiation throughout the remainder of this book. It summarises some qualities and behaviours of good negotiators, providing a checklist to which you can aspire and towards which you can work.

As a negotiator, you can help to achieve good negotiated outcomes. It is taken for granted that you have integrity and show respect for those with whom you negotiate. In the long run, whatever skills negotiators might have will count for little if they are known to lack integrity and fail to show respect to those across the negotiating table.

The whole purpose of negotiation is to resolve differences well, so a primary measure of effectiveness must relate to how the issues are handled and what is achieved. One part of the up-front advice is to be acquisitive, which is an oblique way of saying always get the best deal you can. This can, of course, be taken to mean you must be self-oriented, hard-nosed and competitive, but hopefully the material that is presented in this book will reveal a different approach.

First, it is important to have high aspirations and set challenging goals. This is being competitive in the best sense of the word. Having high goals means you will not look to a compromise concession as the first way out of a deadlock. It means you will be willing to try again to uncover underlying interests in order to find a better solution than those already on the table.

Those goals must be ‘yes-able’, which means you must have a good understanding of where the other party is coming from. It means thinking

in terms of their possible interests to know what they might (and cannot) agree to. This need to understand the other party's perspective continues throughout the negotiation. So try, for example, to understand the reasons why the other party has rejected your proposal rather than instinctively trying harder to persuade them to agree to it. Better still, try to anticipate the objections they are likely to have and deal with them in the way you put your proposal together.

It is important to think, plan and act strategically. This not only applies to being systematic – taking one's time – in one's analysis and decision-making, but also involves maintaining your strategic intent, remembering the primary purpose of the negotiation and where this particular negotiation fits within your broader objectives. Negotiators can easily get caught up in the detail (which is important for finalising a deal) and find that they are becoming increasingly competitive in their interactions. They may be reaching deadlock over issues that, were they to stand back, they would realise were not critical. It is the implementation of the agreement that matters, not winning every point of detail. Maintaining this strategic intent – asking 'How will the implementation of what we are agreeing to help me in my broader objectives?' – will help guard against making concessions for the sake of wrapping up an agreement. Another crucial part of any strategic approach to achieving the best possible outcome is to be aware of the consequences of not reaching agreement, both for yourself and for the other party.

An effective negotiator checklist

An effective negotiator:

- has integrity and shows respect

- will have high aspirations
- will always understand where the other party is coming from
- thinks, plans and acts strategically
- is aware of the consequences of not reaching agreement
- is able to visualise the process, and so can manage it
- explores interests and differences as well as positions and common ground
- keeps any constituency negotiations on track
- builds trust through information drip-feed
- handles other people's suggestions well
- regularly uses process statements
- does not interrupt or rush the process, and so gets a good result.

Taking a strategic perspective – thinking before acting – is also necessary to manage the process of negotiation. As a good negotiator, you will have an understanding of what is happening across the negotiation table and where it is headed because you are able to visualise the process, and so can manage it. Managing the process also means taking care over the three tasks of negotiation – differentiation, exploration and exchange. You will be aware that there is a common tendency for negotiators to work to a competitive script of stating positions and pushing for agreement through compromise. Instead, try to work to a different script and explore interests and differences as well as positions and common ground. If you are negotiating on behalf of others, you need to be alert to them becoming separated from what you are doing on their behalf so you keep any

constituency negotiations on track and follow the course of the main negotiation.

Whether in meetings with your constituents or dealing with the other party, as a good negotiator you will be careful to manage how the discussions are proceeding. Trust is not presumed: you build trust through information drip-feed, in order to steadily develop a joint understanding of interest. Getting to understand both parties' interests is necessary, but it does not guarantee a solution. New proposals have to be developed, and this can become a competitive process – either through negotiators having to defend their proposals, which then start looking like positions, or because the negotiators are dealing with detail or drafting a document. Show you are a good negotiator by the way you handle other people's suggestions well, and try to reflect upon them rather than rejecting them outright. You need to use process statements such as summarising regularly to help manage the dialogue, but it is important to try not to interrupt or rush the process, as doing so can make the negotiations seem competitive. Some competitiveness is inevitable, but there is no need to add to it.

Becoming a reflective practitioner

One important way to improve is to reflect on our performance and see what we can learn from it. People who do this regularly are reflective practitioners, and this is what negotiators should aspire to become. Schön (1987) uses the term ‘reflective practitioner’ to describe how someone engaged in a task – in his example, an architect – tries to work out how to solve a design problem that has not been encountered before. Finding a way around a problem involves a mixture of science and artistry. The architect, or our negotiator, can draw on their knowledge of the core principles they have learned – the science of architectural design or of negotiation. But sometimes these core principles don’t readily provide a solution, so we need artistry or intuitive knowledge to view a situation in a completely new way, make different connections between what we ‘already know’ and so find a new solution.

What does all this have to do with negotiating? Negotiation is a professional practice, and a tough one at that. Negotiators are constantly challenged with new situations. Imagine a scenario where management and union negotiators are sitting across the table from each other, trying to deal with the union’s claim that the recent dismissal of an employee was unfair and that he should be reinstated. Tensions rise but the negotiators are restrained. Then, suddenly, neither side is saying anything. There is silence. What does this silence mean? What should you, as one of the negotiators, do? Anything? Perhaps nothing?

To decide what to do next, a negotiator will draw on what they know about how negotiations ‘work’. They may recall reading in a negotiation textbook that a good thing to do is to ‘talk process’: to draw attention to the deadlock. They may also recall a previous occasion where a negotiator

who broke a silence ended up making a concession – was that the wrong thing to do or was it just poorly done? This is an example of reflective practice, drawing on the science of negotiation, supplemented by the negotiator's own experience. However, the negotiator has a sense (although they may not quite know why – after all, this is artistry at work) that the lead negotiator on the other side is feeling a bit uncomfortable and could be about to explode; the negotiator's intuition tells them to sit and wait, but be ready to 'talk process' if necessary. As the silence continues, one of the negotiators on the other side of the table begins to shuffle in their seat; the lead negotiator then embarks on a long-winded speech about the importance of job security and trust, but in the midst of it all acknowledges that the company cannot survive if workers don't perform. The deadlock is on the way to being broken.

To deal with situations like this, negotiators have to be very much 'in the moment'. They have to be able to read the situation and react appropriately to move the negotiations forward. This occurs not only in an emerging deadlock, but throughout the negotiation. In [Chapter 4](#), once we have looked more closely at how negotiations 'work', we will explore how to improve this skill of reflecting *in* the moment. However, educationalists tell us that before we can develop the skill of reflecting *in*, we first need to develop the skill of reflecting *on* a situation. Reflecting *on* a negotiation in which we have been involved will not only help us learn from it for the next time, but also start to embed the practice of reflecting into our behaviour so we find ourselves doing it while the negotiation is occurring, enabling us to manage the negotiation more effectively.

Developing the skill of reflecting

[Chapter 1](#) presented a definition of negotiation that was then used as the basis for the first of the negotiation tools: a preparation checklist. The structure of a negotiation that is implicit in the definition can also be used to develop a second negotiation tool: a review checklist. As mentioned in [Chapter 1](#), this review process will be strengthened if the answers from a review are compared with the notes that were made during the preparation for the negotiation. It would also help to compare reflections on different negotiations; some instructive patterns may emerge.

This review tool is designed to help a negotiator to systematically and thoroughly reflect upon a negotiation. Reflection is better if you have taken notes during the negotiation. This is difficult when negotiating on one's own, but it is important to try. It is useful to write only on one side of a notebook, leaving the other side blank for any later reflections. Taking notes has other advantages too. It shows the opposing side that you are serious – particularly if they can see from your notes that you have already written quite a bit by way of preparation for the meeting. It also enables you to be clear about any offers or concessions that you or the other party make, or any other commitments. Importantly, taking notes help you to slow the process down and give yourself time to think. If, for example, the other negotiator is pressing for you to agree to their offer, and you are not quite sure whether you should do so, then slow the process down by asking, 'Do you mind going through that again? I'm not sure I got it down right.'

Having taken notes once the session is over, you are in a position to start making some sense of what happened and why. Some research into the behaviours of experienced negotiators involved in multi-million dollar

infrastructure negotiations shows that they quickly review negotiations after each session, but are typically time-pressured (Lindholst [2015](#)). As it may be some time before the negotiation team meets again prior to the next round of negotiations, the time invested in reading through rough notes written in the meeting and on the blank page alongside, highlighting the key points, can prove invaluable.

Negotiator tool kit

A review checklist

If preparation is vital before any negotiation, then reviewing the negotiation once it has ended is equally important. Always ask how you could do this better next time.

Two parties

How well did we understand the other negotiators?

Did the structure of the negotiation work?

with differences

How well did we get to understand the extent of the critical differences that needed to be addressed?

that they need to resolve

Did we over-estimate the quality of our walk-away alternative?

try to reach agreement

What were the critical incidents in how the negotiations were handled?

Did they trust us? Did we trust them?

When was there a sense of us working together rather than working against each other?

If there was such a sense, when and how did that develop?

through exploring options

How well did we manage the process of developing some creative solutions?

and exchanging offers

How well was the closing tension managed?

and an agreement

How does the final agreement compare with what we said we really wanted from these negotiations?

Realistically, what are the prospects for this agreement being fully implemented?

Has this agreement made any forthcoming negotiations easier?

Action commitment

What am I now going to do differently when I next negotiate?
Why?

Being clear about what actually happened – as opposed to what we *think* happened – is what Bain and colleagues ([2002](#)) call ‘reporting’. The next step in their reflection process is ‘relating’ – thinking about what happened in relation to other negotiations, or the negotiator’s expectations

of what *ought* to have been happening. The third step is ‘reasoning’ – thinking why the negotiations unfolded in the way they did. The final step is ‘reconstructing’ – deciding what to do differently next time. These four Rs can be made into a simple set of questions – What? How? Why? and What now?

Negotiation skills tips

Practise reviewing your negotiations

Reporting	What happened?
Relating	How should it happen?
Reasoning	Why did it occur?
Reconstructing	What now?

Deciding what to do next

Having reviewed how well (or not) you are negotiating, there are three main elements you need to consider in deciding what to do to improve your negotiation. Be specific, make it well grounded and focus on one key action.

First, be specific: it does not help much to decide to ‘be more cooperative’ or have a general intention, such as ‘I need to be more cooperative’. Instead, make a specific action commitment, such as ‘If my offer gets rejected, I must ask a question to find out why, rather than explain the offer again’.

Second, be well grounded: the best way to be confident that what you plan to do will have the desired result is to base your actions on best practice – on what researchers have shown is the best thing to do. Throughout the rest of this book, you will find checklists, tips and lists of helpful and unhelpful things that are drawn from case studies and other research on negotiation. Set yourself a challenge to improve, but also be realistic; aim to improve rather than be perfect. (Remember that what happens also depends on the other party.)

Negotiation skills tips

Making an action plan

Negotiation with _____

About _____

I _____ will

Finally, focus on one area of improvement at a time. If you think the area on which you need to improve most is that you always want to push through to a solution, then develop a plan to help you slow down your pace and try to get that right rather than aiming to improve in lots of areas and risk not improving in any of them.

Good negotiators do not stop learning

From time to time, it is helpful to be even more contemplative about your life as a negotiator. It is more time consuming, but will bring different insights that will help improve your negotiating. The self-evaluation tool draws on Lang and Taylor's ([2000](#)) reflective practice approach to building mediation skills. Mediation is closely aligned to negotiation (see [Chapter 10](#)), so Lang and Taylor's approach can easily be adapted and made relevant to negotiators. There are three areas for self-reflection, starting with one's core beliefs, extending outward to thoughts on how the world of negotiation works and considering how one's beliefs and views are actually put into practice. Asking a mentor their opinion of you as a negotiator would also be a valuable exercise. It might be appropriate to use this reflection process as part of an annual performance review.

Negotiator tool kit

A self-evaluation

Reflecting on your negotiations and your negotiating is the key to continually improving. It is also valuable, from time to time, to think far more deeply about what you are doing. Then, if you have an opportunity, ask someone you trust.

What are my core beliefs and values?

- What are my personal values and beliefs?
- What is my view about conflict and cooperation?
- On what basis are differences to be resolved?
- What is my view about ethics in negotiation?

- What motivates me?
- What makes me negotiate the way I do?

What is my view of the world around me?

- How do people behave in situations of conflict or disagreement? Why?
- How do people reveal information (or not)?
- How does trust work?
- How does fairness work?
- How does power work?
- What makes an outcome good?

How do I interact with others?

- What words describe my typical reaction to a situation in which there are differences between participants?
- How do I behave when facing difficult choices or situations?
- How do I handle critical incidents in negotiations?
- What actions by others give me difficulty? Why?
- What actions by me give rise to unhelpful reactions by others?

Action commitment

What one thing am I now going to do differently the next time I negotiate? Why?

Discussion questions

- 1 What can be done to minimise any adverse effects of personality on negotiation?
- 2 What negotiation biases have you been aware of, and what impact have they had on your negotiations?
- 3 Develop a plan to handle a situation where a negotiator uses anger as a persuasion tactic.
- 4 What is the most important skill or quality to possess in order to become an effective negotiator?
- 5 What are the advantages of reflective practice?

Negotiation skills tips

Ask a mentor these questions:

- From seeing me negotiate, what do you think are my core beliefs and values?
- What makes me negotiate in the way I do?
- From seeing me negotiate, can you tell
 - how I expect people to behave in situations of conflict or disagreement
 - how I expect others to reveal information
 - what I think about trust
 - what I think about fairness?

3

The DNA of negotiation: the essence of a negotiation



In this chapter, the focus turns to the core elements of negotiation. After reading this chapter, you should be able to:

- explain the concept of reciprocity in negotiation
- understand the role of trust, power and information exchange in creating the dynamics of a negotiation
- be aware of ethical considerations when negotiating
- appreciate the importance of implementation as part of a negotiation's outcome.

[Chapter 2](#) explored the two strands of negotiation's DNA: the two parties without whom a negotiation cannot occur. This chapter examines key elements that are hard-wired into the negotiation process. These elements – reciprocity, trust, power, information exchange, ethics and

outcome – hold the negotiation together. If any one of them is ignored, then it is likely that the negotiation will not go well.

Reciprocity

If you try to wind up the other negotiators, they are likely to do the same to you. A common feature of any social interaction is reciprocity – the tendency of one person to match what the other is doing. This is how we relate to each other, whether in informal gatherings or sitting across a negotiation table.

Reciprocity is a central dynamic of negotiation (Putnam & Jones [1982](#)). Morton Deutsch, one of the key figures in social conflict research (that is, research into how to avoid conflict), realised that while we might look to the context, personality traits and other sources of conflict, the cause of any conflict behaviour being displayed by the person across the negotiating table is likely to be our own behaviour. The reverse is also true: if a negotiator acts cooperatively, this too is likely to be matched by the person opposite. Deutsch ([1990](#)) calls this his ‘crude law of social relations’. It is a crude law – a general trend to reciprocate, not precise matching (negotiation is messy). Nevertheless, it is a powerful dynamic. Brett and Okumura ([1998](#)) found this matching behaviour strong enough to term it the ‘bonds’ of reciprocity.

The phenomenon has important implications for how negotiations unfold. The *raison d'être* of any negotiation is ‘two parties with differences’, and the typical bias is to expect negotiations to be zero sum. It follows that if negotiators give little prior thought to their negotiations, then before too long they will be emphasising their differences, ‘overlaying this with a bit of competitiveness, which then is reciprocated, and this contentiousness is in turn reciprocated’ (Eyuboglu & Buja [1993](#)). A conflict spiral develops, to no one’s advantage. This is the positional bargaining described by Fisher, Ury and Patton ([1991](#)), in which

potentially beneficial solutions are not considered and where, even if the parties find a reasonable agreement, the process of achieving it has been so poor that neither is happy with the outcome.

The reverse reciprocation is also true. If one party is cooperative, then the other is also likely to develop a cooperative approach. If, for example, one negotiator refrains from interrupting, it is likely that the other negotiator will cease to interrupt, thereby enabling the negotiations to proceed more smoothly. So, while the strength of reciprocity is a danger as it can easily lock negotiators into a conflict spiral, it also represents an opportunity to establish and maintain cooperative interaction.

The power of tit for tat

A lot of research into conflict and cooperation has involved the Prisoner's Dilemma game, which focuses on a key feature of negotiation. This feature, which negotiators tend to forget, is that the outcome of a strategic or tactical choice depends on what the other party does (negotiation is two-sided). The important practical implication is that negotiators should second-guess the other negotiators' options and motivations as well as their own.

The Prisoner's Dilemma situation is described in terms of cooperation, the choice that would maximise joint benefit, implying trust; and defection, the choice that would maximise own benefit, implying no trust. To cooperate is to make whatever move may lead to joint benefit; to defect means to make a move that will disadvantage the other party for your own gain. An alternative view is to regard cooperation as a move towards the other party, whereas the defection move is not really a defection – implying mistrust, deceit and so on – but simply standing firm on one's present offer. These choices, which are brought into sharp focus in the Prisoner's Dilemma, apply most clearly in the negotiation end-game, when parties make a series of offers to achieve an agreement. It is also relevant when negotiators consider whether to exchange information.

The reciprocity or matching behaviour we find occurring in negotiations has been incorporated into a formal strategy known as tit for tat. It emerged undefeated from an experiment by Axelrod ([1990](#)) to see which strategy fared best when played against all other strategies in a repeated Prisoner's Dilemma game.

The essence of the tit-for-tat strategy is that a negotiator matches what the other party has just done. If the behaviour is positive, such as

providing information, then a potentially virtuous circle is established and the negotiations can progress. [Figure 3.1](#) reflects a process of information exchange in negotiations between an equipment manufacturer in the oil and gas industry and one of its raw material suppliers. They could not agree on a supply price. The manufacturer's negotiator, Michael, stated that a key concern for him was the funding arrangement over the life-cycle of the project. Susan responded with information about her company's financial requirements, which led to Michael going into more detail about his company's position. As a result, they were able to work out a payment schedule that benefited the manufacturer at no cost to the supplier. This then enabled Michael to meet Susan's expectation on price.

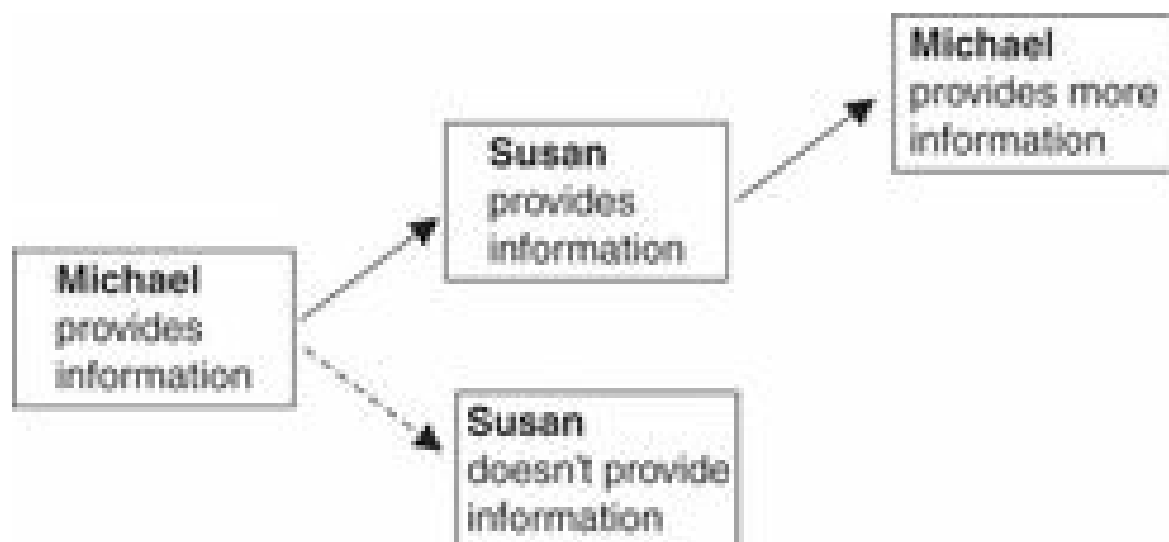


Figure 3.1 Negotiator choice and positive reciprocity in information exchange

If Susan had not responded positively ([Figure 3.2](#)), Michael, having shared some information to move the negotiations forward but not getting a cooperative response, would have found himself in a difficult position. He would have had to try again to encourage cooperation by providing yet more information. While this seems a conciliatory move, giving something when nothing has been received can also look like weakness. Susan would

now be in an even more advantageous position. If this pattern continued, the outcome would probably be in her favour at the expense of Michael and his company.

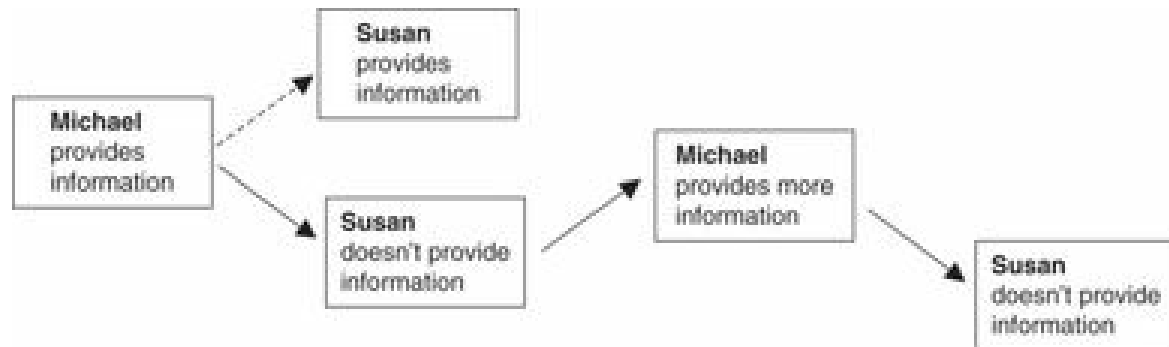


Figure 3.2 Negotiator choice and non-reciprocity in information exchange

According to the tit-for-tat strategy, the correct response to a refusal to provide information is not to give any more information oneself. This looks like a recipe for a deadlock and conflict spiral, so how does this tit-for-tat behaviour lead to cooperation? At the very least, the parties must continue to interact in some way rather than end their negotiations. If they keep the process going and continue to match each other's behaviour, then it is easy to recognise what is occurring and to appreciate that the situation cannot be exploited. As a rule to guide behaviour, matching the other's moves benefits from its clarity:

What accounts for tit for tat's robust success is its combination of being nice, retaliatory, forgiving and clear. Its niceness prevents it from getting into unnecessary trouble. Its retaliation discourages the other side from persisting whenever defection is tried. Its forgiveness helps restore mutual cooperation. And its clarity makes it intelligible to the other player, thereby eliciting long term cooperation.

(Axelrod [1990](#), p. 54)

Negotiators realise that they will not make any progress if they continue doing what they are doing, and that they must adopt more cooperative strategies to achieve a good outcome.

The basic principle of tit for tat can be developed into some rules to help manage a negotiation. As noted earlier, negotiations are about the issue and the process. The tit-for-tat strategy can help both aspects by, for example, encouraging information exchange or building trust, or when making concessions. The key words in the rules all begin, conveniently, with the letter F ([Box 3.1](#)).

Box 3.1 Tit-for-tat rules for engendering cooperation

Rule 1: be friendly and make a cooperative opening move

Issue

- Make a ‘yes-able’ proposition rather than an excessive one to indicate a degree of reasonableness, and so show that you won’t expect the other party to make every move to reach an agreement.

Process

- Establish a comfortable climate, allow the negotiations to build slowly, don’t force the pace; send general messages about the need to work together to see what might be achieved.

Rule 2: be firm and match the other’s behaviour

Issue

- Be clear from the outset on any genuine non-negotiables; state and restate underlying interests; match the other party's statements of interest or position with your own; and make concessions to match the other party (concession size will be contingent upon the expected outcome).

Process

- Don't over-argue the other's points – just match them with your own; match (perhaps slightly under-state) the other party's threats.

Rule 3: be forgiving

Issue

- Do not try to recoup any losses from a previous negotiation and do not focus on retrieving setbacks in the current negotiation. Look at the overall package being negotiated.

Process

- Do not refer to earlier negotiations unless it is necessary, and then not in terms of win or loss. Keep a future or solution orientation.

Rule 4: be facilitating

Issue

- Hold your position on the issue and don't press for change from the other party.

Process

- Make suggestions about a likely sequence of moves against the backdrop of a probable stalemate, but ensure that the message includes a restatement of position.

Rule 1: be friendly and make a cooperative opening move

This does not mean a negotiator has to be soft on the issue and be cooperative by making some initial concessions to get things going. Using the distinction between the issue and the process, a negotiator's opening position can be stated (anticipating that the other party will disagree). At the same time, through language and demeanour, a willingness to find a solution that meets both parties' needs can be indicated.

Rule 2: be firm and match the other's behaviour

If the other negotiators simply reiterate their previous position, then you should repeat yours and not feel obligated to reduce your position in an attempt to overcome the impasse.

Rule 3: be forgiving

If your attempt to be cooperative (friendly, Rule 1) was not matched, be firm (Rule 2) but do not seek to punish the other party for their lack of cooperation.

Because of Rule 2 (be firm), the other negotiators will, over time, realise that if they want an agreement, the only way to get you to cooperate is to cooperate themselves. Further, because of what you have demonstrated through Rules 1 and 3 (be friendly and forgiving), the other negotiators will know that if they cooperate you will not exploit their

cooperativeness, and so they can have some confidence that a genuine pattern of cooperation will be established.

Brett, Shapiro and Lytle ([1998](#)), in testing the strength of reciprocity and exploring how a conflict spiral can be broken, found that non-reciprocity can work. If the other negotiator is using arguments based on power, then responding with interest-based arguments can break the cycle. However, while it can work, it might not, so it is a strategy with inherent risks. Brett, Shapiro and Lytle suggest that a safer strategy would be to deliver a mixed message that involves making a power statement to match the other party's (firmness) and an interest-based statement to provide an alternative. Drawing on the work of Rackman and Carlisle ([1978](#)), Brett, Shapiro and Lytle ([1998](#)) found that labelling the behaviour of the other party and suggesting a way forward also looked positive (though in their research experiment there were few examples of these behaviour strategies). These findings can be made into another tit-for-tat rule.

Negotiation skills tips

Remember the four Fs

Follow the four Fs to help develop a more cooperative approach.

Be:

- friendly
- firm
- forgiving
- facilitating.

Rule 4: be facilitating

Talk about the process and provide other ways of proceeding. As an example, negotiations between two production managers are becoming increasingly positional; each is worried about being left with additional costs through having to meet the other's deadline. A constructive contribution might be this.

[Scott] 'I know your deadline is three months and I've said my department cannot supply that many components in less than four (Rule 2: be firm); however, as I said at the outset (referring back to your friendly opening under Rule 1), fulfilling this contract is important to both our departments, so what if we talk about what the key drivers are behind your timeframe and mine? That might offer us a way forward' (Rule 4: be facilitating).

Negotiation is messy: just because one negotiator makes a facilitating move does not mean that the other will respond. If Ian's reply is:

'I've told you what has to happen. We need your components in three months to meet our deadline.'

Then, by Rule 2, Scott's appropriate response would be:

'I've made it equally clear we cannot do the work you require in less than four.'

Rule 4 means that a negotiator talks about the process and other ways of proceeding, but does not embark on them until the other negotiator shows signs of reciprocating. In time – perhaps following another facilitating move by Scott – Ian might also respond with a mixed message:

'We are tied to our deadline. Three months. Though I can see what we are asking is difficult, the components are complex.'

This gives Scott the option of responding to the firm part of Ian's statement ('We are tied to our deadline') or to the facilitating part ('I can see what we are asking is difficult'), which has opened another avenue for discussion. This is where Rules 1 and 3 (friendliness and forgiveness) come into play again, as shown by what the negotiator does not do. It is not an opportunity for Scott to take the facilitating comment as a sign of Ian backing down, or that he can now harangue him about how unreasonable he has been for even thinking that three months was possible. Tit for tat tells us that this will only lead to Ian responding in kind. Instead, Ian's facilitative response should be reinforced by a similar comment from Scott about the pressures of deadlines (plural, recognising Ian's deadline too), and then shifting the dialogue slowly but surely into a new discussion – perhaps about rescheduling some of the processes.

The GRIT strategy

Osgood ([1962](#)) suggests that the graduated and reciprocated initiatives in tension reduction (GRIT) strategy is another effective way to break a competitive tit-for-tat conflict spiral. In the GRIT strategy, a party seeking to break the deadlock will first outline their intentions, which involve two elements. First, it foreshadows plans to take firm action against the other party; however, this action will be delayed. Second, it makes a number of conciliatory gestures – small, non-costly concessions that may include not doing something it had previously threatened to do. The GRIT strategy relies on the other party responding positively to one of these conciliatory gestures (to forestall the eventual unwelcome firm action). This means that there will have been two successive cooperative moves, and the reciprocity of competitive moves has been converted to reciprocity of cooperation.

The GRIT strategy is predicated upon the parties having a long-term relationship, and the issues they have to negotiate can be fractionalised or dealt with incrementally (not being either/or issues or issues of principle). The context in which this strategy was developed – Cold War diplomacy – is far removed from business negotiations, but the essential principles of GRIT can still be used. Consider a situation in which the parties in a supply contract are disputing every point – deliveries are late or wrong, schedules are always changing – and then ‘resolving’ them by referring to the small print in the contract. The GRIT strategy would first involve making it clear that to continue at this point would mean that both parties would lose. Second, it would involve making a series of small concessions as situations arise, but against the backdrop of potential credible action to address the future of the relationship. The party trying to bring about change might accept the other’s error, or bear some variation costs rather

than contesting them. They would make it clear that they are doing this not for the good of the relationship – which would look very much like appeasement – but rather because they are trying to make this contract work. They plan to accommodate the variations for the next six months, but have also asked their lawyers to pursue the compliance issues under the contract. If the other party reciprocates by giving ground on another of the issues in dispute (as they ought to do according to the tit-for-tat strategy), then progress (such as suggesting a mid-term operational review of the whole contract) can be made and the legal proceedings can be halted. If the other party does not reciprocate, then no more concessions should be given, other than those announced, and the legal budget should be increased.

Although the GRIT strategy is a complex one to manage, a key point in this strategy – the idea of doing things gradually – has broader application, as will be seen in the strategies to build trust and develop a willingness to exchange information.

Trust

Another link in the DNA of negotiation is trust, ‘one of the cardinal underlying characteristics of fruitful negotiation’ (Zartman & Berman [1982](#), p. 27). Trust is one of the great imponderables in negotiation. It seems to be important (and it is), but it is hard to know what trust is, and even harder in the middle of a negotiation to know whether one should trust the negotiator sitting across the table. We are not sure whether broken trust – perhaps due to someone lying – can be repaired, although apologising is a good first step (Lewicki & Polin [2013](#)). Trust gives rise to dilemmas – if I give this information, will it help or will they exploit it? Are they saying how important it is that we can trust each other just so they can then get us to concede more? This means that trust is one area of negotiation where other-directedness – trying to work things out from the other party’s perspective – is really important. Trust is related to personal qualities such as credibility, integrity and honesty, but in the context of a negotiation it is more focused. Trust is an understanding that the other negotiator is willing to cooperate in some way to achieve an outcome, to engage in problem-solving or to match a concession in a trading situation (Pruitt [1981](#)).

Some people are inherently more trusting than others. In the absence of any evidence to the contrary, they are more likely to take statements and actions by others at face value rather than doubt them. More generally, trust means you expect the other person to do the right thing. Examples would be giving money to someone to pass on to a charity, trusting that they will give it all and not keep a dollar or three for themselves, or believing that when the real estate agent says there are three other clients

looking at this property that there are three independent other clients, and that they are separate, rather than three from the same family.

Trust can be made more secure by finding out more about the people and their trustworthiness. We would probably expect a friend to pay all the money to the charity but be less sure about an unfamiliar work colleague. We might trust the veracity of the real estate agent if that agent had been recommended by neighbours as someone who really looked after them when they were buying their house.

We might also put some checks on others' behaviour to make them more reliable. When donating to a charity through another person, for example, we could ask for a receipt – which, of course, changes an act from being a trusting one to a distrusting one as far as the other person is concerned – or ask the real estate agent some follow-up questions about the other clients. It is easier to check other people's actions than their words. Unfortunately, negotiation is typically first about what people say rather than what they do.

Types of trust

Lewicki and Wiethoff ([2000](#)) identify two broad types of trust. The first is calculus-based trust. As its name suggests, this is trust based on weighing up the consequences of trusting compared with not trusting. To continue with the example of the trust involved in giving money to a work colleague, you are prepared to trust that person because you estimate that they will realise that if they short-changed you, you would find out and your colleague would be embarrassed. You have calculated that this person will know that not doing what they have been asked is not worth the risk. Added to this may be your knowledge of your colleague's past behaviour, particularly their reliability in keeping promises.

Identification-based trust is more relationship oriented, and is built on an understanding of the other party and their expectations. Your friend can be trusted to forward the money to the charity more than a work colleague can because your friend understands how much you believe in the work of the charity, and so will want to do what you have asked. Your friend will probably give you the receipt without you asking as a natural way to reinforce the trust between you.

In both examples, the orientation is positive, and the trust has to do with cooperation and beneficial results. On the other hand, distrust is the expectation that other people will take advantage of you for their own ends (Lewicki, McAllister & Bies [1998](#)). That said, a lack of trust does not necessarily mean the presence of distrust. When starting out to buy a car, we may be wary of car salespeople because of their generally poor reputation, but we don't have any reason to distrust the particular salesperson with whom we are dealing: we will typically let that salesperson earn our trust as negotiations proceed.

Situation-specific trust

We cannot do much about our inherent predisposition to trust other people or about the other negotiator's innate trustworthiness. Of more immediate interest is what trust means in the negotiation itself. Lewicki and Stevenson ([1997](#)) make an important point: the type of trust we need to build depends on what we are trying to achieve. If the negotiation is a single transaction, it is only necessary to build calculus-based trust. This would involve behaving consistently, undertaking commitments made and being clear to the other negotiator about the adverse consequences of not behaving in a similar fashion. Johnson and Cullen ([2002](#), p. 343) found a number of actions could be taken by managers that the other party would regard as indications of trust; these included delivering on promises, sharing information and providing opportunities for discussion and decision-making. These are practical ways by which a negotiator can offer trust to the other party. The other negotiator will also recognise when you do not exercise power even if you have it, as this would be a signal of your intention to talk through an issue rather than impose an outcome.

Negotiation in practice

When a handshake is good enough

Quite often, relationships between managements and unions in the construction industry are not very good; negotiations are competitive and both sides instinctively play 'hardball' and then see what happens. However, in this particular project construction company, the managers – both in head office and on site – and

union officials had developed a way of working together that benefited both the company and the workforce.

The company was going to submit a tender proposal for a new project, and to do so needed to calculate the expected costs across the life of the project. It had a wages agreement covering its workforce but that was due to expire about 12 months into the three-year project. If it won the contract, the company could then be vulnerable to union pressure when the wages agreement was due to be renewed right in the middle of the contract, when a strike would be really costly. However, if it factored a possible big wage increase into its tender costings, it probably would not get the job. The managing director met the senior union official and they informally agreed what wage increase the union would request when the current agreement expired. They shook hands on it. The company won the contract. Twelve months later, the union submitted a claim for the amount to which it had committed, even though it was then achieving higher increases for its members in other companies in the industry.

If the intention is to build a relationship for the future, then the parties must work to build identification-based trust through frequent interactions to get to know and understand the other party and their long-term interests. This is particularly so for negotiators who are perceived to be in a strong position. Those in the low power position take a calculative approach, and will expect the stronger party will use their power to exploit (Rubin & Zartman [1995](#)). It is necessary to build identification-based trust by promoting shared values to overcome this (Olekalns, Lau & Smith [2007](#)). One difficulty, of course, is in trying to understand the other negotiator's

intent. Many negotiators have participated in a social dinner followed by an enjoyable karaoke session (with resultant hangover) only to be faced with a very competitive bargaining session the following morning.

As we will see later in the chapter, negotiators need to exchange information in order to achieve better outcomes, but to exchange information also presumes a level of trust. One way to discern the level of trust that exists across the negotiation table is by ascertaining whether the negotiators are interacting mainly through making and justifying offers, or through asking questions and providing information (Gunia, Brett & Nandkeolyar [2014](#)). If they are doing the former, it is an indication that they don't really trust each other, whereas negotiators sharing information do, at least to some extent. The approach we then take is contingent on our reading of the situation (another example of the importance of the skill of reflecting). We might assess the trust as present, possible or not possible (Gunia, Brett & Nandkeolyar [2014](#), p. 31). Where trust doesn't seem possible, we have to glean what we can about the other party's priorities from the emphasis they are giving to their offers or other proposals. If you believe trust might be possible, then looking for commonalities – building identification – and trying to encourage discussion of interests and priorities may encourage reciprocatory behaviours from the other party.

However, we can be even more specific in trying to identify when trust is needed in a negotiation. Irrespective of the general level of trust (present, possible, not possible), negotiators will find themselves facing the question of whether, at that particular point in the negotiation, they can trust the other party. This question arises when there is a risk, because without risk there is no need to trust.

There are three main points in a negotiation process where the need to trust is salient. The first is when information is provided by the other negotiator – is it true? The risk is that the information is false or, more

often, is incomplete, so decisions we make turn out to be unwise. Second, there are critical times when, in order to make progress, a negotiator needs the other party to reciprocate their actions – can they be trusted to do so? The risk is that the negotiator might offer some information in the expectation that the other party will do likewise, only to find that they do not. As an example of the complexity of trust and distrust in negotiation, the fact that they have not reciprocated does not make them untrustworthy; it just indicates that they were not ready to establish a pattern of information exchange at that point in the negotiation. If they used the information so gained against the first negotiator, then this would indicate that they were not trustworthy. The third situation calling for trust in a negotiation is whether the other negotiators can be relied upon to do what they have said they will do, such as honour their promise to come to the next meeting with a new proposal.

The presence of risk means that these situations can be portrayed in terms of the Prisoner's Dilemma, and so the strategies for building reciprocity that were outlined earlier in this chapter can also help to build trust. In particular, the distinction between the issue and the process that is inherent in all negotiations enables a negotiator to talk about the need for trust (Rule 4: be facilitating) while standing firm (Rule 2: be firm) on the issue being negotiated. Only when there is an indication from the other party that they are also willing to trust is the next move – providing information or making a concession – actually made (Fells [1993](#)).

This very pragmatic, situation-specific trust will strengthen as the negotiation progresses. While dealing with the specifics of the issues, a negotiator can encourage the development of calculus-based trust by referring, from time to time, to the adverse consequences of not reaching agreement. Identification-based trust is built on common interests and values as they become evident over time, and should be reinforced at every

opportunity. It is important that negotiators, both personally and on behalf of any organisation they may be representing, demonstrate integrity by following through on any commitments they have made – large or small.

The important implication for negotiators is that the trust required in these specific situations is separate from whether the other negotiators are inherently trustworthy. It helps if they are, but if they are not, this does not mean that agreement cannot be reached. If a negotiator shapes the situation in such a way that it is in the other party's interests to do what they have promised (calculus-based trust over the agreement's implementation), then this may be all that is needed. In these cases, negotiators may trust simply because they feel they have no alternative. This leads to the next of the essential elements of negotiation – power.

Negotiation skills tips

Three steps to developing trust

Trust has to be earned, not presumed:

- Maintain your integrity and predictability.
- Talk process – about how the negotiations are currently unfolding and how they might go differently; use inclusive language ('we', 'us').
- Build the other party's confidence – make it clear that you will reciprocate.

Power

Power has been wonderfully defined as getting other people to do what you want them to do and having them like it (attributed to President Roosevelt). Power is at the heart of any negotiation because having to negotiate is an acknowledgement that you don't have enough power to achieve your objectives without the involvement of others. Negotiators would do well to remember Magenau and Pruitt's ([1979](#), p. 197) observation that power is a slippery concept – it can be exercised in many ways and, while we know that we need to have power, it is difficult to know how much of it we have. One of the dangers for negotiators is that people whose position is getting stronger tend to over-estimate their power, and so make even larger demands. People whose power position is falling do not reduce their demands (Sivanathan, Pillutla & Murnighan [2008](#)). The practical implication of this is that convincing the other negotiators they are in a weaker position than they thought they would be will not automatically lead to them making concessions. As Magenau and Pruitt ([1979](#), p. 198) crucially observe, just because one negotiator thinks they have more power than the other does not mean the second negotiator thinks they have less power than the first. Power is not a zero-sum commodity.

Making sense of power in negotiation

Power can take many forms, so is difficult to categorise or measure. An early representation by French and Raven ([1959](#)) identified power by its sources: expert knowledge, an ability to reward or punish another, one's position of authority or respect conferred by others. While it is intuitively appealing to look to one's power base, it might not be very helpful to do so. Expert knowledge may be valuable (and negotiators cannot hope to secure a good outcome if they have not found out the facts surrounding the issue under negotiation), but two knowledgeable people, one on either side of the table, should each be able to make a good case as to why the other is wrong. On the other hand, they might come up with an entirely new solution, which is a different sort of power altogether. Further, trying to evaluate where the power lies is difficult: how, for example, can I balance my referent power against your coercive power?

We can translate most of the sources of power into the notion of alternatives. Why, for example, is an expert's opinion listened to and accepted? Using specialised knowledge, the experts are able to demonstrate that their suggestion is better than any other option on the table, including the option of walking away, so everyone is drawn to agree to it.

Similarly, the view that 'information is power' (Dawson [1999](#), p. 222; Lewicki, Minton & Saunders [2006](#), pp. 188–9; Winkler [1981](#), p. 141) can lead negotiators to withhold information in the belief that to do so makes them more powerful, whereas to release information makes them more vulnerable. The critical question here is 'information about what?' A negotiator who is cagey about revealing what they really want to achieve should not be surprised if the other negotiator seems unwilling to

cooperate. On the other hand, if the first negotiator can get the other to understand why they are holding on to a particular position, then a cooperative approach is more likely to emerge (see [Chapter 6](#) for greater exploration of this distinction between the what and the why, the positions and interests). The judicial provision of information about the background to the issue, one's goals and preferences and the real reasons for not agreeing to the other party's proposals adds power in the sense of providing the opportunity for creative solutions to emerge.

The one piece of information that all negotiators want is the point at which the other party is going to settle. This becomes particularly important when the parties are trying to finalise an agreement and when the same question is asked in another way: At what point will they walk away? This again shows the importance of alternatives.

Not surprisingly, power is often associated with competitiveness and getting your own way. A classic definition of power is that of Dahl ([1957](#), pp. 202–3), who states, 'My intuitive idea of power, then, is something like this: A has power over B to the extent that he can get B to do something that B would otherwise not do.' Similarly, Chamberlain and Kuhn ([1965](#), p. 170) define bargaining power as 'the ability to secure another's agreement on one's own terms'.

Bargaining power has been described as the power to fool and bluff, 'the ability to set the best price for yourself and fool the other man into thinking it was your maximum offer' (Morgan [1949](#)). Bacharach and Lawler ([1981](#)) bring the notions of subjectivity and perceptions into their understanding of bargaining power. The uncertainty and ambiguity of negotiation, together with bargainers imperfectly processing information, provide opportunities for tactical action to alter the perceptions of the other party. Reshaping the other party's understanding of their interdependence – who needs whom the most to get the outcome they are seeking – can

increase one's bargaining power, irrespective of the actual situation. In a similar manner, Lewicki and Litterer ([1985](#), p. 241) offer a straightforward definition of power as 'the ability to get another party to do something they ordinarily would not do by controlling the options they perceive open to them'.

If power is the ability to get someone to agree to something, then emerging solutions can become a source of power. Fisher ([1983](#)) talks about the power of an elegant solution. Consider two countries in dispute over territory. A river running through the territory would be an obvious place to put the boundary, and is an example of what Schelling ([1960](#)) showed when he identified a rather disconcerting phenomenon for negotiators – namely, that we can reach solutions without actively problem-solving. (He called it 'tacit bargaining'.) If we 'stand back' from a situation, it often speaks to us and an outcome becomes obvious – a 'mutually prominent alternative' (Schelling [1960](#); Pruitt [1981](#)). This is essentially what Fisher, Ury and Patton ([1991](#)) suggest when they advocate using objective standards. In these cases, the 'power' lies not so much with either party as with the proposed solution, and that power is derived from the solution being manifestly better than anything else either party might have come up with.

The power of knowing when not to negotiate

We feel we are in a strong negotiating position when we believe that we don't have to negotiate at all. Rubin and Brown ([1975](#), p. 7) state that the parties to a negotiation are 'at least temporarily joined together in a special kind of *voluntary* relationship' (emphasis added) and Lax and Sebenius ([1986](#), p. 11) regard negotiation as 'a process of potentially opportunistic interaction'. These observations reflect the key point that negotiators should continue to negotiate only for as long as they expect the outcome to be better than what they might achieve in other ways. Fisher, Ury and Patton ([1991](#)) portray this fundamental point in their notion of the best alternative to a negotiated agreement (BATNA).

The word 'alternative' is often taken to mean a different outcome – as, for example, when a supplier offers a flat-rate price increase across the range of its products as an alternative to the previously proposed percentage increase. In the acronym BATNA, the word 'alternative' refers to another way of securing one's objective. So the supplier might decide to post an increase to its prices on the company website and leave it up to the buyer to place purchase orders at the new prices. This unilateral action to secure the desired price rise is an alternative to negotiating the price increase with customers. This, in essence, is how many commodities are traded internationally. Buyers and sellers – such as an iron ore miner and a steel mill – may negotiate a supply contract for the coming year that locks them together for the duration of the contract. Alternatively, there is a spot market for iron ore; some miners are prepared to sell their ore once they have dug it out of the ground; some steel mills are prepared to look to the spot market for their supplies. So the key point for our miner and steel mill, when they enter into negotiations for their next supply contract, is

that each has an alternative way of pursuing its objective. They don't necessarily have to negotiate, but they will stay and negotiate for as long as the expected outcome seems better than what they might achieve through spot market trading.

Negotiation in practice

The power of alternatives to turn around a sales negotiation

A prominent architect had a falling out with a company supplying him with air conditioners. He was so annoyed with the company that he no longer included any of its products in his design specifications unless it was the only one that could possibly do the job. The company felt the adverse sales effect of this in that it missed out on opportunities to supply its products to major construction and renovation projects. A new manager took over the company and resolved to get the architect's business back by giving him first-class treatment whenever he placed an order. Despite this, the architect refused any overtures, and continued not to use any more of the company's products in his design specifications than he absolutely had to.

The new manager's strategy was not working. It was only when he considered the architect's situation when he did place an order that he realised what needed to be done. The fact that the architect had placed an order meant he could not get the necessary equipment anywhere else. The architect's alternatives were nil. Consequently, the manager instructed his staff that when the architect next placed an order, it should be given a low level of priority.

A few days after the next order from the architect came in, the manager phoned him to say, 'You may be wondering why we have not given your order priority and processed it straight away for you.' The architect was indeed wondering. The manager continued to explain that since the architect was only an occasional customer, his orders were naturally given lower priority than those who placed more regular orders and bought larger volumes. He was just phoning to explain the situation to the architect in case he might be worried about any delay and so want to place his order elsewhere.

The architect was worried about a delay (which he had not anticipated), but he knew he could not go anywhere else. Before long, he placed some large orders and since everyone understood how they were now placed, the relationship prospered.

The lesson of this story is clear. Consider the other's alternatives as well as your own to work out where the power lies.

Information exchange

Gaining a realistic appreciation of the walk-away alternatives is just one – albeit crucial – aspect of negotiation. Equally important is gaining an understanding of interests and priorities, as this lays a foundation for improved outcomes (Thompson [1991](#); Olekalns, Smith & Walsh [1996](#); Butler [1999](#)). Even when negotiators prepare very well there will still be some things they do not know or are not sure of when they enter the negotiation. Even once an agreement has been reached, the negotiators will probably still have unanswered questions – even if it is only ‘Would they have settled for less?’ So it follows that encouraging effective information exchange is critical. From this perspective, negotiation is a learning process by which the negotiators, through the exchange of information, begin to understand their true situation.

When information is exchanged, the question arises of how that information will be used, or whether to create individual or joint gain. Murnighan and colleagues ([1999](#)) found that negotiators who stood to gain from doing well used information effectively to get good outcomes for themselves. Using information in this way reinforces the notion that information is power, and so negotiators should be reluctant to share it. Even so, it is important to gain – and, because of reciprocity, this also means exchange – information as the negotiations unfold.

Exchanging information about what?

The facts surrounding the issue are important in any negotiation. If, for example, a mining company is negotiating a contract for the supply of tyres, then issues of delivery logistics – journey times, routes, truck availability, the lifting gear needed to get the tyres off the truck – will influence, perhaps even determine, what can be agreed upon. A solution might emerge simply because the two parties bring different information to the table. In our tyre-supply negotiation, both parties probably have a good understanding of what it takes to deliver tyres and the only information the parties hold back is their respective financials. But the potential supplier might provide information about deliveries to other sites in the region, and the mine operator might say something about their tyre store which indicates that, if deliveries are as frequent as the supplier is proposing, it will now be empty most of the time. The supplier might then realise that they could perhaps rent the vacant store as a regional depot for their own operation. In this way, the additional information provides the basis for a previously unrealised outcome.

This information exchange is enabling power in the sense that it enables the parties to agree to something they otherwise would not have by making a better outcome available. Thus the negotiators can create value through information exchange. Had they not exchanged this information, they would probably have had an essentially competitive price–cost negotiation.

It is even easier to find opportunities to create value if each party clearly understands the goals, priorities and limits of the other party. Priorities might dovetail to enable one party to gain, but not at the expense of the other. At the very least, learning more about the goals and priorities

of the other party gives you an insight into how to persuasively put forward your proposal.

Cautious information exchange

Negotiators can learn about the other party's priorities by listening carefully to their presentations and statements, and by asking open-ended questions. We read earlier that reciprocity is strong in negotiation, so (and in accordance with the rules of tit for tat) being friendly and providing information is the first step to generating information exchange. We should not, though, expect the information exchange to be complete. Much of the information provided (and withheld) early in the negotiation is usually shaped to present the party's situation in a favourable light.

Negotiation in practice

Cautious information exchange in marketing merger negotiations

A Canadian company acquired an Australian competitor. Although the latter sold similar products, its marketing practices were very different so the marketing managers from both parts of the new company met to work out a common approach.

The two teams of negotiators spent a lot of time thinking about how the other might approach the issue. The purpose of this other-directed preparation was essentially to identify the other side's points and arguments, and then work out how they might best be countered.

As would be expected in negotiations between Canadians and Australians, the information exchange was direct, with positions and opinions being expressed clearly and questions being met by clear answers. The problem was that the way that information was

being used was cautious and positional. Each side put its position and provided information in a way that would support its own position. The reaction of each to the other's proposal was to provide information as to why it would not work.

Although the exchange of information was cautious, the amount of information on the negotiation table was steadily increasing. As a result, and knowing that they had to find workable solutions, the negotiators were eventually able to construct some mutually agreeable proposals.

A full account of the Marketing merger negotiations case is available at www.cambridge.edu.au/academic/effective

The marketing merger negotiations (see [Negotiation in Practice box](#)) represent an example of where the two parties were cautious about exchanging information because, initially, each group felt that to reveal too much too soon would weaken their position. This was despite both groups being in the same company and the purpose of the negotiation being to find the best way to work together. So they sought information from the other group of managers primarily to find ways to counter it. Such a defensive information exchange can continue for only so long, and it usually becomes apparent that further disclosure is needed for any further progress to be made. In the merger case, the parties realised that they had to reach an agreement. This motivated them to look at the information more openly and they began to see that the better understanding each side had of the other's operational circumstances offered opportunities to find some new solutions.

When negotiators still feel that to give information might convey weakness rather than generate cooperation, they will be reluctant to openly answer questions. In this situation, the power of reciprocity might be harnessed: ‘What you are asking me is quite difficult to disclose, but there are some costings of yours that would help me understand the situation better, so if we both had more information’ may get the process started.

Another approach is to drip-feed information, a practice that draws on the gradualism of the GRIT strategy as well as the rules of tit for tat. If the negotiations are stalled because of an information deadlock, initiate the process of drip-feeding by providing some limited information (Rule 1: be friendly) but do not provide any more (Rule 2: be firm) until the other party reciprocates. If necessary, talk about the deadlocked situation and the need for more openness (Rule 4: be facilitating). Only when the provision of information is reciprocated should further information be provided, again waiting for it to be reciprocated. In this way, the trust between negotiators can slowly build and information can then be exchanged more confidently.

Negotiators can also learn about the goals and priorities of the other party through their rejection of their offers. Getting to understand why a party says no to an offer can yield valuable insight into what they really want. Rather than respond to a rejection with more reasons why it should be accepted, a good negotiator will seek to clarify the reasons for the rejection (Rackman & Carlisle [1978](#)). Insights can also be gained by repackaging a rejected offer into something of similar value. If the tyre supplier’s offer were rejected, then rather than lower its price to make it more acceptable, the supplier might repackage it by, for example, increasing the frequency of tyre deliveries while reducing the penalties on late deliveries. By keeping the financial value of the offer much the same,

the supplier's repackaged offer may tease out the relative importance of the two issues to the mine operator.

Negotiation skills tips

Information exchange

Be specific about how information will be exchanged:

- Write down the questions you need to ask the other party.
- Assuming you don't get a full answer, what further questions might you ask?
- How do you plan to share (or not) information the other party requests?

Some negotiators are high-context communicators, able to read a situation not only from what is being said but also from information about the inferred meanings from the context (see [Chapter 11](#) for more on cultural differences). Low-context negotiators who like the facts and a straight yes or no answer often have more difficulty discerning the other party's underlying motivations, priorities and limits. Negotiators who are more individualistic in their orientation – that is, not too concerned about the other party – are less likely to be willing to offer information about their own priorities, and so have to rely more on the offer-packaging approach to gain an understanding of the other party's priorities (Olekalns & Smith [2003](#)). Clearly, it is important for negotiators to exchange information well. The appendix to this chapter looks more closely at this important aspect of negotiation behaviour.

Ethics

Ethical behaviour is another link in the DNA of negotiation – or, perhaps more correctly, unethical behaviour is a mutation that distorts the process and the outcome. It is very difficult to repair a negotiation once there has been unethical behaviour.

Ethics is not a stand-alone phenomenon. We are ethical – or not – over how we handle the other DNA links of reciprocity, trust, power, information and outcome. The problem lies in defining unethical behaviour. This relates particularly to information exchange and the use of power (examined more closely below), but surveys of ethically ambiguous tactics – such as those conducted by Anton ([1990](#)) and Robinson, Lewicki and Donahue ([2000](#)) – have found that some tactics are regarded as more acceptable, and are used more often, than others. Participants did not have much difficulty with, for example, tactics associated with competitive bargaining, such as asking for more than they wanted and concealing their bottom line. They were less accepting of actions to manipulate others and had doubts about how one might obtain information about the other party (buying information is not okay). Misrepresentation and bluffing are generally seen as unethical, while providing false information is seen as the worst tactic.

Even so, negotiators use deception frequently (Murnighan et al. [1999](#); Schweitzer & Croson [1999](#)). Negotiators might be inclined to be loose with the truth (particularly by not saying something rather than telling a falsehood) if they think the other party is trusting (Olekalns & Smith [2007](#)). It seems that deception is part of many negotiators' tool kits. This gives rise to a very practical difficulty: honest disclosure increases the likelihood of an improved outcome (Paese, Schreiber & Taylor [2003](#)), but

the honest disclosure is only effective in helping to move the negotiations forward if it is seen to be honest, or is at least readily verifiable. In a private hospital, one of the key factors that determines the hospital's profitability is the extent to which the operating theatres are fully used. During wage negotiations, if the hospital management resists a wage claim on the grounds that the theatre utilisation rate is down, the credibility of this statement will not be helped if the management then refuses to provide the utilisation figures on the grounds of commercial in confidence.

Ethics, information exchange and the bottom line

As discussed earlier, one of the main times in a negotiation when there is a need to trust relates to whether the information being provided is true. To provide false information – including providing information in a way designed to create a false impression – is unethical (and unlawful). If asked a question they do not wish to answer, negotiators have a number of options other than giving a misleading answer. They can ask a question in return, restate their main points or summarise ([Table 3.1](#)). Such responses will divert the discussion and give the negotiator time to consider what response to give if the question is asked again. A good negotiator will have thought ahead about difficult questions that might be asked and will have prepared answers to them.

Table 3.1 Handling inaccurate information in negotiation

Prevention	Diversion	Detection
To deter the other party from providing inaccurate information	When the other party asks a question you are not ready to fully answer	When you think the other party is providing less than accurate information
<p>Be honest with yourself.</p> <p>Be obviously prepared.</p> <p>Ask questions.</p> <p>Don't rush the negotiation.</p>	<p>Ask questions.</p> <p>Restate the main points.</p> <p>Summarise.</p>	<p>Don't automatically assume that the information is not true.</p> <p>Don't respond competitively.</p>

Take notes.

Seek repetition or clarification.

Present your understandings.

Seek time to confirm.

Showing that you have done your research prior to the negotiation, and that you would prefer to take your time rather than press on quickly to the deal-making closure, would deter the other negotiator from attempting any tactical misinformation, as it is likely to be exposed. Asking direct questions cuts down the risk of the other party deceiving through omission, but all answers need to be tested for their veracity (Schweitzer & Croson [1999](#)). If misinformation is suspected, then rather than engaging in a direct confrontation, asking for a restatement or clarification will cause the other negotiator to reconsider; even if they repeat the inaccuracy, they will know it has not been believed. Responding by outlining your own understanding of the situation would have the same effect. If, on reflection, it is believed that the deception was deliberate, consider whether to continue negotiating. If agreement is necessary, then one option is to include a contingency provision in the agreement. If the other party is insisting that they can deliver the raw materials by a certain date and you seriously doubt it is possible, then an additional clause about penalties for late delivery would be important.

If negotiators regard misrepresentation as unethical, why do they tend to conceal or misrepresent their bottom-line position? Rather than see the question of revealing or not as an ethical one, we can consider it and make a judgement in the context of the process of negotiation. A premier league soccer club is prepared to pay £30 million for a striker it wants to appoint to its team. Its recruiting manager makes an offer of £25 million to the

player's club in London. The manager of the London club, who is seeking to maximise the transfer fee, challenges the worth of the offer by asking, 'Is that your best price for my leading goal scorer?' To respond openly and reveal that the club's board had authorised an additional £5 million would put the recruiting manager at a disadvantage because few negotiators expect the other party's early positions to be their final one. (An early final position distorts the negotiation dynamic because the other negotiator expects even more concessions to be made later. But if everything has been revealed too early, then there are none to be given.) As the transfer deadline nears, the two clubs reopen their stalled negotiations. The offer of £25 million is tabled again and draws the same response: 'Is that your best price for my leading goal scorer?' Whether to reiterate that the £25 million offer is all that is available is a question of judgement, not ethics.

Ethics and the exercise of power

Negotiators who believe they are in a strong position often use overly competitive tactics (Crott, Kayser & Lamm [1980](#)), but this can easily backfire. An oil company embarked upon a round of negotiations with the leaseholders of its service stations. The company was facing competitive pressure from food retailers who were expanding into motor retail and service stations. As a result, the oil company needed to renegotiate the leases on terms more favourable to itself, so it developed what was known as the FUD (fear, uncertainty and doubt) strategy. The company negotiators would set out to instil fear, uncertainty and doubt in the station lessees' minds prior to negotiating new terms for the leases. At the same time, the company's website declared that it worked in a cooperative partnership with its station owners, customers and clients. Clearly, members of the negotiating team did not read this – or perhaps they were given such a tough negotiation target by their board that they felt the only way they could achieve their targets was through a drastic competitive strategy. When the FUD strategy became public, the company issued an apology on its website.

A full account of the Oil Company case is available at www.cambridge.edu.au/academic/effective

Ethics and the agreement

The question of ethics might arise when the negotiators contemplate how to implement the agreement. Commitments made as part of an agreement must be honoured, but an agreement cannot cover all possible changes in circumstances that may occur during its life. Negotiators from some cultures place more emphasis on the relationship than on the precise terms of the agreement, so would not see it as unethical to seek changes to those terms when circumstances change. As world prices of resources showed signs of falling rather than continuing to rise, an Asian steel company was reported to have renegotiated the price of a contracted iron ore shipment even after it had already reached the Asian port (*Australian*, 9 October 2008, p. 4).

Being ethical

Few negotiators set out to be unethical, but often the pressure of the requirement to achieve an outcome leads to unethical actions. In negotiations over television rights, one very senior company lawyer admitted that he had lied in the negotiations (*West Australian*, 13 December 2005, p. 12). The court asked, ‘Is it your view that in pursuit of an important business objective it may be legitimate to tell lies?’ The lawyer’s response was, ‘I don’t think that’s the right thing to do. I was desperate to try to get funds from them to facilitate the acquisition of the ... rights, and things were moving very fast.’ At this point in the negotiation, approximately \$10 million was at stake.

Similarly with the oil company negotiators, a succession of strategic and tactical decisions in pursuit of an objective resulted in an unethical approach to the negotiation. Just so you won’t think it is only corporate negotiators who act unethically, in one union negotiation in the Pilbara, some union members put a jack under a section of rail and so prevented all movement of ore trains – hardly a case of good-faith bargaining. In the intensity of a negotiation and the pressure of the moment, the need to achieve a particular objective can justify many decisions – particularly when no single step in the strategy is illegal. However, a good negotiator applies some tests.

If, when we ask ourselves the simple question, ‘is it right?’, we find ourselves offering quite unconvincing justification for what we are planning to do, or a long justification, it is likely that the proposed action is not the right, or best, thing that can be done. A second useful test emerged out of negotiation being two-sided. A negotiator should always ask, ‘How would I feel and react if the other party did to me what we are proposing to

do to them?’ This is a good test to apply, but even here we might – as we often do – apply a different standard to ourselves. A stronger test – the one that came to be applied in the Oil Company case – was the publicity test: ‘Would I be comfortable with everyone else knowing this is what I do in negotiation? Once the negotiations are concluded, would I be willing to have the other party write their account of events and post it on my company website?’ Better the website than publicity as a result of a court hearing.

Negotiation skills tips

An ethics test

When considering whether a course of action is the right thing to do, ask yourself these questions:

- Is it right?
- Would I welcome this being done to me?
- Would I like to read about this on Facebook?

Outcome

The final link in our negotiation DNA is the outcome. Negotiation is a purpose-driven activity, and the success of a negotiation is measured by how well the outcome achieves the parties' goals. In some situations, a negotiator's alternative may be better than the best possible agreement, so to agree would not be a good result. However, the intent of entering into a negotiation is to find a good negotiated outcome.

Many negotiators (and many negotiation books) express a preference for a win-win negotiation. The essence of this is that both parties gain something from the negotiation and are pleased with their agreement. Being satisfied with the result, they are more committed to fully implementing the outcome, and will be more positive about the relationship they have with the other party. This will help future negotiations between them. This beneficial negotiation scenario is contrasted with win-lose and lose-lose negotiations where, as the names suggest, one or both parties do not do very well. As a consequence, they are not committed to the agreement and are not favourably disposed to the other party. The win-win outcome clearly has more appeal, but is it more appealing than realistic?

What exactly do we mean by a win–win negotiation?

The distinction between win–lose and win–win negotiating has its academic antecedents in the seminal work of Walton and McKersie (1965), who describe and analyse four sub-processes of negotiation, two of which – distributive and integrative bargaining – form the basis of these two fundamentally contrasting approaches to negotiation.

According to Walton and McKersie, the core of the distinction lies in the nature of the issue under negotiation. If it is a fixed-sum variable-share issue, in which one party could gain but only at the expense of the other, then this inherently competitive situation gives rise to a set of strategies (misinformation and commitment) that, if properly applied, results in one negotiator claiming the bulk of the available outcome while the other achieves very little. These negotiations are what we envisage by the term ‘bargaining’. They are competitive and leave a nasty legacy for the next negotiation.

By contrast, in some other negotiations the parties’ objectives are not in direct conflict: one party might be able to gain, but not at the other’s expense. In Walton and McKersie’s terminology, these are variable-sum variable-share problems, and should be approached completely differently. The negotiators should exchange information, openly explore options and so find a solution that suits them both. This integrative problem-solving approach provides the basis for future cooperation between the negotiators.

When presented in this way, the preference for a win–win negotiation is understandable, but a genuine win–win agreement is one on which neither party can improve, except at the expense of the other. To get to this position, the negotiators will have created some value that previously did not exist, or was not seen to exist, when the parties first started negotiating.

This is not as easy as it sounds (see [Chapter 7](#)), so negotiators often rationalise an outcome after the event, particularly if they have not done very well, and call it a win–win agreement even when it is not.

Negotiators might, for example, simply split the difference between their respective demands. A shopping centre manager wants each shop to contribute \$5000 to an advertising promotion. The shop owners do not want to pay more than \$2500, and want a veto over the promotion's theme. The manager proposes a reduced contribution of \$4000 provided he has control over the promotion; the shop owners reluctantly agree. Since each party has gained some concessions from the other, they can each regard the outcome as a win–win result, but this outcome can equally be called lose–lose since neither party got what they originally wanted. Similarly, no negotiator likes admitting defeat and, even when the outcome is poor, a negotiator will seek to justify the small benefits of the agreement. A union official at the end of a long strike from which the workers have been unable to secure an improvement in the company's offer might justify the return-to-work agreement to her members in terms of there being no job losses as a result of the dispute. This repackaging of the outcome is understandable in the practical world of negotiating, but the true measure of whether a negotiated agreement was a win lies in the judgement of those who have to implement it, not the negotiators.

Negotiation in practice

The meaning of win–win

A mining company has as one of its declared principles that its partners – suppliers, contractors and so forth – will always benefit from their association with the company. Consequently, their negotiators talk in terms of achieving win–win outcomes that

ensure the other party is always satisfied with the agreement. This builds long-term relationships.

In practice, the company was in such a dominant market position that it was a price setter. It determined the main elements of any purchase or supply contract, and would entertain only minor variations on the margin so as to not set a precedent of flexibility for future negotiations. It still regarded this as a win–win outcome, and because the other party chose to agree rather than walk away, presumably it was.

Is the agreement really the outcome?

Sometimes a negotiation is about a specific one-off action, such as a decision to buy a car for a certain price, but usually what the parties agree to is more involved. Let's say that the owner of an office block reaches an agreement with a cleaning company that the building be cleaned and maintained. The contract would include a schedule of what needs to be cleaned, how often and to what standard. There would be provision for periodic review of how well the cleaning is being done, and there would be a procedure for the owner or the cleaning contractor to raise issues or complaints. There would be some clauses that relate to financial or other penalties if the contract is not being performed properly, and all contracts should have clauses explaining the circumstances whereby either party can legitimately bring the contract to an end.

The fact that the outcome of the negotiation between the building owner and cleaning contractor is going to be ongoing performance suggests that we should perhaps extend the definition of negotiation offered in [Chapter 1](#):

Negotiation is a process by which two parties with differences that they need to resolve try to reach agreement through exploring options and exchanging offers – and an agreement, and the implementation of that agreement.

Strictly speaking, the implementation of the agreement is not part of the negotiation process, which is why it is not in the definition, but it does determine whether the negotiation has been a success. The owner might regard the negotiations with the cleaning contractor as a success if the owner managed to negotiate the contract price down and saved an extra 5

per cent on the budgeted provision for cleaning services. However, the owner will not be in a position to truly know whether that negotiation was a success until the last day of the contract. They can then look back and assess whether it was performed well. If it was, this would suggest that it had been a good negotiation. However, perhaps the owner realised that a lot of time had been spent raising issues with the contractor because the work was not being done to the desired standard. If so, then the owner might wonder whether they had negotiated too hard on price and so the overall cost (the price paid plus the time spent by the owner) meant it was not such a good negotiated outcome after all.

Negotiation skills tips

Remain focused on a good outcome

Throughout the negotiation, keep asking these questions:

- If this agreement is implemented, will it survive?
- Would I want to have the responsibility for making this agreement work?

Organisations often reward their negotiators for being successful in reaching an agreement, rather than for the successful implementation of it. The first productivity agreement negotiated between management and unions at the Fawley Oil refinery was held to be a ground-breaking approach in labour relations in the United Kingdom. Getting companies and their workforces to negotiate similar productivity agreements became a central plank of the government's economic policy (Flanders [1964](#)). In fact, there was a succession of such agreements at the refinery, each heralded as an example of the progressive approach. In time, the managers

involved in negotiating the first agreement were moved on to other challenges within the organisation. New managers came in and, when they saw that achieving a productivity deal was regarded within the organisation as a measure of success, they set about negotiating a new productivity agreement. And they were duly rewarded and then moved on. A long-term assessment of actual work practices showed that productivity over the life of all the agreements barely improved at all (Ahlstrand [1990](#)). The organisation had grown expert at negotiating agreements, but not at raising productivity. Meanwhile, the employees had become expert at trading workplace changes for pay rises and slowly clawing back those changes in anticipation of trading them off again in the next round of negotiations with the new management negotiators.

Negotiation in practice

Agreement as only a small part of the negotiation outcome

One of a shipping company's vessels had been hijacked by Somali pirates and the company had to focus on negotiating with them to secure the release of the ship and its crew. The pirates' opening demand was for US\$3 million. (The pirates don't do the negotiating themselves, but bring in a professional who takes a cut of the ransom as his fee.) With the lives of the crew at stake, two weeks of tense negotiating over the ship's radio phone led to a ransom of US\$1 million being agreed to. Truly difficult. But that US\$1 million was the easy part; the final cost of implementing the agreement turned out to be far greater.

The pirates insisted that the ransom be delivered to the ship. This involved paying for a courier to take the money from a bank in the Middle East to Kenya. Then a security team was hired to

transport the money to the Somali coast, and then a ship and crew had to be paid to take the money to where the hijacked ship was. These and other costs meant that cost of delivery of the agreed US\$1 million was US\$4.6 million.

A full account of the Hostage Negotiation case is available at www.cambridge.edu.au/academic/effective

Becoming an effective negotiator

This chapter has examined the core of all negotiations through the imagery of the DNA helix. Parties seeking to reach agreement are bound together in a competitive yet cooperative process that involves reciprocity, trust, power, information exchange, ethics and outcome. But negotiation is messy, and these essential links in the negotiation DNA do not automatically develop once the parties start negotiating. To be effective, a negotiator must carefully build each link in the DNA of their negotiation.

Negotiation is also two-sided, so to be effective a negotiator must ensure that the other negotiator is also willing to build the negotiation's DNA. Regretfully, the links in the DNA chain can be manipulated. Trust can be abused, information distorted, power exploited and ethics compromised. Careful handling of the negotiation is required, and the distinction between the issue being negotiated and the process by which that negotiation occurs – one aspect of negotiation's complexity – provides an opportunity for a negotiator to achieve this. A negotiator should take a considered, strategic approach to an issue and have a managed approach to the process. These aspects of effective negotiation are explored in the next two chapters.

Discussion questions

- 1** How is it possible to negotiate with people you do not trust?
- 2** What is the role of perception in the assessment of power?
- 3** Write an advisory note to your CEO on principles that would guide the company's staff to ethically negotiate.
- 4** What might have been a more financially beneficial solution for the shipping company and the pirates? Besides the need to buy the trust of those actually delivering the money to the pirates, what other elements of negotiation's DNA might be present in crisis negotiations?

Appendix

Information exchange skills in practice



If information exchange is part of negotiation's DNA, then it is important that we do it well. Therefore, before we start to look at how to manage the negotiation process in [Chapter 4](#), and the issues in [Chapter 5](#), we need to consider the skills of speaking (including how to ask good questions) and listening more closely.

As negotiators, we will not make much progress unless we recognise what the other party is saying. This is not easy. If you look ahead to [Table 4.3](#) in Chapter 4, you will see that there are many different types of response that a negotiator can make, ranging from 'give priority information' to 'states expectation that the other will reciprocate'. (Other researchers have different categorisations.) There are endless combinations of actions and reactions, and the statement types don't come with set phrases that indicate what they are. One negotiator might be explicit about what is a priority, another might seek to convey an issue's importance simply by spending more time talking about it. There is a further complicating factor in that negotiators do not usually negotiate through carefully constructed statements. Reviewing the dialogue of any but the

most formal of negotiations will show that, as the discussion goes back and forth across the table, there are many false starts, half-sentences, pauses and repetitions. Added to this, negotiators often talk in shorthand. A union negotiator might explain to management that the union's members are seeking 'a fair increase in pay and an improvement in conditions'. Since the managers would already know that 'fair' means 'not less than the company down the road', and that the improved condition on which the employees were really focused was overtime benefits, the union negotiator does not need to spell it out. In a business negotiation, one side might suggest leaving the financials until later, which everyone around the table would understand to mean the amount of money each side is going to have to put into the project to make it work.

There are cultural differences too (see [Chapter 11](#) for further examination). Japanese negotiators, for example, have been found to put offers on the table early. They do this as a way to find out more about the other negotiator's position and priorities. In this way, an offer serves a dual purpose: gleaning information and providing information about one's party. On the other hand, US negotiators tend to delay putting their offers on the table until they feel they have more insight into each other's situation. They use offers to consolidate what they have learnt and understood about the situation between the parties (Adair, Weingart & Brett [2007](#), p. 1062).

Listening effectively

Consistent with our general principle of giving consideration to the other party, we will start with listening – which we do all the time, but perhaps not as well as we think. Often we only listen for what we want to hear, or sometimes we listen only for when the other person will stop talking so that we can say what we have to say (which is, naturally, far more important!)

To be effective, negotiators have to be aware of the precision of communication and so must pay very close attention to what is being said and how it is being said. Listening is a key skill for a negotiator. The tendency is to prepare what one is going to say, but not give much attention to how one will listen. We might hear the words being said, but the core meaning of the term ‘to listen’ involves a degree of suspense (Bolton [1986](#), p. 32), a sense of expectation that there is more to come. So listening involves, first and foremost, being attentive; it also involves encouraging the other person to keep talking, and then reflecting on what they have said.

McClendon, Burke and Willey ([2010](#), pp. 287ff) offer useful advice when they say we should listen with all four ears. The three more obvious ‘ears’ are that we should listen to what is being said; to what is not being said; and to what the person is trying to say but isn’t. An example of the second might be when a negotiator spends a lot of time on one item on the agenda, which might reflect a reluctance to address one of the other agenda items. Sometimes negotiators are reluctant to share information, even though they know they will have to do so at some stage; it is often important to listen to what might seem to be an unimportant comment or ‘throw-away line’ as they finish speaking. Having spent some time

explaining in some detail the reasons for their delivery schedule, knowing that it is one that doesn't suit the customer, the supplier might end up by saying, 'So that's how we do it; I don't think you'll find a better way', which could be taken to mean 'our way is the best, so we won't change it' or perhaps, 'if you can find a better way, we might do it'. Negotiators sometimes find it hard to be explicit about making a concession, and may indicate that they have conceded on a contested issue simply by not raising it at the next meeting (Fells [2000b](#)). (That is one reason why it is important to take notes and to check everything during the closing stages of a negotiation.)

The fourth 'ear' is an important one. It is what listeners are saying to themselves as they hear what is being said. It is here that all our preconceived ideas come to the fore, and we start making judgements about what we are hearing, or anticipating what the next point will be, and even beginning to think about how we will reply to it. Coburn ([2012](#)) makes a similar point that mediators, if they are to be effective, must suspend judgement as they listen; this advice applies to negotiators as well.

Having a separate note-taker enables the leader to focus on the other negotiator. Negotiators should never be in a hurry. As mentioned, sometimes as we listen to other people, we are listening only for when they stop so that we can say what we want to say. Because our mind has been filled with the points we want to make, we might have listened to them but not actually heard them. At least try to show you are paying attention by appearing relaxed and looking at the other negotiator. The complexity of most negotiation dialogue is why checking our understanding and reflection is so important. Make it as easy as possible for the other negotiator by not interrupting. If someone is interrupted, they are likely to react to the interruption rather than listen fully to what is being said. In any

event, the strength of reciprocity is such that if someone interrupts, then before too long they too will be interrupted, and they won't like it either.

Negotiation skills tips

Good listening

Three useful things will ensure you properly hear what the other person is trying to say:

- Be relaxed and focus on the speaker.
- Take notes, or have someone present who will.
- As a way of checking understanding, reflect on what the other negotiator has just said.

What if the other negotiator is saying things you don't like or don't agree with, or things are getting a bit heated? The temptation to stop them by interrupting will be strong, but continued listening is a positive way to deal with these situations. There are several reasons for listening rather than interrupting. First, listening pre-empts a defence–attack spiral from developing; it takes two for this to happen. Second, if the person extends themselves too far in what they are saying, they may give away more information or may even back down. Letting the other person continue speaking might lead them to hearing – through their own emotion – what they are saying and realise that it is unsustainable. It gives the listener more time to really think through the genuineness of the point the speaker is trying to make. If you are not speaking, you cannot be making any concessions.

Speaking and asking questions

When it is time to speak yourself, take a key point from what the other speaker has said and talk first about that, or summarise the issues from the perspective of both sides before restating your main concerns. This is a good way to show you have heard what has been said, even if you did not agree with it or like the way in which it was presented to you. Making a habit of reflecting in this way will also help guard against making early judgements.

Obviously, negotiation involves speaking as well as listening, and how we say what we want to say is important. The reciprocal nature of negotiation means that if we have listened well, we are more likely to get a better hearing. Our first goal when communicating should not be to get the other person to agree, but rather to get them to hear and understand. We can make it easier for the listener if our main points are made either at the start of what we have to say or as the final point (utilising the primacy and recency effects). It is better to make a limited number of points and repeat them; just because you've made a point, don't assume that the other party has really heard it or fully appreciates your intent. Next time you speak, make the point again but in a different way. Taking it steady and using repetition are helpful techniques.

Finally, don't clutter up your main points with detail, particularly in the early stages. It is not that detail is unimportant, but what is more important is that the negotiators first grasp the essentials. This then helps show which details are important. Staying away from detail in the early stages also removes one opportunity for competitive exploitation. If a negotiator wants to undermine your position, one of the easiest ways is to pick out some detailed points from your presentation and challenge them.

The focus then shifts from your main points to your defence of these details, which is not helpful when you are trying to develop a persuasive argument. At the settlement stage, checking the detail is crucial.

Negotiation skills tips

Good speaking

Three useful things done early in a negotiation will make it easier for the other negotiator to hear and understand:

- Stick to a few key points made in different ways.
- Explain the why as much as telling the what.
- Leave the detail until later.

Another way by which a negotiator can help the pattern of interaction involves how they interpret what the other negotiators are doing. Just as we have choice of strategy options, we have choice of reaction, so it is not simply a matter of what they say but of how we react to what they say. Honey ([1976](#), p. 80) suggests yet another categorisation of statements in negotiation. Two of them were ‘difficulty stating’, such as ‘I can see a problem with that’, and the more explicit ‘disagreeing’, such as ‘I can’t agree with that because ... ’ We can readily see that expressing disagreement through stating difficulties rather than disagreement will be more cooperative, and thus will help to keep subsequent interaction more open. If the other negotiator rejects your proposal by saying, ‘That’s not acceptable and I’ll tell you why. First ... ’, then it is preferable to ignore the disagreement and respond to the reasons given.

We have seen that even though we may prepare well, there are still some aspects of the background to the negotiation or the other side’s position about which we will be unclear, so we need to prepare questions to help us to find out more. It is not sufficient to think to oneself, ‘I must ask about that’; a good negotiator will formulate the actual question and

have it ready in their notes. A really good negotiator will anticipate that the first time they ask a question they probably won't get a full answer, so they also prepare some follow-up ones to ask later. There should be a strategy to the questions being asked. If a negotiator is reasonably sure of a point, then the question can be quite closed (a closed question being one that is likely to get a short answer): 'Have I got it right that what's really important to you is the delivery schedule?' Where a negotiator is trying to understand more about the other party, closed questions – 'Is the delivery schedule really important to you?' – will generate a closed (and probably not very informative) response. An open question – 'What are the most important issues for you?' – may perhaps get a response along the lines of, 'All the issues are of importance to us!' which isn't overly helpful, but it has put the topic of 'importance' on the table and our really good negotiator will have anticipated an evasive reply and so be ready to follow up with, 'Sorry, I didn't put that very well; out of all the issues which one do you think we really need to address?'

Note the use of the word 'we' in the question above to encourage the next step to be collaborative rather than competitive. As Miles ([2013](#)) points out, question strategies can be either cooperative or competitive. Cooperative questioning is where the intention is to 'unpack' what is being said and explore the potential for new insights or perspectives to emerge. The questioning would be more competitive when you want to test how committed the other party is, or how good they think their BATNA is. We will see in later chapters that the cooperative approach is helpful in the exploration exchange, and that competitive questions would be more likely in the closing exchange phase, but both may occur at any time as negotiators seek to explore or test what the other negotiator is saying. The important point to note here is to avoid asking questions in a way that makes it appear that you are being competitive when that is not your

intention. For example, constantly asking questions – even open-ended ones – will cause the other negotiator to begin to feel as if they are being interrogated, and will make them less inclined to answer. One way to avoid this – and it is a good thing to do in any situation – is to always talk about some part of the answer the other negotiator has just given; this not only stops you firing off another question, but also shows that the answer that was given was important enough for you to think and talk about.

Negotiation skills tips

Good questioning

Three useful things are worth remembering when you are looking for answers to your questions:

- Answer the questions the other party asks you.
- Ask open-ended questions (prepare some, and follow-ups, in advance).
- Talk about their answers.

Finally, on the topic of questions, the best way to get answers to your questions is to remember that reciprocity is part of negotiation's DNA, so you should answer the questions you are asked.

Negotiating via the internet

Trying to convey a point, understanding what the other party is saying, asking questions and generally trying to interact constructively are made all the more difficult when the negotiations are being conducted online. Not being able to see the other negotiator has some adverse effects – negotiators are less trusting and are generally more competitive (Citera, Beauregard & Mitsuya [2005](#); Naquin & Paulson [2003](#)). The lack of visual contact and personal interaction can be offset by a prior phone call or through exchanging some personal information as the email negotiations get started, and generally maintaining small talk during subsequent exchanges (Morris et al. [2002](#); Nadler [2004](#)).

In [Chapter 2](#), we explored how emotions – particularly anger – can arise in a negotiation and might make finding agreement more difficult. The internet, on the other hand, may help to make negotiations more ‘rational’. We might think that since the negotiators can’t see or react to each other, then ‘face’ – how people feel when being confronted or feeling that they will lose face if they agree – is less important. This isn’t so; electronic non-visual communication still conveys emotion. Negotiation is messy, and part of this messiness arises because we can mean to convey the same point but do it in different ways. For example, Griessmair and Koeszegi ([2009](#), p. 226) show different ways in which a negotiator can talk about a tradeoff between two issues (called logrolling). A negotiator might say, ‘A good compromise would be for you to supply the vehicles and for us to provide the drivers’, which sounds like (and will read as) a much more cooperative proposition than, ‘If you provide the vehicles we will find some drivers’ and far more cooperative than, ‘We will only provide drivers if you commit to providing the vehicles’. Griessmair and Koeszegi

([2009](#)) found that the emotional overlay of statements came through even in internet negotiations (as did Brett et al. [2007](#)). This means we have to be very careful about how we word any email communication (and certainly resist the temptation to hurriedly dash off a quick reply). It has been found that negotiators using email tend to use harder tactics than they do in face-to-face negotiations (Galin, Gross & Gosalker [2007](#)), which makes it even more important to be careful about what we write. Interestingly, this and other research (Purdy, Nye & Balakrishnan [2000](#)) suggests that whether internet or face-to-face communication was used didn't make much difference to the outcome, which may reflect the nature of the issues being negotiated in the research projects but is nevertheless a reminder that the outcome of a negotiation will be shaped by 'big picture' strategic aspects, such as the interests and motivations of the parties and their respective BATNAs.

Negotiating over the internet provides a record that enables the negotiators to review what has been written; this can be an advantage or a disadvantage. The disadvantage is that it enables a negotiator to zero in on a section of a message or a phrase and respond to that alone, sparking off a competitive debate if the other negotiator then does the same thing (Bülow [2011](#)) – reciprocity occurs in internet negotiations as in any other kind. This isn't really the fault of the internet; it is just that the internet offers more of an opportunity for a negotiator to exhibit any competitive instincts. Make sure emails are clear, but also succinct.

The advantage of being able to review an email negotiation is as an opportunity to become reflective practitioners and 'read' – in this case, literally – what is happening in the negotiation as a whole, not just the detail of the last offer or piece of information. This ability to stop and reflect is obviously greater in an internet negotiation, and this does have the effect of reducing the emotional content (Pesendorfer & Koeszegi

(2006), which is an opportunity that should not be foregone. One of the key rules of the internet is that if you are writing an email you think the recipient won't like to receive, leave it in the 'draft' box and look at it again in the morning. Negotiations over the internet are really not much different from those carried out face to face (or on visual systems, such as Skype). The tasks and phases ([Figure 4.4](#) in Chapter 4) still have to be worked through so, as in a face-to-face negotiation, it is still better to get the broad issues out there and ensure they are understood before looking for solutions or pressing for compromises. Internet negotiators are still people, so might write something in a way that wasn't quite intended, or interpret something in a way that wasn't meant. The key, as for all negotiations, is to reflect and 'read' what's happening and be alert to rebuilding the process, apologising if necessary so that progress can be made towards a good outcome.

It may seem a bit old-fashioned to some, but we might still have to negotiate over the phone. These negotiations are usually less formal and often seem like 'sorting something out' rather than resolving major issues, but they are negotiations nevertheless. There are occasions when negotiations have reached a final stage without agreement, and it is left to the lead negotiators from each side to see whether a deal can be put together over the phone.

The final stages of a negotiation over the acquisition of a company were conducted over the phone. It got very tense and competitive with each negotiator at times reinforcing their commitment to their position by hanging up on the other. However, both knew that they both really wanted the deal to be done, so the phone conversations were started up again each time until eventually an agreement was reached.

A full account of the IT Company case is available at www.cambridge.edu.au/academic/effective

Some comparisons between phone and internet negotiation are listed in [Table A3.1](#). Again, although the negotiations may be less competitive, it seems that whether negotiation takes place over the phone or via the internet doesn't make much difference to the outcome.

Table A3.1 Negotiating in ways other than face to face

Negotiating over the phone	Negotiating over the internet
The phone is not a leveller; one party can still dominate.	The internet is a leveller; no one can easily dominate. Even so, don't shout.
We tend to overdo our strategy and to be repetitive because we are not picking up any visual clues as to how much the other person is receiving what we are saying.	The length of communication is not constrained.
We tend to sound and be more competitive.	There are fewer social protocols; it is not so easy to have a social warm-up.
We get fewer response cues, especially regarding the genuineness of agreement.	Bad grammar, compressed words, etc. are acceptable, but they usually lead to mistakes and misunderstandings.
Negotiators with a strong case do better over the phone.	Interactions are interpreted more competitively. The essence of email is its immediacy, so we

don't read it properly; we just reply. Delays in response increase our frustrations. There is a risk of messages going elsewhere.

So:

Have a clear end-of-interaction objective. Ask yourself what you want to have achieved by the time you put down the phone.

Keep your statements short.

Make frequent use of summaries and reflective statements.

So:

If possible, have prior face-to-face or phone contact.

Include some social chit-chat in the email.

Fully spell out your priorities and your reactions. Check your understanding of the email; if necessary, email back to get clarification.

Make multiple suggestions; explicitly invite suggestions.

If you have to make a difficult response, leave it for a day.

Develop the skill of being good on paper: the skill of being able to write a balanced summary of the issues, the pros and cons, and the options.

Becoming an effective negotiator

As we saw in [Chapter 2](#), the best way to improve one's skills is to adopt the practice of reflection, so negotiators should set time aside to reflect on how well they communicated – how well they put their point across, how well they asked questions and how well they listened. The checklist in [Table A3.2](#) might help negotiators who want to focus particularly on how well they have communicated. It lists and defines some key categories inviting reflection on when they were done in the negotiation and how well they were done. This checklist would help a negotiator to think, for example, about how suggestions were made, or to ask, 'Was it effective? Did the way I asked the other party whether they had any proposals come over as me being open or closed to what they might then suggest?' And so on.

Table A3.2 A negotiation statement checklist

Issue-related statements	Process-related statements
Finding out the differences: exchanging information	Clear statements clear main point, not too long
'Big picture' statements background or context	Listened well showed openness, empathy (but not agreement)
Positional statements a position is a statement of what the person wants the other person to agree to	Checked understanding asked questions, restated
Interest statements an interest is an underlying issue	Reflected talked about what the other person had just said

or concern that needs to be addressed

Exploring options: solution seeking

Made or asked-for suggestions a suggestion is a possible way of resolving the differences

Exchanging offers: managing concessions

Made or pressed for a concession

a concession is asking for less than (or for something different from) previously

Signalled indicated next statement

Summarised the issues or the process

Process proposal possible next steps

The statement types listed on the left-hand side of [Table A3.2](#) relate to the issue and are the core types of statement we would expect to find as the negotiation goes through the various phases and tasks. So, as we will see in Chapter 4 (see [Figure 4.4](#)), we would expect the parties to talk about positions and interests early in a negotiation, then explore for options and possible solutions, then move onto how they manage the process of making offers and concessions to reach an agreement (these processes will be explained more in [Chapters 6, 7 and 8](#)). Being aware of the nature of discussion – are we exchanging information, seeking solutions or handling concessions? – is an indication of how far the negotiations have progressed. To be able to ‘read’ a negotiation in this way is part of the skill of ‘reflecting in’.

The statement types in the right-hand list in [Table A3.2](#) are all process related. These sorts of statements are a kind of lubricant; they tend

to help avoid friction even if the parties are disagreeing on the issues. It is not necessary, for example, to keep summarising; however, doing it from time to time is normally helpful, so if having thought back over a negotiation a negotiator realised that they hadn't summarised at any point, they might want to try this next time.

4

Ways to manage a negotiation



This chapter focuses on the process of negotiation. After reading the chapter, you should be able to:

- appreciate the balance between competitiveness and cooperation in a negotiation
- be aware of the phase nature of negotiation and how the core sequence of process works out in practice
- recognise the importance of having a negotiation script and the usefulness of imagery in developing one.

[Chapters 2](#) and [3](#) explored the DNA of negotiation – the parties to it and the core elements that give a negotiation its life. This chapter will examine how a negotiation works by considering the overall process of moving from disagreement to an outcome. Later chapters will fill in some of the detail, but first we need an understanding of the process as a whole and must find a way to describe it – a script or imagery – to keep in mind when we are negotiating.



No two negotiations are the same, which makes it difficult to develop a ‘one size fits all’ model for negotiators to follow. Nevertheless, there are some phases of activity that constitute the broad flow of negotiation – there is some order in the chaos (Watkins [1999](#)). It is rather like travelling on a boat down a river: having chosen to reach one’s destination (agreement) by river rather than by road or train, the river itself then sets the broad course and direction, and there are general rules of navigation that all those on the water should follow. In making the journey, it is difficult to go against the flow of the river but it is also risky just to let the river direct the boat. The river has to be navigated – there are times when progress is easy, and other times when action has to be taken to stay on course. This calls for an understanding of what might be happening under the surface as well as knowing the course the river takes.

Negotiation skills tips



Three useful questions to ask

Regularly check the state of play in your negotiation:

- *On the issue:* What is this really all about?
- *On the process:* What is going on here?
- *Action:* What do I do next?

In our river imagery, we can envisage the phases of a negotiation as being the broad flow of the river. The phases are made up from the interactions between the negotiators, and these interactions are the localised movements of water, which impact on how well the boat is placed to handle the next stretch of water. Just as some boat journeys are smoother than others, so some negotiations flow more effectively than others, and achieve better outcomes, suggesting that the flow of negotiation through the phases and patterns of interaction can be managed to good effect. There may be a preferred course down the river, but each journey is different because water levels, winds and other factors change. Just as the skipper needs to know the basic principles of navigation and to be able to read the river as he journeys along it, so too the negotiator needs to understand the broad patterns of negotiation and be able to manage the interaction to ensure that the negotiations stay on course and agreement is reached.

Negotiation phases

If reciprocity is part of a negotiation's DNA, then we can expect there to be times when both parties are matching each other's behaviour. If these periods of matching activity are clear enough, we regard them as 'phases' in the negotiation. A negotiator might describe a negotiation thus: 'We had a fairly robust debate but once we understood each other it was quite easy to reach an agreement.' This would suggest two broad phases in the negotiation, the first broadly competitive and the second more cooperative. If we had a transcript of the negotiation, we might find that even when the negotiators were having their robust debate, they were exchanging information (which is quite a helpful thing to do) and, while easily reaching an agreement, there were times when they were digging their heels in over a particular point. To continue with the imagery of a river, it might be flowing quite fast over rocks and waterfalls as it comes down the mountain, and could then meander quite slowly across the flood plain. Yet there might also be some quiet rock pools in the mountain stretch and fast eddies as the river crosses the plain. The negotiator has to be as alert to the overall flow of the negotiation as to its sub-currents.

Competitiveness and cooperation

[Table 4.1](#) lists a cluster of negotiation tactics and behaviours that we might label ‘competitive’ and another cluster that is regarded as being ‘cooperative’. Walton and McKersie’s ([1965](#)) terminology of distributive and integrative bargaining is often used, as are the labels of win–lose and win–win. The contrast is obvious, and most negotiators would prefer to be involved in the more integrative approach to bargaining, which is a good choice as the research generally suggests that the integrative approach yields better results.

Table 4.1 Distributive and integrative bargaining strategies and behaviours

Distributive bargaining strategies and behaviours	Integrative bargaining strategies and behaviours
	Probably some climate-setting and skills-development processes
Limited information exchange – that is, only information that helps one’s own case	Full information exchange
Adopting firm positions and making commitments	Open, joint consideration of circumstances and interests prior to agendas being established
<i>Both tactics are aimed at shaping the other party’s expectations</i>	<i>All tactics are aimed at enhancing mutual understanding</i>
Threatened alternatives and power plays undermining the other’s position or party	Absence of power plays. Support for other party (even viewing both sides as one)

Tense, controlled interaction

Discussion and open interaction

*Both tactics are aimed at getting
the other party to agree*

*Both tactics are aimed at
generating new options*

Concession-making to reach an
agreement, albeit reluctantly

Emergent consensus

Source: After Walton & McKersie ([1965](#))

Competitiveness and cooperation – either or both?

While many people advocate that negotiators follow the cooperative integrative win–win approach, it is useful to look more closely beneath the surface to see whether this approach is in fact preferable. Putnam (1990) describes those models that present a negotiation as being essentially either competitive or cooperative as ‘separate’ models (see Table 4.2). There may be variations in how the strategies are implemented, but there is essentially only one phase to the negotiation. Walton and McKersie (1965) present their distributive and integrative bargaining not as two separate strategies but as sub-processes within the overall process of reaching an agreement. In fact, they suggest (1965, p. 165) that the best strategy for negotiators is to engage in integrative bargaining first to increase the size of the pie, and then distributive bargaining to get as much of the larger pie as possible. They also note that, as well as this being the best strategy, it is also the most difficult one to use. Lax and Sebenius (1986) recommend a similar approach, advocating that negotiators should first try to ‘create value’, then ‘claim value’.

Table 4.2 Process models of negotiation

Type of model	Negotiation strategies implemented
Separate models	
Competitive	Distributive; win–lose argumentation
Cooperative	Integrative, win–win problem-solving

Mixed models

Stage	Distinct and predictable periods of activity, typically, issue definition, problem-solving and resolution
Episodic	Distinct periods of coherent activity that are flexible in sequence, duration and frequency
Interdependence	An ongoing mix of win–lose argumentation and win–win problem-solving throughout the negotiation

Source: Developed from Putnam ([1990](#)) and Weingart & Olekalns ([2004](#))

This suggests that negotiation is a sequence of cooperative and then competitive tactics. On the other hand, Stevens ([1963](#)) who, like Walton and McKersie ([1965](#)), researched management–union negotiations in the North American collective bargaining system, suggests that negotiators start off competitively, then realise that they have to cooperate to get an outcome. However, this cooperation may not amount to looking for value-added solutions through full problem-solving but rather a more limited level of cooperation, simply because one side cannot get any agreement at all without the cooperation of the other. Recognising that this cooperation might be rather more pragmatic than all-embracing, writers such as Pruitt ([1981](#)) and Putnam ([1994](#)) call such negotiations ‘coordination’ rather than cooperation. Again, it is an example of looking beneath the surface of the negotiation to see exactly what is going on.

Rather than just two phases, Douglas ([1957](#), [1962](#)) suggests that negotiations go through three – essentially competitive to start, then

cooperative for a while but becoming more competitive as the negotiators close in on an agreement. Other models increase the number of phases, but at their heart most models have these three phases (Holmes [1992](#)). Models portraying the competitive and cooperative elements of a negotiation as sequential are called ‘stage models’ (Putnam [1990](#); see [Table 4.2](#)). The practical implication for negotiators is that there is an underlying sequence through which a negotiation should go to reach an agreement, with the further implication that if negotiations don’t follow this sequence, they will either deadlock or reach a poor outcome.

It was suggested in earlier chapters that negotiation is messy, so another view of negotiation is that negotiators keep switching between competitiveness and cooperativeness, but not in a structured way. This means that there are likely to be several episodes of competitive and cooperative interaction before an agreement is reached. Negotiators should therefore expect changes to occur, but they cannot be planned for. Finally on this, Putnam ([1990](#), [1994](#)) suggests what she regards as a more realistic interdependence model of the negotiation process. It reflects a belief that competitiveness and cooperation seem to feed off each other in a dynamic way as a negotiation progresses. The practical implication of this is that negotiators should pay close attention to what the pattern of dialogue is indicating about the progress of the negotiation. (This is why the skill of reflecting *in* is so important.)

Researchers have presented two contrasting models of negotiation phases. Douglas ([1957](#), [1962](#)) observed three phases when she researched labour–management mediation cases in the United States. The two parties present and defend their respective positions almost to the very end. After a period of sparring and testing the other side, the negotiators begin to look for compromise positions. In [Figure 4.1](#), first the union negotiator then the company negotiator make tentative proposals. When these are rejected by

the other side, the negotiators go back to their trenches and restate their positions. In time, negotiators on both sides begin to realise that one particular proposal will be the basis for the settlement. Because both parties are reasonably confident of where the negotiations will end up, they are able to make formal concessions on their respective positions until they reach a point of explicit agreement.

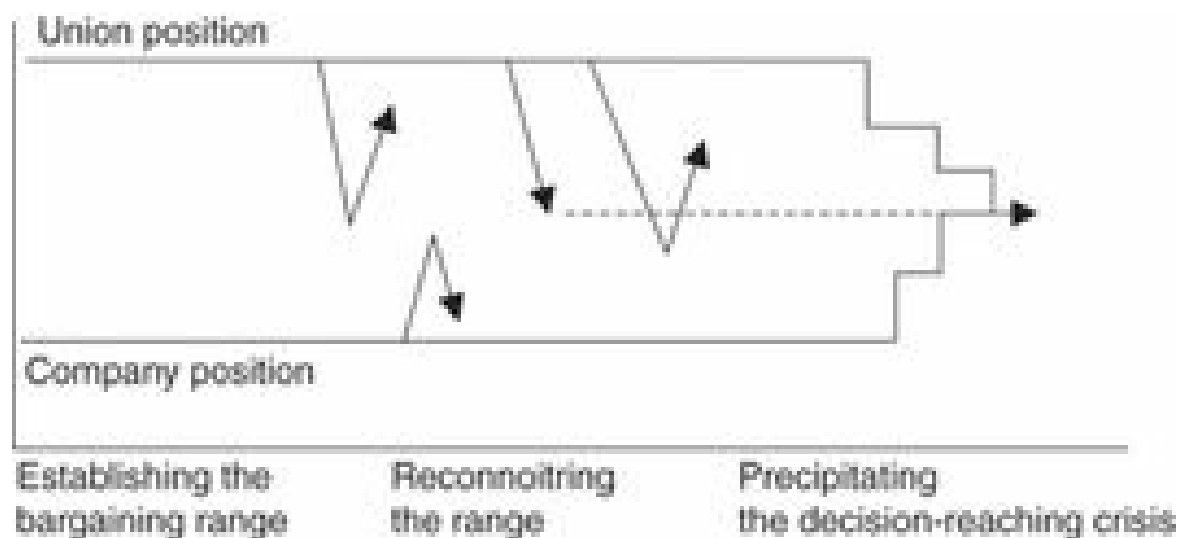


Figure 4.1 Positions, proposals and reaching agreement (after Douglas [1957](#))

Fisher, Ury and Patton's ([1991](#)) Model of Principled Negotiation seeks to break out of this fundamentally competitive process (see [Figure 4.2](#)). Its genesis lies in the experience of nations trying to resolve their differences, but it has wider application. Rather than competitively establishing the bargaining range between two locked-in positions, the parties should take time to uncover their underlying interests. From this improved understanding of what each party's fundamental needs are, the parties can be far more open and creative, and go beyond the range of stated positions to invent options for mutual gain. If there is no one clear solution that meets both parties' interests, then a decision can be made by

reference to relevant objective criteria. This is a far more cooperative approach (Patton [2005](#); Thompson & Leonardelli [2004](#)).

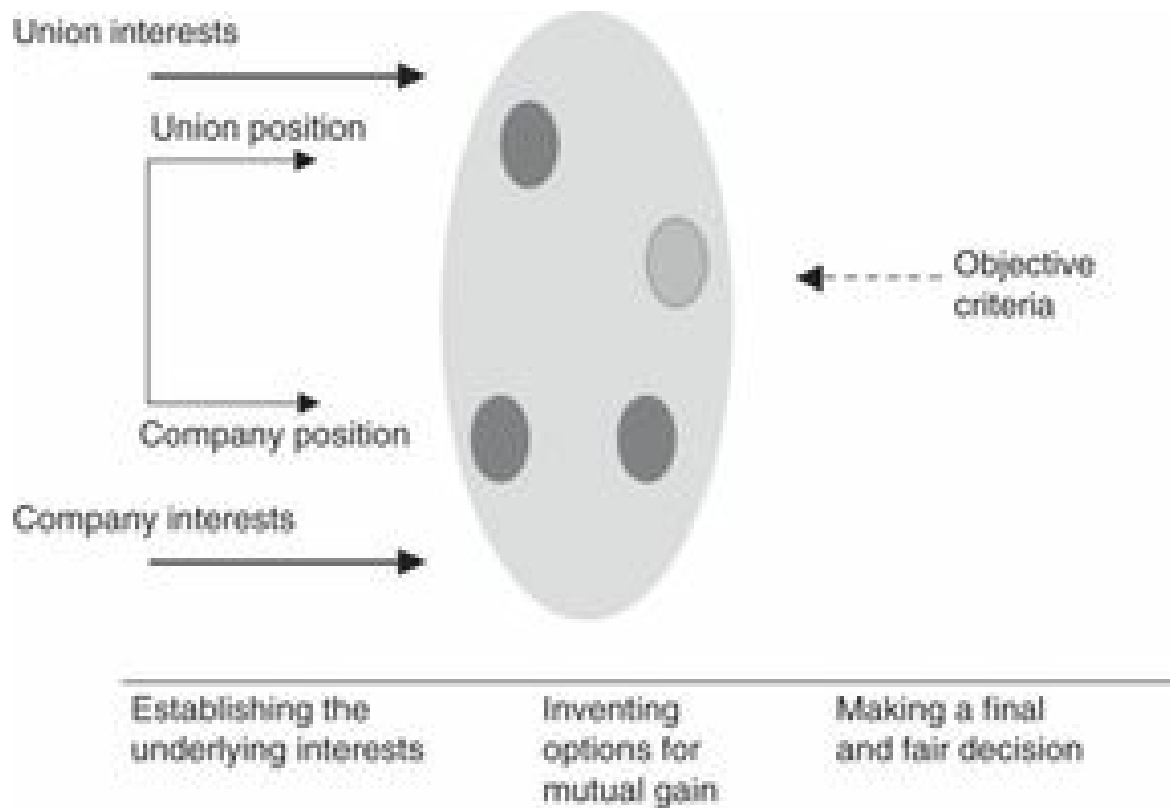


Figure 4.2 Interests, options and criteria for reaching agreement (after Fisher, Ury & Patton [1991](#))

What detailed interaction research tells about phases

Many researchers have looked closely into what negotiators do as they try to reach an agreement. They conduct interviews and surveys, and sometimes are able to sit in on negotiations. They construct scenarios and experiments to highlight a particular aspect of negotiation they want to examine, then take recordings or make a video. These transcripts and videos show the detail of what goes on – who says what and how they say it. The researchers study the frequency of strategy actions or statement types from their timing, from whether certain sequences of actions or statements are more common and from the ways in which negotiators change from one combination of actions or statements to another. The statements negotiators make can have a different effect depending on how they are said and what else is being said at the same time (Adair & Loewenstein, [2013](#)). This type of research is necessarily detailed and complex, and very academic-looking, but this does not mean it is not useful for practitioners. For example, the researchers' detailed categories of behaviours (see [Table 4.3](#) for an example) make it clear that a negotiator has a great deal of choice regarding how to approach a negotiation and what to actually say. Since negotiation is two-sided, the other negotiator has this range of choices too.

Table 4.3 Summary of negotiation strategies and tactics

Strategy	Tactics associated with strategy
Coordination	Gives or requests priority information Suggests a new approach Suggests possible solutions,

	Suggests possible solutions, clarifies information or accepts offer
Affiliation	<p>Makes an open-ended statement</p> <p>Expresses support of the other person</p> <p>Engages in rapport-building</p> <p>Notes differences in a positive way, anticipates agreement</p>
Argumentation	<p>Gives or requests positional information</p> <p>Disputes information provided by other</p> <p>Introduces new arguments</p> <p>Refers to issues without making an offer</p>
Dominance	<p>Asserts wants, states minimum acceptable outcome</p> <p>Notes differences in a negative way, anticipates disagreement</p> <p>Rejects other's offer</p>
Offer management	Makes single or multi-issue offer

Requests mediation of offer
on the table

Gives a concession

States a range of acceptable
outcomes

States expectation that other
will reciprocate

Source: Olekalns & Smith ([2013](#), p. 6)

We will draw on this interaction research in later chapters. The main point here is to reinforce the notion of phases in negotiation. The researchers find that there is a lot going on under the surface of a negotiation – typically more than one thing at a time – but also that there is a broad flow to a negotiation (see [Figure 4.3](#)). The research suggests that we can expect an early competitive-looking start to a negotiation, a more exploratory middle period and a focused exchange of offers as the parties position themselves around an emerging settlement.

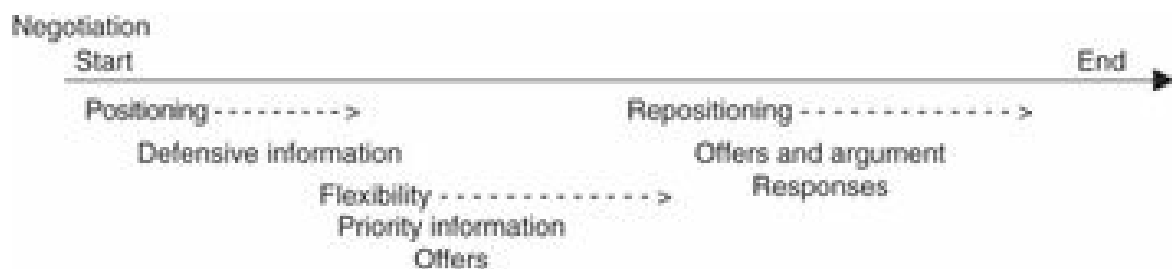


Figure 4.3 Some dominant activities through the course of a negotiation

Making sense of models and research

Both the descriptive models and the more precise interactions research suggest a broad sequence of what negotiators do when they negotiate. There is a certain underlying logic to negotiation, and the definition presented earlier follows this logic. That definition, it will be recalled, is that ‘Negotiation is a process whereby two parties with differences that they need to resolve try to reach agreement through exploring for options and exchanging offers’. Negotiations can’t simply be left to take their course – the process is both two-sided and messy; instead, there is a broad sequence to work through. The two parties with differences have the task of first finding out what those differences are, and then they have to decide whether they need to resolve them through negotiation or can achieve their goals in some other, better way ([Figure 4.4](#)). If they continue to negotiate, they can achieve agreement either through exploring new options, and then exchanging offers, or by moving directly into the task of exchanging offers. But the simplicity of [Figure 4.4](#) conceals the choices negotiators can make and the complexity of their interactions. While going with the flow of differentiation, exploration and exchange, a negotiator should also be working hard to manage the process rather than being managed by it.

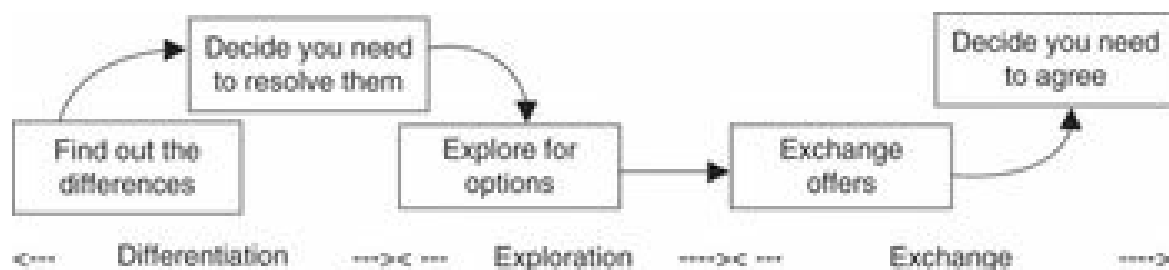


Figure 4.4 Phases and task sequence in the negotiation process

We can expand the definition and sequence of [Figure 4.4](#) into a fuller description of how negotiations work. A negotiation between a shipping company and a manufacturer over the installation of new equipment in the tanker fleet provides a useful example.

Negotiation in practice

Phases within an inherently competitive negotiation

Background

A shipping company contracted a manufacturer to install new equipment into its fleet of 25 tankers that would make the tankers far more efficient. However, problems arose over the installations and by the time half the tankers had been refitted, the disputes had escalated to the point where each side had served writs on the other. Prior to going to court, the parties agreed to make one more attempt at negotiation.

The negotiation timeline

- Day 1: Joint meeting all day
Reviewed the key issues
- Day 2: Joint meeting continues
- Day 2: Lunchtime adjournment
Parties review their situation
Joint meeting, afternoon
Reframed the issue; discussed possibilities
- Day 3: Joint meeting continues
Side meeting of two key executives mid-morning
Resolved key financial issues; agreed on key terms
Joint meeting for remainder of the day
Formalised the key terms into a heads of agreement document
- Outcome: Over the next six months, frequent meetings and exchange of documents to finalise the revised contracts.
But, the work on installation on the tankers resumes immediately.

Two parties with differences

The manufacturer claimed an increase in the contract fee because the shipping company kept changing its specific requirements while the shipping company claimed a reduction because of poor work and delays. The two negotiating teams met and, for one whole day and into the second, they went through all the claims

and counter claims trying to understand what had actually happened. This process served to clarify the issues around a number of key items. It became clear to both parties that their opening positions – that the other was at fault and so was liable – were no longer sustainable.

that they need to resolve

The parties took a formal adjournment and lunched separately to reconsider their positions. It was clear to the manufacturer's negotiators that they could not sustain their position that their company was not at fault. The shipping company negotiators also realised that their company had to take some responsibility for the situation. In view of this, they separately realised that success in court was more problematic. This shaped their approach when they resumed negotiations.

by trying to reach agreement

Now both parties realised that their opening positions were no longer tenable, they were in a position to move forward and did so by reframing the situation into a forward-looking one: What needs to be done to complete the contract? The negotiators worked through what might lie ahead but in a purely exploratory and non-committal way. They spent the rest of the day and most of the next putting some shape to what a revised completion contract might look like, a process that made the financial implications clearer for both parties.

Midway through the morning of the third day, the senior executives from the two company negotiating teams stepped out of the main negotiations and reached an agreement between

themselves on the key elements in dispute, particularly over the amount the shipping company would pay for the remainder of the work to be done. With this and other key commercial terms resolved, the negotiating teams then drew up a heads of agreement that both parties signed, though it took a further six months for the two companies' lawyers to finalise the contracts.

A full account of the Tanker case is available at www.cambridge.edu.au/academic/effective

Two parties with differences

If negotiation is about two parties with differences, then it follows that the negotiators need to find out what those differences are. Most negotiations will open with a period during which the parties emphasise their differences. This can be done competitively, with each stating its positions and endeavouring to undermine the position of the other party, or it can be rather more cooperative, with each party still stating its position but at the same time trying to understand the motivations and underlying concerns that are driving the other party.

Because negotiators can find out their differences in different ways, it is more helpful to view this as the task of differentiating rather than labelling the phase as either competitive or cooperative. (We will look at this task of differentiating more closely in [Chapter 6](#).)

What if the negotiators don't take time to emphasise and examine their differences, but instead try to be settlement-oriented and put solutions on the table? This may work, but it would be rare for a negotiator to get the best settlement first time. (If the offer is accepted, it probably means the negotiator offered too much.) This simply means that if the negotiators don't spend time sorting out what their real differences are at the outset, they will have to do it at some point later in the negotiation. So we might expect an extended phase of differentiation early in the negotiation and shorter periods again later as the negotiators realise they have to recheck their understanding of their underlying interests and motivations.

In the example of the negotiations over refitting the tankers, the shipping company negotiator structured the opening discussion about differences to clearly establish where those differences lay. As is often the case, it is necessary to not only sort out the facts but also to think again

about the interpretation of the facts and, in this case, who was responsible. This process of experiencing a change of understanding of the issues often takes time.

that they need to resolve

If negotiation is about two parties with differences that they need to resolve, then our negotiators need to be sure that they really do need to keep negotiating to resolve these differences rather than invoke their walk-away option. This is an important point in any negotiation and it can be shown diagrammatically using ideas developed by Magenau and Pruitt (1979). All negotiators want to stand firm and achieve their goals, which means that the negotiator expects agreement to be reached through the other party making concessions. Magenau and Pruitt call this the motivation to maintain one's demand (MD). But if the other party does not concede fully, then there comes a time when the negotiator realises, if their BATNA is poor, that their need to achieve an agreement is greater than their desire to hold onto the initial demands. This need is termed 'the motivation to reach agreement' (MA). The two motivations, which are present in every negotiator in every negotiation, are demonstrated in [Figure 4.5](#). It is only when a negotiator's MA – the desire for an agreement – is the stronger of the two motivations that they will be genuinely willing to look at alternative solutions.

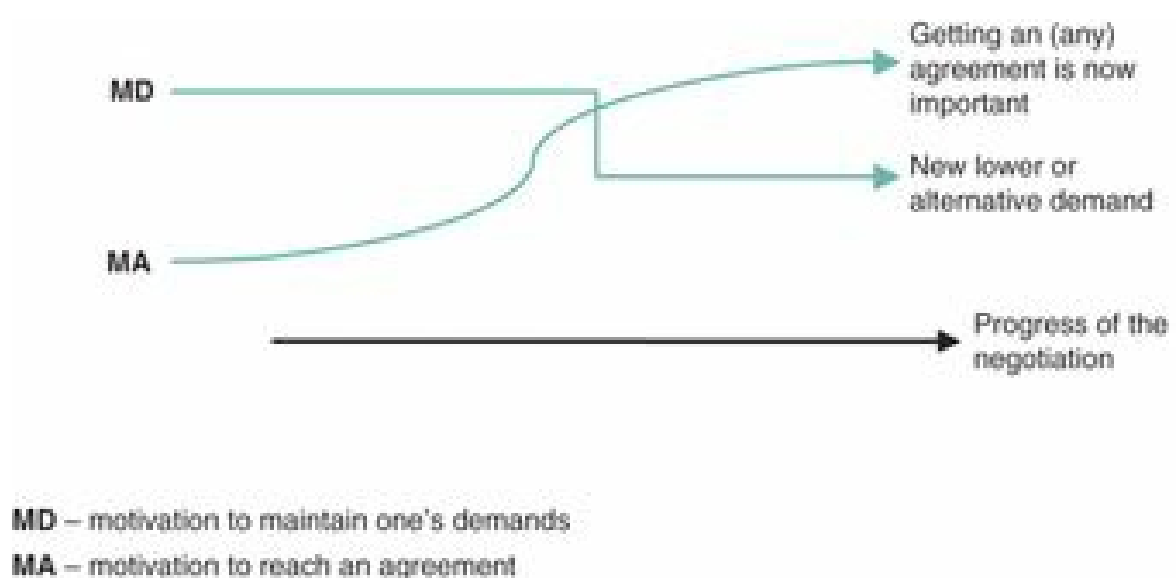
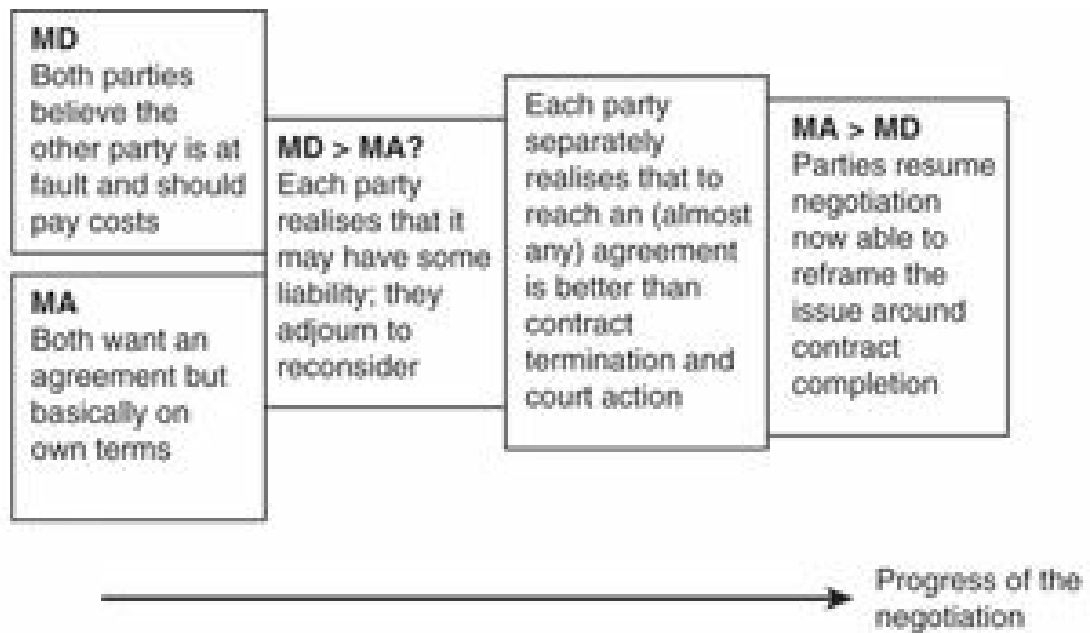


Figure 4.5 The two negotiator motivations (based on Magenau & Pruitt [1979](#))

Coming to the realisation that the other party is not going to give you everything you wanted from the negotiation, and that walking away is not too good an option either, isn't going to create a recognisable phase in the negotiation, but it will be an important turning point, particularly if the two parties have been contending. In some cases, the question of whether the negotiator needs to resolve the issue may have been settled in the negotiator's mind before the negotiations began. The negotiator has reviewed the situation and knows that, one way or another, they will have to reach agreement with the other party. In other negotiations, there comes a point when negotiators realise that their initial expectations are not going to be met. In the Tanker case, this realisation occurred as more and more information emerged about the incidents surrounding the equipment installations (see [Figure 4.6](#)).



MD – motivation to maintain one's demands

MA – motivation to reach an agreement

Figure 4.6 The Tanker case: changing motivations

We should remember that negotiation is two-sided. To reach an agreement, both parties have to put aside the option of walking away and focus on their need to settle. However – and this is an important point in many negotiations – there is nothing in the negotiation process that requires both parties to come to this realisation at the same time. The manufacturer was more on the back foot during the first day and a half, and so realised the need for a changed position and approach. This realisation came later to the tanker company negotiators. Nor does realising the need for change automatically lead to a change in behaviour. It is quite likely that the realisation comes but the negotiator continues negotiating as before until some convenient point – lunchtime perhaps – to adjourn and seriously rethink their situation. Depending on how well you have prepared, you might already know that your walk-away option –

going to court in the Tanker case – is not a good one. However, it might be in the sanctity of an adjournment that you look again at your BATNA and now see that it is not as good as you once thought it was.

This point in the negotiation is clearly one that needs careful handling. If one party is committed to achieving an agreement while the other has yet to get to that point – perhaps because they have a reasonable alternative – the party that needs agreement is in the weaker position and should try to get the other party to see the need for agreement before embarking on any concession-making. If not, the concession-making will be unilateral. The ability to ‘read’ the negotiation is important.

There is one more point in the negotiation where the question, ‘Do I need to resolve this?’ should resurface. This is just prior to the point of agreement, when every negotiator should make one final check of whether what is to be agreed to is better than any alternative.

by trying to reach agreement

If the two parties choose to continue negotiating, then there are two ways in which they can try to reach an agreement. They might resolve their differences through exploring for new options – solutions that no one had previously considered – or through the process of exchanging offers that gradually bring the two parties' positions to a point of agreement. In the Tanker case, the negotiators, once they had realised concessions or new solutions were necessary, could have gone through the issues one by one and negotiated a monetary value for each. Instead, they reframed the problem and approached it in a different way, which made it easier to see how both companies could achieve what they really needed – to get the contract completed. This took time as the negotiators tried to work out what would be required to finish the installation process to their mutual benefit. Although this period of the negotiation was more collaborative, the question of costs still remained unresolved. However, it is easier to resolve what is essentially a zero-sum issue if elsewhere in the negotiations the parties are creating joint gain. In time, the negotiators could see a workable solution emerging and so the hard issues cost could be addressed, which the two executives did in a separate discussion.

Negotiation in practice

Motivations to reach agreement

A European airline was in negotiation with an Asian airline about setting up a joint venture to benefit from the growth of air travel in China. The CEOs of the two airlines had recognised the strategic benefits of an alliance and signed a memorandum of understanding

to that effect. The two negotiating teams built up a good working relationship, but they had a major difference over the nature of the operating systems that they could not resolve, so the negotiations became deadlocked. When the two teams went back home and reflected on the events, they realised that although they were two parties, each with their differences, the prospects for a mutually beneficial outcome meant that they *did* need to resolve their differences. So, following some third-party mediation, the negotiations were resumed.

In this case, the need to resolve their differences was a positive motivation, as the value of what might be created through the joint venture seemed greater than what might be achieved through new projects with other companies. In other cases, the motivation may be driven by negatives.

In the Airline case, management and union negotiators were sitting around the company's boardroom table at Heathrow Airport in deadlocked silence. One of the airline's planes was waiting to take off from Houston but could not get landing permission at Heathrow because of the dispute. The motivation to resolve their differences lay not in any potential mutual gains win-win outcome, but simply in the fact that the likely consequences of continued deadlock were so drastic.

In both of these cases, the negotiators entered into their negotiations in good faith, looking for an agreement. In this sense, they were always motivated to resolve their differences; however, there came a point in each negotiation when they really needed to resolve their differences and so needed to do something different from what they had been doing up to that point.

A full account of the Airline case is available at www.cambridge.edu.au/academic/effective

As noted from [Figure 4.3](#) earlier in the chapter, the negotiations move into a period of increased flexibility. The key mechanism is through the negotiators indicating their priorities, either directly through providing information or indirectly through the way they start to repackage their offers. The negotiation scenarios that are used for research are focused around pay-off structures where negotiators have different priorities; if they can match these, they both get better outcomes. Consequently, this exchange of priority information is always going to be important because of the nature of the exercise (Weingart & Olekalns [2004](#), p. 154). Also, the way to achieve integrative joint gain solutions is through trading offers, which will involve making some concessions around high- and low-priority issues. This logrolling tradeoff is a sort of creative clear-cut compromise (to anticipate the discussion on issue strategies that will be found in [Chapter 5](#)). This is not to deny the real importance of negotiators searching out different priorities, because this is a way to create value. Nevertheless, the nature of the exercises deliberately prevents the participants from going outside the square, and so will inhibit some of the more creative aspects of real-life negotiations.

A complete description of the negotiation process must include provision for a more exploratory activity than might be seen in the interaction research. The exploration task is described more fully in [Chapter 7](#). Even so, we should not expect it to be fully open problem-solving and brainstorming creativity. Negotiators don't forgo their underlying competitiveness; they still seek to persuade by restating their

case and resort to middle-ground solutions through tradeoffs (Fells et al. [2015](#); see [Chapter 8](#) for more on the task of exchange). In their search for a settlement, they might first try exploring options, and then exchange offers. (In doing so, they follow a stage model – see [Table 4.2](#)). Alternatively, they might switch between these two approaches – the episodic model – or they might even find themselves doing both at once – the interdependence model. Again, the logic of the task will help to unravel this. It seems better to explore options that might create value before resorting to trading offers to narrow down the differences (Lax & Sebenius [1986](#); Walton & McKersie [1965](#)). Although the negotiators in the tanker refit negotiation reframed their differences and so found solutions, in the end it all came down to money.

Learning to ‘read’ a negotiation

At this point, it will be helpful to stop thinking about how negotiations work – or ought to work – and revisit a topic raised in [Chapter 2](#) about you, the negotiator, becoming a reflective practitioner. You will recall that one of the ways to improve what we do is to reflect on it and see what we can learn for the next time. This reflecting after the event is known as ‘reflecting on’. However, we can also reflect on what we are doing while we are doing it, reflecting in real time, or ‘reflecting in’ (Schön [1987](#)). This is particularly important for a negotiator, who has to be aware of what is going on around them as it happens in order to know what to do next. We have seen, for example, that it will help you recognise when one party or the other is shifting to a point where reaching agreement is more important than pursuing one’s demands.

Consider a negotiator whose opposite number is constantly going over the same ground, restating their demands and perhaps unwittingly slowly raising the tension. The negotiator can get caught up in the moment and begin to reciprocate, in which case the negotiation may easily get out of hand. However, rather than be caught up in the moment, the negotiator may merely be aware of it, appreciating what is going on but not reacting to it. Ury ([1991](#)) usefully suggests that a negotiator should ‘go to the balcony’ to look down on a negotiation and see what is happening. In [Chapter 1](#), we suggested three useful questions to help achieve the same purpose – to enable you to stop and think before taking action. This is the first step of reflecting in, an important ability that negotiators should develop.

Having stopped to think, the second step is for the negotiator to register something in the back of their mind about what ought to be

happening. The negotiator is not likely to recall the detailed recommendations that they had read in a book on negotiation, which is why models of negotiation are often built around easy-to-remember phrases, such as ‘negotiate over interests not positions’ (Fisher, Ury & Patton 1991). The [next section](#) of this chapter will develop the idea of using a negotiation script and imagery as a point of reference to help answer the action question: ‘What do I do next?’ However, first we must briefly look at the process by which a negotiator is triggered into reflection mode in the first place.

Negotiations don’t either go perfectly smoothly or break down – there are a lot of variations in between. Remember that negotiation is messy. A useful framework has been suggested by two education theorists, Yanow and Tsoukas (2009)– they were discussing reflective practice in general, but we can apply their framework specifically to negotiation. The different states that an activity – in our case, a negotiation – can be in are shown in [Table 4.4](#); they range from everything happening as expected (ongoing routine) through to a total breakdown. The table also shows how these events might trigger a negotiator to think about what is going on in the negotiation. Later we will explore the imagery of negotiation as a train journey; here it is a road trip. The key point here is to show a process by which a negotiator can engage with the dynamics of the negotiation and so start to manage the progress rather than let the process manage the negotiator. The reason this is so important is because of the fixed-pie perception bias that was described in [chapter 2](#). When negotiators don’t know what to do next the uncertainty causes them to ‘close down’, to revert to the default thinking of negotiation being win–lose and so start acting competitively. Sensing one’s body posture tightening up and talking faster or louder (or both) are two signs of not being in control of oneself in

a negotiation, risking a shift to a more competitive demeanour. Reciprocity then kicks in and the other negotiator does likewise.

Table 4.4 Recognising a negotiation's progress – or lack of (developed from Yanow & Tsoukas 2009)

	Ongoing routine	Malfunction	Temporary breakdown		Tab
			Mild	Persistent	
What is going on here? Triggered by 'negotiation as a road' Imagery	We are travelling smoothly	We've hit a bump in the road	That was a pot hole!	We've slowed down: looks like road works	C F
	Implicit acceptance: 'going as expected'	A reactive thought: 'didn't expect that, but it's ok'	A jolt to one's sense of equilibrium in the process 'I need to do something here'	A realisation of the need to concentrate hard on continual new events	F c c n v c
What do I do next? Reference to one's negotiation script	Reinforce current progress	Reinforce current progress but be alert to any recurrence	A decision to take corrective action in the expectation the event was a 'one-off'	A decision to pay more attention; to modify one's approach over the next period	A a c s v

of the
negotiation

According to my negotiation

...

Developing a negotiation script

At the beginning of this chapter, we talked about negotiation in terms of a river – one that has a broad flow and direction but whose volume and speed from headwaters to estuary are not constant. In the early stages, the water might be running quite fast over rocks and waterfalls; later, it slows and meanders; and all the while it eddies and forms other currents under the surface. Picturing a negotiation in this way helps a negotiator manage strategies and tactics at any point in the negotiation in the context of the broad flow of progress to an agreement. Negotiation as a river is one image. It is a visual representation of how a negotiation might unfold, of the script that the negotiators could expect to follow. In this sense, the sequence in [Figure 4.3](#) earlier in the chapter is a negotiation script: negotiation ‘play’ opens with Act 1 where the negotiators should position themselves and use information defensively; in Act 2 they should be flexible by sharing priorities and making offers; and in Act 3 they reposition and become a bit more argumentative, but nevertheless reach an agreement and so can take the curtain call.

All negotiators intuitively work to a script of some sort and, as we have seen, the most common script is competitive. These mental models can be teased out by researchers using fairly sophisticated statistical analysis techniques (Van Boven & Thompson [2003](#)), but practising negotiators need something more pragmatic – something they can use in real time to guide their negotiating.

A negotiation script can be very precise – imagine a script for a classical play, where the words are exact – but this isn’t very helpful. It leads to an attitude that if the script is not being followed, then the other negotiator – and it’s always the other negotiator! – isn’t negotiating

properly. This leads to frustration and, paradoxically, to more competitive behaviour. We have seen that negotiations are messy and a bit chaotic. What we need is a broad script to guide us. As Wheeler ([2013](#)) points out, when you are lost, having a map gives a sense of confidence, generates an impetus to get moving and increases one's awareness so you can start to find your destination (all this even if the map is the wrong one). A negotiator's script serves the same purpose, but the script has to be something that is going to come easily to mind when in the middle of a negotiation, which is why imagery is helpful.

The imagery of negotiation

One way to gain an understanding of complex processes is through the use of a metaphor or representative image. Metaphors or images help in the process of gaining insights into the totality of an issue or situation – what Heron ([1989](#), p. 12) terms imaginal or intuitive learning. It is a way of taking our experience in one area to explain another and so guide our behaviour in that situation (Gelfand & McCusker [2002](#)). A metaphor helps to answer the question, ‘What are we doing here?’ Someone who thinks that negotiation is about working together on a problem might conjure up images of teamwork and cooperation. A plan to hold firm and look for any opportunity to divide and conquer conveys the impression that the coming encounter will be more like war than diplomacy – a very different view of how to deal with the problem.

Metaphors or images have been used elsewhere to convey an understanding of organisations and organisational life (Barker [1993](#); Cummings & Wilson [2003](#); Drummond [1998](#); Morgan [1986](#)). Imagery has also been used in relation to the process of reaching agreement through negotiation. It has been understood in terms of trench warfare (Axelrod [1990](#); Douglas [1962](#)). Negotiation might be viewed as a dance (Adair & Brett [2005](#); Raiffa [1982](#)) or a sporting contest (an especially masculine characterisation) (Greenhalgh & Gilkey [1999](#)). Negotiators typically expect a negotiation to be a win–lose affair (Bazerman & Neale [1992](#)), which shapes their approach to the task. Because negotiation is so often viewed as a sporting contest with winners and losers, Greenhalgh ([1987](#)) suggests that even the notion of win–win is unhelpful because it encourages a competitive orientation. Novice negotiators consider that negotiation generally involves more competitive than cooperative tasks

(O'Connor & Adams [1999](#)). Watkins ([2004](#)) reports that negotiation typically conjures up images of anxiety, but for friends their friendship develops its own conciliatory negotiating script (Halpern [1997](#)).

These images and perceptions of negotiation constitute the negotiator's script, which reflects their expectation of what a negotiation will involve. It is typically self-fulfilling at the negotiation table, where the script is played out. If, for example, the negotiator's script is a competitive one, then a suggestion by the other negotiator that both parties engage in side-by-side problem-solving to come up with a solution that meets everybody's interests will be met with suspicion. Clearly, if both parties work to roughly the same script – that is, they both have broadly similar ideas about the purpose of negotiation and what it involves – then this helps them both to organise their way through the process more effectively than if they were working to different scripts.

In a workshop to prepare for some forthcoming negotiations, a group of management and union negotiators was asked to draw a negotiation. The managers got together and drew a competitive-looking picture – two sides fighting and one coming out victorious. The union representatives drew people sitting around a table having a discussion, a portrayal reflecting their view of negotiation as a consultative process. Both parties had come up with very different scripts or expectations. When each showed the other what they thought the forthcoming negotiations were going to be like, they both realised they had some adjusting to do if they were going to get any sort of reasonable outcome at all.

Lecturers may take the view that their role is to present students with a more cooperative and constructive script. This, of course, is what Fisher, Ury and Patton ([1991](#)) have done with their seminal book *Getting to Yes*. They present a strong contrast between two negotiation scripts – positional and interest-based bargaining – and many programs on negotiation have

been built around their principled approach to negotiation. Essentially, these programs seek to teach students a new negotiation script. Students in the class may well have developed their own images and scripts of what they think negotiation is all about, and these might serve as a filter for the lecturer's (or this book's) suggestions on how to negotiate differently.

Competitive scripts

We might envisage a negotiation as something like a boxing match or an endurance test, or as a round-table discussion. A competitive negotiation can be demonstrated diagrammatically ([Figure 4.7](#)). One party wants more than the other is willing to give. If the parties are negotiating around target points and trying to focus on the other party's resistance point, then clearly the negotiation will be a competitive one that involves a great deal of pressure and concession-making. Given the way the negotiations are set up in the first place, there is not much scope for anything else. It is an outright contest to see who can get the most. If agreement is to be reached, then at least one of the negotiators must be cooperative, but this does not alter the fundamental competitive dynamic of the process. As Fisher, Ury and Patton ([1991](#)) rightly point out, much of what is called cooperative negotiation is simply the soft, conceding side of a hard positional strategy that has not worked.

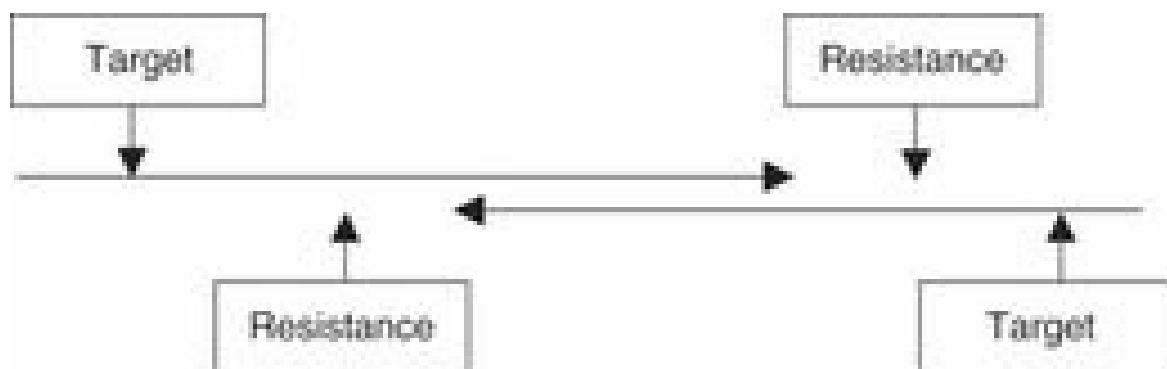


Figure 4.7 Negotiation as competing tension

Alternatively, we can show negotiation as a pattern of more cooperative-looking exchanges in which the parties narrow down their differences ([Figure 4.8](#)). Even so, this is still competitive. Imagine a lead group of riders pulling away from the peloton in the Tour de France. They

need to work together and share the pace-making to increase their lead, but they all know that at some point one of their number is going to try to sprint for the line and win the stage. To be more creative, negotiators need to break out of the existing parameters of the issue and go down a completely different route – which happens not to be permitted in the Tour de France!

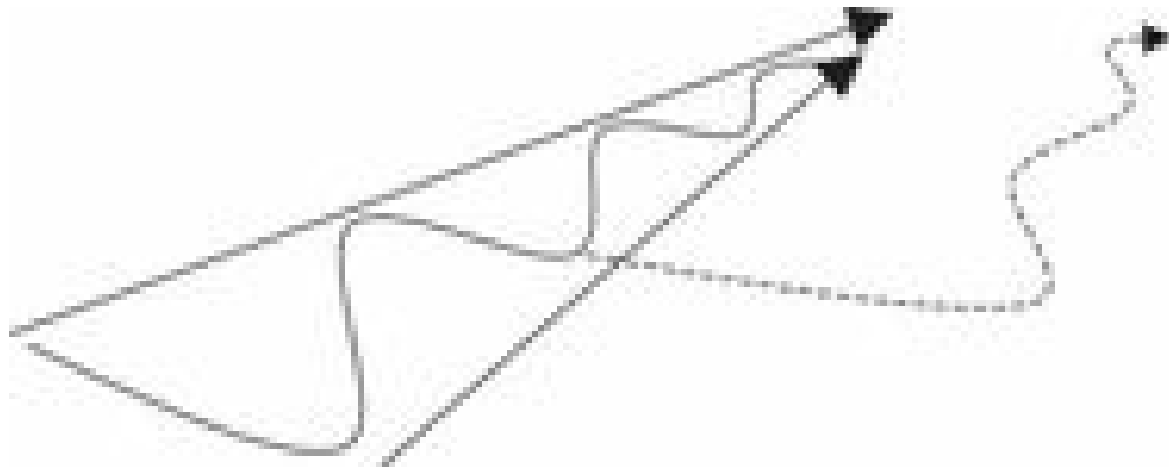


Figure 4.8 Negotiation as cooperative competition

This competitive view of negotiation tends to be our default script, because negotiators tend to approach an issue as being a zero-sum (win–lose) issue and negotiate accordingly – that is, competitively. They also tend to over-estimate the strength of their position and are overly negative about the other party, both of which encourage a competitive stance.

When people feel under pressure – as is often the case in a negotiation – their behaviour tends to close up (they reveal less information) and their attitudes harden (they become less willing to compromise), both of which reflect a view that the safest thing to do in a difficult negotiation is to compete.

Male negotiators are more likely to pick a sporting analogy for negotiation to imply a contest, a winner and a loser. Female negotiators – particularly in the business context – may feel that they have to work to

this competitive script too, so they also begin to see negotiators as winners or losers, and develop their strategies accordingly. We may reveal our script without realising it. Using expressions such as, 'We have to make sure we wear them down' or, 'If we apply constant pressure they will make a mistake and give us an opening' suggests that the negotiator views the negotiation as a trial of strength and would be comfortable with imagery from a game of Rugby Union.

Alternative imagery: architecture, jazz and Sudoku

We can generate useful alternative scripts and use them to help guide the negotiations away from the inherent competitive dynamic.

Watkins ([1999](#)) talks about negotiation in terms of architecture – for example, the issue architecture, temporal architecture and linkages with other negotiations. This architectural perspective suggests an image of negotiation as a building, with the preparation the foundation, the bricks information, the windows potential solutions, the roof beams points that are being agreed to and the roof the settlement.

One group of managers developed the idea of negotiation as a jam session played by a group of jazz musicians. Orchestra musicians rehearse the composition to a tight script as interpreted by the conductor, but jazz musicians are different. They know they have to get their act together for the forthcoming gig and each piece they have selected to play has its fundamental rhythms. Everyone knows the pianist is going to take the lead, while the bass player tries to hold it all together. But everyone also knows there is going to be a bit of a contest going on as each player draws on their own favourite riffs and tries to carry the piece forward. By pushing themselves to the limit, they get creative and every so often all that creativity comes together into something new and compelling. This tension between being individually creative while also working together as a group around a basic format is much like Putnam's ([1990](#)) view of negotiation as a process of interdependence between competitiveness and cooperation, with each feeding off the other – just as one jazz player feeds off another to produce an unexpected but amazing result.



Negotiation as Sudoku is another interesting analogy that sees negotiation as a puzzle to which there is a good answer, although it is not obvious. There are intricate patterns and linkages. Each decision opens up a new insight, but there is no guarantee that the puzzle will be completed. Negotiation has also been likened to a rollercoaster that reflects the exhilaration and tension of not being in full control as events follow one after another.

Negotiation as a train journey

We sometimes talk about negotiations going ‘off the rails’ or of the need to ‘get these negotiations back on track’ – expressions that invoke the imagery of negotiation as a train journey. One such journey is the Indian Pacific across Australia, a journey that in one section involves travelling in an almost dead-straight line for over 470 kilometres, an image that suggests a relatively straightforward linear problem-solving approach to finding solutions.

The Nullarbor Model of negotiation (Fells [2000a](#)) is described below as an example of how imagery can help us to manage a negotiation. The model endeavours to capture the dynamic of what is involved in reaching a negotiated agreement by highlighting key points about the process and posing questions to help a negotiator to more effectively manage that point in the negotiation. Briefly, the negotiation journey starts at Sydney and travels across New South Wales to Adelaide, which represents the differentiation phase during which the negotiating parties sort out what the real issues and differences are (see [Figure 4.9](#)). The train then crosses the Nullarbor Plain, which represents the exploration phase, and then after Kalgoorlie the train heads down to Perth, which represents the exchange phase. Reaching Perth represents achieving an agreement. Given that Perth is such a fine city, it represents a positive outcome for all the negotiators.



Figure 4.9 The Nullarbor Model of negotiation

The Nullarbor Model of negotiation

Getting started: preparation

The Indian Pacific is not the only way to get to Perth; you can also drive or go by plane. This is an important reminder that even before sitting down to negotiate anything, it is important to consider your alternatives and decide whether you have to negotiate at all.

How do we know that we have prepared well and are ready to start our negotiation journey? It is when we have a reasonable understanding of the issues and alternatives, together with some questions to ask concerning areas about which we are unsure.

Two parties with differences

After leaving Sydney, the train has to work its way through the Blue Mountains, which isn't easy. This represents the fact that early in the negotiation there is often some unexpected conflict. We should not always expect negotiations to go smoothly, so we need to manage this conflict without overreacting or letting it affect our approach to the issues. Even when you have travelled as far as Broken Hill, you can still get off the train, go back to Sydney and get on a plane to Perth. This reminds us that even when we are involved in a negotiation and making progress, we still have alternatives. Although the alternatives are becoming increasingly costly, they are still available to us.

How do we know when we are leaving New South Wales and getting into South Australia (coming to the end of the differentiation phase)? We know when both parties have a good understanding of what the other party really wants and why they want it. If we are not clear about that, we should not be moving on to make suggestions about how to resolve the issues.

that they need to resolve

The two conflicting motivations that every negotiator experiences – the motivation to maintain their demands (MD) and the motivation to reach agreement (MA) – were described earlier in this chapter. In our Nullarbor image, as the train travels across South Australia, the passengers stop leaving Sydney (maintaining their demands) and start going to Perth (reaching agreement). Of course, they are doing both for the whole journey, but at some point – not necessarily halfway – they start thinking more about the destination than about the departure point. This represents the period in a negotiation in which both parties realise that they are going to have to work with the people across the table in order to reach an agreement – that is, MA is greater than MD. Furthermore, by the time you get to the edge of the Nullarbor Plain, you really no longer have any alternatives – you can't get out and walk. In negotiation terms, you get to a point where your only realistic alternative is to cooperate with the other side.

try to reach agreement

How do we know we know we are ready to set out across the Nullarbor and look for solutions (start the exploration phase)? We must make sure both parties are on the same train. Once that is established, the journey can continue when each side realises that a settlement will not be based around its own position and so is seriously prepared to look for new options. If one side considers that the other has not yet come this far in the negotiation journey, then it may be necessary to travel back to New South Wales to further examine the issues and alternatives.

through exploring options

It is easier to work together when both parties see the need for a new solution. The straightness of the track across the Nullarbor Plain conveys the image that the task is relatively straightforward. It involves analysing the issues as a joint problem, exchanging information, exploring different perspectives and openly examining any proposals. That may be so, but we should be aware that all sorts of things can go wrong during a long train journey – the track can flood, the Indian Pacific can get stuck behind a slow freight train, perhaps some of the passengers will show signs of frustration at how long the journey is taking. Finding solutions, even while endeavouring to be cooperative, might still involve some competitive trading of offers and some periods of slow, or no, progress.

How do we know we can move on from exploring for options? We know when there are some options on the table that appear to satisfy the needs of both parties.

and exchanging offers

The next big stop after leaving the Nullarbor is the gold-mining centre of Kalgoorlie, where you can get off the train and fly or drive to Perth. In terms of our image of negotiation, this tells us that, having worked through various options, we still have to check whether the agreement we are putting together is better than what we might achieve by walking away and pursuing another alternative. A proper application of the problem-solving approach should result in an outcome that clearly adds value, and so is better than any alternative. So you keep negotiating and move into the exchange phase to package together a final agreement.

The final run into Perth follows the twisting course of the Avon Valley. Often, just when you think you have an agreement in your sights, conflict resurfaces – perhaps over an issue that had been overlooked or because one party tries to extract some extra value out of the agreement by asking for one last, additional concession. The premise of the problem-solving approach is that the negotiators will have found a high-quality agreement that meets the needs of both parties. This being so, the best way to overcome any last-minute difficulties is to emphasise the benefits of the agreement rather than make any final concessions just to wrap up the deal.

How do we know that the negotiation journey is coming to an end? We know when there is a solution (or package of solutions if there were several issues) that both parties believe goes as far as is possible towards meeting their respective needs.

and an agreement

Arriving in Perth, the negotiator has to decide whether the agreement reached is good enough; if not, the negotiator has to walk away. Perth is a great city and, while the journey there might be enjoyable and challenging, what is important is how visitors enjoy themselves while they are there. It is the same with negotiation. Achieving an agreement may have been challenging and satisfying, but what really matters is how well that agreement is implemented. And just as the visitors to Perth may well take time out to reflect on their journey, so too negotiators should see what might be done better next time.

The return journey

Interestingly, the journey in the other direction also represents a typical negotiation. Starting at Perth, and after a bit of competitive sorting out of the issues, the parties get straight into finding solutions (crossing the Nullarbor), only to find that they rushed into this too quickly and so none of their solutions seem to work and the remainder of the negotiation (across New South Wales) gets pretty competitive as each party tries to get the best deal possible from what's available. It is better to take the time to find out the full extent of the differences. This makes it much easier to come up with creative solutions that will be acceptable to both parties, though even then there might be some game-playing as the negotiators reach a point of agreement. (See also [Chapter 11](#), where the Nullarbor Model of negotiation is revisited from a cross-cultural perspective.)

Negotiator tool kit

The Nullarbor Model of negotiation

Use the journey across Australia as a mental picture to help answer the process-related question, 'What's going on here?'

We are still in Sydney: the preparation phase

- Do we really need to negotiate at all?
- Are we ready to start our journey? Only when:
 - we have a reasonable understanding of both parties' interests and BATNAs
 - we have some questions to ask on things about which we are not sure.

Crossing New South Wales: the differentiation phase

- Are we still going through the Blue Mountains? If there's some conflict, it's okay.
- Are we at Broken Hill? If we are not making much progress, should we get off?
- Are we ready to move on? Only when each party understands what the other party really wants, and why they want it.

Travelling through South Australia

- Are we at Adelaide yet? Not if one of the parties still believes they will get agreement on its own terms.
- Are we ready to move on? Only when each party recognises that the other party also needs an agreement.

Crossing the Nullarbor: the exploration phase

- Are we cooperating fully, genuinely looking at all possible options?
- Are we ready to move on? Only when there are some possible solutions that meet most or all of the needs of both parties.

Crossing Western Australia: the exchange phase

- Are we arriving at Kalgoorlie? We've explored some possible solutions but are they good enough?
- We are now travelling down the Avon Valley: watch out for any last-minute problems.

Arriving in Perth

We must now decide whether to accept the agreement or walk away.

Managing the negotiations

Developing a personal negotiation script

The idea that the process of reaching an agreement through negotiation is like going on a journey seems to work, so the Nullarbor Model of negotiation is provided as another tool for the Negotiator Tool Kit. It combines the imagery of the journey with some prompts so you can check whether you are ready to move on, or whether the two parties are at different stages in their negotiation journey (it will be difficult to reach agreement if you are on different trains). Having descriptive imagery does not mean that the detailed research findings on negotiation interactions are of no use – quite the opposite. But a visual image is likely to be a more effective trigger to help you work out which bit of the research needs to be applied.

Not everyone is interested in trains, so one positive step towards improving your ability to effectively manage a negotiation is to develop your own negotiation script, which needs to be something that involves a sequence of events and activities rather than a single or short activity. Some examples were suggested earlier in the chapter. Someone who likes sport might relate to negotiation as a triathlon or as a yacht race. Consider negotiation as, say, constructing a building, a game of chess, a marriage or a dance (see [Chapter 11](#), where images of rock'n'roll and of a Chinese banquet are used to describe cross-cultural negotiations). The imagery should identify some of the key points in the negotiation, but it is not necessary to have everything covered. The image simply needs to bring to mind the key features of negotiation. Perhaps try your imagery out on a colleague or friend for their ideas and suggestions. Then try it out next time you negotiate. Continue to refine your imagery over time.

Remember: negotiation is two-sided and messy

The phases and tasks – differentiation, exploration and exchange (refer to [Figure 4.4](#) earlier in the chapter) – will be explained in more detail in later chapters, but we do need to remember that negotiation is messy. The sequence shown in [Figure 4.4](#) might convey the impression that negotiation is straightforward. We would like it to be so, but in practice it is not. The phases might be short or long, and most time should be spent finding out what the differences are. The more competitive negotiators would tend to disregard the explore for options task altogether. They can still create value through effective offer exchanges, but negotiators would generally do well to explore adding value options if they have the opportunity. The phases can be revisited, which makes the sequence untidy rather than orderly. Often, it is only when one party puts a proposal on the table (an exploration activity) and the other party rejects it that the true goals and limits of that other party start to become clear. We often reveal more about ourselves when we explain why we *don't* want something than when we try to explain what we *do* want. In this case, the negotiators should go back and spend a bit more time understanding more about those goals and limits (a differentiation activity) before putting any new proposals on the table.

This inherent messiness means that negotiators – even good ones – should not expect to fully manage every one of their negotiations down a clear path. Added to this, the other negotiator will also influence the course of events. Nevertheless, a negotiator can have a positive influence on the process, and so increase the likelihood of a good outcome.

Negotiation skills tips

Managing a long negotiation

It is useful to set yourself process objectives to manage your way through a lengthy negotiation. Some examples of these objectives include:

- By the time we break for lunch, I want to have made sure they really understand our priorities.
- By the end of this session, I hope we will have explored two or three workable proposals; then tomorrow we can move on to the financials.
- I'm not going to table any of my proposals until I really understand what their long-term objectives are.

Keep a check on the process

Viewing negotiation as a series of phases and tasks – differentiation, exploration and exchange – helps you to move away from the broad labels of ‘competitive’ or ‘cooperative’ negotiation. If a negotiator labels what the other negotiator is doing as competitive, then they are likely to respond in a competitive manner. If they label the other negotiator as cooperative, they might respond by making unnecessary concessions. If they interpret what the other negotiator is doing in terms of the task – whether they are trying to find out differences, explore for options or set up a pattern of offer exchange – then they can respond accordingly, and so help move the negotiations forward.

Because there are different tasks to be worked through and various issue strategies to be managed, it is worth keeping a running check on what is happening as it occurs. Without a well-managed process, a good outcome is unlikely. The simple checklist in [Table 4.5](#) will help a negotiator to take stock of the issue and the process dimensions before deciding what to do next. Negotiators often forget that negotiation is two-sided, and believe that what they want to happen *will* happen. Thinking about what the other party can do encourages a negotiator to think about the other party’s perspective before estimating what might be achieved.

Negotiation skills tips

Keep thinking: issue–process–action

It is useful to write ‘Issue, Process, Action’ at the top of your notepad to help you think clearly about what needs to be done.

- What are we doing about the issue?

- What are we trying to achieve at this point in the negotiation?
- How are we going to do it?
- What do we expect the outcome of this action will be?

Table 4.5 A negotiation management checklist and an example

Issue dimension +	Process dimension +	Action	→ Outcome
What are we doing about the issue?	What are we trying to achieve at this point in the negotiation?	How are we going to do it?	What do we expect to be the outcome of this action?
		<i>What can the other party do?</i>	
Example			
Stand firm	Differentiate; try to find out more about the other party's priorities.	Restate our position but ask more open-ended questions.	
		<i>They can slowly reveal more information</i>	
		<i>OR</i>	We should then be able to repackage our

*They can offer.
continue to
simply
restate
their
position*

No progress, so
restate our
position and
revisit our best
alternative to a
negotiated
agreement
(BATNA)

The reason why we are negotiating is because we have an issue to resolve, so it is inevitable that we will tend to focus on the issue – how can we persuade them? Is their suggestion any good for me? Should I walk away? It is during these times that the skill of reflecting in becomes important; this means being alert to an event that – to use the Nullarbor imagery – might seem to derail the negotiations or to the growing realisation that we are grinding to a halt, or stuck in a station, or taking the milk train (the local rural trains that used to stop at every single halt to pick up churns of fresh milk and so would take a long time to go not very far at all). This then triggers you to ask yourself where you are on the Nullarbor journey. Whatever the imagery that you have developed to help you manage the negotiation, once something has ‘triggered’ you to think about the process rather than just the issue, you are then better placed to start managing the negotiations well.

Make use of process-related statements

It has been a theme of our approach to becoming an effective negotiator that negotiation is about both the issue and the process. The danger for negotiators is that they focus exclusively on the issue, on *what* they are going to negotiate about, but they don't give much thought to *how* they are going to negotiate. Negotiators may, for example, be very clear about what they want the outcome of a meeting to be, but have not considered how the meeting should start. In [Chapter 3](#), we saw that the language negotiators use in negotiation is important. While the overall flow of the river – the progress through the phases – might be strong, an undercurrent of overly competitive negotiations can rise up to disturb that flow and perhaps even cause it to overflow its banks and take another course. Similarly, the positive use of constructive statements during a negotiation will help to steady the flow of the negotiation along its course. Consequently, it is important to cultivate an ability to shape the pattern of interaction between the negotiators.

Progress in the negotiation needs to be measured against what was set as the objective for that session, which presumes that the negotiator has actually set an end-of-interaction objective for the session. Then, having analysed where the negotiations are and decided what might usefully be done, one way to try to influence the course of the negotiation is through process-related statements. As their name suggests, these are statements that relate wholly to how the negotiators are interacting. They can be about what has been occurring ('We seem to be spending a lot of time interrupting and arguing over small points'), with the purpose of making the statement being to draw everyone's attention to the issue before it has too much of an adverse impact on the progress of the negotiations. A

process statement might also be forward looking, making a suggestion about what might happen next; that usually involves steps for both parties ('Why don't you outline your main points, then I'll go through mine? After that we can perhaps summarise the issues before moving on.') Process suggestions should always be framed as a suggestion, otherwise they might be interpreted as an attempt to gain control. Remember: negotiation is two-sided and the other negotiator has choices too.

Negotiations might need managing because the negotiators are trying to do different things that put them out of phase. This can occur when one of the negotiators is going too fast or too slow. Also, although it would be good for a negotiation to follow the three phases – differentiation, exploration and exchange – negotiators may find themselves switching from one to another and back again. This makes it all the more important to keep track and try to ensure that both parties are doing roughly the same thing at about the same time. If, for example, one party is still trying to understand the issues and priorities while the other seems intent on making proposals to resolve the issue, then the first might say something along the lines of 'That looks like an interesting proposal and we need to look at it, but first can I make sure that I really understand why it is that you want?' and try to put the proposal (an exploration activity) on hold while more time is spent understanding the underlying issues (a differentiation activity). Summarising is another useful way to influence the way the negotiation process is unfolding. If one party wants to bring the negotiations to a conclusion by proposing a final tradeoff of outstanding issues (an exchange activity), one way to encourage further exploration would be to say something like, 'Before we start to wrap this up, let's just summarise all the options we have on the table and see if any of them can be improved.' The words will differ in each situation, but the key principle is to seek to manage the process and keep both parties broadly in step with

each other to avoid the deadlock that may occur if the parties were talking at cross-purposes.

Effectively make use of and manage deadlocks

The example in [Table 4.4](#) shows how a negotiation might make progress or stall, depending on the choices the negotiators make. No matter how much planning and training have been undertaken, a negotiation rarely follows a prescribed path (negotiation is messy), and they can often reach a point of deadlock. At this point, the disputing parties may turn to mediation (more on this process in [Chapter 10](#)) or seek some sort of arbitrated or court decision. However, we can take a more constructive approach to deadlocks if we examine them more carefully.

Negotiation skills tips

Watch out for emerging deadlocks

Deadlocks can occur for many reasons:

- Negotiators going toe to toe in an act of brinkmanship and ego gratification.
- Being in too much of a hurry to settle.
- Trying to smooth over differences in order to get to an agreement.
- Losing sight of the key goals and arguing over minor issues.
- Not knowing when to stop talking and listen to the other side.

The term ‘deadlock’ (or ‘impasse’) has a sense of finality to it, in that it implies that nothing more can be done to negotiate an outcome. There is also a sense that to have reached a deadlock is something of a failure. Yet

there are times when walking away from a negotiation is the right thing to do. In contrast, some negotiators are so concerned about loss of face that they would rather walk away than make a final concession to secure a good deal that is on offer.

Negotiation in practice

Not all deadlocks are disasters

An Australian university had been approached by a university in Malaysia to offer its programs on the Malaysian campus. Prima facie it looked a good fit, so representatives from both sides met to see what might be arranged. As each side outlined its broad strategies, it became clear to all around the table that the proposed joint venture was not going to work without significant, strategy-changing concessions from one or both parties. The Malaysian university worked on a large-volume, low-fees model (because of the fierce competition from other universities), whereas the Australian university's approach was for smaller, high-fee programs. It would be risky for either to change its core business model; both compromising would mean a poorly defined business proposition. On realising this, the meeting was closed and they all went off to a local restaurant for an unplanned lunch. Over time, the two universities collaborated in other ways.

Safety is a primary concern in an oil refinery. The management proposed a new procedure for a particular aspect of the work involved in transferring oil from one tank to another. The procedure complied with good safety practice, but the workers involved didn't like it and insisted on maintaining the existing safety procedures. The deadlock had potential to escalate into a

major dispute. However, a couple of the plant managers took another look at the initial proposal and, as a result, developed an even better – more efficient and less risky – procedure. When they took their new proposal back to management, and to the workers, all agreed that it was better, and it was implemented.

A more positive way of looking at a deadlock is to view it as merely another stage in the process of reaching agreement (Carlisle & Leary [1981](#); Fells [1986](#)), a period when no evident progress is being made, rather than the end of the negotiation. The word ‘evident’ is important because a lot might be going on in the mind of the negotiator or away from the negotiation table. A classic example is the use of silence, which was revealed through negotiations between two of the leading business tycoons of their day. Western Australian businessman Robert Holmes à Court was asked by a journalist about negotiations he had with then Carlton United Brewery CEO John Elliott: ‘I understand that there were many long pauses in these conversations.’ To which Holmes à Court replied, ‘It is well known that you always know who is going to win by who has the longest silence’ (*West Australian*, 20 May 1986, p. 2). There was no evident progress, but a lot would have been going on in the minds of these two men.

A deadlock is an opportunity to reconsider the events at the negotiation table in their broader context. Often, it is only when they find themselves in a deadlock that the parties truly face the reality of their situation so, paradoxically, it is the deadlock that provokes further progress. From an issue perspective, the deadlocked parties may decide that their BATNAs are better than the other party’s offer. They should then agree to part company on good terms in case they have to negotiate again.

If walking away is not a good option, reviewing the Strategy Worksheet (see [Chapter 5](#)) might help suggest ways to change the context of the other party so that it shifts away from its contending strategy. In particular, are there ways to increase the other party's costs of continuing to disagree or ways of reducing one's own costs (Chamberlain & Kuhn [1965](#); Watkins [1998](#))? This should all have been explored before the negotiations began, but the imperative of a deadlock sharpens the analysis and encourages breakthrough thinking (Green & Wheeler [2004](#)).

Negotiation skills tips

View deadlocks as an opportunity

Deadlocks provide negotiators with an opportunity to review the negotiation.

- Take time out to think process.
- Consider your alternatives.
- Be clear on what is really important to you.
- Reconsider their perspective.
- Summarise; talk about underlying interests.
- Keep exploring their offer for benefits.

If action away from the negotiation table is not possible, then a change in issue strategy may be required, perhaps with some informal or back door communications to sound out the other party. If the process has been poorly managed, then efforts should be made to get the negotiations back in phase, if necessary with the involvement of a mediator (more on

this in [Chapter 10](#)). If the process has been damaged through inappropriate actions by the negotiators, then they will need to change their approach, which might involve acknowledging one's mistakes as part of trying to rebuild the process. If the relationships between the negotiators have become counter-productive, then a change in personnel might be necessary before the negotiations can move forward again.

There is a cautionary note to add about deadlocks. Because of their power to force change, some negotiators build their strategy around pushing the other party into a corner to provoke a deadlock. This essentially competitive, if not outright combative, approach is risky because of its one-sidedness. The expectation is that the other party will make a concession, but there is no reason to suppose they will inevitably respond in the requisite manner.

Taking adjournments

As difficulties emerge between the parties, negotiators might feel the need to take an adjournment. This is often the first sign that a deadlock might occur, and it needs careful handling. Prior preparation is important. A negotiator should think through what might need to be done if an adjournment is needed – perhaps it is necessary to determine to restate the main points to provide time to regroup their thoughts. If negotiating as a team, team members need to establish clear signals about whether an adjournment should be called.

It is important that calling an adjournment does not give the impression of weakness. A negotiator should first foreshadow that they think an adjournment might be useful for both sides. If, for example, the negotiations have been getting heated, foreshadowing an adjournment may be all that is necessary to draw everyone's attention to what has been going on. When an adjournment occurs, it is important to ensure that the other side has something to do during the break, otherwise they will think you have simply adjourned to reconsider your position and so will expect you to return with a concession. You could suggest, for example, 'I think it's getting near the time for an adjournment, but before we do that, can we just summarise the areas of difference we still need to address?' or 'We'll take time out to think about what options we might have on the price structure, but why don't you give some thought to the pattern of deliveries, because that's really important to us?' When the negotiations resume, there would then be two items to discuss, not just one.

However, an adjournment is not just a 'time out' to recover for the next session. It is an opportunity to reflect on what has been going on. It is important to discipline yourself (and your team, if you are the negotiation

leader) to systematically analyse what is happening in the negotiation rather than just react to an adverse event. The issue, process, action, outcome sequence that is shown in [Table 4.4](#) is a good approach to follow.

Becoming an effective negotiator

This chapter explored how negotiations ‘work’. It would be easier if negotiations followed a defined path, such as ‘restate one’s position until they agree’ or ‘both state their positions then split the difference’, but they don’t. There are different tasks to be undertaken to reach an agreement: sorting out the issues, deciding whether to continue negotiating, exploring for options and reaching agreement. There will be progress, but there may also be deadlocks. This process won’t manage itself, and our default approach is competitive, so we need techniques to help manage the process as it unfolds. The notion of phases, developed into imagery, helps us reflect so that events in the negotiation ‘trigger’ an alert in us as we sit at the negotiation table. Our imagery then helps us to quickly grasp what might need to be done to move the negotiations forward. To do this well, negotiators need to be reflective practitioners, not only reflecting *on* their negotiations once they are completed to learn what to do better next time but also reflecting *in* their negotiations, and so managing the process rather than being managed by it.

While it is certainly important for a negotiator to be alert to managing the process, the process itself is only a means to an end – a good agreement. Negotiations only occur because there are issues over which the parties have differences. These issues also need to be managed, and it is to this task that we turn in [Chapter 5](#).

Discussion questions

1 Think about how you negotiate. Which of the following strategies (taken from [Table 4.3](#)) do you use the most? (Refer to [Table 4.3](#) for tactics associated with these strategies.)

- Coordination
- Affiliation
- Argumentation
- Dominance
- Offer management

Which strategy gets you the best outcomes? Why is this?

2 Reflect on a negotiation in which you have been involved, such as purchasing a car. Assuming the seller did not agree to all your demands, try to identify the point at which you realised you were not going to get all you wanted. What happened next?

3 Complete the following table to describe the DNA of a typical competitive negotiation script and answer the questions that follow.

Attitude and behaviour of **the parties** towards each other

Information exchange:

What is exchanged, and how?

Trust:

The nature and extent of it.

How is it developed/hindered?

Reciprocity:

How strong?

Developed (or not)?

Power:

How relevant?

How does it shape the outcome?

How does it shape the process?

Ethics:

What's allowed?

What's not?

Outcome:

What might we expect?

-
- How is the DNA different in a typically cooperative script?
 - Does the DNA of a phased script make it more cooperative than competitive?

4 Using [Figure 4.6](#): The Tanker case as an example, describe the changing motivations of the parties in the Airline case (Negotiation in Practice, earlier in the chapter)



5 As you travel along your negotiation train journey, you sense that you have not yet reached Adelaide but you also sense that you are about to run into something on the track: a deadlock. Develop a strategy to handle it. Would your strategy be any different if the obstacle were on the track in the middle of the Nullarbor Plain?

Do you have any examples from your own negotiation experiences?

5

Being strategic: the knight's move



This chapter focuses on strategies used in negotiation. After reading the chapter, you should be able to:

- understand the notion of strategic choice on the issue being negotiated
- know about the five strategic options open to a negotiator and to the other party
- understand the strategy factors – what should be taken into account when deciding what issue strategy to adopt
- think before you act – the five elements of a strategic approach to negotiation.

So far in this book, most of the content has been about how to manage the process of negotiation. [Chapters 6, 7](#) and [8](#) will also be about how to manage the key negotiation tasks of differentiation, exploration and exchange, so it might appear that negotiation is all about process. It *is* about process, but the need for a negotiation arises only because two

parties have differences over an issue that they need to resolve. An online bookstore will need to negotiate a contract with a company to deliver the books – they are bound to have different ideas about what constitutes the ideal delivery arrangements, and inevitably the delivery company's suggested contract price for doing the work will be more than the bookstore wanted to pay. They will need to negotiate through these issues to find an agreement. Or perhaps they can't, and they will decide to walk away in search of other business partners.

As we have seen, negotiation involves making choices, and this chapter focuses on how to make those choices strategically. The negotiators for the bookstore and delivery company may have had several meetings and thoroughly explored their differences, but they are still in disagreement over the key issue of the terms of payment. Should the delivery company invoice each fortnight and the bookstore pay within 14 days (which is what the delivery company wants) or should the invoices be submitted monthly and paid within 30 days (which is what the bookstore wants)? The negotiators agree to meet again to resolve this issue, and before that meeting have to think about what might be done to try to break the impasse. The most common response would be that both parties should compromise a bit in order to reach an agreement. This almost intuitive response reflects a desire to be cooperative – a preference for agreement rather than conflict. It may well be the correct response to the situation, but it may not. How does a negotiator know?

Besides being cooperative and agreement oriented, this instinctive need to make a concession in response to an impasse reflects closed, linear thinking. It is no different from a negotiator who, come what may, says, 'I'm not going to give in on this issue'. This rigid approach to handling an issue ignores the realities that negotiation is two-sided and negotiators always have choice.

Negotiation skills tips

Preparing to think about strategy

- Think big picture. What's this really all about?
- Think from the other party's perspective.
- Remember that nothing is quite what it seems, so develop some questions to ask.

It is easy to imagine negotiating strategically as playing a game of chess. Strategy is at the heart of the game – particularly thinking ahead and working out the many options available to the other player in response to each move you make. Similarly, working through the options from the other side's perspective is an important part of effective negotiating. If we pursue the imagery of negotiation as a game of chess, we should give thought to which piece we might be. The rook and the bishop – both far-reaching pieces – are limited in that they can move only in straight lines. The most powerful piece, the queen, can move in any direction, but again only in straight lines. Linear thinking can be a constraint on a negotiator. In contrast, knights are able to go this way and that, and to jump over obstacles in order to get to where they want to be. So think of strategic negotiation as being the knight's move.

Issue strategy choices open to a negotiator

The most profound choice open to a negotiator is not to negotiate at all. Indeed, it is sometimes suggested that the first rule of good negotiating is not to negotiate if you don't have to. This choice to walk away from the negotiation, which was explored in [Chapter 3](#), remains an option at all times until agreement is reached. In the Airline case, discussed in [Chapter 4](#), the negotiations stalled and the parties took time out to consider their options. They could have ended the negotiations at that point, but they realised that the potential benefits from an agreement were still good – that is, their motivation to reach agreement was still high – so they found a way to resume. However, entering or re-entering into negotiation does not mean that the parties must then reach an agreement; the option of walking away remains. It becomes a critical choice towards the end of a negotiation when the terms of the agreement are becoming clear. In the joint venture negotiations, the European airline was faced with the choice of making a further concession to close the deal or walking away. It chose the latter option. The Asian airline also faced the same choice: if the European airline was clearly not going to improve its offer, should it reduce its demands and so enable agreement to be reached? It too decided that no further movement was possible, so the negotiations ended and the proposed joint venture did not get off the ground.

Walking away is not the only strategy option. En route to an agreement, a negotiator has a choice of other strategies. The names given to each of these strategies will vary between writers, but essentially there are four, together with the walk-away option (see [Table 5.1](#)).

Table 5.1 A negotiator's choice of issue strategy

Strategy	Definition
Contend	You stand firm on the issue and expect agreement to be reached by the other party conceding.
Concede	You bring the negotiations to an end by agreeing with the other party.
Clear-cut compromise	You split the difference between what you want and what the other party wants so that you both get something, but neither of you gets all that you wanted.
Creative compromise	You find a solution that adds some value to the issues so that both can gain something, but not at the expense of the other party.
The non-negotiation option: walk away	You bring the negotiations to a close because you can do better elsewhere.

First, a negotiator can stand firm on the issue and keep restating their offer or position without variation; this is variously called contending, competitive, assertive and dominating. Second, the negotiator can do the opposite and concede, abandon their own position and agree with the other party (conceding, yielding, accommodating, obliging). Third, the negotiators can split the difference between them, which some would call conceding and others a compromise. Finally, the parties can create a new solution altogether (problem-solving, integrating, collaborating); here, the term ‘creative compromise’ is used. Creative collaboration may seem a

more appealing name for this strategy; however, although the parties have to collaborate, there is still a degree of competitiveness rather than harmonious and unified activity.

Making the right choice

Pruitt ([1983a](#)) and his colleagues developed a Dual Concerns Model of strategic choice that suggests a negotiator should take two factors into account. One is concern for self: how important is it for me to get what I want? The second is concern for the other: how important do I feel it is for the other people to get what they want? With high or low levels of concern in each case, the model indicates which of the four strategies is the appropriate one ([Figure 5.1](#)). If, for example, it is important for a negotiator to achieve their objective and they have little regard for how well the other party does, then they should contend, stand firm on their demands and expect the other party to agree with them. If the issue is not important, the negotiator should concede. This is known as Pruitt's 'yielding'; Pruitt also includes 'inaction' when concern is low on both dimensions, but this is not regarded as a distinctive issue strategy here.

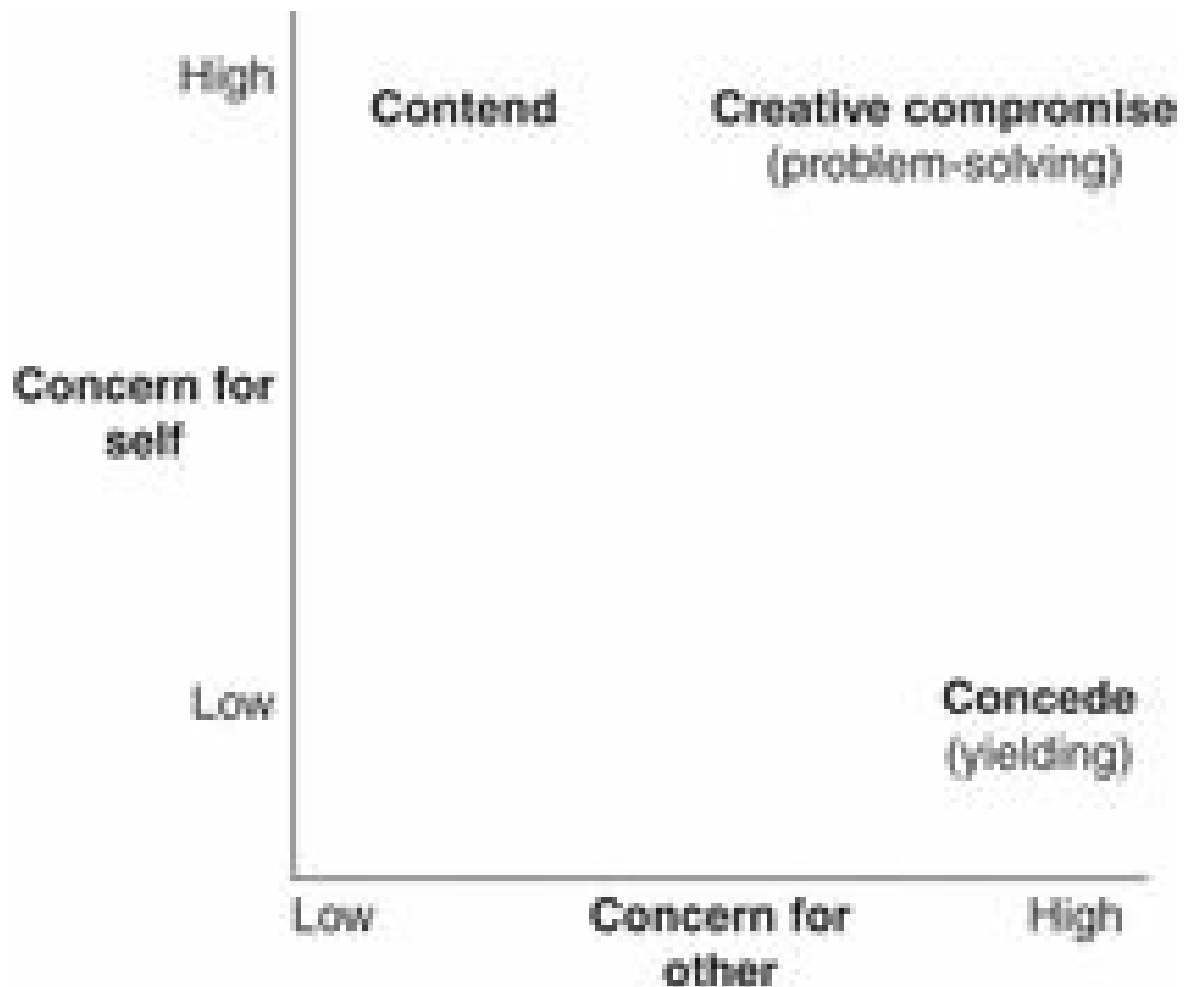


Figure 5.1 Strategic choice: the Dual Concerns Model (based on Pruitt [1983a](#))

The Dual Concerns Model is intuitively appealing, and has been developed by others. It has become increasingly clear that relationships are an integral part of successful business, and this also applies to negotiation. Hence the Dual Concerns Model has been modified (see [Figure 5.2](#)) to suggest that a negotiator should, on the one hand, take account of the importance of the outcome and, on the other, be concerned with the importance of the relationship (Savage, Blair & Sorenson [1989](#); Lewicki & Hiam [2006](#)). As in the Lewicki and Hiam model, a midway strategy – their ‘compromise’ – is often included in presentations of the Dual Concerns

Model approach. Their ‘avoidance’ is again omitted from [Figure 5.2](#). We will return to this relationship aspect of negotiation later in the chapter.

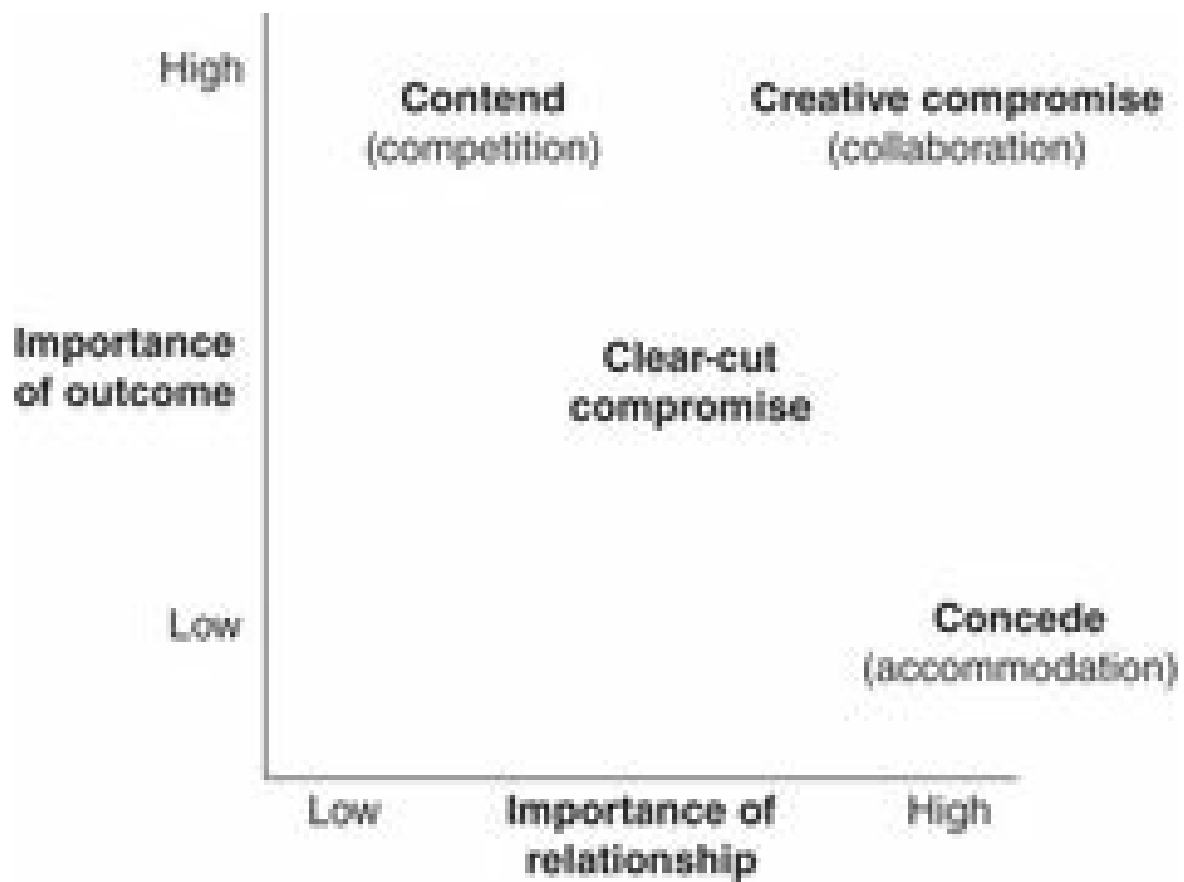


Figure 5.2 Outcome and relationship: a variant of the Dual Concerns Model (based on Lewicki & Hiam [2006](#), p. 32)

What factors need to be taken into account?

The two-by-two matrix structure of the Dual Concerns Model has a lot to commend it. It reminds negotiators that they do have a choice of strategy, and it encourages an analytical approach – which is always a good thing. But as negotiation is both messy and two-sided, the Dual Concerns Model may over-simplify the complexity of managing an issue strategy over the course of a negotiation. The way the Dual Concerns Model is presented – though not by Pruitt ([1983a](#)) – conveys the idea that negotiation involves a single strategy choice: that any particular negotiation consists of contending or problem-solving or yielding. Messiness occurs partly because negotiations are more likely to involve sequential choices of strategy, given that their levels of concern for self and other will probably change as information is exchanged. One practical implication for negotiators is that they should revisit their analysis during the negotiation to see whether a change in strategy is required.

The Dual Concerns Model also portrays a single rather than two-sided perspective. If each party has high concern for self but not for other, then both should contend, in which case there will be no agreement until something changes. Also, while a negotiator with high concern for self and for other should engage in problem-solving (creative compromise), if the other negotiator is contending, then problem-solving will not work; in these situations, it is usually the problem-solver who comes out worse off. A practical implication is that a negotiator should endeavour to raise the other party's level of concern in both dimensions before embarking on a problem-solving strategy. Pruitt ([1983a](#)) added the notions of feasibility and vigour to the basic model of strategic choice, but it would be helpful to

give more explicit consideration to the strategic choices of the other negotiator when deciding on one's own strategy on the issue.

A dual concerns approach can be strengthened by increasing the number of factors to be taken into account to five: the importance of issue to self, concern for the other's outcome, expectation of the other's strategy, time pressure and quality of alternatives. These five factors are explained more fully below. When considered together, they provide a framework by which negotiators can evaluate the situation and decide an appropriate course of action: whether to contend, concede or pursue one of the compromise strategies. This framework (see [Figure 5.3](#)) forms the basis of another negotiation tool, the Strategy Worksheet, that will be developed as the chapter progresses.

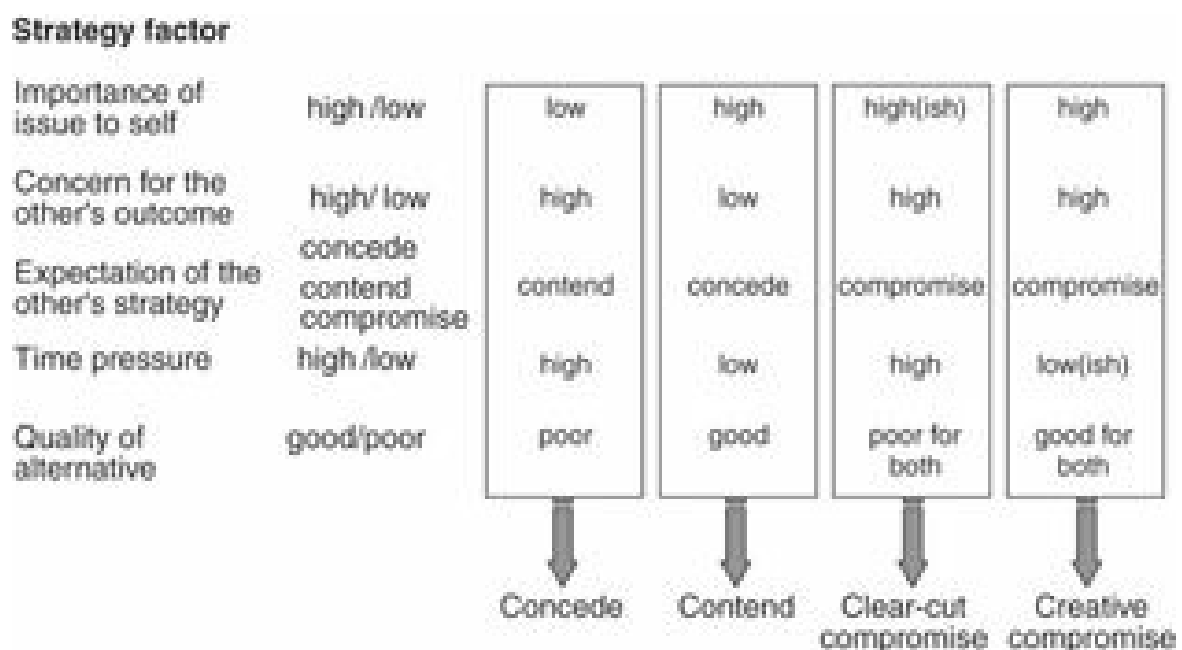


Figure 5.3 The strategy framework: factors and strategies

The importance of issue to self

A common feature in all the strategic choice models is the importance of what the negotiator wants to achieve through the negotiation, variously described as ‘concern for self’ or ‘importance of the issue’. The research into the validity of the Dual Concerns Model holds up for this factor: the more important the issue, the more likely it is that the negotiator will stand firm and contend (Pruitt & Carnevale [1993](#); Rhoades & Carnevale [1999](#); Sorenson, Morse & Savage [1999](#)). In the delivery company–bookstore negotiations, if the delivery company’s financial system was fortnightly based, then to program monthly invoicing for one customer may prove expensive (and perhaps risk messing up the rest of the system), so it would be very reluctant to concede on this issue; instead, it would want to contend. However, if it proved possible to easily reconfigure the program, then 14 days would become less important. The delivery company would want to maintain consistency and avoid setting a precedent (longer payment terms can affect cash flow), but might be prepared to compromise if there were off-setting gains on another issue – a clear-cut compromise. If payment terms were already different for different clients, then 14 or 30 days may not be important at all, so they could concede and agree with the other bookstore’s position on this point. Interestingly – and significantly – the high importance of the issue that can lead to a negotiator standing firm also provides the opportunity and impetus for negotiators to find other creative ways by which the needs of the issue might be satisfied. Thus one of the antecedents of effective problem-solving in negotiation is that the parties stand firm on what is really important to them (Neale & Bazerman [1985b](#); Pruitt [1983b](#); Roloff & Jordan [1991](#)).

Concern for the other's outcome

A negotiator's concern for the other party's outcome is a significant factor that needs to be taken into consideration. This concern can be altruistic in that, for personal reasons – perhaps liking the other negotiator, perhaps because of one's social values or religious beliefs – a negotiator wants the other negotiator to achieve their goals.

In the business context, the concern for the outcome of the other party may be more instrumental. A company may have the franchise for selling fast food at a sports stadium. When approached by the stadium owner for a share of the costs of promoting the stadium as a family-friendly venue, the franchisee will be concerned that the stadium owner does well because more attendees at the stadium will mean more food sales. Many negotiations are based on the principle of how one company can help another to improve its value chain, so there is an instrumental concern for the other's outcome in any negotiations between them.

A shopping centre manager has been instructed to ensure that there is no cost increase when renegotiating a cleaning contract. (The reason is to set a precedent for the centre's other service contracts.) To the manager, the importance of the price issue is high. If the manager has little or no concern about whether the cleaning contractor does well out of the contract – that is, the manager is concerned only about the standard of performance of the contract itself – this suggests that the manager should contend and stand firm on the issue of price (see [Figure 5.3](#) above). High concern for the contractor's outcomes, as well as those of the manager's own company, would indicate a need to creatively find ways to keep the money value of the contract constant without financially pressuring the contractor.

Concern for other must be distinguished from the relationship. If the effective implementation of the agreement will require an ongoing relationship, then the relationship becomes part of the issue being negotiated, and so increases the importance of the issue to self. If the relationship is important to the other party, then this will affect their choice of strategy too. Generally speaking, an expectation of future interaction leads to more cooperation (Ben-Yoav & Pruitt [1984a](#)) but, as we have seen, it is important to guard against cooperation being taken to mean that concessions must be made for the sake of the relationship. That can lead to appeasement – an approach that has little to commend it.

When examining the impact of relationship on negotiation, it is helpful to distinguish between the relationship a negotiator needs with the people across the table in order to reach an agreement and the relationship required between the parties to implement the agreement over time. The relationship across the negotiating table (or over the internet, if that is how the negotiations are being conducted) enables the negotiation's DNA to develop – particularly reciprocity, trust and information exchange.

Negotiators don't have to like each other, but they must have a relationship that enables exchanges to take place. More important for the outcome – particularly in negotiations between organisations – is the relationship between those who have to implement the agreement, who may not have been at the negotiating table. Good relationships at both levels provide the opportunity for ongoing cooperation between the parties to their ongoing mutual benefit.

We must guard against putting too much weight on the notion of relationship when negotiating. A close relationship can lead to too much cooperation. When this occurs, each party is willing to concede to the other, sometimes without even explicitly discussing the issue. This in turn leads to clear-cut compromises rather than value-added solutions (Halpern

[1994](#), [1997](#); Valley, Neale & Mannix [1995](#)). If friends resist the temptation to yield, they may achieve a better outcome for both parties. A close relationship can also raise expectations; this occurs when one party assumes that the other will be cooperative – meaning ‘give some ground and make concessions’ – to keep the relationship working. When emphasis is given to the relationship, it can open up the possibility of it being exploited tactically. This can happen in two ways: at the interparty level – ‘If you let us have 30 days for payment then I’m sure that will be a good start to us building a cooperative relationship’ – and at the personal level – ‘We’ve been working well together, but I’m not sure I can take 14 days back to my boss. Can you help me out here?’

Negotiation in practice

A close relationship can raise expectations

When the Australian and US governments were negotiating over a bilateral free trade agreement – something that was important to both – they were doing so in the context of a long-standing strategic relationship, forged during World War II and reinforced by Australia being one of few countries to give support to the United States in the Gulf War. But when it came down to the final issues in the agreement – one of them over beef quotas – the Australian negotiators could not secure the final concession from their US counterparts. As a lead negotiator later reflected, ‘It caught us all off guard that our relationship was not worth 30 000 tons of beef’ (*Australian*, 25 February 2004, p. 6). The US negotiators had their own good reasons not to make further concessions on beef imports. The lesson to be learnt is that while the parties may well have a strong relationship, they are also in a

negotiation over a specific issue; the nature of the relationship has to be translated into the negotiation rather than being presumed.

Negotiation in practice

The presence of a relationship can be a tactic

The iron ore companies of Western Australia are in a long-term relationship with the steel mills of Japan. Each year, the parties meet to negotiate tonnages, price and other issues for the coming year. One ore company negotiator reflected on more than 10 years of negotiations in the early development of the industry and realised that each year, when there was one final issue left on the table, the Japanese would suggest something like, ‘Perhaps you might give on that last point; after all, we are in a long-term relationship, trying to work together’, and the Australians inevitably did. He also realised that he could not think of any occasion when the Japanese had given in on the last point for the sake of the relationship. Well done to the Japanese negotiators! The cross-cultural wisdom is that the Japanese value long-term relationships very highly, but an awareness of the importance of a relationship to the other party does not mean only one party has to make all the concessions to keep the relationship going.

There is a potential gender effect of which negotiators need to be aware. Female negotiators may be socialised into over-estimating concern for other (Song, Cadsby & Morris [2004](#)), and when they have been found to do less well in negotiation, it seems that it is when they have placed more emphasis on the relationship aspect of the situation and have traded

(Curhan et al. [2008](#)). It is not so much that having concern for others is a weakness – indeed, thinking more broadly about a situation and who else might be affected, as opposed to the more masculine narrow task orientation (Halpern & Parks [1996](#)), is beneficial. The key point is not to trade off the substantive issue due to a concern for other. Goal-setting helps to counter this (Calhoun & Smith [1999](#)).

Negotiation skills tips

Assessing the relationship factor

How important is it?

- Build a working relationship with the other party's negotiators, even when disagreeing with them.
- Be clear on what sort of relationship – and between whom – is needed to properly implement the likely agreement.
- Check whether you are being drawn into negotiating the next agreement rather than the present one.

Time pressure

Another factor impacting on negotiation is time. (We'll come back to the other party's strategy later.) Many negotiations settle just before a particular deadline. In the United States, labour negotiation contracts are often finalised after months of negotiation but only minutes before the existing contract expires. Coal exporters in the Hunter Valley reached agreement on better use of port facilities on the evening of the deadline day set by the Australian Consumer and Competition Commission (*Australian*, 9 April 2009, p. 2). When a US President embarks on negotiations to resolve issues in the Middle East, all the other countries at the negotiating table know that the timeframe is set by the presidential elections. A car salesperson may well try to instil a sense of urgency into the discussions to put pressure on the potential buyer to decide quickly, knowing that such pressure often induces the buyer to make that last concession to close the deal and buy the car. The time factor might explain why Sorenson and colleagues' (1999) negotiators, who had low concern for each other, compromised and split their differences, rather than just remaining inactive as the Dual Concerns Model suggests. Knowing there was a timeframe to their negotiations, and wanting an outcome, they engaged in the easiest way of finding a solution – they split the difference.

If negotiators are not under time pressure then, all other things being equal, they are likely to stand firm, to contend (see [Figure 5.3](#)); however, high time pressure will likely cause them to make concessions (Magenau & Pruitt 1979; Stuhlmacher & Champagne 2000), either by conceding unilaterally or by splitting the difference through a clear-cut compromise. We might imagine that being under pressure, such as having to find a solution quickly, is an impetus to creativity, but this is not what happens in

practice (Amabile, Hadley & Kramer [2002](#)). Negotiators might find a creative face-saving package that enables one or both parties to back down from committed positions, but they need time to find a truly creative value-adding solution (Carnevale & Lawler [1986](#); De Dreu [2003](#)). However, do not allow too much time: if there is no time pressure to settle, then there is no pressure to settle at all.

As with many aspects of negotiation, what might appear to be a constraint on one's negotiating might also represent a tactical opportunity. Negotiators who are under more time pressure do less well, as they concede more to achieve an agreement; however, if negotiators who are genuinely under a deadline tell the other party, this puts the other party under the same deadline and subjects them to the same time pressure (Moore [2004](#)). If both parties are under the same time pressure, they are more likely to make mutual concessions (a clear-cut compromise outcome), resulting in a better outcome for the party that initially experienced the greater time pressure. Negotiators should also be aware that if the other negotiator is acting on behalf of constituents, then to put them under time pressure to get them to concede might have the opposite effect (Mosterd & Rutte [2000](#)).

Negotiation in practice

A strategic approach to a procurement negotiation: part 1

A shipbuilding company was preparing a tender for a contract to design and build a new fleet of ships for a Middle East customer. Because engines were a major component in the overall cost, their price was an important issue. In the past, the procurement manager – who does the negotiations – had found that he had to be flexible on price with this company. The shipbuilder was not concerned

that the engine manufacturer did well out of supplying the engines, apart from being aware that perhaps he might have to do business with it again. The procurement manager needed an agreement quickly (in time for the tender deadline), and was of the view that alternative manufacturers' engines did not really meet the specifications for the ship the company was designing for the tender. The procurement manager gave some thought to the engine manufacturer's situation. He considered that the manufacturer placed less emphasis on price than on maintaining full production, and believed that the engine manufacturer had a relatively full order book. The manufacturer would not be too concerned about how well the shipbuilder fared in the deal, but it would be wary about losing its engine servicing business in the Middle East to a competing manufacturer. The sales manager for the manufacturing company would want to reach agreement one way or another pretty quickly, even though it would not be under a specific deadline to conclude a deal.

While some strategy factors ([Table 5.2](#)) suggested that the sales manager might well contend and stand firm on price, others – time pressure, the lack of alternatives – suggested that he should concede on price to close the deal. On balance, the procurement manager thought he would soon have to be prepared to concede.

Table 5.2 Shipbuilding company's analysis, part 1

Strategy factor	Shipbuilder's analysis of the manufacturer	Shipbuilder's analysis of its own situation	Shipbuilder's realistic strategy options	
Importance of issue to self	Low	High	Low	High
Concern for other's outcome	Tending to high	Low	High	Low
Expectation of other's strategy		Concede	Contend	Concede
Time pressure	Growing	High	High	Low
Quality of alternative	Good	Poor	Poor	Good
			Concede	Contend

Quality of alternatives

Power is part of a negotiation's DNA. It has been suggested that one of the most practical ways for a negotiator to assess the power situation is to consider the consequences of walking away from the negotiation (see [Chapter 3](#)). All other things being equal, having a good alternative to a negotiated agreement puts a negotiator into a stronger position, but negotiation is two-sided and a negotiator with a strong alternative can anticipate a better outcome only if the other party has a weak one (Pinkley, Neale & Bennett [1994](#); Wolfe & McGinn [2005](#)).

The obvious strategic implication is to try to improve one's alternatives before the negotiations start. At the same time, be aware of your own almost inevitable over-confidence when entering into a negotiation (Neale & Bazerman [1985a](#); Thompson & Hastie [1990](#)). If strengthening one's own alternative could lead to a better outcome, then, intuitively, negotiators should do what they can to weaken the other party's alternative, or at least undermine their perception of the strength of their alternative. But this is not necessarily the case. The research also found that if both parties have good alternatives, then provided they see the prospect of a better outcome through continued negotiation, they pay greater attention to each other's needs. Then reciprocity develops, especially through information exchange, and as a result they are able to achieve integrative agreements. So, while a negotiator who has a good walk-away alternative might be inclined to contend, if it is found that the other negotiator also has a good walk-away alternative, the best strategy is not to try to contend even harder but to look to get into a position of trust across the negotiating table to make mutually creative compromise strategies possible.

An example of where both parties have good alternatives would be negotiations over a potential joint venture. The business development teams within the two companies will no doubt have scoped many development opportunities so that they both have good alternatives when entering into negotiations with each other. The belief that by working together they can create greater synergies and value-creating opportunities provides the ongoing incentive to negotiate. In other negotiations, both parties may face poor alternatives. Their failure to reach agreement might have bad consequences for each of them. The car manufacturing process is one long supply chain of component suppliers. If a company making and supplying brake shoes can't reach agreement with the metals company that supplies springs for the brakes, then it will lose its contract with the car manufacturer. Both the brake company and the metals company would lose, so they both have an incentive to stay at the bargaining table and work together. When facing the pressure of poor no-agreement outcomes, negotiators typically find solutions somewhere between their positions – the clear-cut compromise strategy – rather than embark on a creative search for added-value solutions. The key point is that facing similar quality walk-away options helps both parties to work together. If the quality of the parties' respective walk-away options is unbalanced, this will push the strategy choice to concede or contend.

Expectation of other's strategy

One of the weaknesses with the Dual Concerns Model is its single-sidedness. It does not seem to take account of the other party's strategy when determining what stance to take on the issue. This is important because the two-sided nature of negotiation means that the outcome of your strategic choice is dependent upon what the other party does by way of response. Negotiators like the idea of standing firm on the issue, but this contending strategy will only work if the other party adopts a conceding strategy.

Pruitt's ([1983a](#)) addition of the notion of feasibility to his model was in recognition that a negotiator cannot implement a strategy in isolation. Rhoades and Carnevale ([1999](#)) found that negotiators reacted to the strategy choice of others – for example, participants in their negotiation research experiments only seemed willing to persist with cooperative problem-solving if the other negotiator was responding cooperatively (the reciprocity DNA). Contentious behaviour extinguished attempts at cooperation. If a negotiator is absolutely convinced that the other party is not going to concede, then the only strategy that will get an agreement is for the negotiator to concede. Conversely, if the other party is expected to concede, then (all other things being equal) this is a good reason to enter the negotiation (or the next meeting) with a stand-firm contending strategy. So contending would encourage conceding by the other party, and vice versa.

More importantly, the two cooperative strategies of clear-cut and creative compromise both rely on the other party's choice of strategy. It is not possible to engage in either strategy unless the other party is doing the same thing, which is what Rhoades and Carnevale ([1999](#)) found:

participants in their negotiation research experiments only seemed willing to persist with cooperative problem-solving if the other negotiator was responding cooperatively (the reciprocity DNA).

Negotiation in practice

Why not stand firm?

The context for a management–union negotiation over wages and work conditions in a manufacturing company was a local car plant announcing that it intended to close down with resultant extensive job losses. The manufacturing company’s employees were concerned about their jobs despite the company being successful; the mood at union members’ meetings was subdued.

In response to the union’s claim for a pay increase, management had offered a small wage increase, but changes to other conditions that kept the package ‘cost neutral’. The negotiations stalled but management saw no reason to improve its offer as it believed the workforce would eventually accept it – which they did.

Consider a simple situation in which one party is trying to sell its widgets for \$10 but the other party is offering to pay only \$6. The ‘obvious’ or ‘mutually prominent’ solution (Schelling [1960](#)) is to settle on \$8. This being so, our buyer – trying to be helpful and cooperative – suggests the compromise price of \$8 but the vendor responds with the same selling price of \$10. Our potential buyer thought he was engaging in the clear-cut compromise strategy – meet you halfway – but ended up having to take the conceding strategy. The buyer has now incurred both position and image loss (Pruitt [1981](#), p. 23); the negotiating range is no

longer between \$6 and \$10 but between \$8 and \$10, and the seller can reasonably expect another concession to follow. The critical point is that the clear-cut strategy works only if the other party has also chosen to do it.

As we saw in [Chapter 2](#), we are all different: some might be disposed towards being collaborative while others are more naturally assertive. Yet this should not govern our choice of issue strategy; negotiating according to one's personality is not being strategic. Negotiators' personalities may influence how well they implement a particular strategy, but should not determine what that strategy should be. An appreciation of the other negotiators' personalities and known negotiation styles will contribute to your expectation of the strategy they might adopt. Even so, it is important to remember that, in most negotiations, personality characteristics will be constrained by other contextual factors.

Similarly, the cultural impact can be significant in the other negotiator's choice of strategy. It might be expected that negotiators from a high-context culture will be more likely to negotiate by leaving stated positions on the table, this being an element in the contending strategy (see [Chapter 11](#)). As with personality, though, the cultural influence is not the only determinant of strategy. A negotiator's understanding of the cultural context of the other party would be considered alongside their estimation of how important the issue is to the other party, the time pressure they seem to be experiencing (being aware that 'time pressure' might mean something very different to people of a different culture) and the negotiator's estimation of how the other party regards the quality of their alternatives. Anything that can be known about the other party will help a negotiator make a reasoned estimate of the strategy the other party is likely to adopt.

One factor that does impact on a party's stance and issue strategy is the presence of a constituency. These effects will be explored more in

[Chapter 9](#), but it is sufficient for our purposes here to know that the presence of a constituency encourages a contending strategy through higher importance of the issue to self and lower concern for other. Negotiators who act on behalf of others are more competitive, and so have more difficulty in reaching agreement.

Your expectation of what the other party is likely to do should not determine what you then do; it is just one of the factors to be considered. The Strategy Worksheet presented later in this chapter is so designed to ensure that the other party's strategy *does* get due consideration – being the third of the factors to consider – but places it in context. The order of the factors reflects the line of thinking when preparing. The first two factors emerge out of what you want to achieve – your goals (which reflect your own needs) – and any concern – instrumental or otherwise – that you have for the other party to achieve its goals. The next step is to consider what strategy the other party might take – not the strategy you want it to take, but the one you would take if you were the other negotiator evaluating the strategy factors from their experience. Once you have an understanding of their perspective, then complete the analysis by considering your time factor and your alternatives.

Being strategic in your preparation

Good preparation is essential for negotiating effectively, and is built around two key principles. The first is to break down a negotiation into its constituent parts by means of questioning; the second is to do one's preparation from the other party's perspective. Both principles are embedded in the strategic approach to negotiation that has been developed in this chapter.

Taking an other-directed approach to preparation is important because it reflects the essential two-sided nature of negotiation. The author was involved in preparing for some difficult, politically charged negotiations that involved the future of the organisation in which he was working. In preparation for meetings with the government minister who was dealing with the issue, rather than carefully listing and rehearsing the key points, the approach taken was to ask what the minister might say to us, and then prepare the response to his points. Similarly, key points should be prepared and rehearsed. It is useful for someone to role-play as a member of the other party to see how your points sound on the other side of the table. List all the other party's possible responses to your points and work out how you will deal with them.

As noted earlier, negotiation and chess have a lot in common – especially in terms of the need to think ahead and consider all the options. A rather less helpful aspect of the negotiation as a game of chess imagery is its competitive element. Strategising a way to checkmate one's opponent is perhaps not the best approach to a negotiation. Unfortunately, this attitude can creep into one's preparation. There is a danger that thorough preparation brings the negotiator to a point where only one solution can be seen, and thereafter all the planning goes into how the other party can be

persuaded to agree to it. From the very start of their preparation, negotiators should maintain the flexibility of the knight's move and carry this attitude through into the negotiation itself.

Box 5.1 A strategic approach to negotiation

- Have clear, considered goals.
- Be constantly aware of options.
- Make a considered analysis before deciding upon a course of action.
- Consider what might be done in the context to make a preferred course of action more likely.
- Constantly review the situation to take account of changes in the context that might lead to a revision of strategy.

Having clear, considered goals

The good thing about not setting goals is that you cannot fail to achieve them. Negotiation is a purpose-driven activity, focused on achieving an outcome that can then be implemented. Only a poor negotiator would set out with a ‘Let’s just see what we can achieve’ approach. Negotiators need to be clear about what they want to achieve and should try to achieve more rather than less. The generally accepted principle of goal-setting is that challenging goals lead to better performance (Locke [1968](#); Latham & Yukl [1975](#)). The same is true in negotiation. Negotiators with specific, difficult goals do well (Huber & Neale [1986](#); Brett, Pinkley & Jackofsky [1996](#)), in part because they prepare more fully and are more persistent when negotiating (Roloff & Jordan [1991](#)). This finding about the importance of goals is reinforced by the findings of Halpert et al. ([2010](#)). They reviewed a full range of research findings to look for the factors that contributed to negotiation success, which they measured in terms of profit, satisfaction and perception of the other negotiator. The pathway to success lay in having a strong goal rather than a moderate or ‘do one’s best’ goal (see [Figure 5.4](#)). Trying to achieve this goal then caused the negotiator to work with the other negotiator to exchange information more openly and to work around offers and concessions rather than be positional. In short, a high goal causes a negotiator to work harder and more constructively, so a better result is more likely.

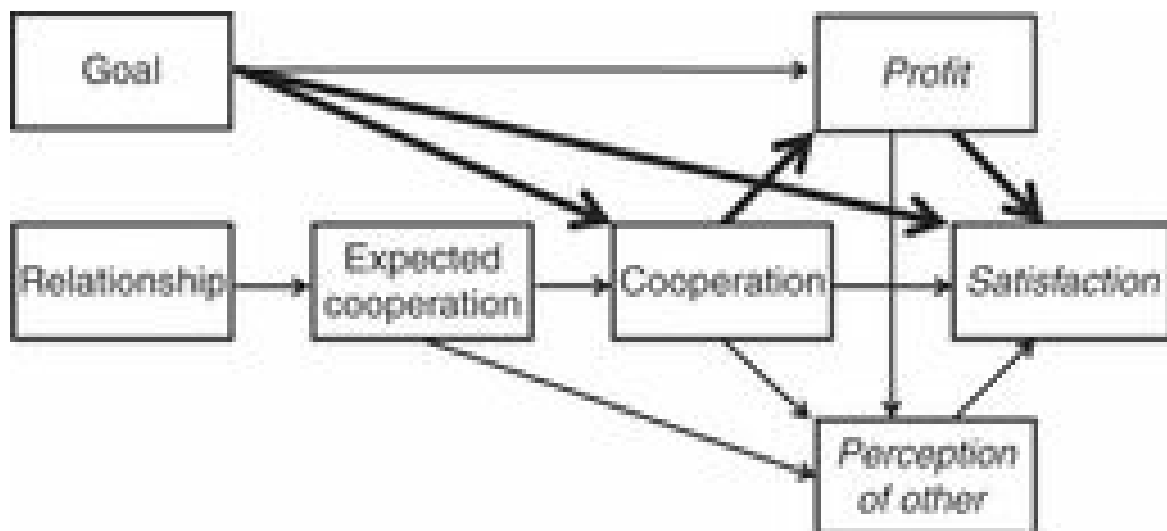


Figure 5.4 Path model of negotiation success (Halpert et al. [2010](#), p. 105)

While it is right to set a challenging goal, the goal must be plausible. A goal that translates into an opening position that appears outrageous to the other party will merely provoke a similarly outrageous response by virtue of reciprocity, or perhaps provoke the other party to call off the negotiations. A potentially lucrative deal might then have been lost. There is another risk too: if a negotiator puts an opening offer on the table to which the other party cannot (as opposed to will not) say yes, then to concede from this opening position may be seen as a sign of weakness. This only adds to the other party's perception of the negotiator's unreasonableness and causes them to become more rigid in their position (negotiation is two-sided). For progress to be made, it is likely that the over-the-top negotiator will have to start making concessions, and may end up making more concessions than would otherwise have been necessary to reach an agreement.

So, when deciding where to pitch an opening offer, how high is too high? A simple test is to ask whether what is being sought is a 'yes-able proposition' (Fisher [1971](#); Fisher, Kopelman & Schneider [1994](#)). In deciding what might be achieved from the negotiation, the negotiator,

having properly considered the whole situation from their own and the other party's perspective, should ask, 'If I were the other party, could I possibly agree to what I am asking of them?' If the answer is no, then too much is being expected. However, negotiators should not negotiate with themselves and lower their goals 'just to be reasonable' (Bazerman, Tenbrunsel & Wade-Benzoni [1998](#)).

There is another note of caution to be sounded here, in relation to setting goals for a forthcoming negotiation – such goals can become too positional. The manager of a shopping centre might decide that the centre's advertising needs to be more effective, so she asks each shop tenant in turn for an increased contribution to the advertising budget. If she sets herself a challenging goal – a large increase from each tenant – she will probably do better than if she sets a modest target figure. However, the original goal of 'what' (more effective advertising) has transitioned into 'how' (increased payments by the tenants) and, as will be seen in later chapters, these negotiations are likely to be positional and competitive, missing the opportunity for other creative joint-gain solutions. Being too goal-focused can also cause negotiators to not recognise new information (Polzer & Neale [1995](#)), so once again they may miss out on the opportunity for a better solution. Big-picture thinking while preparing helps keep one's goals broad rather than narrow; if they are too detailed, they can again lead to a positional approach.

Finally, although knowing one's walk-away point is really important, if it weighs more heavily in the negotiator's preparation than what they are seeking to achieve, it quite possibly will become the goal itself. For the negotiator, thinking they must make sure they do better than their BATNA of \$10 per unit is a minimal, not a challenging, goal. Similarly, entering a negotiation with a conditional goal that they will ask for \$15 but will settle for \$12 if they don't get it undermines the commitment to work for the

higher outcome. As mentioned earlier, the path to negotiation success lies in having a strong goal from the start (Halpert et al. [2010](#)).

It is also useful to have clear process goals. Negotiators often prepare around what they need to achieve at the expense of considering how the process might unfold (Fells [1996](#)), so are less able to deal with what occurs (negotiation is messy). While it might seem time-efficient and achievement-oriented to come to the table and present a proposal for how the issue should be settled, it is quite likely to provoke difficulties rather than generate a quick settlement. Negotiators should establish an ‘end-of-interaction’ objective (Honey [1976](#)). Rather than having only the ultimate goal of a favourable agreement, it helps to work to more immediate task-related goals. So if the negotiations are expected to last all day, it is useful to ask what you hope to have achieved by the time you break for lunch. One reasonable expectation might be that it will take most of the morning to get a full understanding of the differences between the parties. If that is so, then lunchtime might be given over to each party reshaping any proposals they have in the light of what they have learnt during the morning. In this way, negotiators can pace the process and manage it properly (see [Chapter 4](#)).

Negotiation in practice

Not a ‘yes-able’ proposition

In the campaign lead-up to the 2010 federal election, the Gillard Labor government proposed a new mining super profits tax to tap into the increased revenue and profits from the mining boom – a boom that was contributing to Australia’s two-speed economy. There was great antagonism towards the ‘big new tax’, as it was termed by the opposition. A review of the proposal was inevitable.

One mining company put a proposal to the government that the new profits tax not be levied on companies until after a number of other company imposts had been allowed for. It transpired that, under this proposal, the company in question would pay no super profits tax at all.

Imagine making a proposal on how to raise new tax revenue that involved raising no revenue at all. How would this have looked to those sitting on the other side of the table, whose sole objective was to raise revenue, not pass laws that would mean this would not happen? Could they possibly say that they agreed with the proposal? The common advice is that your opening offer should give you room to move, but should still at least be in the same room.

As various other proposals were examined, it was suggested that the government's original proposal might have resulted in this particular company paying all its profits in tax. If so, then who made the first 'unyes-able' proposition?

There are two pieces of advice to emerge from this story. First, and most importantly, do your preparation carefully and ensure that the other party can – albeit reluctantly – agree to what you are asking of them. Second, become a tax accountant. You will have a job for life.

Negotiation skills tips

Deciding what to ask for

- Ask yourself, 'What is the most the other party could possibly agree to?'

- Think big picture. Is what you hope to achieve broad enough to enable different solutions?
- Are you more worried about your walk-away point than your goal?

Be constantly aware of your options

Always remember that there are four issue strategies from which negotiators can choose. In addition, they can always walk away. While this may sound obvious, it seems less easy to put into practice when the negotiations begin to get serious. The pressure of the negotiation tends to close one's behaviour and decision-making processes, with the result that a negotiator can easily develop tunnel vision and feel that there is only one option: 'We can't afford to give on this issue', or 'We really don't have much time so we have to make a concession to get the agreement.' Having locked in a course of action, the tendency is to then look for information or reasons that justify this decision while discounting anything that might suggest an alternative.

The good negotiator will systematically evaluate each option before deciding. A good way to help remember there *are* options is to write them at the top of one's notepad. It can take some courage to challenge the CEO or lead negotiator and suggest that they could consider other options when they are insisting that everyone stand firm, but that's what good negotiators do.

Make a considered analysis before you decide

The analysis of the strategic factors will indicate an appropriate strategy to take on the issue. The combination of high importance of issue to self through to good-quality alternatives, as shown in [Figure 5.5](#), indicates that a contending strategy would be appropriate. The key point is that a negotiator should analyse and consider all the factors before deciding on a strategy, rather than just making a hasty and possibly ill-considered decision based on one seemingly compelling circumstance.

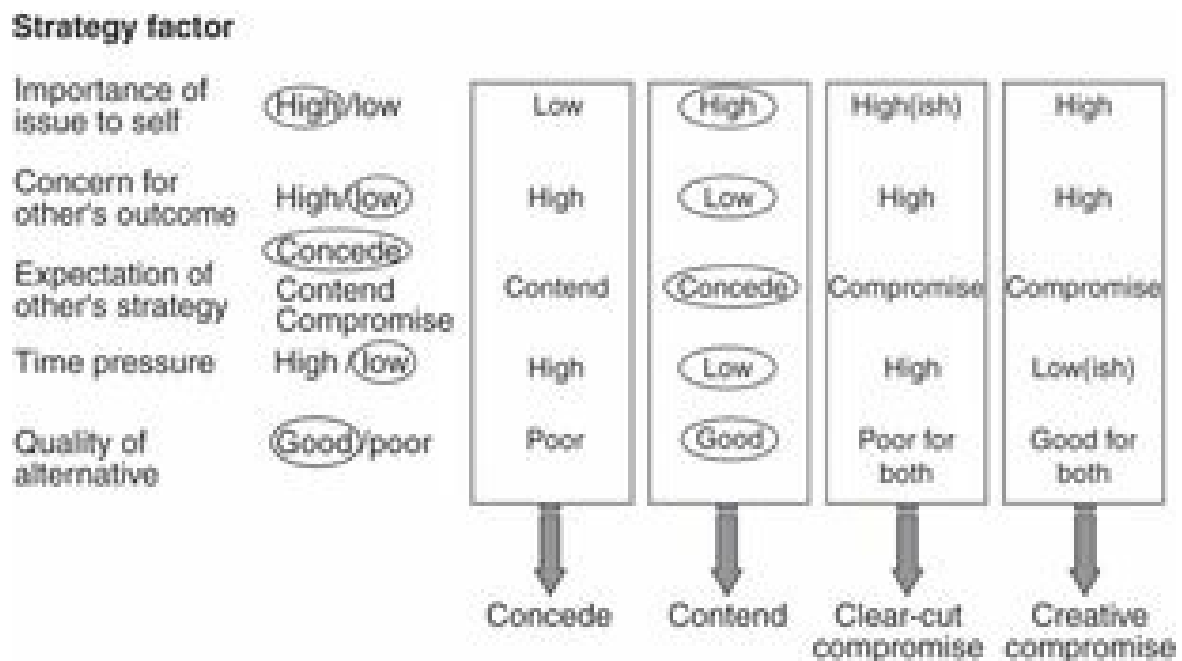


Figure 5.5 The Strategy Framework: the straightforward case

Consider changing the context

In real-life negotiations (compared with examples in books), it is unlikely that all five factors will line up neatly. If the analysis shows a contradiction for a strategy (time pressure in [Figure 5.6](#)), then it is important to do something about it before starting the negotiation. In this case, when all the other factors point to a contending strategy, something needs to be done to relieve the time pressure before starting the negotiations.

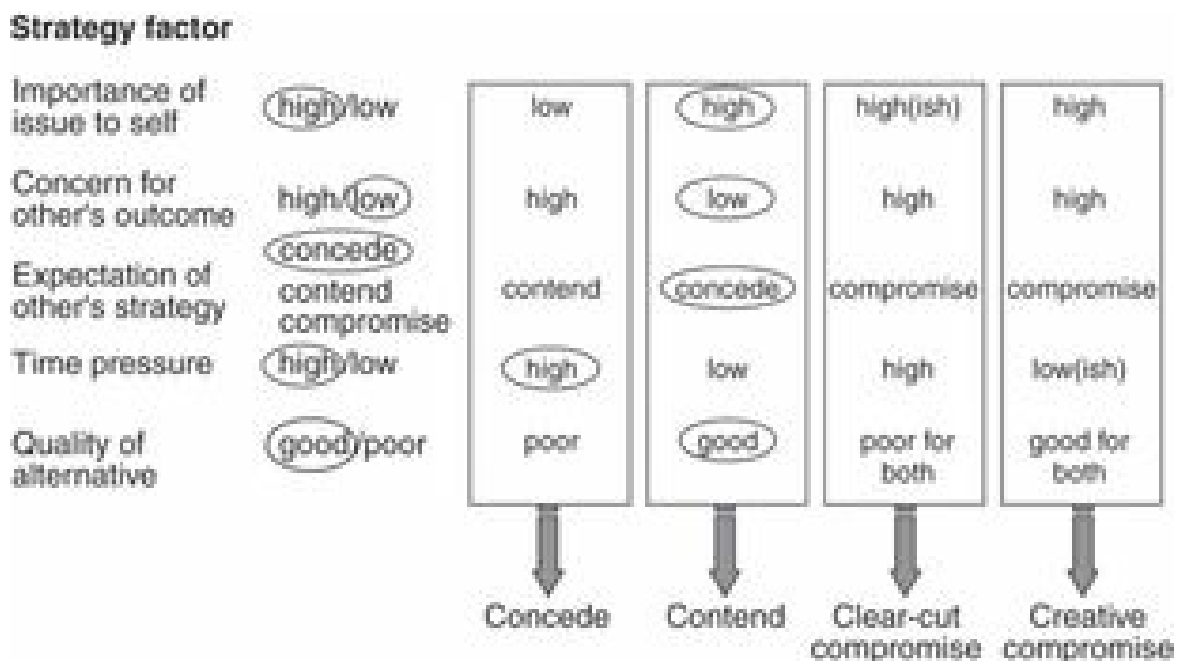


Figure 5.6 Strategic analysis: What might we change?

Analysing the negotiation in this way to highlight what aspects of the negotiating context might be changed is a critical element in being strategic in negotiation. Lax and Sebenius ([2002](#)) present negotiation as having three dimensions, all of which have to be taken into account: the process, the potential to create value and the opportunities that exist away from the negotiating table. Similarly, Watkins ([2006](#)) recommends that negotiators be alert to opportunities to change the nature of the game, not only during the process but also even before the negotiations have started.

While much of the literature on negotiation is about changing the game of negotiation from a win–lose contest to a win–win cooperation, these writers are describing something more fundamental that involves looking at the essential structure of the circumstances surrounding the negotiation and seeing how they might be changed. From the simple expedient of always buying an open-ended ticket when travelling to an overseas negotiation (to forestall being put under time pressure) to undertaking a brand awareness campaign before negotiating with your franchise owners (whose instrumental concern for your ongoing success will now be higher), it is important not to take the negotiation context as a given. Always look for ways in which the context can be restructured to give rise to more favourable strategies and better outcomes.

Negotiation in practice

A strategic approach to a procurement negotiation: part 2

The procurement manager realised that some factors in the negotiation context would suggest that he should stand firm, but others indicated that it would be appropriate to concede. So he thought again about those factors that were pushing him into a concession strategy. On checking with the design team, it became clear that without major design changes they could not go to an alternative engine supplier, so there was not much he could do about that. He then talked to the contract team and persuaded the cost estimators to work with an approximate figure until about a week before the tender was due, which would give him about two extra months to close the deal. In any event, tender dates – the cause of the time pressure – often slip. With the time pressure eased to some degree, he now felt more confident in approaching

the manufacturer with a relatively low price proposal and able to hold firm on this price as the negotiations over technical specifications unfolded. He secured the contract without having to make concessions on price, and thus secured some additional value for his company.

Table 5.3 Shipbuilding company's analysis: part 2

Strategy factor	Shipbuilder's assessment of the manufacturer	Shipbuilder's analysis of its own situation	Shipbuilder's realistic strategy options	
Importance of issue to self	Low	High	Low	High
Concern for other's outcome	Tending to high	Low	High	Low
Expectation of other's strategy		Concede	Contend	Concede
Time pressure	Growing	High	High	Low(ish)
Quality of alternative	Good	Poor	Poor	Good
			Concede	Contend

The engine manufacturer did indeed come to accept the procurement manager's price offer. The shipbuilding company was then able to submit a price-competitive tender, which helped it to secure the contract to build the ship.

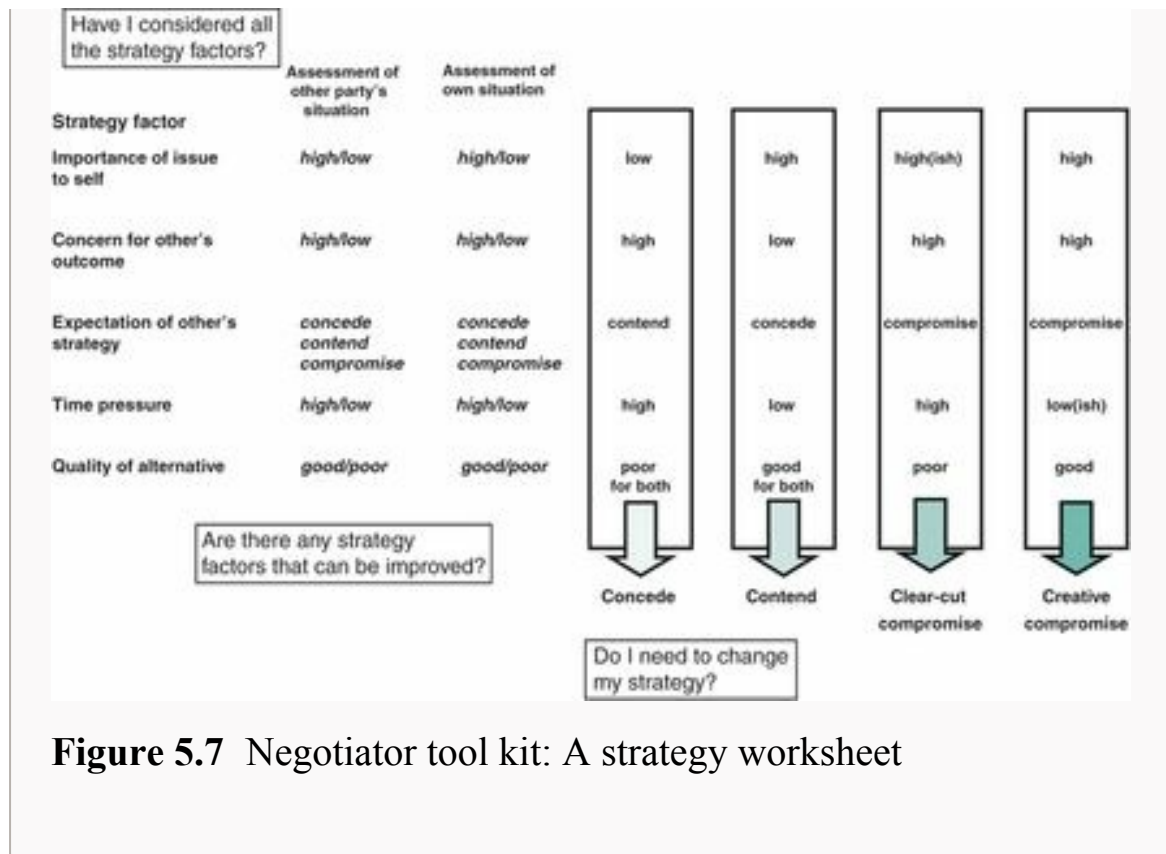
Reviewing your course of action

A strategic approach to negotiation involves constant review. The situation in any negotiation is dynamic, and the factors that underpin a choice of strategy will almost always change over time. It is essential to keep reviewing the bigger picture as events away from the negotiation table can significantly reshape the situation. They need to be understood to better manage the flow of the negotiation (Druckman [2001](#); Donohue [2004](#)). The other party may adopt a strategy that was not expected. The negotiations might become deadlocked. Time and alternatives may change. Indeed, the other negotiator might actively be trying to change your alternatives and/or sense of time pressure, using circumstances away from the negotiating table to create what Watkins ([2006](#)) calls ‘action-forcing events’. In addition, events at the negotiation table might cause a re-evaluation of the importance of the issue to self or concern for the other’s outcome.

Therefore it is essential to regularly review the situation and to reassess one’s strategy. Although some elements in the strategy context may have changed for the worse, others may have changed for the better. Always ask, ‘Can we implement our preferred issue strategy in a different way?’ and ‘Do we, in light of these new circumstances, need to lower our aspirations?’

Negotiation tool kit

A strategy worksheet



Becoming an effective negotiator

Being strategic means you think before you act, which also implies you have a choice. The imagery of the knight's move helps to convey not only a considered approach to negotiation that is similar to a game of chess, but also the need to think and act flexibly. This chapter has reviewed some of the key factors a negotiator must consider before deciding what approach to take on the issue: whether to stand firm, concede, seek some form of compromise or even walk away. Being strategic also means thinking in terms of the other party. We can draw all these themes together to compile another negotiation tool, a Strategy Worksheet, that helps a negotiator consider all the factors, rather than be impacted by just one of them; it also reminds the negotiator that there are four issue strategies rather than being unthinkingly locked into one. The design of the worksheet also requires a negotiator to give full consideration to the other party's strategy choices as much as their own. This helps to counter the tendency to view negotiation from just one's own perspective; it keeps a negotiator alert to the fact that the outcome of their strategy is dependent upon how the other party reacts. Finally, the worksheet prompts a negotiator to think about change – in a particular context, or in strategy as the negotiations unfold.

The example of a shipbuilding company that needed to lock in a contract on engine supply demonstrates how this strategic approach can work in practice. Previous negotiations that unfolded with the shipbuilding company increased the price it was willing to pay, so that it could have certainty prior to submitting its tender. Adopting a strategic approach shows how another price offer strategy might be more appropriate. Starting with the perspective of the other company – the engine manufacturer – and taking all the factors into account before making a

decision, the procurement manager was able to have more confidence in being firm on price.

The case shows the importance of a systematic and two-sided approach, but it also shows that nothing is straightforward – that negotiations are messy. In the end, negotiators have to make a judgement call, but it is better to do so based on analysis of the present situation rather than on past practice. One interesting aspect is whether the sales manager, as he began to understand more of the shipbuilder's technical requirements, would realise that the shipbuilder had no real alternative supplier, in which case he might have been tempted to hold firmer on price. This shows the importance of constantly revisiting the strategy framework during the negotiations.

Negotiation skills tips

Become a thoughtful negotiator

These are the ways to develop a strategic approach.

- Think before you act.
- Think in terms of the other party.
- Think and act flexibly.
- Think after you have acted.

Being strategic is not confined to the negotiations themselves. We have learnt from earlier chapters that good negotiators are reflective, so we can now add a fourth element to being a strategic negotiator: think *after* you have acted. In the end, a good strategic negotiator is one who is aware that the issue strategies have to be managed through a complex and dynamic process. It is to an examination of this process that we now return.

Discussion questions

- 1** Find examples that show the difference between a clear-cut and a creative compromise (review actual negotiations as reported in the media for examples).
- 2** Think of some examples of negotiations in which relationships are important, and others where they don't seem to be important. What were the strategies of the negotiators in each case? Have you examples of where an emphasis on the relationship has led to a poor outcome?
- 3** What can we learn from areas not related to negotiation – such as sport or studying for exams – that help us understand the links between goals and performance? What are some downsides of high goals?
- 4** Review a past negotiation in terms of the strategies used by both parties.

6

Digging deep to deal with differences



This chapter demonstrates how negotiators can build a good foundation for their negotiation. After reading the chapter, you should be able to:

- understand what ought to be achieved through the differentiation phase, particularly identifying the parties' interests
- appreciate the importance of managing information exchange in negotiation – giving and gleaning information, handling interruptions
- be aware of how to manage competitive tactics.

[Chapters 4](#) and [5](#) considered the process and issue aspects of reaching agreement. [Chapter 4](#) outlined how a negotiation 'works' and suggested ways to manage one effectively, including working to a good negotiation script. [Chapter 5](#) reminded us that the reason for a negotiation at all is that there is an issue to be resolved. The chapter outlined ways to be strategic

in deciding whether to contend, concede or compromise (or walk away). This chapter and the next two bring these process and issue aspects of negotiation together. They will fill in some details for each of the three negotiation tasks – differentiation, exploration and exchange – using the issue, process, action and outcome framework presented in Chapter 4 ([Table 4.4](#)). All three are ‘how-to’ chapters.

[Chapter 4](#) also used the Tanker case as an example of how a negotiation might work its way from a disagreement – a serious one in that case – through to a point of agreement. The negotiation timeline included in [Chapter 4](#) is repeated here, showing how the negotiation went through the three phases. (We also need to remember that there was a lot of preparation beforehand and considerable work during the important agreement implementation phase once the negotiations themselves were completed.) As mentioned in [Chapter 4](#), negotiations are messy and often shift backwards and forwards from one phase to another, which is why negotiators need to be good at reflecting in. This particular negotiation was well structured, going through each phase in turn (in part, this is why it was successful), and it is helpful to have a good example like this in mind as we work through each phase in more detail.



The first task: digging deep

Negotiation is a process through which two parties with differences that they need to resolve try to reach agreement by exploring options and exchanging offers. It is towards the beginning of the negotiation that negotiators focus on the task of sorting out their real differences. They must also get to understand why these issues need to be settled. In the imagery of the Nullarbor Model ([Chapter 4](#)), they are travelling across New South Wales (the differentiation phase). From [Figure 6.1](#), we can see that the differentiation phase lasted a day and a half. Even though both sides were prepared (one side particularly so), they still found that they had different understandings of what the incidents and problems were, and it took this long for them to reach the important realisation that they were not going to get what they expected, but that they still needed an agreement (see [Chapter 4](#)). Often, on reflection, it will be seen that this time of differentiation amounted to half the total negotiation time. It is not a bad thing to take time to lay a good foundation for a negotiation.

The negotiation timeline

Differentiation	Day 1: Joint meeting all day
	Reviewed the key issues
	Day 2: Joint meeting continues
Exploration	Day 2: Lunchtime adjournment
	Parties each review their situation
	Joint meeting, afternoon
Exchange	Reframed the issue; discussed possibilities
	Day 3: Joint meeting continues
	Side meeting of two key executives mid-morning
Outcome	Resolved key financial issues; agreed key terms
	Joint meeting for remainder of the day
	Formalised the key terms into a heads of agreement document
Outcome: Over the next six months, frequent meetings and exchange of documents to finalise the revised contracts. But, the work on installation on the tankers resumes immediately.	

Figure 6.1 Phases in the Tanker refit negotiations

The essence of this phase (see [Figure 6.2](#)) involves a combination of contending and differentiating as the negotiators establish the parameters for the ensuing discussion. Later, they may find that there were aspects of their differences they had not realised, so they need to return to the task of differentiating. While this occurs, the negotiators need to stand firm (contend) on the issues.



Figure 6.2 Dealing with differences in a negotiation

The archaeologists on television's *Time Team* love digging up the ground to see what they might find. Looking for explanations from the past, they probe and dig and survey in all sorts of different ways and places across the archaeological site. When they find something, no matter how small, they want to know how it fits into the overall picture, what it tells them and what it means. Usually, they are able to put together a picture of what life was like in the Saxon village or Tudor castle. Apart from the fact that it looks more to the future than to the past, laying the foundations for a good negotiation is much like an archaeological dig. Information exchange in negotiation is akin to lots of time-consuming

digging (often in the wrong place), turning up fragments and asking what they mean. Like archaeologists, negotiators would prefer information about their different interests and priorities to be laid out openly; however, desirable though this may be, it is not usually the case. So, like archaeologists, negotiators have to go digging.

Build the negotiations slowly. Some people place great emphasis on the negotiators building a personal relationship through activities such as extensive golf and karaoke sessions. As we will see in [Chapter 11](#), negotiators may encounter some cultural differences here, with Asian business negotiators giving the relationship more emphasis while Northern Europeans might think that just a restaurant meal prior to the negotiations is sufficient. While it is important to build a relationship, what really matters is what happens at the negotiating table. Negotiation is an evolutionary process: each party will take time to learn and understand the other, talk about issues in general terms, confirm their common understanding of the big picture and what might be achieved, and set up open agendas. Take your time to do this. Once the negotiations start, no amount of golf or karaoke can cope with a solution-oriented or controlling approach.

In the opening stages, negotiators often emphasise the importance of achieving a win–win outcome. This macro language of cooperation will have no impact if it is not matched by cooperative micro behaviours, such as summarising, being open to suggestions and not interrupting. Showing yourself too willing to cooperate may also be interpreted by the other party as a sign of your weakness (De Dreu & Van Kleef [2004](#)). As the negotiations proceed, it is unwise to assume that just because the last meeting was cooperative and had a good constructive atmosphere with lots of progress made, the next one will be the same. Cooperation has to be built and consolidated throughout the negotiation.

Negotiation skills tips

Getting started in a negotiation

You can help overcome any tension at the start of a negotiation if you:

- take your time; be in control but don't seek to control
- clearly state your issues and concerns but in broad terms; stay away from detail
- make it clear that you want to hear what the other party has to say.

Another frequently used approach is to search for common ground and find things to agree on. This approach presumes that the parties will build trust, and so will be able to then resolve the more contentious issues between them. This is an approach that should be taken with some care, particularly if the other party seems to be really keen on it. Negotiators who realise they are in a weak negotiating position may well try to appeal to your sense of fairness – ‘Let's see whether we can find some common ground’ – that might result in you making more concessions than you ought. In the early stages of a negotiation, the search for something in common between the two parties relates to whether they actually do both see that reaching an agreement is better than walking away with no agreement.

Differentiation: the issue dimension

Negotiators first need to deal with their differences through contending, which simply means being firm about the things that need to be achieved through the negotiation. If it is important that the cash flow be maintained at a stable level during the life of the contract, then this point has to be made firmly and, if necessary, often until the other party accepts that any final agreement will provide for it. The details – not least the amount – would be left until later, but make sure that the importance of cash-flow stability is clear from the outset.

Negotiation skills tips

Standing firm

It is important to stand firm (contend) on what is important without being positional:

- Make sure your goal is a 'yes-able' proposition.
- Have one or two key reasons to justify the stance you are taking, and make sure these are explained well.
- Present your key concerns as factors that must be taken into account, not as solutions to the negotiation.
- Allow the other negotiator to stand firm too; don't try to undermine their statements.

The usual advice is to build up the agenda and ask for more than you expect to get. This approach has some virtues. Pitching high reduces the chance of a negotiator asking for less than the other party is willing to give. It also gives a negotiator room to move. By appearing reasonable and flexible oneself (even though giving up on only what was never expected anyway), you will draw the other party into concession-making. However, too high an opening position increases the risk of a deadlock and merely invites a similar extreme position from the other party (reciprocity), which makes it that much harder to bridge the gap in order to find a solution. Further, if negotiators are known to ask for more than they expect, then making concessions will also be expected, and so does not earn any cooperation dividend (these mini tactics only work on negotiators who have not read the same book of tactics). So a negotiator needs to set a plausible goal that can realistically be achieved, a 'yes-able' proposition,

not one that is inevitably going to have to be backed down from (see [Chapter 5](#)). Negotiators should be similarly cautious about trying to gain early advantage by giving emphasis to less important issues – for example, by saying that the stability of cash flow is important when really it is not. The aim of this approach is to ‘earn’ concessions by being seen to give up on something you have said is important to you. It is a tactic that presumes the other party hasn’t done any research.

Stating an opening position can lead to the negotiations becoming a positional contest, but it does not have to. The win–lose perspective causes negotiators to lock in to their respective positions and, even though they know they have room to move, they find it hard to do so unless the other negotiator does so first. The problem is that the other negotiator is not going to make the first move either, so the negotiation then involves pressure, threats and avoiding loss of face, and moves straight into clear-cut compromise, with little opportunity for creative, value-adding solutions to emerge. Fisher, Ury and Patton ([1991](#)) rightly condemn this type of negotiation: it is inefficient, produces poor outcomes and damages relationships. The cause of this problem lies not in clearly putting one’s position on the table, but in having a win–lose view of negotiation and being wary of sharing information. Negotiation as a journey is a far better image than negotiation as a contest.

Contending need not, and should not, degenerate into competitive positional bargaining. Positional bargaining seeks to deal with differences by eliminating the other party’s position. Contending should be viewed as protecting one’s interests rather than negating the interests of the other party. It establishes one’s own position and demonstrates firmness to the other party. This requires an acceptance by negotiators that there are times when what is needed is simply to go over ground that has already been

covered, restating the key points and concerns, and not expecting – at least for the time being – that there will be any movement on the issues.

Differentiation: the process dimension

Finding out the real differences

Contending will not degenerate into positional bargaining if the negotiators are aware of the process task (differentiation) and if, instead of contending and waiting to see who cracks first, they focus on finding out the real differences that lie behind the positions. The essence of this interest-based approach, which has been popularised through Fisher, Ury and Patton's (1991) Principled Negotiation Model, is that negotiators focus on the *why* rather than the *what* of the issue. An interest is the concern, motivation or objective that lies behind a particular demand or request. In the earlier example of negotiating a contract, an opening statement to the effect that 'Stability of cash flow is really important to me' reflects an underlying interest, whereas while 'My minimum monthly revenue requirement is \$50 000' may seem much like saying the same thing, it is more positional.

In a Family Court negotiation, for example, the demand for ownership of the family home may not actually be for somewhere to live but rather the need for recognition of all the effort and devotion put into making the home into what it is. In a major international acquisition negotiation, it was important to one of the key principals that he be known for achieving a billion-dollar deal – the first such deal in that industry in his country. His standing in the business community would be enhanced, thus giving him greater access to further capital-raising (as well as gratifying his ego). The other partner was not willing to put in the amount of cash needed to reach \$1 billion, but some creative accounting in the area of ongoing management fees boosted the package, which gave it its billion-dollar label.

Finding the underlying need

A charity was organising a high-profile fundraising concert and the head of the charity was pleased to have found a national company to sponsor the event and so offset some of the costs, meaning that more funds from the event would be available for the charity's work. The company's MD had nominated an amount that was readily and gratefully accepted by the charity's CEO, who also agreed to a request that some tickets for the event would be given to the company.

The charity's fund manager had to make this deal 'work', so had a meeting with the company's PR manager. As the costs for the event became clear, it became equally clear that, although generous, the sponsorship amount was being eroded by the company's quite firm request for 30 tickets that would enable the CEO and some other directors to attend and bring some of their clients. As the two managers discussed the issue of how many seats, the fund manager came to realise that the PR manager's real challenge was not that he had 30 people lined up to attend but rather to convince his board of directors that the sponsorship was worthwhile. Offering 15 front-row seats where any of the directors who did attend would get VIP treatment proved to be sufficient.

The pragmatics of interest-based bargaining

If negotiators were completely analytical and rational in their approach to handling information and decision-making, they would come to the negotiation table fully understanding their own interests and priorities, and would be willing to openly exchange information with the other party. Quickly, both parties would be in what researchers call a 'full information condition' and could work out the best solution for each of them. The more realistic situation is one in which the parties know what they would like their interests to be, only to find that they must revise their thoughts on what is really important as they learn more through the negotiation itself. In particular, as negotiators become aware that they will not get everything they want through negotiation, they will need to reconsider and perhaps reorder their priorities.

A good foundation will be laid if the parties present their key concerns at the outset. A mediator schooled in the interest-based approach would see their first task, after gaining the confidence of the disputing parties, as drawing out from the parties their interests and concerns. These might be written up on a flip chart as two lists side by side, so that each party can see what is really important to the other and what needs to be addressed if there is to be a good settlement.

Negotiators have to do this without the assistance of a mediator who has authority to control the process. Even when both parties openly recognise the need for an interest-based approach, the process of drawing out interests will be more pragmatic. Negotiators will continue to state and advance their positions because their belief in the interest-based approach is conditional, provided they get what they want on this issue. Negotiators who have prepared well and so believe they understand each other's

interests don't feel the need to go through the process of thoroughly examining them. In less well-prepared cases, the interests might be implicit; it would be unusual for them all to be spelt out at the first time of asking. The critical practical point is that drawing out interests takes time.

The pragmatics of uncovering interests in an inherently competitive situation is demonstrated in the following example. The issue concerned access to a national park in Western Australia for the purpose of mineral exploration. No matter how sophisticated the aerial mapping, at some point a team with a drilling rig had to go to the location and extract core samples to see exactly what was under the ground. The history of this particular national park, which also contains areas of significance for Indigenous Australians, was that the drilling activity seemed likely to damage the park and to disturb Indigenous sites.

A meeting was called of the four government departments with interests in the situation. The Department of Aboriginal Affairs wanted mining exploration to be kept out of the park. The Department of Environment and Conservation wanted to maintain the park in its natural state. The Department of Mines and Petroleum wanted, not surprisingly, mining companies to have access to the park. Finally, the Department of the Premier and Cabinet wanted to promote the long-term government priority of economic growth as well as find a solution rather than have it become a divisive issue in the community.

These opening stances of the four parties can be presented in terms of positions and interests (see [Table 6.1](#)). The Departments of Aboriginal Affairs and of Mines and Petroleum both present positions; the Department of Environment and Conservation and the Department of the Premier and Cabinet also present their underlying interests.

Table 6.1 Mineral explorations in a national park of Indigenous

significance – opening stances

Department	Opening stance	Interest	Position
Aboriginal Affairs	No access		Positional
Environment and Conservation	Preserve integrity of the land	An interest	
Mines and Petroleum	Access		Positional
Premier and Cabinet	Economic development	An interest	

The first – cautionary – point about interests is that you can't negotiate around interests forever; at some point, they firm into proposals, then those proposals can begin to look positional. While there are, for example, many ways to preserve the integrity of the land in a national park, when asked what this meant in practice, the Department of Environment and Conservation said that the best way to preserve the integrity of the land would be to limit access to conservation staff. This would mean no access to drilling teams. 'No access to drilling teams' is a position. Similarly, the state's economic development was dependent on the mining industry, so the Department of the Premier and Cabinet's interests were that it had to give the miners access. In negotiation terms, this is positional.

The point that the negotiations have now reached is shown in [Table 6.2](#). The issue has now become framed as a win–lose situation in which the solution for two parties is to deny access to the drilling rigs, but the

solution for the other two parties is to permit access. As part of the dynamics of uncovering interests, the parties seem to have done the opposite by becoming more positional. When this occurs, good negotiators draw on their understanding of phases and tasks within the negotiation process. They understand that negotiation is a journey, not a contest. Rather than challenge the increasingly positional stance of the other party, or even try to find ways around it, a good negotiator will endeavour to prolong the differentiation phase. They would try to maintain an even-handed dialogue and encourage the exchange of more information. As a result, new insights might emerge into the underlying interests of the parties.

Table 6.2 Mineral explorations in a national park of Indigenous significance – emerging positions

Department	Emerging stance	Interest	Position
Aboriginal Affairs	No access		Still positional
Environment and Conservation	Preserve integrity of the land by restricting access	→	Became positional
Mines and Petroleum	Access		Still positional
Premier and Cabinet	Economic development by allowing mining – that is,	→	Became positional

While discussions continued in the mineral exploration negotiation, it became clear that when the representatives of the Indigenous peoples were asked what was happening to their sites and routes across the park, they mentioned only one company when they gave examples of sites being damaged. Reframing ‘no access to anyone’ into ‘no access for this one particular company because of what they are doing to the land’ revealed an underlying interest in getting everyone to respect the land.

Similarly, a sense of frustration about delay was apparent in the mining representative’s comments. Although the industry believed the park to be rich in resources, it was not the only area proposed for development. If an application for an exploration permit for a particular area in the park was going to be rejected, could it be rejected quickly so the company would know and move onto another project? When presented in this way, the issue for the mining department is reframed in terms of speed of decision-making, not access *per se*.

[Table 6.3](#) shows these different perspectives on the issue. It can be argued that it would have been far better for the parties to have voiced these specific interests in the first place, but we don’t negotiate in an ideal world. The essence of good negotiation is to manage the process so that it evolves well, not to assume that everyone has been on the right training course. ([Chapter 9](#) will demonstrate that the presence of constituencies – as in each of the parties here – leads to more positional stances being adopted at the negotiating table.)

Table 6.3 Mineral explorations in a national park of Indigenous significance – emerging interests

Department	Emerging	Interest	Position
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interests			
Aboriginal Affairs	Everyone to respect the land (no access)	Interests emerge	←
Environment and Conservation	Preserve integrity of the land (by restricting access)	Refocus on the interests	←
Mines and Petroleum	Make access decisions quickly (access)	Interests emerge	←
Premier and Cabinet	Economic development by allowing mining but controlled access	Refocus on the interests	←

The issue facing the parties can now be reframed. Instead of whether to allow mineral exploration in the park, which was a contentious zero-sum issue, the problem (note the change of word) now facing the parties is how to set up a decision-making process on access that was (a) relatively quick, and (b) governed the conduct of companies operating in the park. This is the sort of task at which government officials excel so, before very long, a set of core principles was drafted that enabled each to go back and demonstrate to their respective constituents that their key needs and requirements had been addressed.

This example demonstrates two important points about good negotiating. First, it is important to draw out underlying interests so that a good solution can be found. Second, the underlying interests are underlying in more ways than one, so may not surface easily. The good negotiator must manage the process in such a way that will draw them out.

Differentiation: the action dimension

Managing information exchange

While negotiators are stating, restating and explaining their positions, they also need to be differentiating, getting behind the positions to find the real differences in interests, priorities and motivations. The key activity is information exchange. But even though this is a strand of a negotiation's DNA, negotiators are often reluctant to offer or reveal information, and it takes time for important information and insights to come to the surface. The negotiators in the tanker refit negotiation took a day and a half to unpack the issues; the negotiators in the marketing merger negotiations were initially defensive in the way they presented their positions, but after several exchanges began to be more open. Negotiators need to ensure that sufficient time is spent on the task of differentiation, which may involve an element of managing the other negotiator. If the other party seems keen to push forward into looking for solutions, it may be helpful to suggest, for example, 'Before we get focused on considering your new proposal perhaps we might check our understanding of the issues, just to be sure. Would you explain again about ... ?' (see [Table 6.4](#)).

Table 6.4 Information exchange: some helpful and unhelpful behaviours

Helpful	Unhelpful
Clear statements of what and why	An unclear mixture of shorthand and detail
Focused statements	Long, rambling statements
Repetition	Not revisiting a topic
Drip-feeding	Not reciprocating
Checking understanding	Interrupting

Summarising

Criticising

Restating

Being in a hurry

Reflecting

Presenting information: how to contend well

Most negotiators come to a negotiation ready to explain what they want to achieve and, understandably, providing information is one of the most common ways of finding out what the differences between the parties are (Fells et al. [2015](#)). However, negotiators also tend to think that other people understand what they have just said more than they actually do ('the illusion of transparency'). Furthermore, if there is any ambiguity in what is being said, then the other party may well put the most favourable spin on it (Loewenstein & Moore [2004](#)), leading to false expectations and misunderstandings. So negotiators must take care to be clear when they explain what they want and why they want it. Unfortunately, they can unintentionally be less than clear by sounding too terse or too rambling. A negotiator might be too terse and not say enough because of the tenseness of the situation, which tends to close down the other negotiator's behaviour. Paradoxically, having fully prepared, the negotiator may be so familiar with the issues (in itself a good thing) that they then assume the other negotiator can see the situation equally clearly. As a result, the first negotiator makes points in a kind of shorthand, expecting the other party to readily see the implications of the points being made in a way that is obvious to the speaker.

Talking for too long leads to the other party becoming frustrated. They want to make their points too, so they either switch off until they (eventually) get their turn or interrupt in order to have their say. Either way, they typically talk for as long as the first speaker (one of the effects of reciprocity), which leads to a similar reaction. The pattern of dialogue between the negotiators begins to deteriorate, and this can lead to a

‘dialogue of the deaf’ – two parties talking to each other but neither listening.

Another difficulty with a long presentation is that too much detail means the main points get lost. People tend to remember what was said early on or what was said at the end (the primacy and recency effects), but not what was said in between. So a good presentation has the main point first, followed by some supporting points, or it leads up to the main point.

Once they have made their main point, good negotiators stop, even though there was perhaps something they missed in their presentation. To go back and cover that lesser point means the main point is now not the last one, so its full impact is lost.

Gleaning information

The task of differentiation is not only about getting the other party to understand your own concerns and issues, but also understanding where the other party is coming from. Good negotiators will have fully prepared from the other party's perspective, and should have a good estimate of what their issues and priorities might be. This will be the case when they have negotiated before or have access to common industry and market information. But beware: good preparation can lead to over-confidence. What has been inferred about the other party needs to be confirmed at the negotiating table. Do not be rushed.

Getting the other party to be explicit is helped by being explicit oneself (reciprocity), by showing respect, by good listening and by checking understanding. It is also helped by what is *not* done – not interrupting, not challenging the detail, in fact not criticising anything that is said at this stage in the negotiation.

Negotiation skills tips

Ask questions

Negotiation involves gaining and giving information, but it must not seem like an inquisition:

- Prepare questions and follow-up questions prior to the negotiation session.
- Ensure that questions are open-ended: 'Can you tell me why the scheduling is important to you?'

- Don't expect a full answer to each question, but instead encourage answers by giving full attention to the speaker, by reflecting back on what they have said and by answering their questions well.

A negotiator can check understanding by summarising the main points – ‘So the key issues for you are ...’ – by restating – ‘If I understand you correctly, you want to prevent access to the park because of the damage that is caused by exploration crews’ – or by reflecting, which is adding to what has been said – ‘If access to the park is stopped then that would stop the damage to the flora and to the sites but the ban would also keep out those companies that we know rehabilitate wherever their crews have been.’

Negotiation in practice

Finding the deal breaker

One company was negotiating to acquire another. The negotiations, which took over a year, were in two phases. In the first, the senior officers of the acquiring company talked with the owner/CEO of the target company, each testing out the presumptions they had about the other's business and how the deal might work. Once they moved into due diligence, the process was more competitive as they discussed and negotiated specific issues through draft after draft of the purchase agreement. On reflection, the negotiators for the acquiring company realised that they had presumed the owner would want the standard two to three years post-acquisition employment contract, but in fact a longer-term

contract was important to him. This did not emerge until late in the negotiations, when he threatened to walk away from the deal on this point. Only then could they finalise the deal. To accommodate him, the acquisition of the company was staggered rather than outright.

Good negotiators summarise frequently (Rackman & Carlisle [1978](#)). They summarise their positions, what has been agreed or what has still to be agreed. Summarising can be used to slow down the process if the other negotiator is trying to rush the negotiators, and it is a useful way to bring the discussion back to the main issues. A negotiator who feels under pressure can summarise, and so create time and thinking space to work out what to do next.

Dealing with differences is also helped by what is not happening. There should be no attempt to find solutions to the differences as they emerge. If a negotiator is too solution oriented, a critical adverse dynamic can emerge. Two managers are negotiating over how to reorganise production to meet a pressing deadline. As one begins to explain some of his staffing constraints, the other interjects: 'You can deal with that particular problem easily. All you have to do is start that work group's shift an hour earlier than the other group.' An instinctive reaction is to think, 'How can he solve the problem when I have not finished explaining it?' So the suggestion gets rejected. What might have been a good solution has now been turned down, making it more difficult to return to later. While trying to find out the extent of differences, negotiators should keep any potential solutions on hold.

In fact, during a differentiation phase there should be no real attempt to dislodge the other party from its stated position. The reason is the

underlying strength of reciprocal behaviour. If one negotiator undermines another when they are trying to explain what is important to them, then the first negotiator must expect that they will undermine the second negotiator's position while they are trying to explain what is important to them. In these situations, both negotiators close up and explain their positions tightly rather than fully, and quickly set up a positional win-lose situation with an overlay of interpersonal antagonism.

Handling interruptions

The flow of information can dry up if there are too many interruptions. Interrupting the other party, along with going into too much detail too early, can quickly turn an open discussion into a defensive one. Because of this, some negotiators use interruptions as a competitive tactic to unsettle another negotiator and control the discussion, so it is important to manage this aspect of the discussion (other competitive tactics are described later).

Prevention is better than cure, so keep what you have to say short as this will deter interruptions, and don't go into too much detail – particularly early in the discussion. Some interruptions are inevitable, but if they begin to impact upon the discussion there are a number of ways in which they can be handled.

Sometimes a person starts to interrupt, but then backs off when they see that the speaker is going to continue. So continuing to speak over the interruption might be regarded as the first level of response to an interruption. The next response is to acknowledge that the other person wants to make a point, but then carry on. Other ways of responding are shown in [Table 6.5](#). It will be seen that each response increases in severity. Try to use the range of responses rather than stoically bear the interrupting until it all gets too much and you point the finger: 'If you keep interrupting me like that ...!' Probably, in your frustration, you have interrupted the other person to tell them not to interrupt.

Table 6.5 Ways to deal with interruptions

Don't respond to the interruption – continue to make your point

Acknowledge, but then continue with 'That's something we could deal with later but my main point is ... '

Follow the interruption by going back to your main point (instead of responding to the interruption) with: ‘The point I have been making all along, and want to repeat now is ... ’

Refer to the ground rules of debate with: ‘It is only fair that each person has the opportunity to put their point of view across’, or ‘If there are too many interruptions, then we are not going to have much of a discussion on issues that we need to sort out.’

Maintain direct eye contact prior to continuing with your point.

Refer directly to the other negotiator’s behaviour with: ‘If you keep interrupting me, then you can’t expect me to sit quietly while you are talking, can you?’

An example of pragmatic information exchange

A small UK-based hi-tech company was working on a new management information system. Although it was only at the development stage, the company demonstrated its product at a computing technology fair in the United States. After he returned home, a director of the company took a phone call from the vice president (VP) of management services of a major US-based global company, who said that he liked what he saw at the fair and wanted to purchase the system for his company. This was a great sales prospect for the hi-tech company, as it would establish its reputation with its first sale. But there was a problem. The phone call was made in April. The VP insisted that he had to have the product by June, but the director knew that the new system was not likely to be ready until November. All the negotiating was done by phone. They made proposals back and forth. As might be expected, they agreed to a compromise timeframe of August, a clear-cut compromise that split the difference between their respective positions.

There were other issues to resolve, so the phone calls continued. As they shared information and got to understand each other more fully, it became clear that what the VP had meant when he had said ‘We want it by June’ was ‘I have a budget for projects such as this and need to pay for it by June’. The ‘it’ referred to payment, not to the product. The negotiators had been too solution-oriented to fully understand where each party was coming from. A better solution for both might have been for the payment to be placed into a trust account in June pending delivery in November.

They continued to contend on other issues, but this did not mean that the negotiations were becoming competitive. They combined their continued firmness on the issues with spending more time on finding out

the why behind the positions rather than just offering ways that the gap between the positions might be bridged. Understanding the why behind their seemingly incompatible positions on product licensing (single versus multisite) enabled them to create a licensing agreement that accommodated the VP's underlying need for financial predictability as well as the hi-tech company's need to set a precedent for future sales.

This example shows yet again that underlying interests might indeed be very underlying, and it is only when negotiators uncover the meaning of words (and remember, negotiation is often in shorthand) that key underlying facts and perspectives emerge. Therefore, it is important to take the time to go over and around each issue even though this may not seem very efficient to the solution-oriented. Once a new perspective or insight has emerged, it is worth standing back, even if the parties are exploring options, and take time to again differentiate and fully understand the emerging differences rather than quickly press on with a search for solutions.

Differentiation: the outcome

When does the phase of dealing with differences come to an end? It ought to end only when each negotiator is confident that they understand where the other party is really coming from on the issue. One likely consequence of having a better understanding of the other party is a more realistic expectation of what might be achieved. It might confirm that the goals *can* be realised through negotiation, or that expectations and priorities must be revised, or even that the walk-away alternative looks like a better option. The key outcome is that both parties understand what the real interests and differences are and why they need to be resolved.

Negotiation skills tips

Things to avoid

- Talking in big-picture generalities, saying nothing definite
- Saying what you want but not why you want it
- Repeatedly emphasising the common interest (this is an irritation)
- Interrupting the other party
- Being judgemental about what the other party says
- Telling the other party what the outcome is going to be
- Making threats, particularly ones you can't implement
- Imposing a false deadline

The difficulty is that, often, negotiators don't reveal what they really want until new proposals are put on the table, which then gives them the opportunity to say what they don't want. A good negotiator can learn a lot from the other party's rejections of their proposal. Rather than trying to defend the proposal, they will try to find out more about the other party's underlying motives. In terms of the negotiation process, this means drawing back from presenting new options and moving the negotiation into another period of differentiation, trying again to explore and understand the differences. Once this is done, the negotiators can again move on to the task of looking for solutions. There may be several periods during a negotiation in which the focus is on the task of differentiating, but it is better to do this as fully as possible in the early stages of the negotiation to ensure a more satisfactory outcome.

Managing competitiveness

As each party seeks to establish its key concerns and, at the very least, is wary of showing any weakness towards the other party, the differentiation phase of a negotiation can become competitive. Negotiators can make the process more competitive by not managing the process well. Sometimes they don't even realise the effect their actions are having. Perhaps the meeting has not gone in the way they planned, or the other party has put some unexpected issues on the table. Reacting to this increased uncertainty, the negotiator forgets that (using the Nullarbor imagery), the negotiations are merely making their difficult journey through the Blue Mountains. Instead, negotiators slip into their default script, which is to close down and be more defensive. Some of the things negotiators do when they get defensive are negotiation non-skills – things to avoid doing. They convey an impression of competitiveness, to which the other party reacts accordingly.

Deliberately competitive tactics and how to manage them

Some negotiators believe that it is a good idea to gain an advantage from the outset by deliberately engaging in some competitive tactics. It seems a good idea to use negotiation tactics that give you a competitive advantage except for the fact of reciprocity, which means the other negotiator will then try the tactics back on you.

Note, though, that being competitive in the sense of wanting to do well is a positive rather than a negative. The negative side surfaces when the negotiator stops being strategic and allows the desire to do well to drift into a desire to do better than the other party out of this negotiation. This is a polite way to say you must beat them so that they don't beat you. It reflects the imagery of negotiation as a sporting contest.

There are many hardball tactics, some of which are explained below with some suggestions on how to handle them – the inference being that good negotiators will not resort to these tactics. The general principle for dealing with competitive tactics is to be firm on the issue and, if the tactics persist, to talk about the process. Repeating one's main points or summarising are good first reactions to a competitive tactic by the other party. Always check your BATNA.

Some negotiators feel that by taking a tough stance from the outset, they will achieve a good outcome; they make an extreme claim and try to give the impression that any concessions will be small and a long time coming. The essence of this strategy is to wear down the other negotiator and rely on the fact that the clear-cut concession strategy is the most common way of settling differences. By always making smaller concessions, the outcome will be in their favour. The signal of this strategy is an extreme opening offer.

It is a single-sided strategy that takes no account of the other party other than to presume that time pressure, a poor walk-away alternative (BATNA) and a generally high motivation to settle will all lead the other negotiator to make the necessary compromises.

First, check the other party's context. If they have a good BATNA and are not under any time pressure, then they can be expected to follow a strong contending strategy. Second, check whether you need to negotiate at all. Assuming you do, then the best response to an extreme offer is a two-pronged approach. On the issue, make a matching high but not extreme offer and be resolute about it. On the process, outline a scenario of trying to package together some creative options.

Realistically, this is not going to make a lot of difference at the start, but it will lay a foundation for later in the negotiation. The other party is only going to change strategy when their context changes. Trying to convince them that they have a poor BATNA will only cause them to become more rigid. They need to realise that you are not going to make concessions. In strategy terms, their expectation of your strategy has to change. Be prepared to walk away.

Competitive negotiators also engage in some gamesmanship. This includes being late or unexpectedly bringing a large negotiating team. Always remember your BATNA and theirs. Politeness and straightforwardness are disarming, as is recounting an anecdote of a related situation in another negotiation in which the gamesmanship tactic did not work (a high-context way of calling the trick). Also remember that, to an extent, business practices are different in different contexts. Meetings never start on time in Jakarta. This is partly because of the traffic, but also because in Indonesia there is no sense of punctuality, so to arrive late is not deliberate gamesmanship.

Negotiation skills tips

Some competitive tactics to watch out for and some things to do when you encounter them

- *The tough stance negotiator:*
 - Apply the tit-for-tat strategy.
- *Gamesmanship and other tactics to unsettle:*
 - Check your BATNA; restate your main points.
- *The good cop–bad cop routine:*
 - Let it run, then call it.
- *Bluffing and deception:*
 - Stand firm on the issue; ask questions.
- *The cooperative inviting negotiator and ingratiation:*
 - Focus on the issue, not the relationship.

Some negotiators set out to deliberately unsettle their opponent. They tend to see the other negotiator as an opponent, not someone to work with to find a good solution. One way to put another negotiator off guard is to get them to focus on detail, which causes them to challenge points and ask for still more detail. The intent is that, once flustered, the negotiator will say things they did not intend to or make a concession. However, don't immediately assume the other negotiator is being deliberately competitive; some people just naturally think in terms of detail. In this case, they need to be encouraged to consider the big picture, the underlying concerns and motivations, not the detail of the history or of the technical arrangements.

The detail becomes important later. Other ploys directed towards putting off the other negotiator include bringing a far larger team (especially when it includes some lawyers) than you had indicated, always changing the topic, deliberately getting angry or making personal attacks. The response to any of these unsettling tactics is to first check your BATNA, and then theirs, then restate your main points.

Negotiation in practice

Hardball tactics don't always work

Negotiating teams from two companies in different European cities had been meeting to finalise a merger between the two companies. After lengthy negotiations, the essential elements were in place, leaving only a few points to be finalised. It was recognised on both sides that none of these were deal breakers so they all agreed to meet just once more to complete the negotiations – and to celebrate their achievement. They agreed to meet in another city that was convenient to both parties, and rooms were booked in a hotel for them to stay, to have meetings through the day and to have dinner together in the evening.

When they arrived and came into the meeting, one team had a new member, who had been advising the team but had not previously participated. As they milled around over a welcoming coffee, this adviser spoke to the other company's lead negotiator, suggesting that unless one of the previously understood terms was reopened and conceded on, there would be no further negotiation. The lead negotiator – no stranger to competitive negotiations – was taken aback but held himself together enough to realise he had to resist this end-game demand. He said that the point had been

agreed and couldn't be reopened. The adviser then rounded up his team and left. The lead negotiator and his team left too, there being nothing to do – except wait around in their rooms all day, and into the evening.

At 1.00 am, the lead negotiator got a phone call suggesting the parties meet. The hotel accommodated their request for a meeting room and the two teams got together and with very little input from the adviser (although not admitting it, his bluff had been called and he knew it), the two teams finalised the negotiation. They met later in the day – the adviser having left – and then celebrated.

Negotiation is two-sided and most hardball ploys only work with negotiators who haven't read the same book.

A popular tactic is the good cop–bad cop routine. There is some evidence that this works (Brodt & Tuchinsky [2000](#)), but it only works because it is allowed to. As in all these competitive ploys, the defence lies in good preparation and having a clear statement of one's main points and concerns. Don't retaliate by bringing in your own heavy hitter. Contend on the issue. When you've had enough of their role-play, either call the play or, if you are feeling particularly confident, wind up the bad cop – he'll lose the plot eventually and have to be rescued by his own team. It is best, though, to just let them do whatever they want and each time they finish restate your main points and concerns.

It is more serious when a negotiator sets out to mislead. We saw in [Chapter 2](#) that ethical behaviour is part of negotiation's DNA and that, although acts of deceit undermine the process and the relationship, negotiators do use deception as an information tactic. Some cases are

extreme – as in a case in which a mining company, when it did not receive a contracted payment from its overseas joint-venture partner, later found out that the CEO had pocketed the money for himself. Even though he was caught and jailed, the joint venture collapsed as a result of his actions. Negotiators will seek to deceive about the alternatives they have, exaggerate the adverse implications of the other party's proposals and fudge the financials.

Do not reciprocate. Ever. The way to handle this type of behaviour is to be firm about the issue and keep asking questions regarding the area you suspect is not accurate. Don't expect an open confession. The aim is to make sure the other party knows that you know they have lied. Allow the correct information to be provided at a later point and, when it comes, a moment of direct eye contact will probably be sufficient rather than, 'Oh? That's not what you said last time.' Remember to double-check everything. One of the advantages of taking notes is that the other party knows you have a record of what they said and that you can always go back and check. Remember that not being explicit about one's bottom line is not regarded as being deceitful. Also remember that if you give only partial information, while you might not call this lying, the other side might not see it as being truthful.

In contrast to the tough-stance negotiator, some will be friendly, considerate and open, and seek to create a very relaxed environment out of which they then invite you to make an opening offer. This looks cooperative – 'Tell me what you think it's worth' – but the intent is to have you put your price on the table so that they can spend time explaining why it won't be acceptable, so when they state their offer it looks more acceptable. Through your prior preparation, you should have an opening position ready. When invited to make an opening offer, if you are not ready to do so, ask a question for clarification or reopen discussion on one

of the issues, or perhaps summarise the differences between the parties. Don't respond by asking the other party to make their offer.

Some negotiators take this further through ingratiation. Through trying to impress you, they hope to make you feel obligated towards them and, as a result, in due course make concessions for the sake of the relationship. Take what comes and be properly respectful in return, but remember that you are not obligated to make concessions just because people say nice things about you. It is hard to know when trying to be friendly and building a working relationship becomes deliberate ingratiation, so be careful about making judgements. If the other party organises a company car to meet you at your hotel to take you to the negotiation, they may be trying to make you feel obligated or they may just be showing you respect. Remember to do the same for them when they visit you.

Becoming an effective negotiator

Unless the parties sort out their real differences, they cannot properly address them, and any solution they reach will not be as good as it might otherwise have been. Good negotiators spend time on the differentiation task early in the negotiation, revisiting it if necessary. [Table 6.6](#) lists some issue- and process-related actions that help a negotiator to effectively manage the task of dealing with differences. It is important that the negotiators take their time and do not rush through this process. Accept that underlying interests might only emerge as the parties sort out their priorities. Another aspect of taking time is to put any suggested solutions on hold to be dealt with later; try also to discern what motivated the suggestion. Deflect any threats or closing statements by talking about the need to first explore the parties' interests further. As it becomes clear that each party has an understanding of the other party's perspective, this will be an indication that the negotiations are ready to move into the exploration phase.

Table 6.6 Managing the task of differentiation: issue and process dimensions

Issue	Process
Clearly state your perspective and expectations – that is, the issues and concerns that have to be addressed if there is to be an agreement.	Invite the other party to state and restate their positions and interests; allow them to do so without interruption.
Present your position in a broader context so that it does not look as	Invite the other party to provide background information;

if you are presenting a take-it-or-leave-it proposition.

reciprocate when they do.

Do your best to outline – albeit a bit at a time – the key drivers behind your position.

Encourage reciprocity through information drip-feed.

Ask ‘Why?’ from time to time, but don’t assume you are going to get the full answer the first time you do.

Give attention to building a good working relationship with the other negotiator.

Encourage reciprocity by giving full answers.

Summarise regularly.

Discussion questions

- 1** What are the reasons for competitiveness early in a negotiation?
How might it be managed?
- 2** List five good ways to convey a point to negotiators across the table.
- 3** List some reasons why the other negotiator isn't answering your question (finding two or three reasons is an acceptable answer; five to seven reasons is a good answer; finding 10 reasons is a great answer).
- 4** One person's fact can be another person's opinion. How well have you handled an argument over facts in a situation?
- 5** Has anyone tried competitive tactics on you? If so, how did you handle this?
- 6** Have you tried competitive tactics on someone else? If so, with what result?
- 7** When is a bluff in a negotiation a lie?

7

Light-bulb moments: exploring options



This chapter continues our examination of the phases and tasks of the negotiation process. After reading the chapter, you should be able to:

- recognise the importance of not looking for options before the issues are understood
- understand how to create an environment in which new solutions can be developed
- be aware of the skills that help solution-seeking.

When negotiators feel they have a good understanding of each other and of the issues, it is time to move on to finding ways to meet the aspirations of the two parties. Good negotiators will not rush into this solution-oriented phase. You will recall that in the Tanker case ([Chapter 4](#)), the negotiators spent a day and a half going through the issues, even though they had prepared well. Only then did they realise that both parties

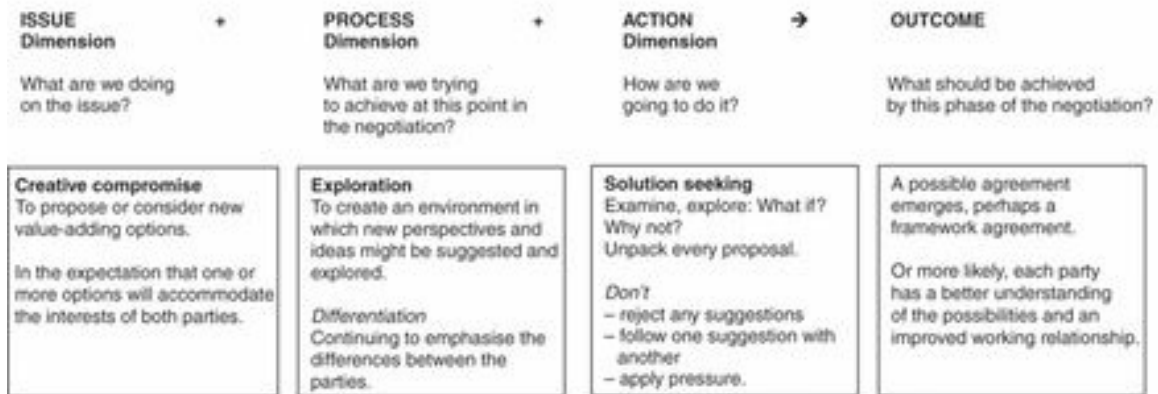
needed to take a new approach to their differences. In terms of the Nullarbor Model imagery of negotiation, they realised that they had crossed New South Wales. Taking time to fully understand the issues is important because if this is not done well, the negotiators will have to go back and spend more time later dealing with their differences.



The negotiators have the choice of finding solutions through being creative or through the more competitive value-claiming end-game. This chapter deals with how options – ways in which the differences might be resolved – can be created during a negotiation. This is another ‘how-to’ chapter. The message is that creativity does not come easily, and that neat, satisfying solutions rarely fall into place. The task is to keep working away until something useful happens, just as Thomas Edison did when he was inventing the electric light bulb – 99 per cent perspiration, 1 per cent inspiration. The key elements in exploring for options are shown in [Figure 7.1](#).

AIM:

While still having a firm commitment to one's underlying interests and needs, to propose and openly consider new options.

**REMEMBER:**

The creativity might be just one comment by another negotiator; it might be just a passing comment, not even a proposal.

Figure 7.1 Exploring options in a negotiation

In the Nullarbor Model, the exploration phase is represented by crossing the Nullarbor Plain, a large part of which is a 470 kilometre-long stretch of dead-straight track – the longest stretch of straight track in the world. This straightness conveys the impression that finding options is relatively straightforward, logical and inevitable. In one sense it will be, if the right foundation has been laid and the parties are genuinely open in their discussion. If a negotiation breaks down and goes to mediation, the mediator will work very hard to structure the discussion so that it will be a relatively straightforward process, and that is why it works. (See [Chapter 10](#) for more on mediation.) However, the journey across the Nullarbor is a long one, implying that the process of generating options is not automatic, and it cannot be rushed. Therefore, a key element in managing the exploration task well is to create an open environment around the negotiating table that makes it easier for the negotiators to leave their stated positions on one side and feel free to generate and consider new options. This may come about as a result of systematically working through what might be possible, or it might occur because someone has a ‘light-bulb’ moment – a sudden insight that seems to come from nowhere

but opens up new perspectives on the issue. Watkins ([1999](#)) suggests that being in a negotiation can be like being in a fog: suddenly, when the fog clears, you can see your way ahead.

The foundation for finding new options that might resolve the differences has already been laid – well or poorly – through effective preparation and time spent in the negotiation itself to differentiate, while avoiding a tendency to slip into competitive positional bargaining.

An important part of preparation is thinking what a good agreement might look like. This involves thinking through possible solutions. The more ideas a negotiator has about how the issues might be resolved, the better. There is a danger that a negotiator might be so attracted to a particular solution that once the negotiation starts, it gets presented as *the* solution and becomes a position to be defended rather than a possible solution to be explored. That is why it is important for negotiators to understand the phases (negotiation as a journey), and so appreciate the importance of timing.

Train travellers to Perth reach the Nullarbor Plain only after having already travelled more than halfway across the country. This reflects the important point that new options are more effective if they are – to again switch metaphors – built on a solid foundation. Even though a negotiator may have thought of a good solution while preparing for a negotiation, it is better to hold it back until all the issues have been laid out on the table and, importantly, until both parties realise their need to work together to find a solution. Part of the imagery of the Nullarbor Model is that the negotiators, like the train travellers, really don't have any option other than to sit and talk to each other. Negotiation is where two parties who have differences need to settle. It is only when they realise that they need to settle their differences, rather than expect the other party to concede, that

they are open to new solutions (see [Chapter 4](#)). Entering the exploration phase too soon will be counter-productive.

Another practical aspect of preparation emerges from the findings of Rackman and Carlisle ([1978](#)), who observed that the more skilled negotiators tended to generate more possible solutions while preparing for their negotiations. They also found that the better negotiators tended to prepare in what might be regarded as something of a disorganised way: they did not prepare one topic at a time, but tended to prepare for them all at once. We will see later that negotiating one issue at a time is not very conducive to creating value because each issue tends to get locked away (and often as a zero-sum game), so there is little opportunity to create value by linking one issue to another. How negotiators prepare will influence how they negotiate. If they prepare by looking at all the issues together, then when they come to the more exploratory phases of the negotiation, they will tend to negotiate across all of them rather than trying to deal with them one by one.

Exploration: the issue dimension

A creative compromise is one that adds value and provides real benefit to both parties. The tendency of negotiators is to call almost any agreement a win-win because it is better than no agreement at all (see [Chapter 3](#)); however, in looking for a creative compromise, negotiators are seeking a solution that genuinely meets their needs. To do this, they usually have to find some additional value somewhere.

Both Lax and Sebenius ([1986](#)) and Mnookin, Peppet and Tulumello ([2000](#)) emphasise that value can be created out of differences between the parties. Negotiators can put together mutually beneficial deals that create value from their differing resources, relative valuations of assets, differing forecasts, and different risk or time preferences. This is why the task of differentiation is so important. Many start-up companies need an injection of capital to get their innovative product to market, and to get it they turn to venture capitalists. To the start-up company, an injection of \$5 million is – almost literally – like gold dust. They would forego the prospect of future profits in return for getting the cash they need now. On the other hand, the venture capitalist is prepared to write off the \$5 million but demands a high rate of return if this happens to be the one company out of the 20 or so in which they are investing that becomes a roaring success. So the differences in resources (a bright idea and some capital), needs, risk and time preference all provide the basis for a solution that benefits both parties.

Good preparation should reveal these differences before the negotiations start. Indeed, the whole negotiation might be an adding-value proposition. In the Airline case (see [Chapter 4](#)), the CEOs of a European and an Asian airline drew up a memorandum of understanding (MOU)

committing their companies to further negotiation on a proposed joint venture in the growing China market. They could clearly see the value that could be added to their respective companies if the joint venture went ahead. In this sense, as in many negotiations, the creative compromise was already on the table; the task of their negotiating teams was to turn the prospect of an added-value solution into an actual one – which in this case they were not able to do. The same process has been observed in international negotiation in which a senior politician might make a proposal in a public speech to break an impasse, and then leaves the negotiators to sort out the details (Druckman, Husbands & Johnston [1991](#)).

A full account of the Airline case is available at www.cambridge.edu.au/academic/effective

If the parties have come to understand each other's differences, it then seems rather counter-productive to keep restating these differences when trying to find new solutions. However, it serves the further purpose of challenging the negotiators to find the best solution. It will be recalled that in the Strategy Worksheet (see [Chapter 5](#)), one of the factors indicating that a creative negotiation would be appropriate is 'Importance of issue to self: high', coupled with high concern for the other's outcome. It is the motivation to meet one's own and the other's needs that drives the exploration for creativity. This drive for a good outcome should also cause the negotiators to closely examine any proposal, no matter how impractical it may appear to be at the outset. In one industrial dispute, the company had shut the factory because the employees, as part of an industrial campaign, had refused to work any overtime. Management was adamant that the factory could not operate without people working overtime, so

when someone suggested, ‘Why not just let them work normal shifts and see what happens?’, everyone looked askance at the person who made the suggestion. He clearly did not understand how the factory had worked for years. But then they began to turn over his idea and think some more about it. After a while, they came to the realisation that the factory *could* operate on normal time – not very well, but it could do it. This realisation changed both parties’ perspectives on the dispute and enabled them to move towards finding a settlement.

When unpacking a proposal, it is important to explore how it might add value. We weigh up proposals against a point of reference. Typically, negotiators evaluate a proposal against their initial demands to ascertain whether it will meet those demands. Almost inevitably, the answer will be ‘not completely’, which means the proposal does not look very good and to accept it will mean giving something up. This is known as a ‘loss frame’, and it is why proposals should not be put on the table while the other party still believes they are going to get what they asked for (they are still travelling across New South Wales). It is far better to explore where the value lies in the proposal, and how it will accrue, when and to whom. This means looking for the benefits rather than the losses, though it is equally important to explore the downsides or potential problems associated with a proposal. In the marketing merger negotiations, for example, one party’s approach was marketing through major exhibitions that they wanted to extend to the parts of the world where the other party was selling its product. To take that proposal and apply it to a specific country – say, in Eastern Europe – could easily be rejected on the genuine grounds of poor logistics and exhibitions being counter to the business culture of informal networking and relationships. They might, though, find value in creating an event that had the purpose of building brand value rather than leading directly to sales. Identifying some of the risks

associated with this approach could, if taken critically, lead to the proposal being killed or, if considered openly, to ways of incorporating the company's local partners, thus strengthening the networking. If the negotiators are committed to finding value, they will develop better solutions than if they feel all they are doing is minimising their losses.

Negotiation skills tips

Creating value in a proposal

Here are some useful questions to ask about a proposal.

- In what way does this proposal add value?
- How much value does it add?
- For whom does it add value?
- When will the value accrue?
- What conditions are necessary for it to accrue?
- What are the risks?
- What can we do to improve this proposal?

It is important to ask what might be done to improve any proposal, but this does not happen often enough in a negotiation. If a new proposal appears to go a long way towards meeting the parties' needs, they will be inclined to accept it. Its attractiveness has the effect of encouraging the parties to accept it even though it does not meet all their stated goals. This is an understandable reaction; the prospect of agreement makes it seem unreasonable to keep insisting on achieving one's goals. Still, it is often this very insistence that produces the really good solution. Hence the usefulness of the question, 'What can we do to improve this proposal?' It should be asked early, before people around the table get drawn into an agreement mentality. If they are all getting ready to wrap up the negotiation by agreeing to a solution that seems to give them most of what they need, they are not going to take too kindly to someone then appearing to prolong the negotiation and risk the consensus by saying, 'I know we

are all happy with this proposal as an agreement, but is there anything we can do to improve it?’

Exploration: the process dimension

Creating an open environment

There are many creative ways to generate new ideas, including brainstorming or even using the Nominal and Delphi techniques, all of which are processes for generating options for further consideration. A degree of pragmatism is required because it is not often that two opposing teams of negotiators trust each other enough to openly make suggestions that might disadvantage their own party.

The essence of brainstorming is that any idea that comes to mind should be presented without any criticism, and it should be accepted for what it is – an idea, not a definite proposal. This is important because a negotiator might put forward an idea that, on reflection, does not really work well for their party. They should not be inhibited from putting the idea on the table through fear that they will be obliged to accept their own idea as the solution.

The challenge is to get ideas onto the table even though the negotiators have a lot to lose and will be wary of making risky suggestions. One way negotiators do this is to act on an interpersonal level as well as an interparty level – the distinguishing characteristic of Douglas's ([1957](#), [1962](#)) reconnoitring phase. The negotiator continues to present their party position – 'The Fleecem Telco Group insists on having two seats on your board if it is going to join with you on this venture' – but is more exploratory through an individual role – 'I'll have another look at your proposal of the CEO's appointment instead of a second board position and see what I can make of it'. If the proposal to appoint the CEO turns out to be unacceptable, then the telco group's formal position is still intact.

Listening for a ‘light-bulb’ moment: Supply partnership agreement

There had been a significant downturn in the construction sector. A building materials supplier was being asked by a construction company customer to take a 30 per cent cut in price for the contract to be renewed. Fortunately, the implementation of the current contract had been relatively cooperative, and some of this cooperation flowed back into the otherwise tense negotiation. This cooperation took the form of the construction company taking time to explain the impact of the price on its internal supply chain. (Explaining the ‘why’ reasons that lie behind a position or rejection of a proposal is always a cooperative move.) Some negotiators on the supplier side took this as an example of the constructor going on about cost pressures to try to get a lower price. However, one person on the team who had been more involved with the contract during the year was listening more effectively, and realised that some changes in the way their company managed its deliveries (at little cost to itself) would reduce the handling and storage costs of the construction company. This bridged the gap, allowing both the supplier to get the higher price it wanted and the construction company to keep control over its costs.

If the differentiation has been thorough, the parties will have a good understanding of the situation and it may be that the solution has emerged without the necessity for any explicit problem-solving. These tacit solutions (Schelling [1960](#)) often shape the final outcome, so again negotiators should not rush to come up with new solutions but rather

should reflect upon whether any are already present through good differentiation. If it becomes clear that the emerging solution is significantly different from the opening position of one of the parties, then still more time will be needed to allow these adjustments to take place. Even though the Fleecem negotiators realise that the emerging solution of appointing the CEO is the best one available, it might take them time to openly agree to it.

Negotiation skills tips

Things to avoid

- Don't find fault in everyone else's proposals – and especially don't interrupt to tell them so.
- Don't tell everyone how reasonable and cooperative you are being.
- Don't use your proposal to squash someone else's – that is, don't immediately follow another's suggestion with one of your own.
- Don't apply time pressure.
- Don't blame others for not seeing what is needed to reach an agreement.

This points to a role for the good negotiator. In addition to pursuing a good outcome for their party, they will need to pay attention to managing the overall process, perhaps by drawing the parties back into a period of further differentiation or endeavouring to prolong the exploration phase when the other party is wanting to press on towards an agreement.

Joint problem-solving

Walton and McKersie ([1965](#)), who highlight some of the major elements in the competitive and cooperative approaches to negotiation, are quite deliberate when they define distributive (win–lose) items as ‘issues’, while describing integrative items as ‘problems’. This might seem somewhat semantic, but the way we place a topic on the table reflects how we perceive it and, importantly, this influences how the other party sees it and shapes their response.

Another element of this framing of the problem is its orientation. Presenting a topic in terms of its past can encourage a competitive overlay to the discussion, particularly if something has gone wrong and the negotiation is about how to fix it. But if the negotiators can view their differences with a future orientation – ‘What do we need to do next?’ – they tend to become more focused and action oriented.

Negotiation in practice

Put it up on the board

It is said that MBA graduates can’t sort anything out unless they use a whiteboard. In one politically tense negotiation, the whiteboard helped. The government has just announced a new energy policy that – although this was not the intention – severely impacted on one particular company, resulting in a public exchange between the CEO and the Energy Minister. A small team of government officials and some managers from the energy company were charged with finding a way to uphold the

government's policy but in a way that meant unanticipated adverse effects on this particular company were mitigated.

The use of a whiteboard enabled the group to write up the points of contention and ad hoc ideas as they were suggested. It took a long afternoon, but they eventually were able to put together a package of suggestions around thresholds and timing that enabled both the Energy Minister and the CEO to each maintain that their original position had been upheld.

A whiteboard can be effective partly because it allows for visual presentation and for new linkages between issues and possible solutions to be seen (which is why it is unhelpful to be neat and tidy when putting points on the board – they should be scattered points, not lists). It also worked in this case because all those involved had the same problem (helping their respective bosses to save face), so did not challenge when points with which they disagreed were being written up.

In similar fashion, Ury ([1991](#)) suggests that negotiators adopt a side-by-side approach, in which both parties – now working as one – attack the problem together rather than from opposing sides. This way of looking at the task has a lot to commend it, and it is easier to get to this point if the negotiators have done their preparation from the perspective of the other party and if they are both facing common external problems (typically, poor walk-away alternatives). We need also to be aware that 'Let's work together on this' is a favourite phrase of the cooperative inviting negotiator (see [Chapter 6](#)).

A further step in the direction of getting away from the 'them-and-us' approach is for the negotiators to be encouraged to sit randomly around a

table rather than grouped in teams on either side, though this should not be forced. Negotiation is between two parties with differences; in most cases – particularly where there are constituencies – they will remain as two parties throughout the negotiation. The author attended a series of lengthy management–union negotiations (Fells [2000b](#)) that were held in the employer’s boardroom. As managers and union representatives arrived at the meetings, they typically found seats near those with whom they had entered the room. Consequently, they were not lined up across the table as management and union. The atmosphere was positive, friendly and open; participation came from around the table. When the negotiations reached a critical stage on the question of the wage increase, management put its offer but it was rejected. At the next meeting, all the management team were on one side of the table, all the union representatives were on the other and they remained in those positions at subsequent meetings: two parties with differences.

Unilateral problem-solving

In major business negotiations, the parties can also be expected to line up across the table. A telecommunications company sought a strategic investment stake in another such company that needed an injection of funds for its own expansion plans. It was clear to both parties that by cooperating they could further their respective interests. They also understood that the negotiations should look towards developing a relationship that would continue beyond the closing of the initial deal. Mutual respect between the negotiation parties was essential to believing that a long-term relationship between the two companies could flourish. The negotiators met over several days to work through technical, legal and financial issues, but despite the context of cooperation it was still a formal affair, with the lead negotiators of each side doing most of the talking.

A full account of the Telco case is available at www.cambridge.edu.au/academic/effective

How, in this context, were proposals raised and explored? First, each side did a lot of preparation, and so was well grounded in the issues and in its areas of flexibility. This meant that on some issues where there were differences of position, suggestions could be made that proved acceptable to the other side. If the suggestion did not prove acceptable, or some other difficulty arose, then the negotiators were careful to make sure they properly understood the difficulty. Typically, they agreed to disagree and committed to reviewing the issue later. There was no brainstorming in public.

The lead negotiators might suggest a working party be set up, which is a more formal example of Douglas's ([1957](#), [1962](#)) separation of interparty and interpersonal roles. Members of the working party could explore – even brainstorm – issues, and then report back, but they would report back to their own team, not to the joint meeting. Ultimately, new solutions were unilaterally generated – that is, the creative problem-solving took place within each party, not between them. It is not surprising that for every hour the parties spent in joint discussions, two or three hours were spent in private meetings to review their positions and generate proposals to overcome their differences.

Although there are many ways by which new solutions can be found, ranging from developing well-considered proposals during a break in the negotiations to having a ‘light-bulb’ moment during the discussion, a survey of nearly 300 negotiations (Fells et al. [2015](#)) found that the most frequently cited response was that solutions were developed privately – that is, away from the actual negotiations. In a negotiation between an energy equipment manufacturer and a client (a power utility and its financial backers), the negotiations themselves were formal; they were sometimes tense, but there was rarely much movement on issues in the meetings themselves. The solution-finding in the early stages was the manufacturer's negotiators getting to appreciate the client's sticking points and then getting their engineering and design team to rework the proposal to address these concerns (while still keeping the project viable for the manufacturer). The negotiators would return to the next meeting with a new proposal. Sales or client-servicing situations such as these can develop a one-sided dynamic, the aim being to satisfy the client's expectations, but even here unilateral problem-solving can only be successful if the parties have jointly discussed the common ground between them and unpacked their differences – two other key processes

that were identified in the survey referred to earlier in this paragraph (Fells et al. [2015](#)).

The more formal the negotiation and the greater the degree of preparation, the less likely it is that the negotiators will generate completely new and creative value-adding solutions while they are around the negotiation table. This makes it all the more important to create and maintain an open environment through the micro behaviours of problem-solving rather than the macro language of cooperation.

Exploration: the action dimension

Making suggestions

It is important that any proposals – particularly those generated within a private session – are put to the joint meeting as suggestions rather than solutions. Signalling a proposal as, ‘Perhaps we could look at doing it this way’ is preferable to, ‘We’ve worked out a solution to this problem’. The first is tentative and inclusive, the second rather more closing and more likely to generate a ‘No, that won’t work’ response.

It also helps if the presentation of the proposal is not only tentative but also other directed; this can be achieved by fully outlining the implications for the other party. Even giving consideration to the problems the other party might have with the proposal will help keep the attitudes open, and is better than not acknowledging the other party at all.

Making multiple offers helps negotiators to identify the best outcomes. Putting just one option on the table invites a closed response. Putting up two or three alternatives allows for discussion to compare them, and so may reveal more insights into preferences and perhaps lead to a better solution. It is, of course, possible to use this competitively – the three-card trick – by putting two or three proposals on the table in such a way that the other party picks the one that suits you (any helpful negotiation behaviour – even building trust – can be manipulated for advantage). No matter how it is done, putting more than one option on the table is often helpful.

Negotiation in practice

Bringing a solution to the negotiation table

Faced with a threat by a major retail chain to move its transaction account, a bank that was losing money on managing the store’s

account, but making a greater profit through its EFTPOS agreement with the store, began to look at what else it might do to retain its customer. Closing the account was a real possibility, but the account managers came to the view that if the store handled its own accounts differently, then the store would actually save itself some money. It would then be able to pay higher fees to the bank but still be ahead financially. It would appear to be a win-win solution, but the problem facing the bank was how to get the retail store to completely change its accounts system.

The meetings between the store representatives and the bankers were positional. The company, convinced that the bank was making a healthy profit from the large volume of transactions, would threaten to walk away if fees were not reduced. The bank would call its bluff by threatening to close what it regarded as a loss-making account in the firm belief that the store would end up paying more in fees if it moved to a new bank.

In this environment, for the bank to say it knew better than the store how it could manage its affairs would be rejected as an insult made by ignorant bankers. So the idea of a different way of managing the accounts had to be introduced as part of a package – as a proposal not a solution. Since the bank wanted the retail store to take a good look at itself, the bank had to take a good look at itself too by providing far more internal information than it normally would, so the store would see the truth of the bank's assertion that it was making losses on the account. The retail store's negotiators were obligated to look at the bank's new systems proposal if they were going to look at the bank's transaction costs information. In the process of doing so, they began to see that the bank was making a loss and also that its

suggestions about the store's own operating systems might be right. Now taking a more open-minded approach, the store's negotiators set up a joint working party with the bank. The working party was able to find savings out of which the store was able to pay the higher fees the bank needed to cover its costs and be left with some to spare.

Handling suggestions

It is not necessary for a negotiator to generate more solutions; being creative helps, but knowing how to handle other people's suggestions is what engenders creativity and better solutions. It is important that each proposal – no matter how unhelpful it seems to be – gets unpacked. Keeping criticism to a minimum – a key element of the brainstorming process – will help to create a more open environment, if only by not inviting criticism when one's own proposals are suggested. At the same time, it is not realistic to expect negotiators to be wholly free from being critical, especially when they are representing others.

A typical first response to a suggestion you know does not meet your requirements is to say something like, 'No, that won't work because ...' Here, the win-lose mentality comes to the surface, which is not the best response. The first step is to clarify exactly what has been proposed, which is particularly important if the proposal has been generated through open discussion. It probably will not have been fully thought through or clearly articulated. Also, we might latch on to the bit we don't like and not hear the rest. So clarifying or checking understanding is a good first response. Note-taking also helps.

Clarifying also gives the negotiator more time to think through the implications and the opportunity to reflect on the proposal. Reflecting – talking about what the other person has just said – might involve reviewing some of the benefits of the proposal as well as some of the difficulties. Rackman and Carlisle ([1978](#)) found that when disagreeing with a proposal, the more successful negotiators tended to give the reasons first: 'Your proposal would mean that we would have to reschedule our delivery schedules; I don't think we can do that' is a better response than 'We can't

accept your proposal because it would mean we would have to reschedule our deliveries’. In the second case, the primacy effect meant that the proposer would only hear ‘We can’t accept your proposal’, and so they would be inclined to defend the proposal more strongly, the risk being that the exploratory exchanges would slip back into positional bargaining. It is often through hearing why a proposal is not acceptable that we learn a lot about the other negotiator and what might be acceptable. We tend to be more voluble in explaining why we don’t like something than why we want something else.

A response to any suggestion needs to be a mixed message that involves some clarification, some reflections on where the proposal might lead and a reminder of one’s own interests:

What you are proposing is that we make daily deliveries because this will fit in better with your stock control process. If we were to do that we could possibly combine your delivery with others in the area because each delivery would be smaller, but it would mean we would have to reschedule our deliveries, not only to you but also to these other clients. I’m not sure how your proposal helps us in that regard. As you know our prime concern is to have full-load deliveries; that keeps our costs down and so helps you too.

Note that at no time did the negotiator say ‘no’ to the proposal. Yet it is hard not to say ‘no’ to an unacceptable proposal. If it is not going to be accepted, it seems a good idea to have it taken off the table and so enable everyone to move on to another proposal – one that might work. But it is more helpful to leave unacceptable proposals on the table. There might be an element in it that links with something else later, so it becomes useful. Similarly, if time permits, it is helpful to park a deadlocked issue and move on to the next topic rather than to try to force a solution. It may not

seem very efficient to leave a lot of loose ends; negotiators like to feel they are making progress and tick off the issues as they are fixed, but ambiguity and fluidity can be useful. They provide opportunities to find unexpected linkages and tradeoffs, helped by not preparing the issues one at a time. It is important that someone on the negotiating team takes careful notes of what is being agreed to and what is being parked.

Negotiation skills tips

Handling suggestions constructively

When a proposal is made, help unpack it by:

- not saying ‘no’ to it, even if you disagree with it
- finding some aspect of the proposal and talking about what it might mean for both parties
- leaving the proposal at the end of the table so it can be revisited later rather than rejecting or even accepting it.

Handling rejection

No one likes rejection – not least a negotiator who has put a lot of work into a proposal only to see it turned down by the other side. The first reaction is to go through the proposal again to emphasise its benefits – in essence, to contend, or to stand firm on, the proposal. The critical task is to find out *why* the proposal has been rejected. Often, rejections are made in verbal shorthand and are not well explained, or they focus on just one aspect and use this to justify rejection of the whole package. So it is helpful to get the other negotiator to explain their reaction to the proposal again; the second time around, further insights might be gained that will help in either reshaping the proposal or crafting arguments in defence of it.

Negotiation skills tips

Handling unhelpful suggestions

How do you say ‘no’ to a proposal without actually saying ‘no’ (the proposal needs to be left on the table)?

- Talk about an aspect of the proposal – for example, explaining where it causes you difficulty.
- Tell a story of an instance in which what is being proposed did not work out well.
- Ask the proposer how they think it will help you to achieve your goals.

One way to gain insight into the other party’s position when they have rejected a proposal is to ask which part of your proposal they would

like you to improve. They will probably respond, ‘All of it’, but ask again, ‘Which part in particular?’ That might tease out what aspects are of real importance to them.

Handling the process

As in the task of differentiation, summarising, restating and reflecting are useful and constructive activities during the exploration phase (see [Table 7.1](#)). They help to keep the discussion open. Similarly, interrupting, criticising and generally being in a hurry are counter-productive. They tend to close down the discussion.

Table 7.1 Solution-seeking: some helpful and unhelpful behaviours

Helpful	Unhelpful
Tentative proposals	Firm proposals
Other-directed proposals	Implications not spelt out
Asking Why?, What if? and Why not?	Justifying proposals
Open responses to questions	Interrupting
Checking understanding	Criticising
Summarising	Being in a hurry
Restating	
Reflecting	

Anyone who has seen a video of themselves negotiating will quickly realise that we don't talk in neat structured sentences as if we were reading from a script. Negotiators make a lot of mixed statements (and muddled ones too). One part of a statement might be firm and rigid, another might give a hint of flexibility. This provides an opportunity for the good

negotiator to respond to the implied flexibility rather than challenge the firmness, and so promote openness across the table that might later develop into an opportunity to make and explore new proposals.

This description of the exploration phase presents a different picture of negotiation and how solutions are found from that in the more normal win–win cooperative, integrative approaches. These other approaches have some validity, but we have taken a more pragmatic rather than prescriptive approach, which recognises and seeks to account for some of the messiness of negotiation. As Putnam ([1990](#)) suggests, competitiveness and cooperation interact; they seem to feed off each other. And negotiation is two-sided. If one party stands firm and the other party also stands firm, this looks to be a competitive positional negotiation. If both parties stand firm but also stand back and seek opportunities for creative compromise, then the competitive-standing firm was actually very cooperative. This is why researchers look not only at the immediate reaction to what is said but also to the ensuing frequency of interactions.

An example from a management–union negotiation (Fells [2000b](#)) shows the difficulty that researchers – and negotiators – face. One issue was the skills allowance for a particular job. The union negotiators had prepared a couple of suggestions that they managed to inject briefly into the debate that was going on across the table. There was no discussion of the suggestions, although later one of the management negotiators, while stating his unchanged position, did indicate some openness to the union's points. In a later meeting, management put forward a revision of one of the union's proposals that became the basis for settling this particular issue. So one short sentence in the middle of a fairly robust debate, while not discussed at the time, was developed by another negotiator after the meeting and turned out to be the most cooperative contribution of the whole session. The critical point here is that, while it is helpful to talk

about cooperation and working together, it is the little things that actually generate cooperation and the solutions that ultimately meet the needs of the parties.

Exploration: the outcome

At what point does a phase of exploration and the creation of options come to an end? If the negotiators have found an option that meets both their needs, the negotiations will end with them both fully satisfied. In most cases, the negotiators will have found value-adding solutions to some but not all of their issues. Having fully explored a range of possibilities, the negotiators are now much clearer about what they can and cannot agree to; they know the broad shape of the emerging agreement. They are aware that they are not likely to come up with any more creative solutions and realise agreement will come only if one (or both) parties is willing to lower its expectations.

It is easy to see why there is not much creative compromise in negotiation. Particularly at this point, a negotiator needs to remember that achieving one's own goals does not mean the other party has to lose. A good negotiator has to work hard at the micro level to engender windows of openness whenever they might occur. A negotiator also needs a good understanding of phases: that there are times to differentiate, times to explore and times to exchange.

Exploration phases can decay and be over quickly for three reasons. First, the parties might problem-solve unilaterally and come back to the meeting with new proposals. Second, as the negotiators begin to see why proposals are being rejected, they learn more about the underlying interests, which means they might have to go back to differentiating for a while. Neither of these is a real problem in the process. A third way in which an exploration might end is because one or both negotiators become settlement oriented and defend rather than explore their proposals. This settlement orientation will undermine exploration. It is difficult for one

party to keep pushing for openness while the other wants to settle now. The negotiator should revisit their strategy and, if necessary, revert to contending rather than being drawn into conceding.

More positively, if the parties have explored their positions and possible solutions reasonably well, then it will become clear that one of the suggestions is going to work. This mutually prominent alternative becomes the basis for a final agreement. Each party realises that it is going to have to move from its declared position – a realisation that takes it into the end-game and the task of exchange.

Becoming an effective negotiator

[Table 7.2](#) lists some issue- and process-related actions that help a negotiator to manage the task of exploring for options effectively. Some of the issue-related behaviours are essentially a continuation of the differentiation phase, in which the parties explain what is important to them. This process of getting to really understand the issues and the other party's perspective continues through the negotiation, and is part of the drive for good solutions. It may be that, as proposals are discussed, one party is gaining more insight into the requirements of the other party, so it might be appropriate to move back for a time into a period of differentiation to fully understand rather than to keep pressing on with new proposals. [Table 7.2](#) also shows that negotiators should not feel under pressure to come up with new solutions, although it helps if they do have some to make. Far more important is the ability to handle other people's suggestions well. The aim would be to have a number of workable solutions on the table, but sometimes this is not possible and negotiators need to realise when they are reaching the limits of their exploration. Negotiators may be forced to look to finalising the agreement as time or other pressures may be building up. But it may be that some more bargaining is going to be required because neither party is completely satisfied. Even so, the negotiators should endeavour to stay in the exploration phase for as long as possible to find a good adding-value solution before moving into the exchange phase to finalise their agreement.

Table 7.2 Managing the task of exploration: issue and process dimensions

Issue	Process
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Clearly state what is really important to you – that is, your requirements, without which there will be no agreement – and why it is important.

Introduce any new proposals as possibilities for consideration rather than as a closing solution.

Invite the other party to state and restate their interests – what is really important to them. Let them do this without interruption.

If proposals are rejected, don't defend them but find out why they are considered to be unacceptable.

Understand what is important to them and show them that you understand.

Try to build on other people's ideas; clarify and reflect.

Search for differing preferences; look for linkages between issues.

If you disagree with another's proposal, give your reasons but don't express your disagreement up front.

Keep all the issues open.

Regularly summarise.

Try to factionalise the issues, to split them into component parts.

Openly reflect on how you think the negotiations are proceeding.

Evaluate any proposal in terms of what you might gain, not what you might lose.

Discussion questions

- 1** What is the difference between a problem-solving group and a negotiation?
- 2** How might you recognise when a negotiation is moving into a phase where solution-seeking is likely to be productive?
- 3** What are some practical ways to introduce brainstorming creativity into a generally competitive negotiation?
- 4** Think of an informal or social situation in which you, as part of a group, have had to come up with some ideas to plan something, such as what to do over the coming weekend. What helped the group reach a good decision? Being realistic, which of your ideas could be used in a negotiation?
- 5** What are the risks in presenting a potential solution to the differences between the parties too early? What might be some indications that the other party is genuinely prepared to look at new potential solutions?

8

A final balancing act: the end-game exchange



This chapter demonstrates how negotiators manage the final stages of their negotiation. After reading the chapter, you should be able to:

- understand the choices open to a negotiator during the closing stages of a negotiation
- be aware of the complex dynamics that can occur in the end-game
- be aware of ways in which the end-game of a negotiation can be managed effectively.

Negotiators cannot keep differentiating and exploring forever. At some point, they have to make a decision to either reach an agreement or walk away. This is the end-game, where much of the exchange of offers takes place.

In really competitive negotiations, almost the whole negotiation may have been an end-game as each side, from the outset, has pressured the other to agree. As we have seen, though, the better negotiators take the process through phases to develop new perspectives and create value before negotiating over the final outcome. In the Tanker negotiations (see [Chapter 4](#)), the negotiators took more than two days before they were in a position to put together an agreement. In this well-ordered negotiation, the first two phases took far longer than the closing phase – which, essentially, was the side meeting of the two executives who put together the key points of the settlement. Despite the differentiation and exploration phases being important, the end-game is still seen as the business end of a negotiation. This chapter – another ‘how-to’ chapter – uses the issue, process, action and outcome framework from Chapter 4 (see [Table 4.4](#)) to examine how to manage this crucial final and often competitive phase. Because of the competitive nature of the end-game, negotiators might start to use some of the competitive tactics that were discussed in [Chapter 6](#). Some other tactics that can emerge in this phase of the negotiation will be described later in the chapter.

By now, our negotiators have found out the full extent of their differences and explored for options, and so have crossed the Nullarbor Plain and are continuing their travel across Western Australia towards Perth. Although they have yet to reach an agreement, it seems that something is emerging from the options they have discussed that is going to be better than walking away, so they have not left the train at Kalgoorlie to take the plane to Perth. They are still negotiating, but now the process seems more difficult and tense; they seem to be walking a fine line between agreement and no agreement. No matter how much we try to bring some order to the process, negotiation is messy, and no more so than in the end-game, when agreement seems near. There are two reasons for

this. First, as we shall see, the negotiation on the issue itself can unfold in one of three ways: a clear-cut compromise, contending or conceding. Second, if the parties become tense as the final decisions need to be made, then they may not handle the process very well. As we will see in [Chapter 9](#), having to report back to their constituents can make managing this end-game even more difficult for negotiators. Because of the tensions and risks that can arise, negotiators must manage themselves well; it is the time when the ability to reflect in becomes really important.

Exchanging offers

Negotiation is a process in which two parties have differences that they need to resolve. By this stage, the parties should have a good understanding of what their differences are and why they need to resolve them. This need to resolve probably has a lot to do with their walk-away options being less attractive than the prospects of an agreement. Because of this, they have been trying to reach agreement through exploring for options and have probably come to a broad understanding of what a final agreement might look like. Their respective positions are on the table. The final task is to bring these together through exchanging offers and so achieve an agreement.

The end-game can unfold in a variety of ways (see [Figure 8.1](#)). At times, when they are moving towards a clear-cut compromise, the negotiations can seem cooperative; at other times, when one or perhaps both of the parties is standing firm, they appear competitive.

ISSUE Dimension	+	PROCESS Dimension	+	ACTION Dimension	→	OUTCOME
What are we doing on the issue?		What are we trying to achieve at this point in the negotiation?		How are we going to do it?		What should be achieved by this phase of the negotiation?
More cooperative end-game						
CLEAR-CUT COMPROMISE To find some middle ground. In the expectation that agreement will then be achieved on some if not all the issues.		EXCHANGE To reach agreement.		JOINT CONCESSION MAKING Make clear 'if you ... then we ...' statements. Emphasise benefits of proposed agreement relative to no agreement. Check the detail. Don't – agree to what you can't deliver.		A possible agreement. Or at least, a smaller agenda of unresolved items.
More competitive end-game						
CONTEND To stand firm. In the expectation that the other party will now agree with you Or CONCEDE To reduce one's demands. In the expectation that the other party will find them acceptable.		EXCHANGE To reach agreement (or walk away).		CONCESSION MAKING (by the other party) Make your position clear and final. Emphasise the benefits of the proposed agreement relative to no agreement. Don't – gloat over concessions gained or blame the other party for making you give concessions – agree to what you can't deliver.		Agreement Or a confident decision to walk away.

Figure 8.1 Exchanging offers in the end-game

One way by which negotiators can bridge their final differences is to move towards the middle ground of their stated positions, which involves an element of cooperation even though the process is still essentially competitive. Without a degree of cooperation and trust between the two parties, there would be no joint concession-making. If one party is going to make a concession to the middle ground, it needs to be pretty certain that the other party is going to do the same.

Clear-cut compromises often result in agreement, but sometimes the parties might find that they have only been able to narrow their differences. In this case, the negotiations will become more competitive. One party decides that it can make no further concessions and puts a final offer on the table. It stands firm (contends) on this final position; agreement will be reached only if the other party concedes. If both contend – another common variant of the end-game – then there is deadlock.

Yet there have been many times when a party has put its final position on the table and threatened to walk away, only to find that it must rethink its position and look again to see whether there might not be some middle ground, another clear-cut compromise, rather than no agreement at all. It is an interactive process.

In practice, negotiators switch – often instinctively – between contending and looking for a compromise so that the end-game can unfold in many ways (see [Figure 8.2](#)), which is why, when looking at the research, the final stage of a negotiation is often less clear than the other stages. In the survey conducted by Fells et al. ([2015](#)), the respondent negotiators reported that they used a variety of tactics to persuade the other party to agree. The most common were restating their own case, contending and trading off less important items. The first is a contending strategy, the second is to compromise; negotiators throw it all into the mix to get the best deal – try to persuade, trade, persuade again. Negotiation is messy – particularly in the end-game. Rather than categorise all the possibilities, the critical point to recognise is that, as the negotiators manoeuvre to get the best outcome, the end-game is seriously dynamic.

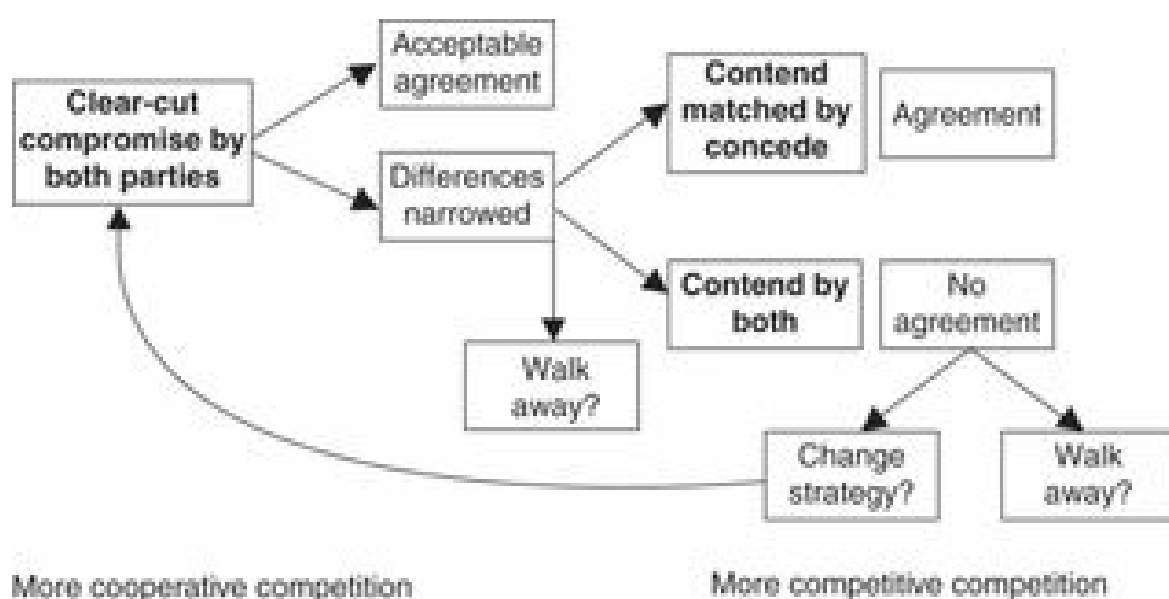


Figure 8.2 Exchanging offers: end-game strategies

Negotiations to buy or sell a company can become competitive as the question of value – what the company is really worth – emerges as the critical issue. The parties may agree on a tentative valuation early in the negotiation, but any transfer of ownership usually involves a number of risks and obligations. The parties need to weigh these up before they can agree on how much money actually changes hands. In their final stages, the IT company sale negotiations involved compromise and contending. Through mutual compromise, the parties had closed the gap to agree to a valuation of the company, arrangements for staff and issues surrounding the vendor transferring its customer list to the purchaser. Within the compromise agreement over the transfer of the customer list was the transfer of the access arrangement the vendor had with the infrastructure provider (the exchange network) for those customers. This became a zero-sum issue. The purchaser needed assurance that the agreement giving the vendor access to infrastructure could be transferred to the purchaser, but the agreement was confidential, so the vendor could not show it to the purchaser to confirm this. This issue was resolved by the vendor conceding the point and accepting liability should the infrastructure provider terminate its contract at the point of its transfer to the new company. This example demonstrates how the end-game can switch from being relatively cooperative, as the parties make progress towards the middle ground through clear-cut compromises, to becoming more clearly competitive, as one party stands firm on a particular issue, requiring the other to concede if agreement is to be reached.

The final exchanges between the two key negotiators in the IT Company case ([Chapter 3 Appendix](#)) became tense as each negotiator sought to resist the pressure from the other to make concessions. However, both knew that, despite the tension, they were heading towards a deal, and accepted the strident language as part of the ‘cut and thrust’ of getting the

best deal possible – particularly when a lot of money was at stake. The closing stages of negotiation and the inevitable pressure that comes with having to make concessions do not have to be contentious. In another negotiation involving the sale of one company to another, the parties well understood that an agreement would be reached, but there was still tension around the table. The deadlock was broken through the negotiators taking an adjournment, which provided an opportunity for two key negotiators to meet and reach a joint understanding on the remaining issues. Making a final decision to commit is not easy. No matter how much research has been done and the level of understanding that has been gained, there may still be residual uncertainty and doubt. Negotiators might need to take time out in order to create the mental space necessary to make the final, committing decision.

Facing up to your BATNA

Negotiators in the end-game of a negotiation find themselves switching between contending and looking for a compromise because they are having to face up to the critical decision of whether to agree at all. Up until this point, the negotiator's walk-away option – their BATNA – has been in the background, part of the underpinning of the negotiator's issue strategy. In the end-game, the BATNA comes to front of mind, and the previously considered option – such as going to an alternative supplier – now becomes a possibility, perhaps even a probability, and the actual practicalities of having to invoke one's alternative now often seem more daunting or risky than they did when preparing for the negotiation. The prospect of starting a new negotiation with another supplier, which no doubt would know that you have now reduced your own options by walking away from one of its competitors, seems more daunting than making one more effort to reach an agreement in the current negotiation, which is why the final move in a negotiation is one of the most important. While the overall shape of an agreement may be determined by the context – particularly the relative power position of the two parties – the actual settlement will emerge as a choice between each party's final position. It falls to one of the parties to make that final decision to agree rather than to walk away. This is why Weiss ([1997](#)) regards the final move as one of the most important factors in explaining the outcome of a negotiation.

Assume that in a supply negotiation the parties have agreed to everything except the level of credit to be offered – the time beyond delivery of the goods that the purchaser has to pay for them. The purchaser's position is 60 days; the supplier wants the money sooner, so has asked for 30 days. The obvious compromise between these two

positions is 45 days, but even if the supplier suggests this clear-cut compromise, that does not mean agreement will be reached. There are still two positions on the table: 45 days and 60 days. The purchaser still has to make a choice between these two positions: agree to 45 or stick with 60 days and risk no agreement. We would normally expect a compromise proposal to be accepted, but this will be because, at this closing point in this negotiation, the purchaser prefers to make a concession rather than risk not being able to get the supplier's agreement to his preferred position. At that point, the purchaser needs an agreement more than the supplier, and so makes the last concession.

Negotiation in practice

BATNAs change, and can be changed

Often, conflicts drag on, and one reason for this is that each party finds the status quo better than doing what the other party is asking of them. One example has been the financial situation between Greece and the European Union that first emerged in 2009. The Greek government has only been able to pay its debts – money previously borrowed – by borrowing more, and the prime lender has been the European Union. The European bankers want Greece to trim its spending and so lower its debt obligations, but for the Greek government and people that would mean an unacceptable level of austerity. So, rather than agree, they continued to negotiate for the bankers to restructure (and reduce) the loans to make it easier for the Greeks to repay over time. For the bankers, this was unacceptable as they feared that other countries would then also want similar favourable treatment and, further, that no one would lend anymore if they expected not to be repaid. In the background was the default option – the parties' BATNA – that Greece would leave the Euro region, leading to a crisis for the Greek economy and people, and a meltdown spreading across the Eurozone.

The 'Grexit' negotiations (Greece's possible exit from the Eurozone) is an example of the importance of BATNAs and how they might change, or be changed, over time. According to some financial analysts, the situation at the beginning of 2015 was that the consequences of a Greek default on its loans were too dire for either the Greek nation or the EU bankers (and politicians) to contemplate. With such a poor BATNA, a deal would be done. However, while negotiating, the EU has also been reshaping its

BATNA by taking steps (including establishing emergency funding) to minimise the flow-on effect of a Greek default. A stronger BATNA means the bankers can be firmer in their position. At the same time, the passage of time has meant that the Greek economy has slowed so much, leaving only tourism – which would actually benefit from a default. So, although clearly still drastic, a default might now have an up-side, causing the Greek government to continue with its requirements of the banks rather accede to their demands.

As a result, the Greek government, with about one week to go before the default date, made a new, conciliatory proposal that went some way towards meeting the stated requirements of the European bankers. This led to further negotiations with the European financiers making conciliatory public statements, though no public concessions.

The final stages of the negotiations involved tense meetings, walk-outs, public demonstrations, a referendum, resumed negotiations, an all-night session and, finally, the Greek parliament accepting the bankers' demands for economic reforms as a condition of further loans.

Managing the end-game

How, then, do negotiators manage the end-game? With great difficulty. The incentive to wrap up the negotiation is strong. Time pressure, the concern about walking away, the need to achieve an outcome given all the work that has been put in so far – all these push negotiators towards an agreement. Their motivation to reach agreement is high, but there will still be pressures on them to get the best possible outcome.

At the same time, the uncertainty of what might happen – ‘Will they make the next move or will we have to?’ – coupled with the risk of not reaching agreement at all heightens the competitiveness and so affects how negotiators manage the process. The end-game is a time when mistakes can easily be made and concessions unnecessarily given away. In the tension of the moment, negotiators can apply pressure unwisely and provoke a deadlock, with the result that a potentially good agreement falls apart.

Negotiators must be focused. They must take one step at a time – much like a performer on a tightrope. The tension increases as the tightrope walker steps out from the platform (makes the first concession) and the risks of falling to the left or to the right (being too tough or too conciliatory) are obvious. The tightrope walker is probably being carefully watched while moving forward, with each step making it more difficult to retreat. Of course, the walker has it much easier than a negotiator: no one is trying to move the other end of the rope.



Exchange: the issue dimension

At this point, the negotiators will find themselves left with two positions on the table, with each party's position being unacceptable to the other. They have to choose between three issue options – contend, compromise or concede – with the additional prospect of having to walk away if both parties contend (see [Figure 8.3](#)). So how should they proceed?

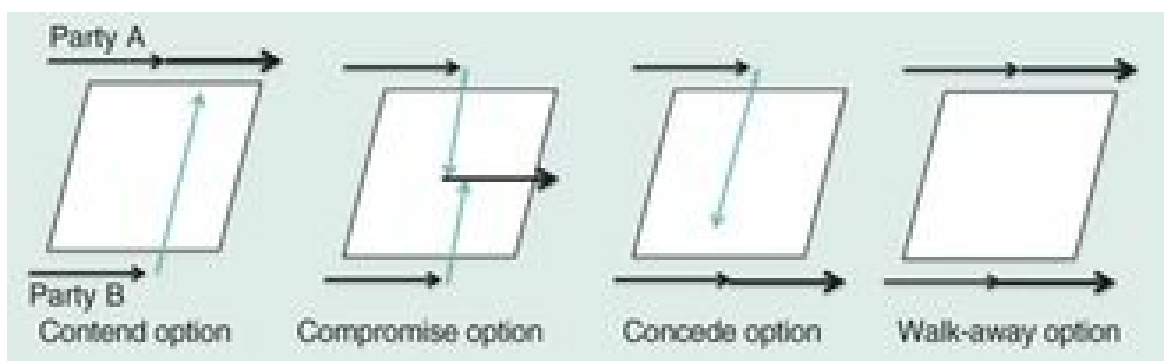


Figure 8.3 The four closing options in a negotiation

First, the Strategy Worksheet (see [Chapter 5](#)) will help a negotiator to analyse the situation. Increasing time pressure and poor walk-away alternatives push negotiators towards agreement. If achieving what was expected is now seen as less important compared with achieving an agreement, if each party's instrumental concern for the other (without whom there will be no agreement) is higher and if each party expects the other to be in the same position, they will work together to find a clear-cut compromise. If, however, a negotiator has reached the limit of their flexibility and is prepared to walk away rather than make further concessions, then they should contend – particularly if they thought the other party was not interested in a clear-cut compromise. If what is being offered by the other party is better than the walk-away alternative, which suggests a concede strategy – particularly if the other party is expected to

contend on their offer – the final option is that both parties contend, in which case the deadlock brings the negotiation to an end and the parties walk away.

As the end-game unfolds, a negotiator must check three things at all times: their goals, their BATNA and the other party's expected approach. Negotiators must re-examine the purpose of the negotiations. What was the reason for entering into them? In view of all that has been learnt through the negotiation, what is being achieved? Does what is now on the table look like a good agreement? In considering this last question, it may also be necessary to consider how the agreement will be received by those who have to implement it.

Second, negotiators should examine what would happen if no agreement is reached. What would be the consequences of walking away from the negotiations? They might ask themselves why, if their BATNA is so good, they have not walked away before now. Revisiting the Strategy Worksheet will help a negotiator not to get caught up in the momentum of reaching agreement or be pressured into hasty decisions. It will also help a negotiator to continue thinking about the other party and its likely approach, as it is in the end-game that the outcome of one party's choice of strategy on the issue is very much dependent on the reaction of the other party. If both parties are looking for a compromise, then they will work together to find a settlement. But if one party is standing firm, then the end-game will become more competitive.

If the parties are stuck on their respective positions yet want to settle, then they need to find something else to which they can both agree. Fisher, Ury and Patton ([1991](#)) suggest a way that might prevent the negotiation becoming an unhelpful trial of strength. They recognise in their Model of Principled Negotiation that although parties might try hard to invent options for mutual gain, they may not fully succeed, which will leave some

final points of disagreement. To deal with this, they suggest that negotiators look to an objective standard. The logic is compelling: both parties can agree with a standard rather than argue with each other.

Negotiation skills tips

Taking stock in the end-game

The end-game of a negotiation needs to be carefully and slowly managed.

- How well are we achieving our goals?
- How good is our BATNA?
- What's the other party's approach to the end-game?

Two companies might, for example, agree that it is in their best interests to have a two-year supply agreement, but they are still in disagreement over prices in the second year of the contract. Agreeing to review the price might give rise to an unhealthy competitive negotiation in 12 months' time. If they can agree to a principle now and write it into the contract, it removes the risk of confrontation later. Clearly, a useful objective standard is the consumer price index (CPI), so they could write a clause to the effect that in 12 months' time the supply price will be varied in accordance with CPI.

While not denying the power of this approach, negotiators should also be aware of an inherent weakness in it: the risk that the objective standard will become a proxy for a preferred position. This risk is present because, as Pruitt and Carnevale ([1993](#)) point out, there is usually more than one particular standard. In the example above, should the price index be the national CPI or one based on price trends within the industry? Both are equally objective, and their existence would be known by both parties before they entered into the negotiation. So the supplier might well promote the industry index, believing it is likely to increase more than the

CPI; the purchaser might suggest that the industry figures are not quite as reliable, relying instead on the national CPI data (the real reason for the preference being that the purchaser expects CPI data will be lower over the coming 12 months). The survey of business negotiations referred to earlier showed that negotiators use objective criteria, although they will also be restating their own case. Even so, negotiators need to be alert to the power of finding a standard to which they can both agree, particularly if the negotiators have to report back to constituents that they were deadlocked but to go with a CPI increase seemed fair.

Another way by which negotiators might move from their respective positions to a point of agreement is to just split the difference between their two positions. This is relatively straightforward if dealing with money or other elements that can be divided. In [Chapter 6](#), the example was given of the small high-tech company that was negotiating with a large global company and one of the issues was over the delivery of its product. Readers might recall that the underlying issue was not the delivery date but the payment date, but until they realised this the parties dealt with their differences in the typical way: they split them. The global company wanted delivery in June, the hi-tech company offered November. Months are easily divisible: between June, July, August, September, October and November, August and September stand out as the obvious middle ground, which is where they moved to. There is nothing that requires the parties to settle exactly in the middle, though the equal concessions give the middle position an extra sense of fairness and acceptability. The parties settled on August, which reflected the greater bargaining power of the global company, but still the sense that both parties had given something made a clear-cut compromise easier to agree to.

Negotiation in practice

A competitive negotiation

The owners of an IT company, who had built up a major company from nothing, decided that it was time to sell. Their business consultant advised them to continue working on a business plan for the ongoing future of the company. This would be their realistic BATNA, which would stop potential purchasers from gaining the impression that the vendors would accept a lower price because they were committed to sell. Having sourced a potential buyer – one who had a growth through acquisition strategy – the consultant conducted the negotiations, which centred on the value the IT company could bring to the purchaser. This value lay in economies of scale and a strengthening of the purchaser's market position. One such economy related to the vendor company's premises, which were in a particularly good location for the purchasing company. A second factor was the access arrangement the vendor had with the network exchange company, which meant that its customer rental was cheaper than that for the purchaser. To transfer the customers over on these cheaper rates would result in added value.

The parties debated back and forth before agreeing to a nominal value of the company, essentially recognising that an agreement would be reached over the sale once the details were sorted out. Following due diligence, the parties started the task of drafting the documents, and in doing so argued over and sorted out key issues, such as the transfer of the premises, the arrangements for staff – particularly the senior managers – and the transfer of the customer list, together with cheaper access to the exchange.

However, as is often the case, some points of detail emerged as critical and potential deal breakers – issues relating to the lease on the premises, clauses in the vendor’s contract with the network exchange (which it could not reveal to the vendor because that contract was confidential) and the purchaser’s method of funding. With just a few critical issues still to be resolved, and both parties keen to settle, the negotiations between the lead negotiators were mainly conducted over the phone, where proposals to break an impasse were put forward or rejected. In the context of the possibility that the deal could fall apart if agreements could not be found, the phone calls were often tense and combative. In the end, outright concessions had to be made – generally by the vendors – in order for an agreement to be reached. The owners had to make the final judgement call on whether to walk away and continue developing the business themselves. As they were getting a good price for their company, they decided to make the final concessions to conclude the agreement. The purchaser secured the stronger market position it was seeking, as well as operating value through the acquisition.

If the issues are not divisible – meaning that there’s no scope to split the difference on them – then, assuming there are at least two unresolved issues on the table, it might be possible to trade one issue for another. Reciprocity and notions of fairness are still important because, even if it actually benefits them, negotiators are likely to reject an offer if they think the outcome will in some way be unfair.

A full account of the IT company sale negotiations is available at www.cambridge.edu.au/academic/effective under the IT sale link.

Negotiators might resolve all or most of their issues though agreeing to an external standard, by splitting the difference between their positions or by trading one last issue for another. Some negotiators have been known to toss a coin. In one management–union negotiation, the parties had made progress in a mediation session through compromise and trading one issue for another until just one issue remained. It was an issue over allowances that was relatively unimportant in money terms for both the company and the union members, but neither party was willing to be the one to make the last concession. This is not unusual. It is often the case that the final issue takes on far more significance than its actual importance because all the previous tradeoffs get added into the final one, with both parties thinking that they have given away so much already and now the other party wants them to give up this last point too. How unfair is that? In this example, the mediator casually suggested, ‘You could always toss for it’, and since everyone around the negotiation table just kept looking at him, he took a coin out of his pocket and did just that.

That one party stands firm at the end may provoke some last-minute creativity. In the Telco case ([Chapter 7](#)), in which a European telecommunications company was seeking to expand into the Asian market, negotiations with an Asian company resulted in a new joint venture built around one of the Asian company’s subsidiaries (see the ‘Managing a major business negotiation’ Negotiation in Practice box in [Chapter 11](#) for a fuller description of this negotiation). The final sticking point was that the Asian company wanted it to be a \$1 billion deal. As the first deal of that size in the country, it would assist the company’s

reputation and future fundraising. The Europeans would not budge on this point, so a compromise was found by increasing the management fee that the European company would be receiving through its ongoing involvement in the joint venture. In reality, it paid enough to make it a \$1 billion deal, but soon afterwards received the money back.

A full account of the Telco case is available at www.cambridge.edu.au/academic/effective

It is also the case that neither party may be able to find a compromise or agree to some other face-saving device that will bring them to a point of agreement because one or both of the negotiators feel they can make no further concessions. In this situation, a negotiator can achieve an agreement only if the other party makes more concessions. To achieve this, they have to adopt a contending (standing firm) strategy to force the other party to concede, which raises the negotiation's level of competitiveness. In the Airline case ([Chapter 4](#)), the two airlines that were planning to set up a joint venture in China had agreed to all the technical issues, which left the key financial issue – the respective shares that each company would put into the joint venture – to be resolved. The parties had previously made their positions known. The European airline decided to stand firm (contend) on the size of its financial contribution despite anticipating that the Asian airline would also not want to increase its financial stake in the proposed venture. It anticipated correctly, so was then faced with the decision of conceding to the Asian airline and contributing more, or walking away. It chose the latter.

Negotiation in practice



An unusual compromise

Two mining companies were in negotiation about one gaining agreement to build its railway across land held by the other company. Usually, any such agreement would take the form of a special-purpose lease that would specify the specific area of land to which the company could have access and what they could build on that land. These two companies were seeking a broader level of agreement, so the company that owned the land offered to sell it to the other. If it later needed access to the land, the purchasing company would grant it. The companies could not agree on a price for the land so agreed to each get a real estate valuation. As a rule, what happens is that the valuer for the vendor puts a higher price on the property than does the valuer for the purchaser, and the parties then typically split the difference. When these two companies met and exchanged valuations, the purchaser's valuation was the lower of the two. The negotiators for the company holding the land could legitimately have taken this lower price as the sale price but instead, in a spirit of cooperation, agreed to split the difference between the two valuations. This maintained a sense of fairness across the negotiation table and helped as they moved on to deal with other issues.

A full account of the Airline case is available at www.cambridge.edu.au/academic/effective

The Airline case example shows that a contending strategy can lead to an agreement on one's own terms or to no agreement at all. If the party's BATNA is better than the other party's final offer, then to walk away would be the preferred outcome. Even when the party's walk-away alternative is not as good as the other party's offer, the negotiators will sometimes still walk away to avoid loss of face. The more rational, but nevertheless still difficult, option is to concede. In this, the last of the end-game scenarios, it becomes clear to a negotiator that an agreement is needed but that the other party is not going to make any further concessions. To get an agreement, the negotiator is the one who has to make the final concession and so bring the negotiation to a point of agreement.

Exchange: the process dimension

A more cooperative end-game through clear-cut compromise

The critical point about the clear-cut compromise strategy is that it will only occur if both parties undertake it, so part of the process is to ensure mutuality. Trust and reciprocity – two links in a negotiation's DNA – are particularly important at this point. The trust is not the generalised trust of whether there are commonalities and mutual understandings, but the more calculative situation-based trust: If I make a concession can I trust the other negotiator to reciprocate? It is therefore important to set up the process rather than make a concession and hope the other party follows suit. Talk process before making any moves on the issue. In the end-game of one negotiation (Fells [2000c](#), p. 111), with the parties' different positions on pay firmly on the table, one of the management negotiators informally sounded out one of the union officials. Both agreed that the negotiations were deadlocked, neither wanted industrial action and both thought somebody had to do something to move the negotiations forward. There was no discussion of the substantive issues, but by the end of the conversation each knew that a compromise offer would not be greeted by a contending strategy from the other.

Negotiation skills tips

Talk process

Talking about the process during the end-game of a negotiation helps to manage any concession making.

- First, sound out the other party. Talk about what you think should happen next in the negotiation, talk about the need to look for some sort of compromise solution (keep it a bit vague)

and look for an indication from the other party that they also think the negotiations are at that stage.

- If by their response you get the impression that the other party also thinks that the negotiation has reached a stage where both parties need to find some middle ground, then you can make a move on the issue, such as proposing a compromise solution.
- If their response suggests they are still expecting you to make all the concessions, then just stand firm and restate what is important to you – that is, continue contending.
- Try again later. After some further exchanges, again test out whether they are ready to compromise, but don't make a move on the issue until you believe they will reciprocate.

Negotiators are more willing to make a concessionary move if they know where the process is likely to end, and that they won't get drawn into making unexpected and unwanted concessions. Having confidence that both sides are moving on the issue reinforces a negotiator's sense of having some control over the outcome. In this regard, some of the advice on concession-making – such as that it is usually productive to concede on a minor issue but better not to concede first on a major one (Hendon, Roy & Ahmed [2003](#), p. 81) – emphasises the competitive orientation of the end-game and seems to forget that negotiation is two sided. If both parties follow this advice, they necessarily remain deadlocked on the major items.

A negotiator can protect their position while seeking a compromise solution by making 'if you, then I' offers. A human resources manager is seeking to limit the payment of overtime to the weekend and stop the present arrangement of overtime being paid after 38 hours worked during

the week. The staff representatives are apprehensive about any change that might impact on their earnings, but are prepared to be a bit flexible, so they suggest a compromise in a conditional way: ‘If you are prepared to pay overtime after 40 hours worked, then we might look at that.’ Should the HR manager indicate that 40 hours might be a solution, then the staff representatives can be more explicit about their proposal, confident that they won’t get drawn into making still more concessions.

If the HR manager responds by still insisting that overtime be paid only for the weekends, then the staff negotiators should simply restate their position of no change. By holding to their respective positions, both parties would be contending – that is, expecting the other to concede. The ensuing deadlock should cause them to review their walk-away alternatives, which might be quite drastic for both parties. Only then, and as a last resort, should the staff representatives consider making a unilateral concession and formally propose that overtime be payable after 40 rather than 38 hours.

Negotiation in practice

Setting up a clear-cut compromise

If one party offers a clear-cut compromise but the other party does not accept it, then the first party has ended up making a concession. Managing the process of concession-making helps to guard against this.

A company and a union were deadlocked over their respective final positions on wages. The union membership had rejected the company’s final offer and they were due to meet again to vote for and almost certainly take strike action if the company did not improve its offer. The union official was not confident that the

strike would draw a quick concession from the company; nor did the company negotiator want to risk a strike, so he engineered an informal meeting with the union official. While they both mentioned their respective wage positions, they talked more about the problem of being in a deadlock. Following their discussion, neither had shifted on the issue but both knew that if they offered a middle-ground position they could anticipate that the other would agree rather than continue to stand firm and press for a full concession.

Later, the two negotiators informally sounded each other out on compromise positions, but neither took the compromise offer of the other and then asked for more. Instead, they reached an understanding on a compromise package that was then firmed up as an offer the union official could recommend to the membership meeting.

As the previous example shows, it is during the end-game that the negotiators are faced with the stark choice of reaching agreement or walking away. Up to this point the BATNAs – the walk-away alternatives – have been almost theoretical. Threatening the other party that you will go to court always sounds like a good alternative until the moment you are faced with closing down the negotiations and relying 100 per cent on your lawyer.

Negotiation skills tips

Making offers

When it comes time to put offers on the table that you hope will lead to agreement:

- Make sure your offer does indeed meet your own party's requirements.
- Make sure that the offer is very clear on the key terms.
- Frame the offer in such a way that benefits to the other party are clear.
- Leave the offer on the table to speak for itself.

It follows that a negotiator should focus on presenting the benefits of an offer – particularly if it is a final offer – in comparison with the costs of walking away. Negotiation might be viewed as a process of restructuring the alternatives negotiators believe they have open to them. It is in the end-game that these alternatives become clear, so the points of comparison become important, as is shown in [Figure 8.4](#).

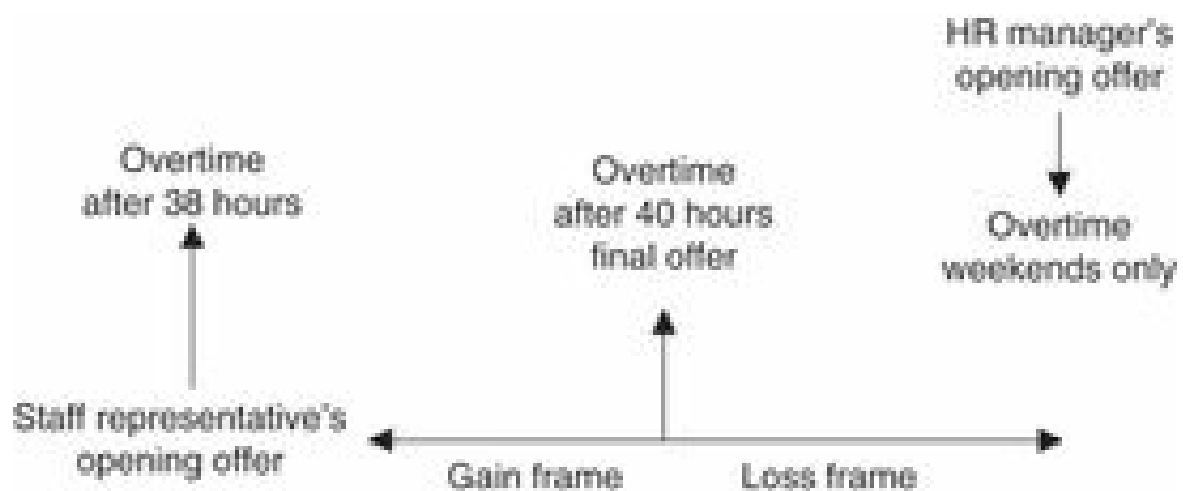


Figure 8.4 Framing in the end-game

Returning to our staff representatives who are trying to get the HR manager to agree to their final offer of overtime after 40 hours, there are two ways in which they can make this offer. To do it by saying, ‘I know you wanted weekend-only overtime but the most the staff will agree to is

40 hours’ immediately focuses on the loss the HR manager would be making – a loss frame (see [Figure 8.4](#)). Alternatively, to put the offer as, ‘You know it has always been 38 hours and that is what we told you when you first asked for our position, but we think we can extend it to 40’ places the emphasis on how much the company is gaining, and so makes it easier to accept. Shaping an offer in a gain frame generates more concessions than a loss-framed offer, particularly if the negotiator can have been made to feel positively disposed towards you earlier in the negotiation. We tend to feel our losses more (Carnevale [2008](#)).

When presenting an offer, it also helps to refer to what has been achieved so far in the negotiation and, if relevant, to the transaction costs of having to start all over again with another party. The benefits of reaching an agreement – however small – should be emphasised. The intent is to convey the impression that both parties are working together to get the best deal in the circumstances. This aspect can be emphasised by pointing to the benefits for both parties of reaching agreement and to the cost facing both if there is no agreement, rather than just pointing out the other party’s costs if the parties fail to agree. Similarly, presenting an offer in relation to the other party’s walk-away point (or what you believe it to be) leaves them with the choice, rather than feeling that they are being forced to accept something.

Negotiation skills tips

Receiving offers, even unacceptable ones

When the other party has put an offer on the table, to which it expects you to agree:

- Take notes; make sure you understand it; ask questions about it if necessary.
- Don't reject it yet (even if you know you can't accept it).
- Restate your own key objectives to set the context for your consideration of the offer.
- Check your BATNA.

A more competitive end-game through contending

If a negotiator plans to make a final offer, then it is critical to check that, should the offer not be accepted, the walk-away alternative is better than anything that might be gained from further negotiation. The offer must be final, and be seen to be final. The whole intent is to present to the other negotiator a choice between just two options – the offer on the table and the consequences of no agreement. Walton and McKersie ([1965](#)) suggest that making an external commitment helps. A CEO making a final bid for shares in another company might convey a degree of finality: ‘My final offer is \$5 per share. I just happened to meet a finance reporter and he’s written a short piece about my offer. Should be in the paper today so there it is in print for all to read. You can’t expect me to go beyond that.’ If he had finished with, ‘You can’t expect me to go beyond that today’, the potential vendor might just wonder whether the price might be different on another day.

A first offer tends to become an anchor for the negotiations, so going first has an advantage (Galinsky & Mussweiler [2001](#); Magee, Galinsky & Gruenfeld [2007](#)), although we should note that these offers are made in the context of an experimental negotiation; they are not case studies. So what if the other party has made the first offer? The research suggests that to focus on walk-away options or one’s own objectives will tend to counter the anchoring effect of the other party’s first offer. In essence, put something else on the table to talk about so that the discussion does not focus on the other party’s offer. Keep the negotiation two-sided. And because of this two-sidedness, remember that your contending strategy will only work if the other party concedes.

Conceding is never easy, but there are times when it has to be done. The critical point is to be clear on what is being agreed to and that it will conclude the negotiations. Some negotiators like the ‘disappearing concession trick’, whereby when agreement is just about to be achieved they put another small issue on the table or revisit a point that has previously been agreed to. As always, the walk-away alternative is the reference point when deciding how to respond.

Negotiation in practice

Reaching agreement doesn’t always mean agreement

The end of a negotiation can get very tense, even when the negotiators are acting in a professional manner and, as one of them put it, ‘putting in the big hours and burning the midnight oil’ to try to reach an agreement.

The negotiations were about railways. As in many rail systems, the track for part of the network had been leased by the government to an infrastructure company, which then entered into separate agreements with transport companies for the latter to run their trains on the network. The network company wanted rates that would cover the track maintenance costs (and some profit); the transport companies wanted the rates to be as low as possible so as to keep fares and freight rates low (and make a profit).

The ‘transport company’ in this case was a bulk carrier, transporting the grain harvest to port for export. For several months, the carrier and the rail network were in negotiations but could not reach agreement, with the rail network company claiming that the rates being offered by the carrier were insufficient to maintain the existing rail network. The alternative –

to transport the grain harvest by road – was not a good option for the bulk carrier; nor would it be welcomed by the government (and it would not be popular with rural communities either). The network company also wanted to maintain its operation, but only at a profit; this rail operation was only part of a larger multinational company.

The agreement expired and the bulk carrier stopped its train operations. However, the standstill did not last long; the carrier found it had to reach agreement, and had to do so on the network's terms. It was an interim agreement pending further negotiation on a long-term contract. Those negotiations also failed, and the dispute was referred to arbitration. However, the arbitration process was not expected to make its determination before the expiry of the interim agreement, meaning that, although the trains were running, and despite the best efforts of the negotiators, the parties were still in contention and the issue remained unresolved.

A full account of the Railways case is available at www.cambridge.edu.au/academic/effective

Exchange: the action dimension

Managing concessions

The end-game can be a difficult time, because by this stage it is obvious to the negotiator that they will achieve less than they had set out to, but equally compelling will be the prospect of not reaching agreement at all. As the end-game unfolds, it is necessary to guard against the risk of the process gaining its own momentum and leading to hasty decisions. Two ways of countering this are clarity and checking. This is not the time for loose ends. Being clear on what is said, offered, rejected or agreed to is vital, which means being clear oneself and checking your understanding of what the other negotiator is saying, offering, rejecting or agreeing to. Checking helps slow the negotiations and guards against hasty reactions made in the tension of the moment. Taking time to write down offers as they are presented is useful, even though you may have discussed something like this offer many times before. Summarising what is being agreed to is another useful way of taking the pace off the negotiations (see [Table 8.1](#)).

Table 8.1 Concession-making: some helpful and unhelpful behaviours

Helpful	Unhelpful
Making clear statements	Fudging concessions and agreements
Framing positively	Reiterating what is being given up
Referring to both parties' BATNAs	Making unsustainable threats
Checking understanding	Being in a hurry
Summarising	Blaming the other party

It is important to recognise that it is not easy to make concessions. When making concessions, negotiators incur position loss – they will achieve less than they hoped for – and image loss – they seem to lack firmness – and so might make yet more concessions (Pruitt [1981](#)). Image loss is important *vis-à-vis* the opposing negotiator and any constituents. So, rather than an explicit ‘We agree to your position’, the concession might be a quietly spoken ‘No problem’ or ‘We’ll look at that’, and the item being dropped off the agenda for the next meeting (Fells [2000b](#)). Negotiators must be alert to these muted changes in position, and not cause the opposing negotiator to lose more face than is necessary. If the negotiator has resolutely been arguing for a particular outcome but will now have to agree to something less they may feel the need to vent their disappointment and get a bit of history off their chest or speak a few home truths about your company and how you do business. This is not the time to react. Let them work through it and make the concession that you want them to make.

Negotiation skills tips

Things to avoid doing

- Don’t make a concession in the hope that the other party will do the same.
- Don’t make lots of threats, especially if you know you can’t carry them out.
- Don’t blame the other party for not being reasonable.

- Don't make lots of rapid offers and trades, and thereby lose track of what is being agreed to.
- Don't place new issues on the table in the hope of getting a bonus.
- Don't keep referring to your win or even to a win-win situation (doing this becomes an irritant).
- Don't draw attention to the fact that the other party is now accepting something it had previously said was unacceptable.
- Don't agree to whatever the other party wants just to end the negotiation.

If asked or pressed to make a concession, then make the concession linked or conditional to help maintain some balance in the process and so work towards a clear-cut compromise rather than a unilateral concession: 'If you are prepared to make a concession on delivery dates, then I can look at the payment schedule.' Note that the 'you' comes before the 'I'. Formulating a concession in this way places the onus on the other party to also make a concession if the negotiation is going to move forward. If a negotiator feels it is necessary to make a unilateral concession, then it must be a single concession, preferably backed up by attempts to open up the negotiation into something more creative: 'I'm prepared to look at the payment schedule and extend the period to 30 days. I will not be able to go beyond that so please don't ask for more. Delivery dates can be improved. What suggestions do you have about how this might be done?'

Managing the end-game competitiveness

Some competitive tactics that negotiators might use as a negotiation begins to unfold were described in [Chapter 6](#). Competitive negotiators may play tough, engage in gamesmanship or perhaps try the good cop–bad cop routine. Or they may take a different approach, though with the same aim in mind: to make the other negotiator more conciliatory by being overly friendly. These tactics may re-emerge as negotiators try to seek advantage in the end-game.

A tough strategy on concessions is to make as few as possible and get the other party to make more and more of them. If the other negotiator is pressing for concessions but not showing any signs of being willing to make any, then remember the tit-for-tat strategy. Having made a concession, be prepared to stand firm. If at all possible, avoid making two concessions in a row. It only encourages the other negotiator to become even more resolute (‘raise the level of their aspiration’ is the technical term). However, if your strategy analysis indicates that you are going to have to concede, then do so and get it over with.

Competitive negotiators will also try to undermine any offer that the other party makes, no matter how good it is. Responding to criticisms risks getting caught up in minor detail, so it is important to stick to the main benefits of the offer and keep focused on the need for agreement.

A negotiator might make a show of presenting their last offer on a take-it-or-leave-it basis. All final offers are made on such a basis, but there are contrasting ways of doing it and the competitive negotiator will endeavour to bring more pressure into the situation: ‘We’ve talked enough about this. This is what I’m going to do and you’d better think carefully about accepting it, because this is my last offer. Take it or leave it, but

decide right now.’ The first response would be to check your BATNA to see whether you would actually be better off leaving the offer on the table. Always counter with your own offer, even if you are going to walk; they might well concede before you leave. If possible, give the other party an excuse to back away from their take-it-or-leave-it position: ‘In the light of this new information’ – which does not actually have to be new, but just put in a new way – ‘you might like to see if this proposal is a better one.’ If their final offer is better than your walk-away option, then although you might find it difficult, just get on with it and agree to their offer.

Rather than be blunt about their take-it-or-leave-it offer, the negotiator might make more of a personal appeal. They may emphasise how cooperative and reasonable they have been, yet there is still no agreement, which invites the conclusion that the deadlock is all your fault. This tactic tries to make the other negotiator feel guilty for the situation and so be motivated to alleviate the difficulty by making a concession. Always remember that it takes two to reach a deadlock. Restate your main points and concerns.

Dealing with threats

The usual threat – often involving time pressure – is that one negotiator is going to walk away: ‘If you don’t agree now, next week the price will be higher/lower.’ Threats such as these work because they have the effect of altering the other negotiator’s perceptions of their available alternatives. Other threats can be more punitive or personal: ‘If you walk away from this deal, I’ll make sure you never do business in this town again.’

A threat made early in the negotiation does not show much respect for the other negotiator. Stating that you have an alternative and so don’t really need to negotiate, or that the other party does not have any alternatives and so has to negotiate with you, will encourage a competitive response. It may well be the case that you do have a good alternative and that the other party does not, but there is no advantage to be gained by bringing that to the negotiation table early. Let the context speak for itself in the early stages. Threats are more effective in the end-game, at which point they should be more explicit (Sinaceur & Neale [2005](#)). The negotiators face a real choice of whether to agree, so a threat has more impact.

Negotiation skills tips

Maintain your focus

Things to remember in the end-game to help keep focus on a good outcome:

- It takes two to reach a compromise.
- You can win this particular negotiation but there is no need to make an enemy in doing so.

- The light at the end of the tunnel – the prospect of an agreement – may be coming from a speeding train.

There is one thing to remember about all threats – including the punitive ones, which are intended to unsettle you. Each threat has an implementation cost for the person making it. If the threat would indeed get you to change your mind and it cost the other party nothing to implement it, they would not be talking to you but would have already done what they are threatening to do. When the other party threatens to take you to court, you may well already know that you would lose the court case but the cost in fees and the inevitable time delay stops the other party from relying 100 per cent on court action to achieve their desired outcome. So when a threat is made, ignore it the first time but think hard about the costs to the other party of them implementing their threat. When the threat is raised again, refer to those costs, then carry on making your main points.

Of course, if you are going to lose the court case, it probably means that your case at the negotiation table is not going to be very strong either.

Exchange: the outcome

What should have been achieved is an outcome that meets the needs of both parties. More realistically, the outcome will be accepted because it is better than walking away. The outcome should not leave one party feeling that it has lost and that it intends to claw back that loss during the life of the agreement. Neither of the parties should have agreed to something that is inferior to what they might have achieved through some other means. As we have seen, the final negotiated outcome will be achieved through either a cooperative process of compromise or a competitive process of contending and conceding – routes to agreement that were summarised in [Figure 8.1](#). Whatever route is taken, negotiators should remember that the final outcome of the negotiation is not the agreement itself, but the way in which the agreement is implemented and whether, at the end of this time, both parties feel that they had achieved all that they expected to achieve when they shook hands at the negotiating table.

Becoming an effective negotiator

For some negotiators, the exchange phase – trading between positions – is all there is to a negotiation. These negotiators may achieve good outcomes for their party if the strategy factors favour them, but it is likely that they are leaving some value on the table. Holding back from making offers improves one's chances of a better outcome (Sinaceur, Maddux et al. [2013](#)). Effective negotiators endeavour to spend as much time as possible understanding the issues and developing possible value-adding solutions before moving into the exchange phase. If the negotiations have gone well, this end-game may simply be a time for tidying up loose ends, but in most negotiations there will be some key differences still to be resolved – albeit far narrower differences than when they started.

Good negotiators are reflective practitioners. The tension that exists towards the end of a negotiation in which the parties are exchanging offers and concessions in the search of an agreement can lead negotiators to make mistakes and reach poor outcomes. They may walk away when a better deal is possible or agree to something they may later regret. Negotiators need to carefully manage their handling of the issues and the process, which means taking one's time and constantly checking rather than being caught up in the anticipation of the negotiations reaching their conclusion. [Table 8.2](#) lists some issue- and process-related actions that will help a negotiator to effectively manage the end-game of a negotiation.

Table 8.2 Managing the task of exchange: issue and process dimensions

Issue	Process
Clearly state what is really	Talk process, talk about the need

important to you and why it is important.

Restate what you believe is important to the other party.

Make your proposal clearly, preferably: 'If you will ... then I will ...'

Emphasise the benefits to both parties of an agreement and the costs to both parties of not reaching agreement.

Steadily apply pressure through reiterating your closing position.

Check any emerging agreements against your BATNA.

Double-check what you are agreeing to and how it will be implemented.

for finding compromise solutions and ensure that the other party also sees the need for making a compromise.

Allow the other party whatever rationale they choose (new information, the bigger picture, the future, etc.) to justify their concessions, even though you might not believe it to be valid.

Allow the other party to backtrack over old ground or make extreme demands, particularly if they are negotiating on behalf of others, as part of the process of coming to terms with the need to accept a lesser outcome.

Leave the other party with the final choice of accepting your offer or of walking away.

The negotiation will be a success only if the agreement is well implemented. If the terms of the agreement are spread over time or have to be fulfilled by people who have not been involved in the negotiation, then even in these closing stages the negotiator must check what is being agreed to with the practicalities of their implementation. It can be even more difficult when the negotiator is negotiating on behalf of others who are not present, but it is they who have to endorse any agreement. This constituency dimension of negotiations is explored in [Chapter 9](#).

Discussion questions

- 1** What effect do you think the opening positions have on the final agreement?
- 2** Consider some negotiations in which you have been involved, such as buying a car or renting a unit – preferably negotiations in which you reached an agreement, but also others where there was no agreement. Recall the final stages of the agreement, in particular how the final concession that closed the deal was made. What can you learn from this about the dynamics of the end-game of a negotiation and about how well you managed it?
- 3** How can you let the other negotiator know that you have a very good walk-away alternative without it appearing that you are threatening to walk away? How might you counter the other party's threat to walk away?
- 4** Why do you think reaching agreement by trading off less important items is common? What needs to have happened earlier in the negotiations for this approach to actually be of benefit?
- 5** What are the risks associated with the strategy of reaching agreement on an issue by splitting the difference? How might these risks be minimised?

9

Building bridges: negotiating on behalf of others



This chapter examines the process of negotiating on behalf of another party. After reading the chapter, you should be able to:

- appreciate that the structure of a negotiation can be complex
- understand how the presence of a constituency impacts upon a negotiation
- understand why constituency and collectivity increase the likelihood of competitiveness in negotiation
- be aware of some principles that will help you to manage these complex negotiations more effectively.

In [Chapter 1](#), we saw that ‘negotiation is a process by which two parties with differences’ come together to resolve them. Up until now, we have kept the idea of ‘two parties’ quite simple, and for the most part considered what happens between two negotiators, one on each side.

However, we have also seen that negotiations are ‘messy’. Now they get complex. [Chapter 4](#) outlined the core process of negotiation, and [Chapters 6, 7 and 8](#) described the three key tasks in which negotiators engage as they try to find an agreement: information exchange, solution-seeking and concession management. Negotiation is made even more complex when the negotiators are acting on behalf of others. Few negotiate solely on their own account – two business development teams negotiating over a potential joint venture represent their respective companies, as does an IT manager negotiating to acquire a new system for their company. A union official negotiating a new enterprise agreement represents the membership. Members of a delegation to the local council seeking a change in the parking regulations represent their neighbours up and down their street. Even though when the CEO of Air Berlin negotiated over lunch, then shook hands with the CEO of Airbus on a \$7 billion deal to supply aircraft, each of them had complete authority, they were also representing their companies and all their employees (Newhouse [2000](#), p. 40). In these situations, negotiators can find themselves acting as a bridge, spanning the two sides and forming a channel of communication and accommodation.

In [Chapter 2](#), we stressed that it is the implementation of the agreement that matters, not the agreement itself. Clearly if those you are negotiating on behalf of are the ones who will be expected to implement the agreement, then it is important for them to accept what is being agreed. We will see later that this was not the case in a negotiation exploring a potential joint venture between two airlines, and was one of the background factors in the joint venture not going ahead. This chapter will consider the practical consequences of having to negotiate on behalf of others – whom we call the constituents – rather than for oneself. The presence of a constituency brings an extra dimension of collectivity to the negotiations. The general proposition is that these negotiations are

typically more competitive and positional than negotiation between two individuals. This chapter will examine why this is so, and suggest what might be done about it. Much of the research into collective negotiation has been drawn from the workplace and management–union bargaining, but the principles apply in all contexts in which the acceptance of a group of people is needed before an agreement can be finalised.

The structure of constituency negotiations

The most obvious and important point about the presence of constituencies is that three negotiations will need to occur, not just one. In addition to the negotiations across the table between the parties, there will also be negotiations within each party (see [Figure 9.1](#)). The remit given by the constituency to its representatives is important. Then there will be yet more negotiation within the teams as each team prepares to meet the other. These internal negotiations were first given the name of ‘intraorganisational bargaining’ by Walton and McKersie ([1965](#)).

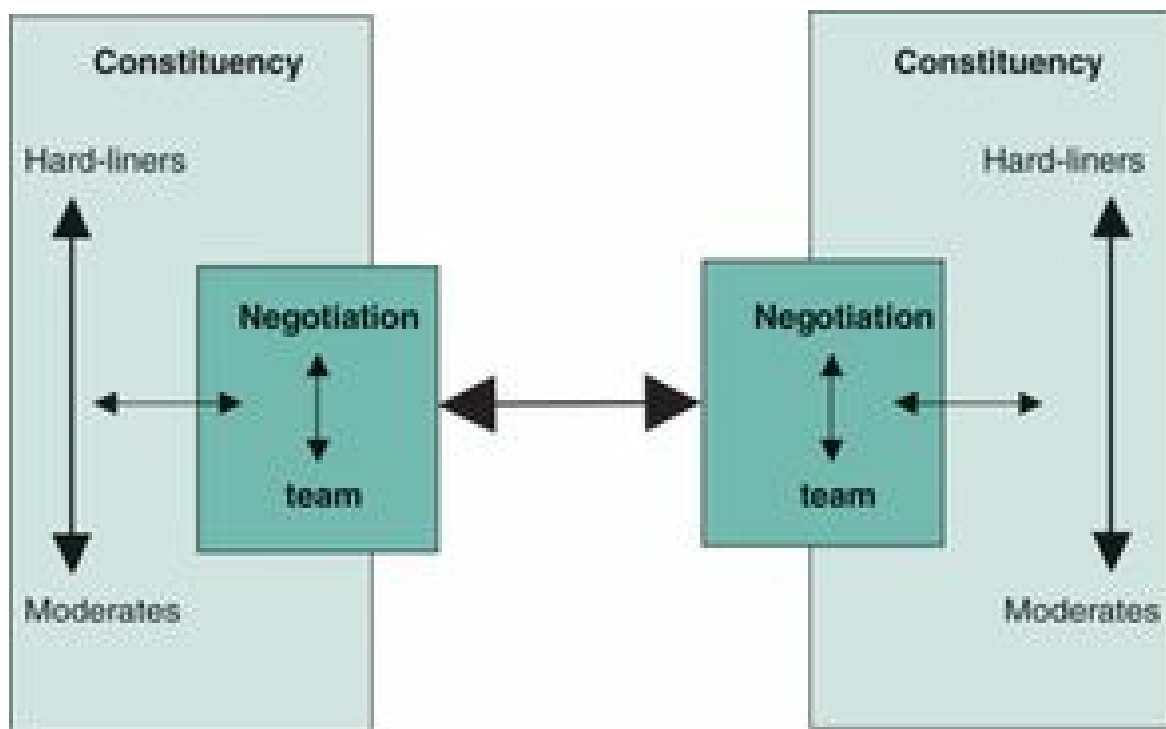


Figure 9.1 Two parties, three or more negotiations

Any group planning to send someone to negotiate on their behalf first has to give its representative some direction. There is no reason to presume that the group will be of one mind (negotiation is messy), so there will probably be a lot of negotiation within the group to enable it to come to a

collective point of view, which the representative can then present to the other party. Let's say that the members of a group of residents meet, intending to send a delegation to their local council about difficulties in parking their cars when football games are being played at the local stadium. They all agree that they want to have space reserved outside their own homes, but they do not agree on whether it should be only on match days, only when there is a concert at the stadium or permanently, because there is often a parking overflow from the local shopping centre.

Not only do the neighbours differ regarding what they want the council to do, but they also have different views on how their case should be presented. Some hard-liners want to present a strong position, while others – who see themselves as moderates but are seen as weak by the hard-liners – are prepared to present the issue to the local council as a problem and trust the council to come up with a good solution. Before it can meet with the council, the group has to reconcile these differing views on both the issue and the process. Consequently, its members will find themselves going through the phases of negotiation – differentiation, exploration and exchange – to get to a point of agreement on what their representatives should say to the council. These representatives (if there is more than one) will discuss – even negotiate – between themselves to agree on the best way to proceed and just how much emphasis to place on the points over which they have to negotiate. They may even find themselves in negotiation with those they are going to represent before setting off to meet the other party.

Similarly, within the council there will be those who are sympathetic to the residents' situation but others who take the view that football has been played at the stadium for decades and all the residents knew of the problems when they moved into the area. So the council will also have to negotiate within itself to formulate a coherent response to the residents'

petition and their representatives will have to agree among themselves – another negotiation – about how best to proceed.

Warr ([1973](#)) describes a management–union negotiation, which he shows as an important aspect of the dynamics of collective negotiations that applies in other contexts beside the workplace. The same sort of dynamic would be occurring within the group of residents during their dealings with the council. Warr observed that the negotiations went through phases similar to what we have called differentiation, exploration and exchange, but his additional insight was into how the weight of opinion within a group shifted during the course of the negotiation (see [Figure 9.2](#)). At the outset, some employees might have accepted the company's offer; however, others were resolutely opposed. Once the union had presented its claim, everybody lined up in support of it. This hardening of attitudes once a claim is made is why constituency negotiations can easily become positional. But, using our Nullarbor Plain analogy, negotiators need to remember that they are only travelling through the Blue Mountains at this point. Then some members of the group begin to see the need for an agreement; eventually, the majority are won over. Warr calls this phase 'breaking up', referring to the solidarity of the group, not the process; this is when the motivation to reach agreement now becomes greater than the motivation to maintain their demands. They can then find solutions (the exploration phase), with opinions on management's different proposals varying until the proposals become increasingly acceptable. Even when the employees came to the view that management had made its last offer and accepted it through a vote, a small group of employees rejected it.

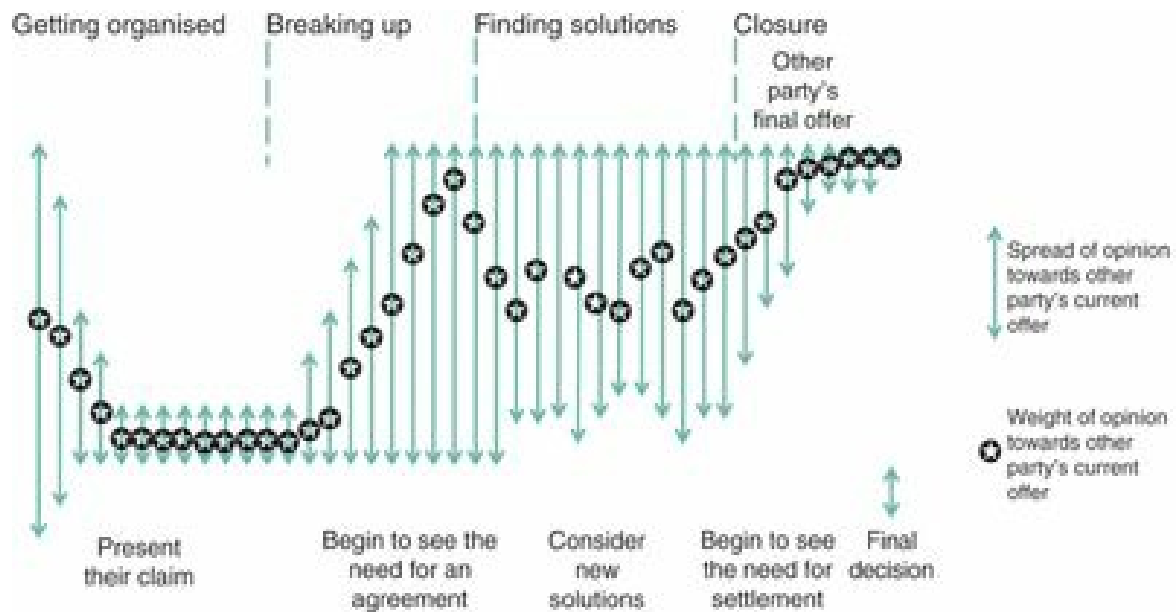


Figure 9.2 Collective negotiations and the spread of constituency opinions

This example illustrates two important points about collective negotiations. First, there will be a spread of opinions within the group and the task of the negotiator is to manage this. Even within the management team there will have been the same spread of opinions towards the union's claims and the lead management negotiator would have had to manage these, just as the union officials had to manage their members' wide range of views. The second point is that, although agreement may be reached across the negotiation table, and may even have majority support from the constituents, this does not mean that everyone is in support of it. This may affect the implementation of the agreement, and therefore determine the success or otherwise of the negotiations.

Negotiations in the political area bear some similarities to management–union negotiations in that the negotiating politicians are answerable to constituencies who have a vote. The constituency in this case might be either the members of the legislature who will have to vote on any proposed policy or legislation or the voting public as a whole, who

might exercise their choice if there is a referendum, or at the next election. In [Chapter 8](#), the negotiations over the debt crisis involving Greece and the European Union was used as an example of how BATNAs can change over time – particularly in the end-game. These negotiations are also an example of complexity. To continue the account of the negotiations, the parties did not reach agreement and the Greek government declared it was going to put the bankers' final proposal to a referendum of the Greek people (much the same as union negotiators put the employer's final offer to the membership for a vote). The voters rejected the bankers' proposals, leading to yet more rounds of negotiation before the issues were resolved. [Figure 9.3](#) captures some of the complexity of the situation with which the negotiators had to deal. The various heads of government of the EU countries all had different attitudes towards the Greek position, but the two dominant parties were Germany and France. The leaders of the EU countries had to take account of the views of their own electorates, but also have regard for broader and longer-term considerations – not least the future operation of the EU and Eurozone. The Greek government was emboldened by the voters following its recommendation to reject the proposals, but this 'no' vote also strengthened the resolve of some of the EU leaders. At the same time, there were still outstanding debts to be paid – of great interest to the lenders – but other countries may perhaps have been willing to help out with loans, while all the time the money markets were making their own decisions about future risks – decisions that then impacted other countries all around the globe. It is not surprising, given this complexity, that the issues were difficult to resolve.

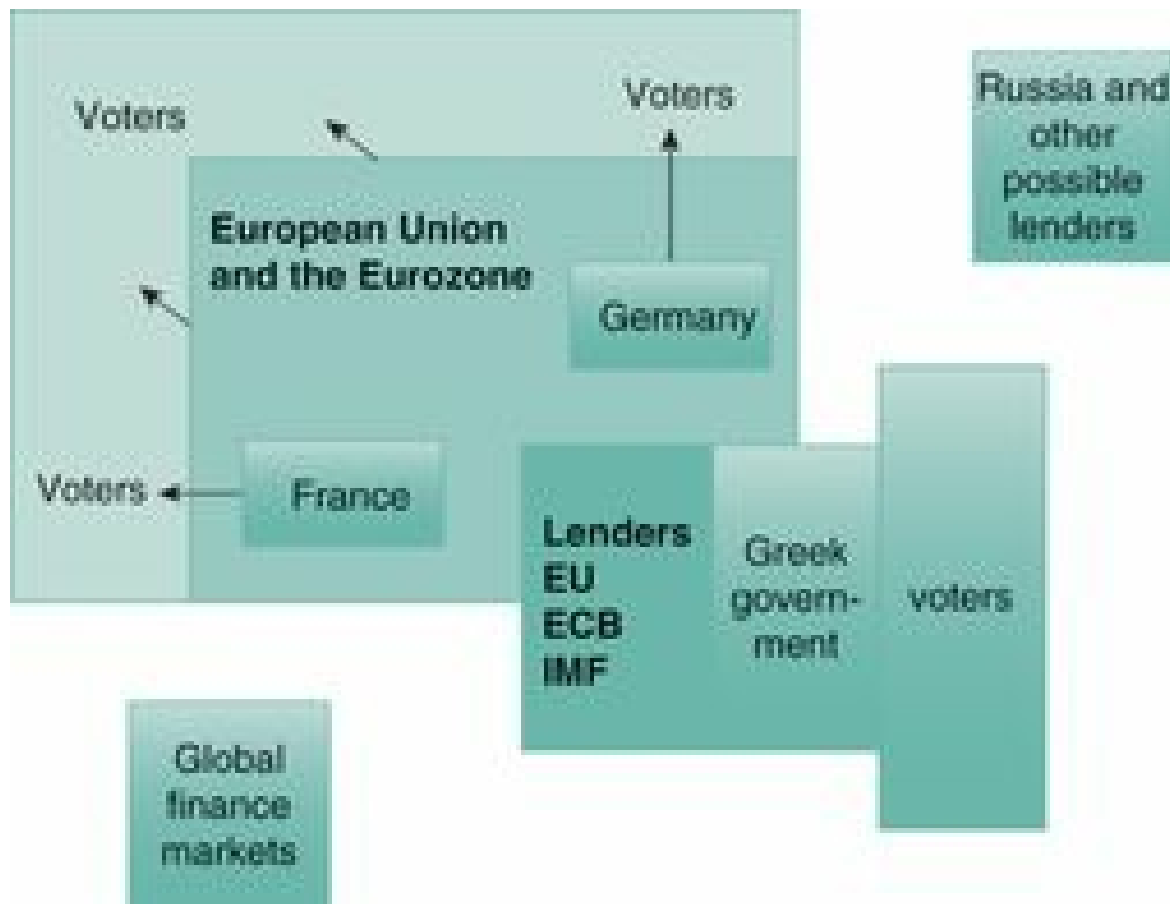


Figure 9.3 The ‘Grexit’ negotiations – a simplified structure

Most negotiations are between two parties rather than several – but they can still be complex. Weiss (2011) provides a detailed account of the nine-month long negotiations that led to the formation of an alliance between Nissan and Renault. The structure of the negotiations was complex: the two main parties were both surrounded by a cluster of other industrial and governmental organisations, each one of which had to be taken into account by the two major car companies. For simplicity, only the Renault side of the negotiation is shown in Figure 9.4. (Nissan had even more government departments and external companies to take into account.) However, Figure 9.4 does show several important characteristics of business negotiations. First, there will normally be one key ‘driver’ of the negotiation – in this case the CEO, although it may be someone else in the organisation who has been given that responsibility. We will see later

that it is important to maintain strategic focus throughout a negotiation, which requires a leadership role. The second characteristic is that negotiations with the other party may be carried out at several levels – in this case, between the CEOs, between the negotiating teams and within joint study teams, each reporting back to their respective negotiating teams. Third, there are negotiations within the organisation, such as between the CEO and the board of directors, at the same time as negotiations are being undertaken with external organisations, such as government departments. We can see from [Figure 9.4](#) that the negotiating team does not have direct involvement in these (apart from the advising consultants). These complex factors all point to the importance of leadership and coordination to manage the negotiations well.

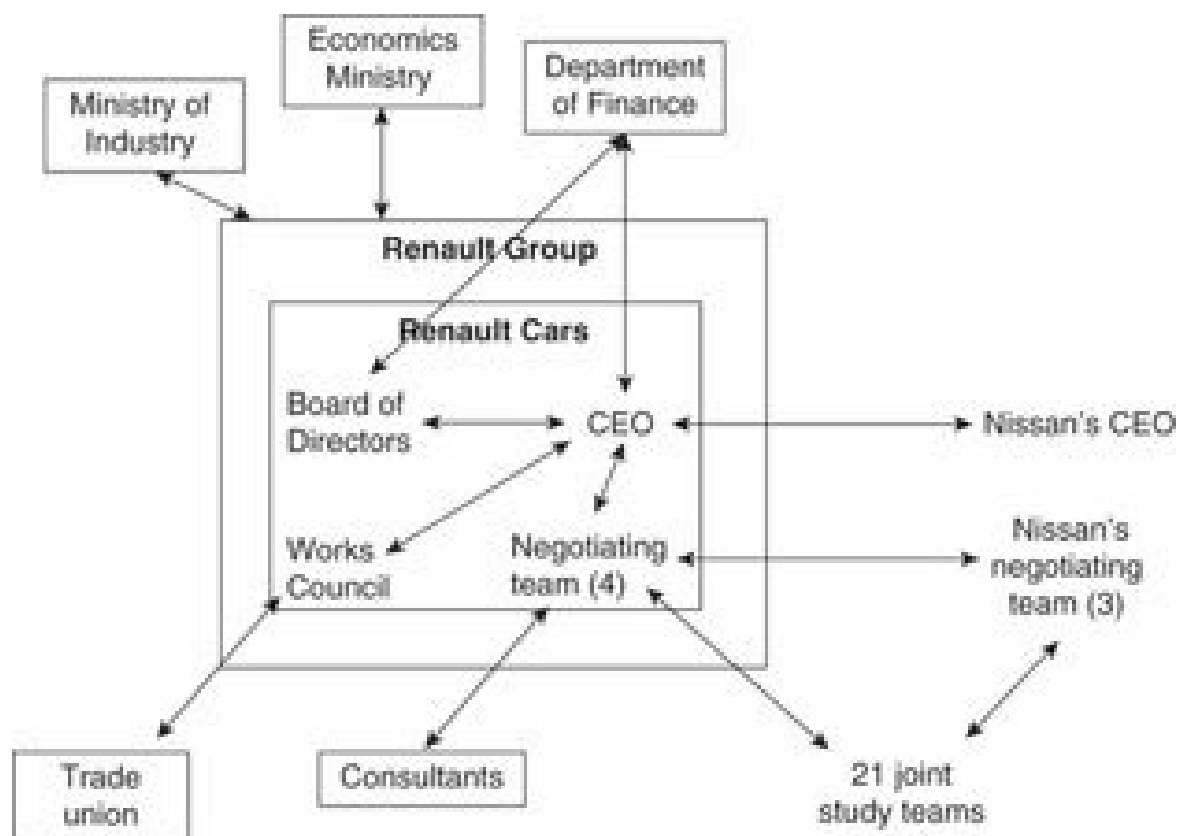


Figure 9.4 Complexity in business negotiations (adapted from Weiss [2011](#), p. 324)

The different layers of decision-making that are found within most organisations add to the complexity of the negotiation process, although less so if the organisation is well managed and the strategic intent of the negotiation is clearly understood by all those involved. [Figure 9.5](#) shows the main elements of internal and external negotiations in a formal business negotiation, such as over an acquisition or joint venture. The terminology differs from that used in [Figure 9.1](#), but the essential elements of one group negotiating on behalf of another are present. It reflects the governing structure of negotiations that involved a European telecommunication company entering into an alliance with an Asian provider (see [Chapter 12](#)).

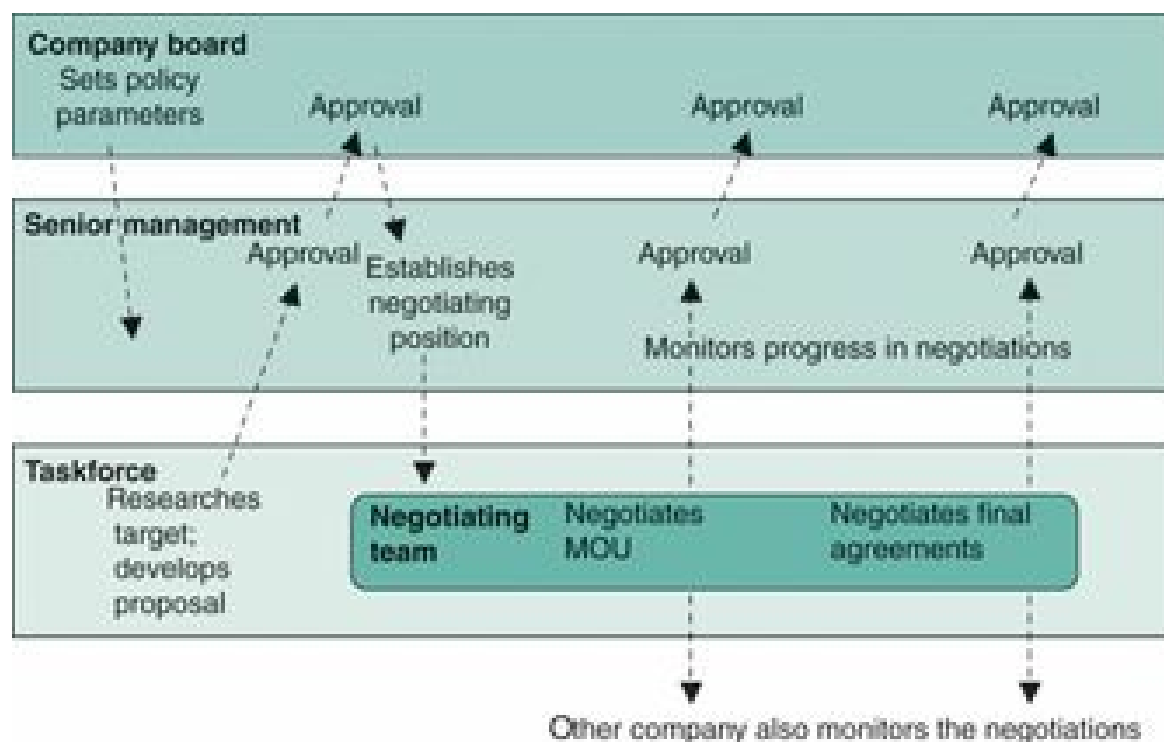


Figure 9.5 Business negotiation: some layers of decision-making

Although the company constitutes one party in the negotiations, it comprises several layers. The company board would have established its policies on business development, and potential acquisitions or joint ventures will be researched until a target company that meets the

parameters set by the board is identified. Once a formal proposal has been developed and approved, a negotiation team will be established to pursue the proposal. The characteristics of a typical business negotiation will be described later in the chapter, but the core elements will show the need for intraorganisational bargaining within the company. The first stage in negotiation would typically be a memorandum of understanding to cover the main elements of the proposed agreement. If approved by both companies, this MOU would be signed and negotiations would resume to finalise the detail and prepare the necessary legal documents for final approval and signing. The level of authority given to the negotiating team would vary between companies, depending on their management structure, but generally the team would need the authority to negotiate, and would refer back to senior management only when critical issues impacted upon its negotiating limits.

Negotiations on government and public sector issues are often complex, with a range of different negotiations taking place at the same time. It may, for example, be government policy to contract out a particular service, such as running a prison or a community service. The decision to contract out this activity rather than provide it directly through a government department would be a political one, the product of negotiations between a range of interest groups, both for and against the proposal (see [Figure 9.6](#)). Once a decision has been made, staff in the responsible government department will have the task of developing a tender document that specifies all the tasks that need to be undertaken, the standards of performance expected from the winning tenderer and the many other legal and financial considerations. Developing this document is in itself a major negotiation. At the same time, companies that might be interested in tendering for the contract would begin to position themselves and, when the tender process is opened, develop their submission in a way

they hope meets the tender specifications while still achieving the company's own strategic objectives. A company might choose to emphasise one area of competency, knowing that it is weak in another, or might simply be bidding in this tender to position itself for another later one. There will be a lot of negotiation within the company as it prepares its response to the tender.

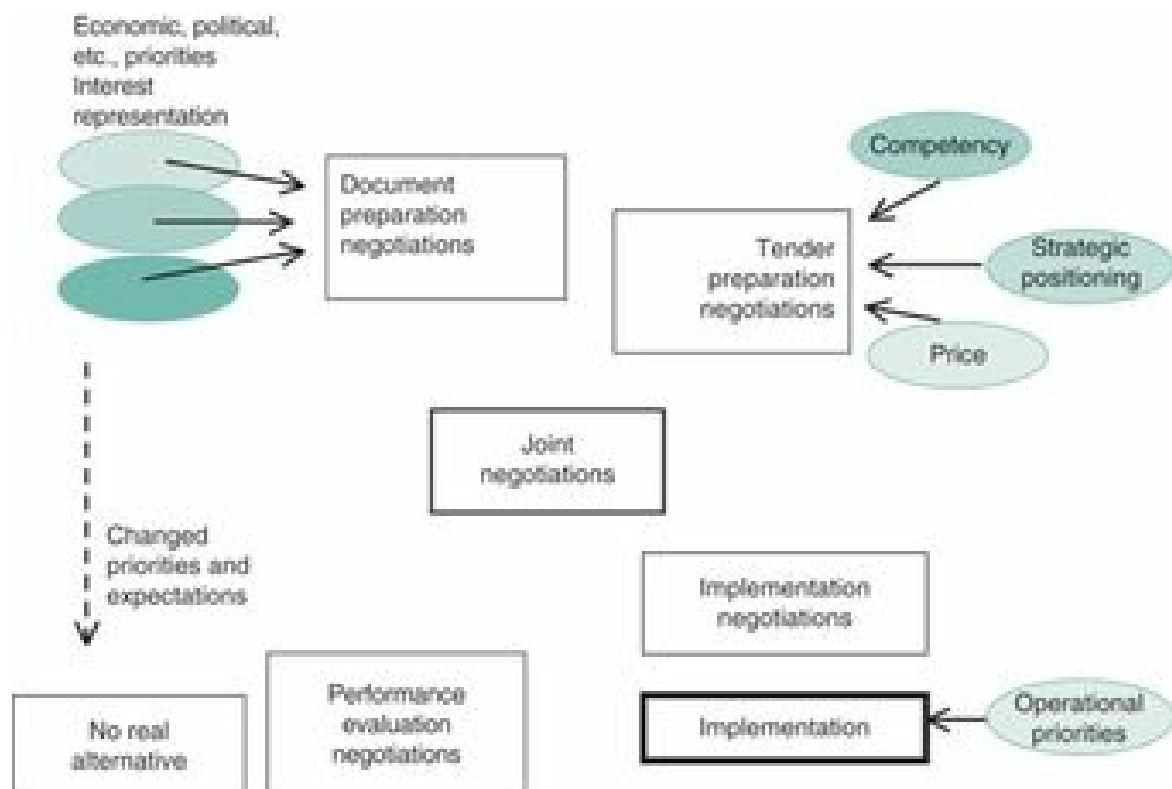


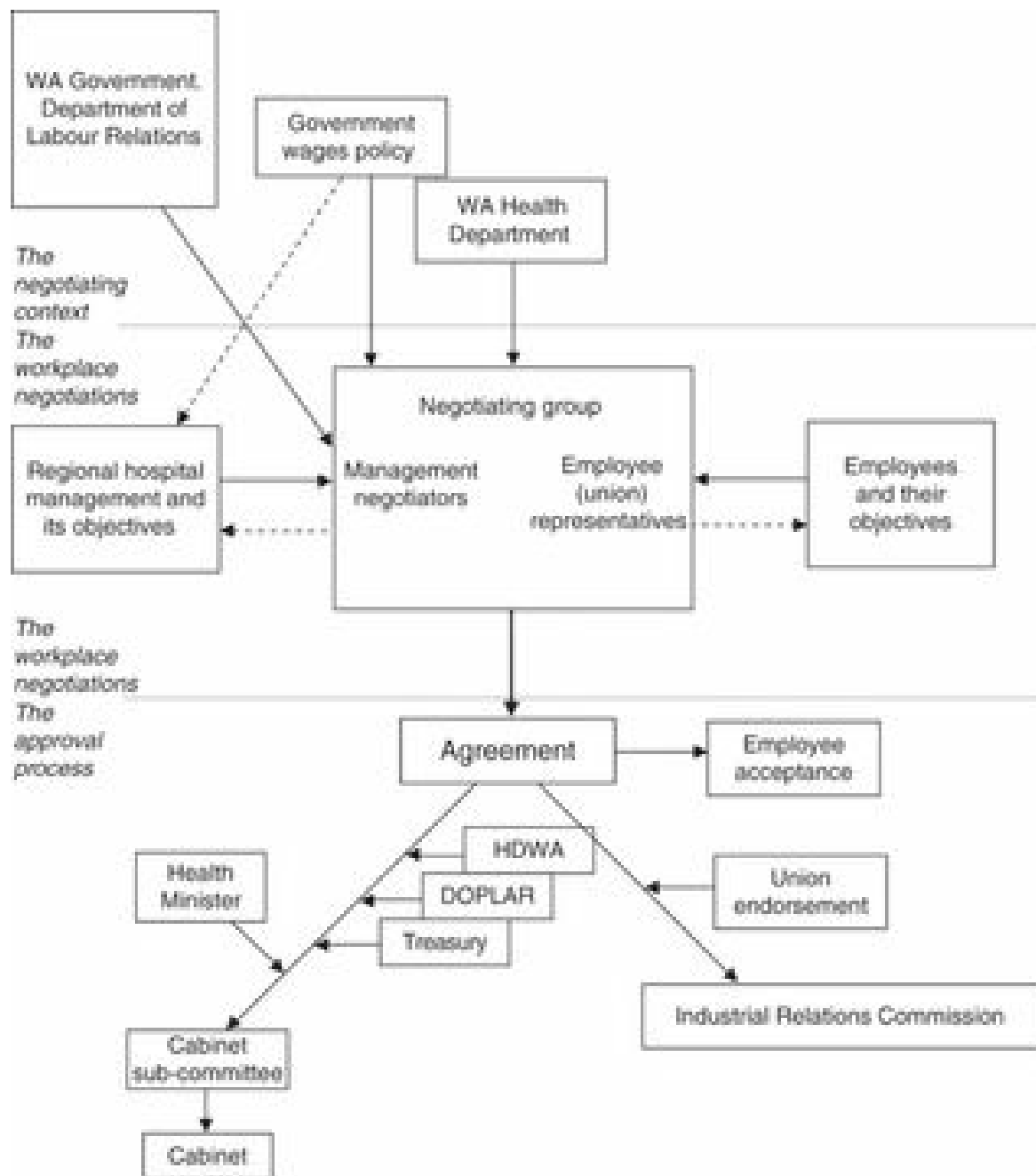
Figure 9.6 The structure of governmental service delivery negotiations

Governments are tending to move away from simply accepting the lowest-price bid, and there is often negotiation between a preferred tenderer and the government department to fine-tune the service provider contract. Once the tender is awarded, there will then be further negotiations within the successful company as the contract is implemented; these may be about the cost of some essential supplies that could increase more than had been anticipated. So there will be negotiations by the line managers over how to absorb the costs while still

meeting the contract's performance requirements or over whether the contract allows the company to claim the additional costs from the government. This negotiation over the implementation of the contract is exactly the same as those that occurred in the Tanker case (see [Chapter 4](#)). At some point, the contract will require a review of performance, but unless the performance measures are precisely defined, negotiation will be about extenuating circumstances and other contingencies. The government negotiators might find that the policy priorities have changed over the life of the contract, or perhaps the government itself has changed. The government department may find that it no longer has the expertise to properly monitor the performance of the contractor or take the activity back in house if the contractor's performance is regarded as sub-standard. This can leave the government negotiators in a poor negotiation position when performance issues arise during a long-term contract.

The public nature of constituency negotiations

[Figure 9.7](#) provides another example of how complex the structure of negotiations can become. This portrayal of an enterprise negotiation for a group of employees in a public hospital again shows that reaching agreement across the negotiation table is not the end of the process. Although employed by the hospital, the outcome of the employees' wage negotiations was subject to third-party (government) approval, which incidentally had also set the policy context for this and all other public sector wage negotiations. This complex process has a private sector equivalent when a large company sets a central wages policy for all its operating units, and then delegates the task of negotiating agreements to each unit.



Note:

HDWA – Health Department of Western Australia

DOPLAR – Department of Productivity and Labour Relations

Figure 9.7 The agreement-reaching process at a regional hospital (Fells 2001)

There is one contrast between these business and workplace examples. The former would have been done as quietly as possible, not in the public eye. The unpredictable effect on the companies' share prices

could change the valuations that are at the heart of the negotiation, as happened when the proposed Qantas–British Airways merger negotiations became public (*Australian Financial Review*, 4 December 2008, p. 61). However, many constituency negotiations are far more public from the outset and, as in the case of the hospital negotiation, include a public approval process. Agreements reached in the international arena are often subject to ratification by elected politicians. Those seeking to negotiate free trade agreements have to understand the influence that producer groups can exert over the US Congress or the political pressure that farmers in many parts of Europe are able to exert. Once a community or environmental issue gains public attention – which may have been the result of the campaigners’ pre-negotiation preparation – far more people become interested in the outcome. The larger the audience, the more difficult it is for either party to back down from publicly made statements. Often, the realisation that any agreement will set a precedent for subsequent cases only adds to the pressure to stand firm.

Negotiation in practice

Managing expectations

Sport is part of most Australians’ DNA, so anything to do with sport – particularly the major sports of Australian football (AFL), Rugby League and cricket – is reported in the media. The Australian Football League was rightly proud of the deal it negotiated with the television companies, which provided \$1.25 billion to the league, the clubs, the players and the broader football community. It set a benchmark for the next major negotiation, this time between the National Rugby League (NRL) and the television companies. An internal report to Rugby League clubs canvassed a

range of possible outcomes that might result from the negotiations. Inevitably, the top of the range – \$1.4 billion – gained all the attention. This resulted in concern that this headline figure would set the clubs' expectations and so put the organisation's negotiators under unrealistic pressure when it was their turn to meet with the representatives of the television companies. As one NRL official put it, 'Talk of a \$1.4bn NRL deal does nobody any good if expectations are unrealistic' (*Australian*, 25 July 2011, p. 30).

The public nature of these negotiations highlights an important point when negotiating with someone representing a constituency group: the task is not to convince the person sitting across the table but to convince the representative, and then help them to convince the people they represent. Any problems that one negotiator may have moving their constituents towards a point of agreement are problems for both sides. Negotiators should not leave themselves open to the final plea from their opponent: 'You have to give me something with which to go back to my people.' However, they should be alert to shaping proposals in a way that will help the representatives when they present them to their constituents, or perhaps even increasing their own competitive stance to assist the other negotiator to convince their constituency group that no more concessions will be forthcoming.

The effects of constituency and collectivity

Organisational competency in negotiation

One clear implication of the complexity of these negotiations is the need for organisations to develop their competency in negotiation. There are many negotiation training courses on offer that provide good value, but they need to be context-specific to maximise the transfer of skill from the classroom to the negotiation table. In-house training and coaching are important steps in embedding negotiation competency throughout an organisation.

As a first step, it is useful to compile a negotiation map of where negotiations occur within the organisation, as well as between it and outside organisations. [Figure 1.1](#) in Chapter 1 is one example; [Figure 9.8](#) is another. It shows some of the negotiations in which a mining company has to be involved in order to develop a new mine. A negotiation map alerts everyone to the pervasiveness of negotiation as a way of getting things done, and also to the fact that their negotiations to fix their particular issue may well have implications for others somewhere else in the organisation. The map – which is essentially an audit of how an organisation negotiates – would also provide some general characteristics of how the negotiations are conducted. Although negotiations in different areas will vary, there may be some common themes, such as people finding they always have to negotiate under time pressure or that they are pushed into agreements.

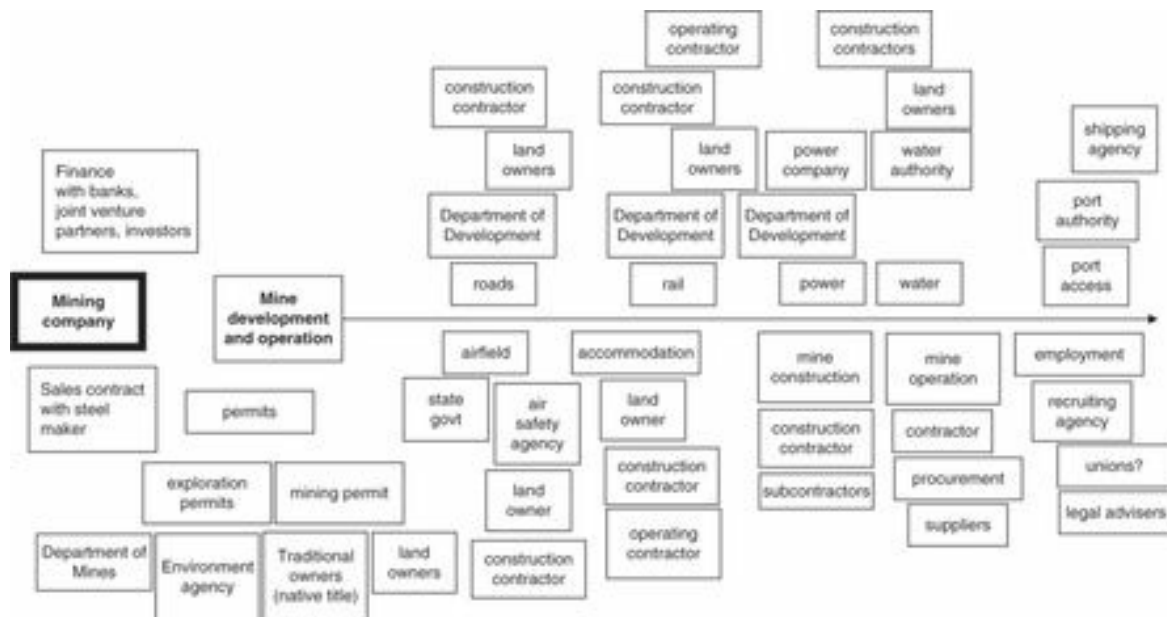


Figure 9.8 A mining company's negotiation map

Negotiation skills can be developed in house. Part of the standard preparation for a forthcoming major negotiation would be to identify the negotiation team. Consultants can then coach the members of the team for that particular negotiation, and so help build their skills in an immediately practical context; the consultants would also act as mentors during negotiation itself. To extend this learning process, the organisation could identify one or two staff who might be on a team for the next negotiation. They would sit in on the coaching and mentoring and so then be ready to lead the next team. In turn, that team would have a couple of people being taught through being part of that group, in anticipation of their own forthcoming negotiation. Thus each negotiation is used as a training ground for the next team of negotiators. This approach helps to retain skills development within the context of the organisation and focused on its actual negotiation tasks.

The complex structure's effect on the DNA of negotiation

When negotiators are acting on behalf of others, the two strands of the negotiation DNA are fatter and more complex, with each strand containing another negotiation DNA. The other elements of the negotiation DNA are also present in the intra- and interparty negotiations ([Table 9.1](#)), but the interparty negotiations are made more difficult because the people who will be making the decisions on the issue – the respective constituents – are not at the negotiating table. As the earlier example of workplace negotiations provided by Warr ([1973](#)) shows, a constituency group gets solidly behind the position it wants its negotiators to present to the other side. This early solidarity is typical of all collective negotiations, not just those in the workplace. Then the negotiators themselves may spend time building some rapport and trust. They exchange information, and so learn more about the interests and priorities of the other party. There is no mechanism for this to occur between the two groups of constituents, as there is no opportunity for the two groups – or even individuals from within the two groups – to build trust. Against this background, any new proposals would be viewed cautiously by the constituent group; within the group, individuals may be reluctant to express their own opinions on any new proposals. Consequently, although the strands of negotiation DNA are present within each side and between the two groups of negotiators, the DNA strands between the two constituent groups – and these are the ones who finally have to agree on and implement the agreement – are a lot more fragile.

Table 9.1 How the negotiation DNA is complicated by the presence of constituencies

Negotiation DNA	Constituency effect
The two parties	The strands of the DNA are now much larger and each strand contains a negotiation DNA of its own.
Reciprocity	Reciprocity between those at the negotiation table is still present but there is no basis for reciprocity between their respective constituents.
Trust	Trust still needs to be built between those at the negotiation table but ways of building trust between their respective constituents are limited.
Power	Power is still best understood in terms of walk-away alternatives, but those of the constituents, not the negotiators.
Information exchange	Information is still a critical factor but the constituencies are likely to have different and probably less information than their negotiators.
Ethics	Ethical behaviour is still a critical element.
Outcome	The focus of the negotiation is still the agreement and how it will be implemented, but implementation will be by people other than those at the negotiation table.

The effect of constituency and collectivity

In a constituency negotiation, the fundamental dynamics – the issue strategies and process tasks – remain the same, although the exploration phase may be even more constrained and the whole negotiation is likely to be more competitive (see [Box 9.1](#)). The real difficulty is that the strategies and tasks have to unfold across three negotiations at once.

Box 9.1 Reasons for increased competitiveness

- The difficulties in developing the party's stance to take into the negotiations. It is easier to get broad support for a position than it is to get endorsement of a broad statement of interests.
- The need to convey an image that the negotiator does actually represent the constituents' views. This tends to lead to high opening positions being developed, as these will have broad support.
- The need to report back. This induces firmness at the bargaining table, not only as a tactic but also to avoid loss of face with the constituents.
- The fact that constituents generally expect their negotiators to 'act tough'.

Each of the three parallel negotiations involves differentiation, exploration and exchange, as well as the key tasks of information exchange, flexibility testing and concession-making. In a one-on-one negotiation, there is no reason why both negotiators should automatically

progress through the phases and tasks in parallel, hence the need to manage the negotiations and to work as much as possible to a similar script. This element of pace and progression through the phases becomes more important when there are negotiations in parallel, making the task of managing them more difficult.

Separation in constituency negotiations

The changing dynamics between the joint negotiations and the constituency can be viewed in terms of cohesion and separation (see [Figure 9.9](#)). At the start of the negotiations, the constituency and their representatives will be as one, solidly behind the position being put to the other party.

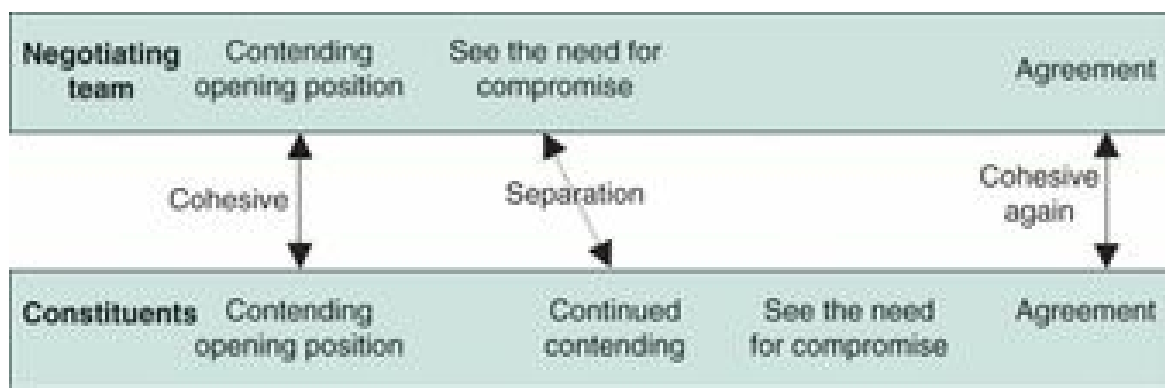


Figure 9.9 Constituency–negotiator separation in positional bargaining

As the negotiators gain a greater understanding of their differences, the other party's priorities and BATNA, they will realise the need for compromise, but the constituents – not having been present at the negotiations – will still feel justified in maintaining their original position. At this point, the negotiators become separated from their constituents until, through communication (and negotiation) with the constituents, the constituents also come to the realisation that compromise is necessary. At some point, constituency support will coalesce around a final position that can be agreed to by both parties.

Negotiation skills tips

Managing separation

- Approach your dealings with your own party as a negotiation.
- Ensure that the practical arrangements for your negotiations with the other party provide time for reporting back to and discussion with your constituents.
- If possible, have one or more constituents on your negotiating team; maintain control over who speaks.
- Ensure that your constituents have thought through their BATNA.

The more competitive the opening stance of the parties, the more difficult it will be to bridge the separation. If the representatives are to find creative or clear-cut compromise solutions while their constituents are still set on contending, they must build a bridge towards the other party. At the same time, they must reflect the support of their constituents for a particular position – particularly in the closing stages of a negotiation. Some ways by which negotiators manage this are listed in [Box 9.2](#). One way is through the interpersonal exchanges identified by Douglas ([1957](#), [1962](#)) (see [Chapter 7](#)), where negotiators indicate their own views (‘I might have a look at that proposal’) while maintaining the integrity of their party’s position should the negotiations not progress (‘Our position on this issue is unchanged’). In one negotiation (Fells [1998a](#)), management and union negotiators, in their party roles, contended on the pay issue and expressed the difficulties they would have in getting their party to accept a revised position. Concurrently, they sounded each other out through

interpersonal exchanges on how work performance would be linked to pay (which might be a way to bridge their incompatible pay positions).

Negotiation in practice

The risk in not being part of the negotiation

A dispute arose in a factory and work stopped. The workers claimed to have been locked out; management said the workers had gone on strike. At a mediation on the third day of the stoppage, it became clear that everyone wanted the stoppage to end but the practicalities of organising the return to work meant that the stoppage would last five days. Each party held the other liable. This meant that the company would not pay the workers for the time they were on strike and the employees were demanding their wages for the days on which they were locked out. After many hours, the company shifted its position to offering two days' pay; the union believed the workers would accept two and a half. The management negotiators came to realise that two and a half days would settle it and get everybody back to work.

However, the company directors – who all day had been in their head office not 10 minutes away by car from the mediation office – refused to make further concessions. The management negotiators were in phone contact with the directors, but could neither persuade them to make the last concession to bring the stoppage to an end, nor persuade them to come to the meeting and become involved. After more than 12 hours of meetings, the mediation broke up. The stoppage lasted two months.

Box 9.2 Building bridges

- Negotiators may at the same time be standing firm yet looking for solutions. Negotiators may stall in the negotiations in order to give themselves time to organise their own party around a new negotiating position.
- Negotiators may begin to make distinctions between their own views and the policies or views of those they represent.
- Negotiators – particularly the key negotiators – may develop informal links with opposing negotiators to find new solutions.
- Negotiators will begin to re-emphasise the constituency group position as the final concession-making process unfolds.
- Negotiators may raise their level of toughness as the negotiations close, even if they are the conceding party.

Another way to build bridges – again in the industrial relations context – is for the parties to negotiate formally on the front stage while talking informally on the back stage (Friedman [1994](#)). This back stage might be a quiet discussion between key negotiators during a coffee break or a more considered approach through a third party. This two-track negotiation is also evident in international negotiation and in the business world, where formal negotiations are supplemented (or even rescued) though ‘chance’ meetings at conferences or other public events. The trigger for another attempt at a merger between British Airways and Qantas, for example, was a conference speech by the British Airways chief executive (*Australian Financial Review*, 4 December 2008, p. 1).

Negotiators must be alert to these process complications, and allow them to be worked through. If the opposite negotiator has just come from a difficult meeting with their constituents, they may well take a harder line

in the joint meeting, but this does not necessarily mean that the negotiations are going backwards. Flexibility around the process is preferable to making concessions on the issue to break a deadlock caused by the process being too rigid.

Negotiators should also be alert to the tactical opportunities within constituency negotiations. Negotiators can use the ‘My hands are tied’ ploy to fend off pressure to make further concessions. There is no difference, in a negotiation sense, between the union official saying they can’t take this offer back to their membership and the company negotiator saying that there is no more money in the budget. In both cases, the negotiators are using an away-from-table event – the membership endorsement of the earlier claim, the management’s previous budget meeting – as a constraint on their negotiating flexibility.

Negotiation in practice

Internal tensions within a negotiation

Two European telecommunication companies were developing a plan to merge two of their subsidiary organisations and establish a new business venture to capture the growth in international call traffic. The negotiations were being conducted by senior sales executives from the two companies, supported by small teams of specialist managers. The companies had agreed that their respective returns from the new venture would reflect the relative size of the two subsidiaries. One company was far larger than the other, so the split – based on the valuations – was accepted to be 20:80.

Two business analysts on the negotiating team of the smaller company were concerned over the financials and, after much checking and double-checking, came to the view that the other company had made an error in its valuation. There was no suspicion of duplicity, just that some errors had occurred deep in the calculations. If this view was correct, then the relative shares would be 28:72, which over the years would mean an improved income stream of millions of euros.

The analysts knew their senior executives wanted to close the deal, to make it happen. They certainly would not want to jeopardise the deal by raising the discrepancy only to find out that the other company's calculations were right. The analysts had to pluck up their courage and raise their concerns with their senior colleagues, who at first reacted as predicted but then they too checked the figures and became convinced that there was an error. Even so, the senior executives still had to decide whether to risk

raising the issue: when shown to have made a mistake, the other company might pull out because its financial returns would now be too low, or it might find some reason to stall the negotiations and cause them to fail simply because of the loss of face.

The potential increased revenue stream was too big to ignore just for the sake of the deal so, informally, one lead negotiator talked to his opposite number and suggested they revisit their calculations. The face-saving way through this for the negotiators was to agree to an independent audit of both companies' valuations, an audit that later confirmed that the 28:72 split was appropriate.

There was no going back on the original agreement to structure the deal around the valuations, so that left the senior executives of the larger company to have to go back to their board and explain that, at a stroke, the deal was now worth 8 per cent less than they had planned on – not an easy meeting.

A full account of the Telco case is available at www.cambridge.edu.au/academic/effective

Constituency and collectivity: effects on the negotiator

The two-way negotiator

When negotiators are acting on behalf of others, such as the senior executive or a group of their workmates, they often feel they are being pulled in two directions at once. This arises because they are in a boundary role position (Druckman [1978](#); Walton & McKersie [1965](#)). If agreement is to be achieved, negotiators have to be advocates for their constituents, yet still be responsive to the other party; they also have to persuade their constituents to be responsive. Consequently, negotiators might find that they negotiate more with those they are representing than with the other party, and that often those negotiations are the more difficult ones. Walton and McKersie ([1965](#)) outline some of the tactical possibilities for representative negotiators, not the least being to try to moderate the demands of the constituents *before* presenting a position to the other party. To convey an image of strength, the constituency has to be solidly behind its representatives when the opening position is presented. This is just one of many tactical dilemmas faced by representative negotiators.

As the negotiations progress, the constituency group's expectations of what it will achieve may have to be negotiated downwards even further by its representatives. The more diverse the constituency, the more mediation skills are needed by the representative negotiator, particularly in international negotiations where the constituency might actually be a number of government departments, each with its own committed stance on the issue under negotiation (Druckman [1978](#); Fisher [1989](#)). In the workplace, particularly on the workers' side of a negotiation, leadership is needed to bring the constituency to a point of agreement (Fells & Savery [1984](#); Friedman [1994](#); Walton & McKersie [1965](#); Warr [1973](#)). The same would be true for negotiators representing a local community group. As noted earlier in the chapter, a constituency group may comprise a wide

range of opinions that have to be managed as carefully as the negotiations with the other party.

Another aspect of leadership is providing those you represent with a clear rationale, both for the state of the negotiations and for what is being agreed (Morley [1992](#)). It is only when the emerging agreement makes sense to the constituency group that it is likely to commit to it. This is why union negotiators need the confidence and authority to manage membership meetings, and why management negotiators should realise that when they present their offers they need the workforce's agreement, not just agreement from those on the union side of the negotiating table.

The Forth Bridge in Scotland provides a useful image of a negotiator acting on behalf of others. The bridge, the first major steel bridge in the world, works on the cantilever principle, with the extended arms of the towers balancing out across the river. The towers need to be on a solid foundation – the skill and experience of the negotiator. Each tower has to be constructed in two directions at once, back towards the firm ground – the solidarity of the party the negotiator is representing – and reaching out towards the other side – another negotiator (who is in a similar position). If too much is built on one side rather than the other – that is, too much attention is paid to one's own party or too much flexibility offered to the other – the tower will topple and the negotiations will collapse. Only when our negotiating towers of strength have carefully reached out in both directions is the link between the two parties – successful agreement and implementation – complete.



In [Chapter 4](#), negotiations between the European and Asian airline were referred to as an example of how negotiating parties will come back together again after a deadlock to resume their negotiations. However, as shown in the following Negotiation in Practice example, despite the potential benefits of an agreement and much further negotiation, the parties still could not reach agreement. The constituents of the Asian airline's negotiators, the engineers and other key operational staff back in the depths of the airline's administration, felt that their negotiators had leaned too far towards the European airline in agreeing to use the latter's operating system in the proposed joint venture. They felt that the European airline should make some other major concessions to restore the balance. As this did not happen, the proposed joint venture did not get off the ground.

Negotiation in practice

The influence of those not at the negotiation table

A European airline was in negotiation with an Asian airline to explore the establishment of a joint venture to enter the growing Chinese market. The CEOs were committed and the parties made progress on many issues, until they got to the point of having to decide on the operating system for the new company. They deadlocked on this important point and the negotiations broke down completely. They resumed their talks through an intermediary; during these discussions, the Asian airline agreed that the joint venture should use the European airline's systems. Although the negotiators had agreed and could then proceed to deal with all the other issues, many operational and technical staff at the Asian airline were unhappy with the decision and, although they did not work against the ongoing negotiations, were certainly not supportive of them or of what was being agreed.

When the negotiators came to the financial aspects of the new joint venture, the Asian airline's position was firm, and part of this firmness was due to the pressure from within the organisation: they had made a major concession over the operational issue, and so should not make further concessions over price. The European airline negotiators understood this final position of the Asian airline and recognised that no further concessions would be forthcoming. They were unwilling to raise their financial stake in the joint venture, so decided not to proceed with the deal. Part of their concern was the extent of support for the new venture from within the Asian airline.

A full account of the Airline case is available at
www.cambridge.edu.au/academic/effective

The negotiation representative's role

In addition to the practical reason why the constituency group is too large to meet directly with the other party, there are two other good reasons to appoint a negotiation representative. First, a carefully selected representative – particularly if a professional, such as a union official, a lawyer or a diplomat – will bring expertise to the negotiation. This expertise should comprise a broader knowledge of the issues and of what settlements are possible, together with experience of how best to manage the process. In addition, representatives can establish trust – or at least a working relationship – across the table, one professional to another, even though they might be arguing stridently over the issues. This interpersonal trust can help the negotiations over sticking points, not least at the points when trust is really needed: Is the information being provided to me true? Can the representative be expected to reciprocate? And will the representative do what they say they will do?

The second reason for appointing representatives is that they tend to be tough negotiators, and can achieve good outcomes for their party. Early research suggested that to get the best outcome, representatives should be appointed rather than elected and be required to report back (elected representatives tend to feel they have been given a free hand) (Ben-Yoav & Pruitt [1984b](#); Breaugh & Klimoski [1977](#); Klimoski [1972](#); Klimoski & Ash [1974](#); Klimoski & Breaugh [1977](#)). Representatives contend more strongly on the issue, and therefore achieve better results (though at the increased risk of deadlock). ‘My hands are tied’ can be an effective closing commitment tactic (Friedland [1983](#)).

Negotiating on behalf of others is not easy. If the representative is too tough, then a deadlock might result, even though the constituency group

was prepared to settle for less. Being too flexible in searching for a solution can result in the rejection of agreements by the constituency and the reputation of the representative being damaged. Representative negotiators experience the tension that arises from the mixed-motive nature of negotiation: the tension between striving to fully achieve the constituent's stated goal and being prepared to accept a lesser outcome rather than none at all. The implications for how the process is managed are explored below.

A further consideration is whether the interests of the negotiators align directly with those they are representing. Negotiators achieve better agreements for those they are representing if they feel their position as the representative is secure (Lee & Thompson [2011](#)). Negotiators might find themselves in a three-way tension (Cutcher-Gershenfeld & Watkins [1999](#)). They have to bring together the diverse views of those they are representing into a single position; they have to ensure that that position is something the other party can agree to; and, at the same time, they have to look after their own interests. Real estate agents act on behalf of the seller, and will supposedly get the best price because their fee is based on the sale price, but their personal interest is in closing the deal and moving onto the next one (Levitt & Dubner [2005](#)). Business and financial consultants may have an interest in the outcome of a negotiation they are advising on where they receive their fee only if a deal is signed. In these cases, the parties need to remember that the real outcome of the negotiation is in the implementation of the agreement, so their adviser's fees should in part be contingent upon the success of this, and not merely be for completing the agreement itself.

Negotiation skills tips

Helping your representative

- Fully share information, your goals and priorities.
- Be sure on what you won't agree to, and why, and make this clear.
- Give your representative time.
- Listen to advice on how the negotiations should be managed.
- Retain responsibility for any issue-related decision.

Managers regularly assert that union officials are only playing tough because soon they will have to face their membership for re-election to keep their jobs – the implication being that the union members are more moderate and reasonable than their elected officials. The research findings cited above suggest that what is more important in determining a contending stance is the requirement of the union officials to report back and have the potential outcome voted on.

To best manage the relationship between a principal (an individual or group) and its negotiation representative, Fisher and Davis ([1999](#)) suggest that the 'agent' (their term for a representative) should have no authority to settle an issue, but should be given discretion regarding how the negotiations are conducted. The agent should focus on the underlying interests and priorities rather than be settlement oriented. As the principal gains a greater understanding of the other party, through their agent engaging in good communication with them about the negotiation, they should give their agent more flexibility to explore and make recommendations. Final decision-making should always reside with the principal.

Negotiation skills tips

Being an effective representative

- Take time to fully understand what your constituents really want to achieve.
- Make sure they fully understand their BATNA.
- Summarise the strategic intent of the negotiation on a piece of paper and keep reminding yourself of it.
- Assert your expertise over the process, but remember that the decisions on the issue lie with your constituents.

Having examined how constituency and collectivity make negotiations more complex, and therefore more difficult for a negotiator, it is worth looking at some more ways in which these complex negotiations can be managed effectively. Later in the chapter, we will examine negotiations in the business context and in the workplace more fully, but here are some general principles, which are useful when any negotiator, or group of negotiators, is acting on behalf of a larger group – any negotiation that fits one or both sides of the situation shown in [Figure 9.1](#). We will draw on many of the aspects of negotiation that have been explored in earlier chapters.

Start the negotiation process early

If you have been given responsibility for managing a negotiation, such as a potential joint venture or a long-term supply contract, it is likely that the first negotiations will be with your own side. Walton and McKersie ([1965](#)) rightly point out that the more strongly negotiators negotiate with their own team to keep their demands to moderate proportions, the easier it is to reach agreement with the other side. It may not be possible to influence the constituency position, but a negotiator should be aware that the negotiations start in the preparation meeting, not when facing the other party. These pre-negotiation negotiations should be handled carefully. Indeed, attitudes could be shaped even before the formal planning starts by providing information that might then pre-empt a groundswell of hard-line views taking hold at the constituency meeting.

The more authority negotiators have, the easier it will be to bring together a coherent and moderate (perhaps even interest-based) opening position to put to the other side. This does not mean taking control or imposing one's views. The critical point of any negotiation is how the agreement is implemented; in a constituency negotiation, it is the constituents who have to agree, and then implement the decision. Negotiators on both sides need to remember this. Thompson, Peterson and Brodt ([1996](#)) found that teams achieved better outcomes than individual negotiators because there was more exchange of information within the team – and, as we know, information is key to finding a value-adding solution. So a representative negotiator needs to draw out all the information (differentiation) from the constituency group through open discussion; a viewpoint put forward by one of the quieter people in the group may be something that becomes really important later in the

negotiations. Similarly, tightly structured issue-by-issue discussions might inhibit creative linkages (Rackman & Carlisle [1978](#)), so allowing the discussion to flow from one topic to another is crucial. It is always important that the constituents begin to think about what their alternative to agreement through negotiation might be (and the other party's too).

Negotiation skills tips

Have pre-negotiation negotiations

- Provide prior information to those on behalf of whom you will be negotiating.
- Ensure that the discussions they have on the issues are open.
- Ensure that there is some other-directedness in the discussion.
- Explain the way the negotiations are likely to unfold.
- Get them to think realistically about their BATNA.

When a group gets together to discuss an issue, particularly if it has a grievance or wants to bring about change, it is easy to forget that negotiation is two-sided. The negotiation representative should endeavour to have some other-directedness in the discussion in order to get those they represent to give some thought to what the other party wants from the negotiation and why it wants it.

Think about preparation in a different way

Negotiations that are complex normally take more time, and generally involve more than one meeting with the other party. Knowing you are going to have to meet often, it is helpful to think about preparation in a different way. In [Chapter 5](#), we suggested some ways to be strategic in your preparation: set clear goals, be aware of all the options, see what might be done prior to the negotiation and so on. The notion of ‘preparation’ is that it occurs before an event, but we should think of preparation as an ongoing activity. Research into how negotiators prepared for multi-million Euro power supply negotiations (Lindholm [2015](#)) showed that the task of preparation is ongoing (see [Figure 9.10](#)). This useful insight applies to any ongoing, complex negotiation.

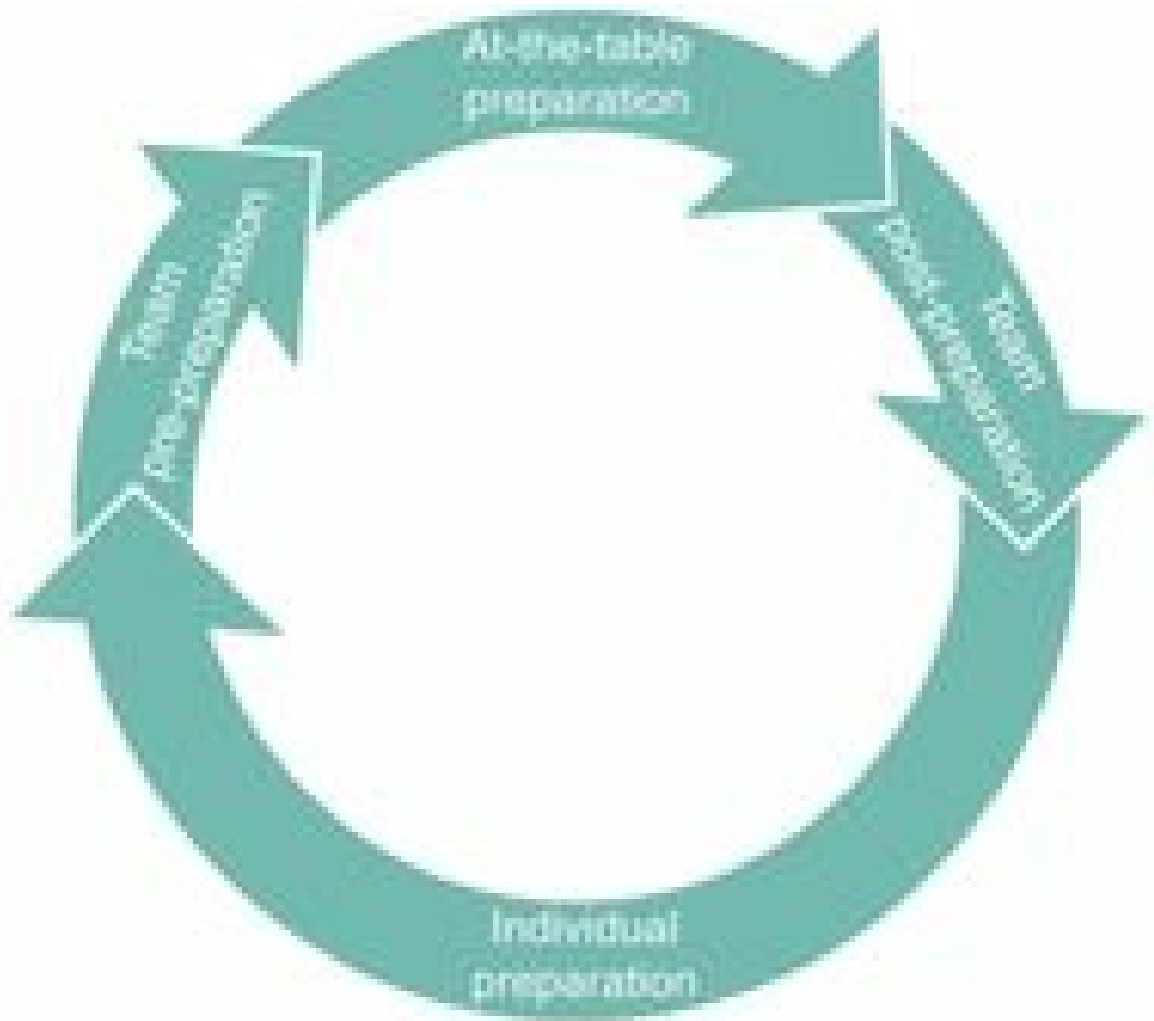


Figure 9.10 The preparation cycle for complex negotiations (Lindholst [2015](#), p. 271)

Many of us find ourselves ‘time poor’, so don’t prepare well; however, we should not leave it until we meet with our constituents or negotiating colleagues before we start thinking about the negotiation; we should do some preparation on our own and so be in a place to make a contribution. This would include thinking not only about the issues, but also the process. The next step would be meeting with the constituency as described above; if there is going to be a team for the negotiations, this team needs to spend time preparing together – although this might not involve a lot of time if everyone is organised (which implies that there is an accepted leader). The next step is meeting with the other party (more

about this later), but straight after the meeting it is important to set time aside to prepare for the next meeting – the ‘post-preparation’ – so that the individual negotiators know what they need to do or think about before they next meet – for example, to report back to those they are representing or to prepare for another meeting with the other party. It is too late to leave the preparation for the next meeting until that meeting is about to happen. In this way, preparation is best viewed as being a continuous circle of activity. In fact, the preparation – thinking about and planning what to do next – was found to carry on during the business negotiations themselves, with the team texting each other while in the meeting with suggestions about how to handle the next part of the discussion. (Time will tell whether this use of new technology at the negotiation table will become accepted practice. Remembering the two-sided nature of negotiation and the need to show respect, give some consideration to whether the other party would view it as acceptable.)

Ensure that everyone is working to the same script

Another important contribution that a negotiator can make through the preparatory discussions is to build a reasonable expectation of the forthcoming negotiation by taking time to discuss how the negotiations might proceed. The fundamental script of negotiating still holds but, as we have seen, the most difficult part is exploration. It is too easy to envisage negotiation as a trial of strength and final reluctant concessions – hopefully by the other side. The script needs to be balanced. Accept that there is competitiveness through differentiation, but sow the seeds for exploration.

On one occasion, a company–union negotiation ended in serious conflict. When their agreement was due for renegotiation the parties met and undertook a ‘lessons learnt’ exercise to see how they might avoid getting into the same situation again. As part of this process, they developed an alternative negotiating script, but a one-day workshop does not reshape ingrained behaviour. Both parties started the substantive negotiations as they had always done, according to their old, comfortable, competitive and positional scripts. As usual, they reached a deadlock but at this point, rather than continue to apply pressure as they had done in the past, they stood back and reflected on what was happening. They remembered the more exploratory negotiation script they had talked about previously, then agreed to move forward in this different direction.

Manage the negotiations

The practical implication of the notion of phases (see [Chapter 4](#)) is that negotiations need to be managed. Working broadly to a preferred script is one way of doing this, but it is still necessary to be able to ‘read’ a negotiation while involved in it – the skill of reflecting in (discussed in [Chapter 2](#)). The three questions in [Figure 9.11](#) follow the issue–process–action approach of this book; they can help a negotiator to make an on-the-spot action review in the middle of the negotiation.

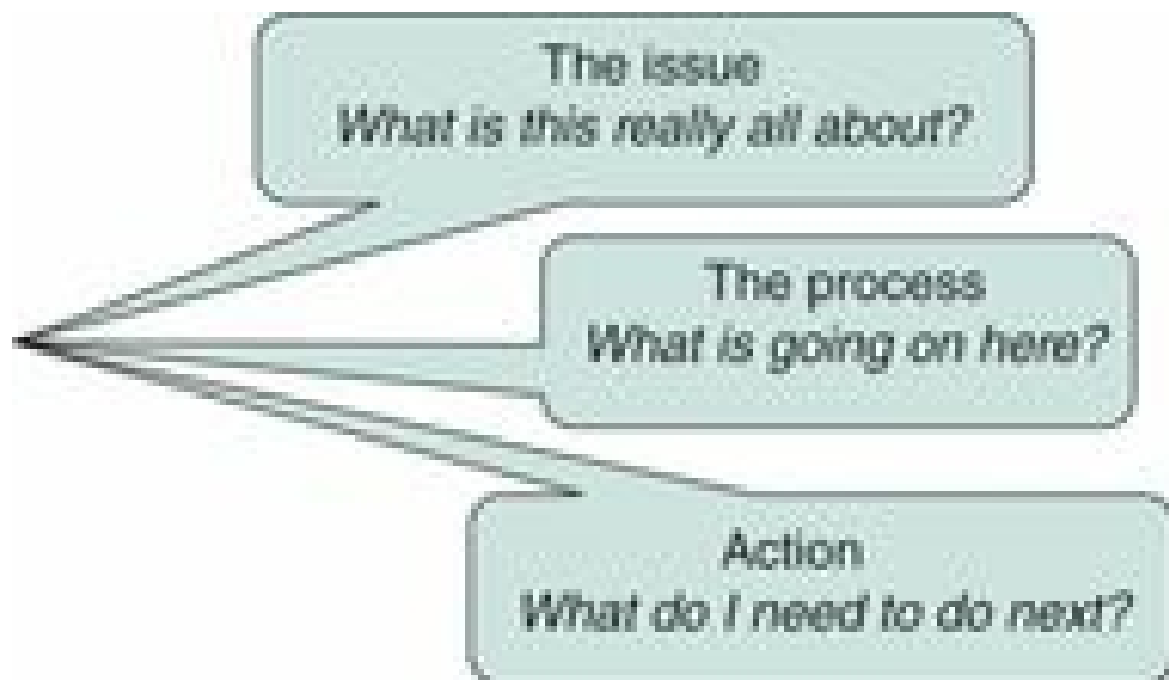


Figure 9.11 On-the-spot action review questions for negotiators

At the same time, negotiators have to manage the issue, and where there are many issues on the table, it is important to keep track of them. Setting up a spreadsheet is one way to do this. In very complex and lengthy negotiations, the lead negotiator can seem to be more of a project manager, identifying critical issues that need to be addressed before others can be dealt with and making sure that no issues are lost or presumed

agreed when they are not. If necessary, the lead negotiators from each side should periodically check with each other regarding the state of play on their respective issues lists. It might be thought more efficient to have just one list, but in reality each party is always going to have its own.

Negotiators can help or hinder the process of bringing their constituencies to a point of agreement (see [Table 9.2](#)). Bringing the three negotiations together takes time, so periods of no obvious progress should be anticipated, and when they do occur they should be accepted. Allow for the fact that the other negotiating team may feel additional constituency pressure, which can happen at any time during the negotiation, but particularly in the end-game. Be alert to hints regarding flexibility or attempts to set up informal communication and respond positively but cautiously; however, try not to push open the flexibility offered into a major breakthrough. Finally, negotiators must remember that final agreement lies with the constituents, not with those sitting across the table, so forcing a table settlement may not lead to a good outcome.

Table 9.2 Constituency negotiations: some helpful and unhelpful behaviours

Helpful	Unhelpful
Extensive, open, other-directed preparation	Allowing a single, extreme position to be developed
Making provision for regular consultation with constituents	Misrepresenting the progress of the negotiations to the constituents
Allowing for periods of strong contending, even when exploring options	Undermining the authority of the opposing negotiator
Allowing time and behavioural	Pressing for a quick settlement

flexibility during the closing
stages of the negotiation

Maintain communication

It is important that negotiators maintain regular communication with those they are representing and with other interested parties. Schedule any briefings or meetings just as carefully as the meetings with the other party. Recognise that meetings with constituents can easily become a negotiation in itself, going through the same tasks of information exchange, solution-seeking and concession-making to evolve a new position to take to the other party, preparing the negotiator for the approach to be taken in the next joint session. Sometimes even briefing meetings with an external party can become a negotiation when you realise that they expect you to take their concerns into account.

A critical issue for the two teams of negotiators to sort out is how much feedback should be provided after each negotiation session. Some prefer relying on agreed minutes of the meeting, but these can take time to prepare and so leave an information vacuum. Often it is sufficient merely to agree on the key points that the negotiators will convey to their constituents and other parties. In drawing the session to a close, a good negotiator will ensure that the feedback points are clear. If the negotiators cannot trust each other to report back openly, there are more difficulties in the negotiation than can be overcome by relying on formal minutes, which themselves could become a source of dispute. Employers are often unwilling to give their employees time to talk through the issues when a major negotiation is in progress, perhaps unaware that when time to discuss is limited, the more contending position is easier to accept. In business negotiation, releasing commercial information may have a serious impact on the negotiations and so needs to be managed carefully.

A good negotiator will try to build a working relationship with negotiators from the other party so that the process can be maintained, even though the parties are in conflict over the issues. At least one negotiator from each side should be preparing the ground in case an informal back-door approach becomes necessary to bridge an impending deadlock.

An option in the more public forms of constituency negotiations is to attempt to directly convince the opposing constituency. Employers can communicate directly to their employees other than simply through the negotiation process; the local council might call a community meeting to broaden the issue beyond the interests of the petitioners from a particular street; a company might brief reporters for the business pages of the newspaper. These opportunities to communicate provide one party with more strategic opportunities than the other (Fells [1998b](#)). The presumption behind direct communication is that the constituents are more moderate than their negotiators, but this is not always the case (see [Figure 9.2](#)). If the communication is perceived as an attempt to undermine (manipulate) the negotiation process, attitudes can be hardened (remember, the other party has choices too).

Maintain trust and authority

We saw in [Chapter 3](#) that trust is part of a negotiation's DNA. Any negotiator or negotiating team must earn the trust of those they represent. Part of this trust is built on the negotiator's experience. An obvious source of mistrust – that the negotiator will negotiate something behind the backs of the constituents – can be dealt with through clear instructions on the issues and the amount of flexibility the negotiators have. For this reason, it is important for negotiators to ensure that their instructions are clear. Negotiators must be clear about what they can and cannot agree to and the areas of flexibility that can be explored if the situation seems to call for it. The constituents must extend confidence to the negotiator and not expect them to argue only for a declared position. If the negotiator has to keep saying, 'I'll have to refer back on that', then they will lose the respect of the negotiators across the table and agreement will be more difficult to reach.

Similarly, negotiators need to have authority over how the process should be managed. Only they have the feel of the process, so they should know how best to implement the chosen issue strategy and how best to respond to the other party's manoeuvrings. The negotiator should determine when and how particular positions, suggestions and concessions are made in joint sessions. The constituents, if they want a good agreement, should commit to considering any alternative proposals their negotiators bring back to them. Equally, they should not think their negotiators are letting them down if they recommend that a concession is necessary. Whatever the case, the final decisions on the issues should always be with the constituents.

Negotiation skills tips

Maintaining strategic intent

- Understand where what you hope to achieve in this particular negotiation fits within the broader objectives of the organisation.
- Write this as some dot points and keep that piece of paper with you to refer to in your planning meetings and negotiation sessions.
- Make sure each person in your negotiating team understands how their role contributes to the overall goal.
- Spend time to ensure that those who will be affected by any agreement also understand the broader objectives, not just their own area's particular interests.

Maintain the strategic intent

Finally, negotiators must remember why they are negotiating. It is very easy to be caught up in the complexity of a constituency negotiation and lose focus on the bigger picture: the fundamental goal that needs to be achieved for the constituents through the negotiation. This was an important factor in negotiations between two mining companies that were looking for ways to reduce their costs by sharing resources (Fells [2013](#)). The two teams of negotiators began working on a deed of cooperation between the companies, but in the process became focused more on the detail than the bigger picture. The negotiations got bogged down until their respective senior executives intervened and reoriented their team back to the overall cooperative goal that was to be encapsulated in the negotiated agreement.

A lead negotiator may come to the realisation that to continue by simply restating the demands of their constituents will jeopardise reaching an agreement, yet they are convinced that all the negotiator needs to do is stand firm and the other party will give in. A negotiator may be the only one in the team to realise that the process is getting bogged down in competitive detail; others in the team may think this is merely the cut and thrust of real negotiating. It is at this point that the negotiator must draw on the trust and authority that they have built up and talk process with their own side to ensure that they don't lose sight of what they are trying to achieve.

Discussion questions

- 1 What are the primary challenges that you face when you have been delegated by a group of friends or work colleagues to negotiate something on their behalf?
- 2 ‘Grasp the big picture’ is good advice when preparing for a negotiation. How can this principle be put into practice? (You might want to look back at [Chapter 5](#) for some more thoughts on preparation.)
- 3 Why do negotiations on behalf of others seem more competitive? What extra challenges are there where the constituency is a large group?
- 4 For each element of negotiation’s DNA in the following table, identify what might be done to strengthen the DNA link.

How the negotiation DNA is complicated by the presence of constituencies

Negotiation DNA	Overcoming the constituency effect
The two parties	
Reciprocity	
Trust	
Power	
Information exchange	

Ethics

Outcome

5 What leadership skills do you think a negotiator needs? When might they be particularly needed?

Managing a negotiation: a mediation perspective



This chapter looks at negotiation from a different perspective. Mediation has been described as skilfully assisted negotiation, so we can learn about how to manage a negotiation by looking at what mediators do. After reading the chapter, you should be able to:

- appreciate the importance of mediation as a dispute-resolution process
- understand the nature of the mediation process and its affinity with the negotiation process
- be aware of the variety of approaches to mediation
- be aware, as a negotiator, of how to make use of mediation skills.

Dealing with disputes

If negotiators work their way through the tasks that have been described in [Chapters 6–8](#), then they should be confident about managing the process effectively and achieving a good outcome. However, negotiation is both messy and complex, so it doesn't always go according to plan. As we saw in [Chapter 4](#), they can get stuck or reach a deadlock. That chapter suggested some ways to handle a deadlock effectively and move the negotiations on towards an outcome. Another way to overcome a deadlock is to involve a mediator. It is unlikely that the reader will become a mediator, but a negotiator should understand the nature and effectiveness of the mediation process.

Mediation is a form of third-party involvement that can help disputing parties find a settlement that brings their dispute to an end. People have been mediating and helping resolve disputes since time immemorial, and it is growing in importance as a dispute-resolution process. Indeed, a lot of what is regarded as diplomacy involves mediation. In this arena, mediation is often conducted by neutral countries, such as Norway or by retired prime ministers (Tony Blair) or presidents (Jimmy Carter). Now mediation is being used in other areas. One of the first areas in which mediation was formally recognised as a preferable means to resolve disputes was in industrial relations, though historically this form of mediation tended to be called conciliation. Following widespread disputation (due mainly to industrialisation) in the 1890s, conciliation processes were established in New Zealand and the United Kingdom. Australia's system focused more on the arbitration system, but subsequently conciliation was introduced as a possible process for intervention before arbitration. Later, other countries also established conciliation services in support of collective bargaining

between managements and unions. Strikes and lockouts can cause serious social and economic hardship, so the need for alternative dispute resolution processes was clear. The term ‘alternative dispute resolution’ (ADR) is now much more familiar, with the word ‘alternative’ meaning ‘alternative to going to court to settle your dispute’. Having one’s day in court may be satisfying (especially if you win), but it can be very costly (even if you do win), so many court procedures now require the parties to engage in a mediation process to see whether they can resolve their differences themselves rather than needing a judge to do it for them. Recognising that mediation works, many commercial contracts now contain a mediation clause that requires the parties, if they are in dispute, to go to mediation before considering any court action. We will see that what is termed ‘mediation’ can take many forms. A customer in dispute with their telco or bank may lodge a complaint with a formally appointed industry ombudsman who will usually try to mediate a resolution rather than arbitrate one. Many areas of employment law, such as those making discrimination unlawful, provide for conciliation (which involves a process very much like mediation), with provision for a legally binding decision in the background.

An extensive review of research into mediation by Wall and Dunne ([2012](#)) reveals the wide variety of situations in which mediation can be used ([Table 10.1](#)), and several examples are provided later in this chapter that show how mediation has been used very effectively. In addition to these more formal processes, mediation often occurs informally when, for example, a respected relative is asked to help out in a family dispute, or a community leader tries to bridge a gap between local farmers and landowners. Wall and Dunne ([2012](#)) make an interesting distinction around processes established for situations where the disputants could be expected to have some negotiation experience, and those where it is quite

possible that one of the parties (if not both) has little or no experience of dispute resolution. Clearly there will be some difference between a mediation over a disputed term in a commercial contract with both parties represented by their lawyers and a mediation of a dispute between two neighbours who have fallen out over who should pay for the cost of a new fence between their properties.

Table 10.1 Contexts for mediation (based on Wall & Dunne [2012](#), p. 222)

Disputants will retain future relationship	Disputants will not retain future relationship
Disputants have adequate negotiation skills	
Industrial (e.g. construction industry)	Civil court, contractual disputes
Inter-firm	Civil court, liability claims
International	Civil court, medical malpractice
Union–management	Homeowner–insurance
Within organisations (e.g. HR procedure)	
Disputants have inadequate negotiation skills	
Community	Debt negotiation
Divorce with children	Divorce without children
Doctor–patient	Tax department–taxpayer
Education	Victim–offender
Employment	
Government–citizen	

Inter-gang

Mental health case

Police boards

School peers

Already, you will have noticed that the terminology is a bit confusing, and when we get to discuss the different types of mediation it may well get worse. One of the reasons for this is that when two parties are in dispute and have turned to a third party for assistance, they are really only interested in the help they can get, not what it is called. The essence of mediation, as we will see, is its voluntariness: the parties retain the rights to and the responsibility for the final outcome. This voluntariness is what distinguishes mediation from conciliation: although the mediator and the conciliator may be conducting their meetings in much the same way, a mediator is there to help the parties reach their own agreement, whereas the conciliator has to ensure that what the parties agree to is consistent with the requirements of the law under which the original complaint was made.

This chapter focuses on the mediation process, particularly the things mediators do to help the parties resolve their differences. (For a review of ADR processes, see Roberts and Palmer [2006](#).) There are several reasons for exploring mediation in a book on negotiation. A clear understanding of mediation will help a negotiator to make good strategic decisions on when and how to make use of the prospect of mediation during a negotiation. Because mediation is becoming more widely used, negotiators may find themselves involved in mediation, so they need to understand what the process involves; a knowledgeable negotiator will be able to contribute to the smooth progress of the mediation and so improve the likelihood of a

good outcome for their party. More importantly, negotiators can learn from mediators because many of the skills that mediators use are those a negotiator should be using. Finally, having an understanding of mediation skills puts a negotiator in a position to become a mediator within the negotiation, and so manage an emerging deadlock – perhaps making recourse to mediation unnecessary.

Following an exploration of the mediation process and a mediator's skill set, we will resume a negotiation perspective and explore the practical implications of mediation for a negotiator.

The essence of mediation

In earlier chapters, we described negotiation using the imagery of DNA. We can start our examination of mediation by using the same imagery. If a person's DNA is damaged, they become unhealthy; if the DNA of a negotiation is incomplete or damaged, then the negotiation will deadlock. Just as a doctor works to bring a person back to health, so too a mediator works to bring a deadlocked negotiation back to a situation where the parties can reach agreement. [Table 10.2](#) uses the DNA perspective to give an overview of what mediation involves and what a mediator does. The similarities with negotiation should be clear.

Table 10.2 Mediation's DNA

Reciprocity	The manner in which the mediation is conducted will create a sense of balance – each party having their say in turn and so on – and a sense of procedural justice that will encourage further collaborative participation.
Trust	A mediator will seek to build the parties' trust in the mediator as a first step to them developing a level of trust between themselves. The mediator acts as a sort of guarantor.
Power	The mediator will want to ensure that the parties understand the balance of

power (their respective BATNAs), but do not exercise their power.

The mediator will seek to control and negate any attempts to exercise personal power at the mediation table (intimidation, threats, etc.).

Information exchange

Through controlled conversation, the mediator will endeavour to ensure that each party knows what the other party wants and why, what an offer involves, why the party is rejecting it and so on.

Ethics

The mediator's own competency, conduct and mediation ground rules will set the standard for the parties.

Outcome

The mediator will endeavour to ensure that the parties are fully aware of what they are agreeing to and what the implications of their agreement will be.

The many types of mediation

Mediation sits within a wide range of third-party dispute-resolution processes. These processes can range from a court hearing, in which the judge or arbitrator has complete control over the process and decides the outcome, through to some forms of loose facilitation in which the facilitator has some input into the proceedings to help the parties get started and identify their issues. Another form of intervention – one that is between these extremes – is when the parties make use of fact-finding or expert advice. A construction contract to build a new office block, for example, will typically have a variations clause through which the parties can sort out and agree on the cost variations arising from design changes or unexpected building problems. Where they can't agree, the clause can provide for a costing expert to make a recommendation about what each party's cost liabilities should be. The parties do not have to accept these recommendations, but would probably be wise to do so – which means that the expert has a strong influence over the outcome; this process is similar to Fisher, Ury and Patton's ([1991](#)) recommendation to use external criteria to resolve outstanding differences.

As we have seen, mediation can take many forms. Alexander ([2008](#)) lists six different types of mediation: expert advisory; settlement; facilitative; wise counsel; tradition-based; and transformative. Others make a distinction between facilitative and evaluative mediation (Boulle [1996](#); Riskin [1996](#)): facilitative mediation is the mediator helping the parties through the process; in evaluative mediation, the mediator is more actively involved in the issue by providing their assessment of the parties' positions. This form of mediation is not far removed from giving an expert appraisal (similar to Alexander's 'expert advisory'), but it is more likely

that the evaluation of each party's case will be given in a private session rather than as a formal opinion for them both to consider.

Wall, Dunne and Chan-Serafin ([2011](#)) identified 25 different approaches, but for their research brought these into three broad strategies: neutral (not take sides or tell the parties what to do but just help them keep talking); evaluative (tell the parties the strengths and weaknesses of their case); and pressing (be the devil's advocate and put pressure on the parties to compromise). (They found that the evaluative and pressing strategies were more successful, but more on that later.) The way writers and practitioners make distinctions between the different approaches is normally around two dimensions: the extent to which the mediators get themselves involved in building new processes and/or the extent to which they involve themselves in finding a solution for the parties. Using this process and issue distinction (which we have already seen is helpful in negotiation), we can see that the different approaches of third-party dispute-resolution processes can range from merely keeping some form of contact with disputing parties (orchestrators) in one corner to third-party decision-making in the other (see [Figure 10.1](#)). We can see that the various forms of mediation can fill much of the space between. To help understand the different approaches, we will first describe the two extremes on the process and issue axes – orchestrators and deal-makers, both appropriate in the right situations – and then examine the transformative approach that envisages resolving far more than the current dispute between the parties. A fuller description will be given of the facilitative approach, which has become the core model for mediation practitioners.

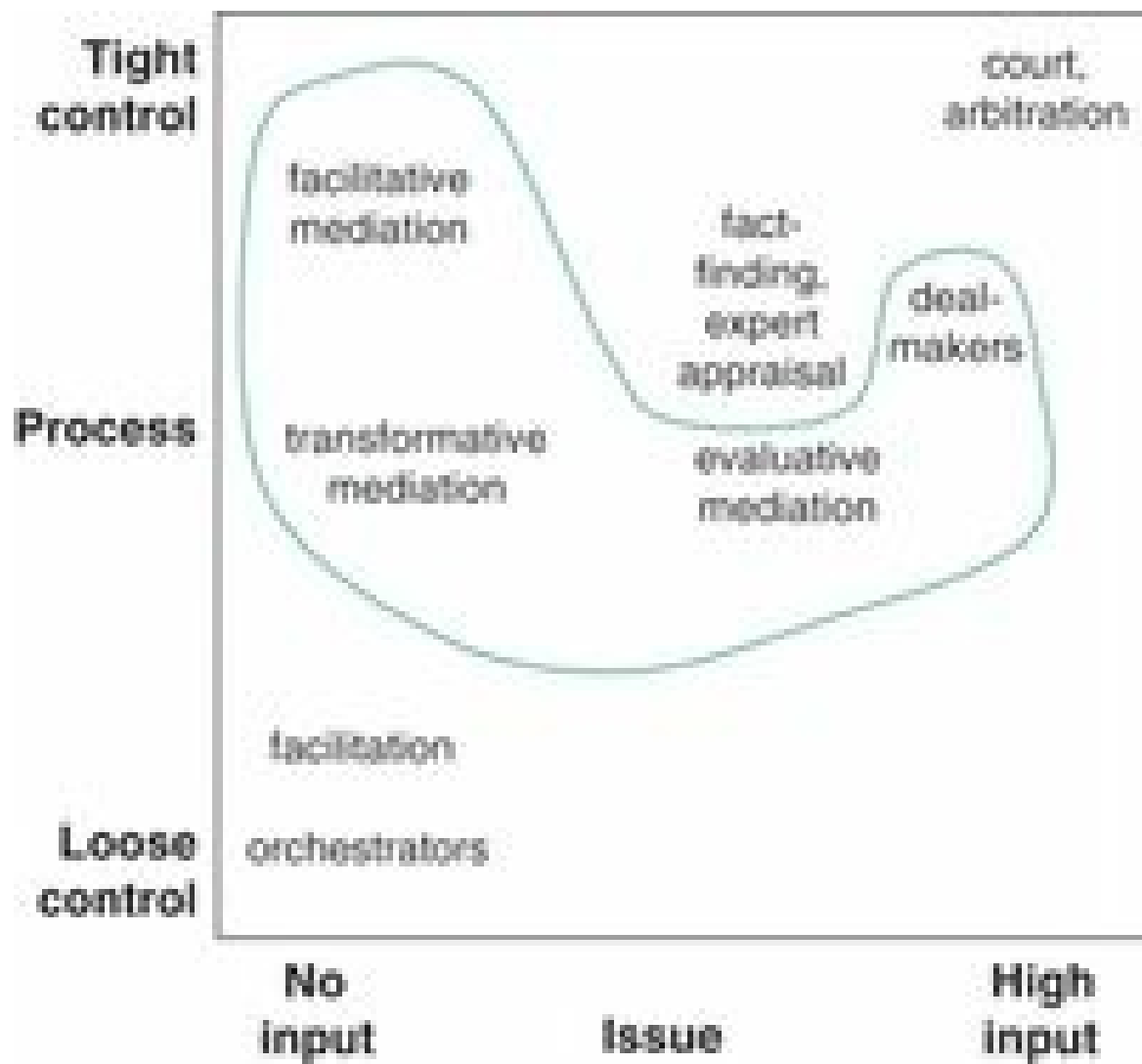


Figure 10.1 A map of resolution processes

Orchestrators or deal-makers?

There are some situations in which the parties are in dispute but not yet ready to engage in talks to resolve the situation; all mediation involves at this stage is to maintain lines of communication and encourage collaboration rather than conflict. This often happens in industrial disputes – particularly at the beginning – and also in long-standing international conflicts. It occurred in the Airline case, where negotiations over a joint venture between two airlines broke down and a respected industry expert was approached by one party to approach the other to assess the prospect of further negotiation. After his intervention, the parties were able to resume their negotiations.

Kolb ([1983](#)) uses the term ‘orchestrator’ to describe this relatively passive approach, and contrasts it to ‘deal-makers’ – mediators who draw on their experience to suggest and persuade the parties to accept a particular solution. In practice, the distinctions between the different approaches may become blurred. The evaluative approach envisages mediators using their judgement of each party’s likely success in, for example, a subsequent tribunal or court case, to get them to reconsider their positions and move towards a more likely outcome. Where there are no precedents, the mediator may draw on their experience of previous similar settlements to encourage the parties to rethink their positions; they may have to be a bit more persuasive than if they had some court decisions to which to refer. In other situations, there may be no clear outside points of reference for the mediator to draw on, but they may see how a particular solution could meet the needs of the parties and begin to promote it as a possible settlement. In the most extreme form of deal-making, the mediator is solely focused on finding a solution to which both parties can

agree. This settlement-oriented approach by a mediator is summed up in the expression, ‘Don’t confuse me with the facts. Tell me what will settle it.’ It is far removed from the process-oriented facilitation approach, and probably does nothing to deal with the underlying causes of the dispute, but it may be used by a mediator when a situation needs urgent resolution.

A full account of the Airline case is available at www.cambridge.edu.au/academic/effective

Transformative mediation

Another form of mediation is transformative mediation (Bush & Folger [1994](#)). As its name suggests, this approach to mediation seeks to manage a major change in the relationship between the parties. For example, environmental groups and businesses often have diametrically opposed views on a proposed industrial development, so finding common ground is not easy. The transformative model of mediation is built on the belief that, no matter how combative the parties might be, attitudes can change and building new relationships is a critical part of any long-lasting solution. There is the story of an ongoing dispute between a pastoralist and an Aboriginal group, in which both parties were acting according to stereotype – until the pastoralist and one of the elders found themselves in a conversation about the terrible erosion and degradation that was happening to the land. The elder could see that the pastoralist was genuinely upset and concerned about the future of the land, just as he was. Both men realised that, despite their differences, they thought and lived by the belief that preserving the land was the most important thing of all. This realisation did not resolve their differences, but it did mean that they saw

each other in a completely new light and so could discuss their differences in a more productive way.

The core model of mediation: facilitative

The critical implication of this variety of approaches to mediation – for negotiators, as well as for mediators – is the need to ensure the mediation approach is appropriate to the nature of the dispute. The expectations of both parties and the mediator need to be aligned. The origins of a dispute between a company and a union, for example, may indeed lie in their combative relationship – which, if not addressed, will only give rise to further disputes. With a strike looming, the parties all just want the current dispute to be fixed; they are not interested in embarking on a journey to transform how they deal with each other. Conversely, a family mediation may be less than helpful in the longer term if all the mediator does is tell the divorcing couple how best to divide up their assets.

Mediation in practice

A business franchise mediation

A food company operates its stores across Australia on a franchise basis. The agreement for one particular store was due for renewal. The store had not been meeting its targets; Australia-wide, the company was not doing very well either. The husband and wife team who held the lease wanted it to be renewed only in the husband's name. It transpired that, for income and tax reasons, it was financially better for them if the wife worked elsewhere; in fact, she already had another job. In the months leading up to the agreement's expiry date, the two sides sorted out all the

commercial terms but there was one item on which they could not agree. The franchisor would not agree to the husband being the sole franchisee unless he and his wife agreed to a new clause in the agreement and waive all outstanding rights that might accrue out of the previous agreement. The husband and his wife refused to accept this new clause.

Here was a win–lose issue – either the clause was inserted in the new agreement or it was not. The alternatives for each party were either to agree with the other side’s demand or to walk away and, in the case of the company, find someone else to take up the franchise and for the husband to find a new job. The deadlock had to be resolved. For this to occur, they had available to them an industry-wide process for disputes on franchise agreements to be referred to mediation.

The mediator met separately with the parties. Because they had been required to go to mediation, each party took the opportunity to test out what mediation really involved and where it might lead. Through the intake sessions, the mediator provoked the parties to consider other options. (Because the parties had locked themselves into the ‘either in or out’ way of framing their differences they had not realised that there could be other options.) When the mediator later brought the parties together, they spent time going through the issues, then each side put forward its alternative ways around the problem. After several hours of joint and separate meetings, the owner came to the view that none of the options that he or the franchisee had proposed was going to be better for him, so he was left with the choice of walking away or agreeing to the franchisee’s position. He chose the latter.

There is, however, an emerging core approach to mediation that is facilitative and interest-based (Boulle [1996](#); Sourdin [2002](#)). Coltri ([2010](#), p. 68) calls it ‘pure mediation’, and it views itself as really the only proper form of mediation. This is the approach that is taught in most mediation courses, such as those offered by Lawyers Engaged in Alternative Dispute Resolution (LEADR), which now incorporates mediators, adjudicators, conflict coaches and facilitators, so it is the one negotiators are most likely to encounter.

This core approach is facilitative because its focus is on encouraging the parties to develop their own solutions; and there is no place for the mediator to make solution-oriented suggestions. It is interest-based because the method is to first get a clear understanding of all the issues in dispute, not simply to look for a settlement that will ‘fix it’ and make the dispute go away. From this perspective, mediation is overlaid on the negotiation rather than being a separate process that takes over the handling of the dispute (see [Figure 10.2](#)).

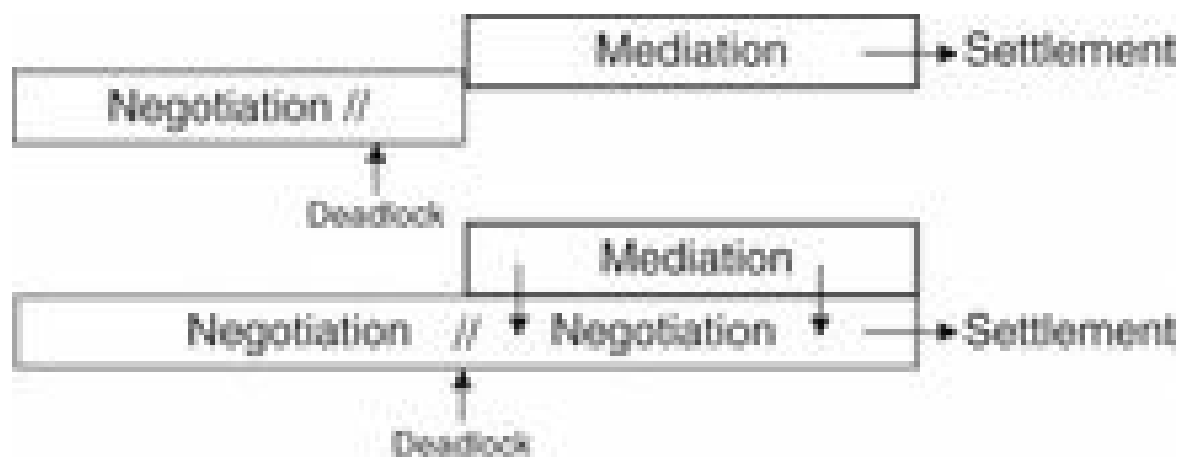


Figure 10.2 Two perspectives on mediation: as a separate process and as a negotiation overlay

The mediator brings a skill set and experience that the parties might lack, and so assists them through the remainder of their negotiation –

hence the descriptions of mediation as assisted negotiation (e.g. Coltri [2010](#), p. 58; Moore [1986](#), p. 14; Redfern [2010](#), p. 53). This perspective on mediation means that the definition of negotiation (see [Chapter 1](#)) can be used to provide a parallel definition of mediation. Negotiation is a process in which two parties with differences, which they need to resolve, try to reach agreement through exploring options and exchanging offers, and an agreement. This can be rewritten to provide a definition of the role of mediator:

Mediation is the involvement of an independent person whose role is to assist the parties find a solution to their dispute through helping them clarify their real differences and clarify why they need to resolve them, and through supporting their efforts in trying to reach agreement through helping them explore and create more options and assisting them when exchanging offers, and making sure they are comfortable with their agreement.

What do mediators do?

Two early summaries of what negotiators actually do – one by a leading negotiation researcher (Raiffa [1982](#)), the other by a leading mediation practitioner (Moore [1986](#)) – show the broad sequence of events. The similarity with the phase nature of negotiation is clear (see [Table 10.3](#)).

Table 10.3 What mediators do

Bring the parties together.	Make initial contacts with disputing parties.
Establish a constructive ambience for negotiators.	Select a strategy to guide mediation.
Collect and judiciously communicate selected confidential material.	Collect and analyse background information.
Help the parties to clarify their values and to derive responsible reservation prices.	Design a detailed plan for mediation.
Seek joint gains.	Build trust and cooperation.
Keep negotiations going.	Begin the mediation session.
Articulate the rationale for agreement.	Define issues and set an agenda.
	Uncover disputing parties' hidden interests.
	Generate options for a settlement.

Assess options for settlement.

Undertake final bargaining.

Achieve a formal settlement.

Raiffa ([1982](#), pp. 108–9)

Moore ([1986](#), p. 25)

The core model is built on the interest-based approach (Fisher, Ury & Patton [1991](#)). The importance of the parties' interests in finding solutions in negotiation was explored more fully in [Chapter 6](#), but briefly here, a party's interests are the underlying concerns and motivations that sit behind their stated goals and positions. Uncovering these interests opens up more opportunities to find mutually beneficial solutions. The logic of mediation, as for negotiation, is that it is important to understand the problem –the nature of the differences – before moving on to finding solutions. The mediation process is structured to this end and, since the mediator is in control (or should be), they will endeavour to take the parties through the process, step by step, and not move on to the next stage until the current one has been completed. The process is often shown as a diamond (e.g. see Boulle [1996](#), p. 98; Sourdin [2002](#), p. 54) to convey an opening up of the issues before a narrowing down to a settlement (see [Figure 10.3](#) later in the chapter).



Figure 10.3 The mediation diamond (based on Boulle [1996](#), p. 98 and Sourdin [2002](#), p. 54)

As the examples provided in this chapter demonstrate, mediation is appropriate in a wide variety of contexts, and is able to help the parties find resolutions in family, business, community and workplace disputes. All are actual examples, but the cases have been written in such a way that the confidentiality of the parties is maintained. The examples show that the process works to assist the parties to find a settlement, and so contributes to the parties' ownership of the outcome. In the interpersonal example, the relationship between the parties was such that they could not even come together to sign their agreement, but did so separately. Nevertheless, the achievement of the mediation was significant; it enabled the parties to reach an agreement and develop a commitment to that agreement for the future – a far better outcome than what would inevitably have been a costly and acrimonious court case. In the business franchise example, it might be thought, with the benefit of hindsight, that the owner could have agreed to the eventual outcome far earlier, or even to conclude that mediation had failed because a new solution was not found. It is up to the parties to find solutions and if, in the end, one of the parties realises that their best solution was something they had previously rejected, then the mediation has done its job in bringing about a point of agreement.

Mediation is similar to negotiation in that it is the implementation of the agreement that matters, so ownership of a mediated outcome is important. This is particularly the case when the outcome affects a whole group, as in the community mediation example.

From a survey of mediators, Honeyman ([1998](#)) found that mediators need to be good at the following:

- empathy – gaining people's confidence

- investigation – asking good questions to find out what the issues are and why there are problems
- invention – finding new ways to look at a situation and identify new solutions
- distraction – the ability to manage tension, often by recounting relevant and/or humorous anecdotes.

Herrman and colleagues ([2001](#)) identify a range of mediator skills, including critical thinking and relationship management. Experienced mediators regard building rapport – a task that continues throughout the negotiation – as the key to success (Goldberg [2005](#)). Mediators must be demonstrably impartial, especially when only one of the parties is paying for the mediation. Without clearly recognisable impartiality, the parties will not be prepared – even in a private session – to reveal key concerns or to openly consider alternatives, and any attempts at reality testing by the mediator will be received defensively by the parties. Interestingly, although it is important for mediators to gain the trust of the parties, once they have it mediators will be less effective if they place more emphasis on maintaining their relationship with the parties than they do on pushing them towards a solution (Stimec & Poitras [2009](#)). Another aspect of negotiation effectiveness is its consistency. Wall and Chan-Serafin ([2010](#)) found that mediators who explained in their opening discussion that their approach was to be evaluative, or pressing (a deal-maker), and then followed through on this were more effective in achieving settlements than those who indicated they would take one approach (the third option was to be neutral) but then took a different approach as the mediation unfolded.

Mediation in practice



A family mediation

Interpersonal disputes – particularly marriage break-ups – can be bitter. Levels of antagonism between the parties can be so strong that no solution seems possible. In one such case, the separating couple refused to even be in the same room together, and it took all the mediator's persuasiveness to get them to attend a common venue, to the extent that the mediator had to provide an assurance that even the parking arrangements would be separate. Even though the parties would not meet, the mediator still worked through the steps of the process, talking first to one, then the other. The reality of the situation was that both had similar values and expectations, so that the way they each envisaged a settlement – the main issues being property and the future of their children – was broadly similar. But such was the animosity between them that any suggestion by one was rejected outright by the other, notwithstanding that the second party would later make essentially the same suggestion, only to have it rejected by the first. Through a succession of separate meetings, the mediator was able to get the two people to actually hear what the other was proposing. Eventually they agreed on the key steps to divide their assets and on how they might manage their future decision-making with regard to their children. They signed the document separately.

The mediation diamond

The process for setting up a mediation is critical. In a real sense, the mediation starts the minute a decision to resort to mediation has been made. If the parties have not had experience of mediation before, or if there have been no real negotiations over the issues, then the first task of the mediator is to gain the confidence of the parties and build their confidence in mediation as a process that will help them to resolve their differences. This is particularly important if the parties have been required to go to mediation because there is a clause in their contract that mandates it or because the court has ordered it. In these cases, one or both parties may not want mediation, and so will attend but not really engage with the process (the motivation for approaching mediation in this way will be explored further below). The mediator may have to work hard to convince the parties to commit to mediation.

Even when each party is familiar with the process, the mediator will still meet with them separately and take them through an intake process. The mediator will get them to explain and think very hard about their situation, and also get them to consider, in a non-committal way, what some possible solutions might be. This prepares the parties for when they later meet for the formal mediation session, even though the mediation process has already started. The mediator will open the joint session with a short statement about their role and the purpose of mediation. This is another step in reinforcing the parties' commitments to work with the mediator and each other to find a solution to their difficulties. The mediator will then ask each party in turn to outline the issues and problems as they see them. This is not an opportunity for debate; it is a process whereby each party has their say about what gave rise to their being in

dispute. The mediator's control of the process is clear; they will summarise and make sure the points that the first party has made are clearly understood before inviting the second party to explain their perspective. In terms of the Nullarbor Model of negotiation, the mediator is making sure the parties get through any residual hostility (going through the Blue Mountains) and travel safely across New South Wales (differentiation).

The parties then need to establish an agenda of issues. The mediator would endeavour to ensure that these agenda items – perhaps written on a whiteboard or flip chart for everyone to relate to – are phrased in language that is neutral and mutual. So, rather than an agenda item that reads how much the owner should pay the builder for variations, it would simply be 'variations'. The former way of expressing it implies a liability on one party, and that is not to be presumed. The parties need to agree to this agenda; by doing so, they have to acknowledge – at the very least – that the other party sees the issue as a problem, even if they don't. Further issues can be added to the agenda later if they emerge, but the mediator's intent will be to spend time getting the parties to bring all their issues out onto the table.

Then the mediator will get the parties to talk through the issues one by one. Up to this point, the mediation process will have directed each party's attention to the mediator, though as a by-product of each party explaining their issues to the mediator the other party also hears them – perhaps for the first time if there has been no open discussion between the parties prior to mediation. From this point, the mediator will encourage the parties to talk to each other so that each gets a better understanding of where the other is coming from.

Mediation in practice

A community mediation

Two families in a country town were constantly feuding. Hardly a week went by without somebody – sometimes several people – from one or other of the families finding themselves in trouble with the police and regularly appearing before the local magistrate. Finally, the magistrate ordered the two families to attend a mediation session to see whether they could find a way to end the feuding and the associated violence.

The mediation was held in a community hall with the 20 or so people who represented the two families coming and going during the course of the day. This flexibility did not deter the mediator: the core process of mediation was followed and in time achieved a positive outcome. The mediator had to overcome the two families' initial suspicion of and their sense of pointlessness about the whole process, and then draw out their understanding of the situation before, in another all-day session, getting them to talk through possible solutions that eventually ended up on a whiteboard as a sort of action plan.

The families needed time to commit to this plan and there were still some who believed nothing was going to change. However, there was sufficiently strong support within the two families for the plan to be drawn up, agreed to and signed by many family members. Part of the plan involved a follow-up meeting that was to be held a month later and chaired by the mediator. When everyone came together for that meeting, it was clear that the agreement reached through mediation had turned the situation around; in the intervening period, no one had been arrested for anything.

This more open discussion – open because it is controlled by the mediator – should lead the parties to see their situation in a different light, and become more accommodating. If not, then the mediator may need to talk to each one separately. Their purpose here is twofold. First, a private meeting will give the party an opportunity to talk openly and provide information or opinions that it was not prepared to reveal in front of the other party. The mediator will be looking for an indication of what the party would be willing to accept as a settlement. Second, a private meeting is an opportunity for the mediator to ease the party away from its initial positions. This is often done by reality testing – by getting the party to think through how what they are saying looks and sounds from the perspective of the other party – as well as by getting the party to think about what would happen if agreement is not reached through mediation. A good mediator question here is, ‘If you don’t reach agreement today, what does your tomorrow look like?’ The notion of BATNA (see [Chapters 2 and 5](#)) applies here, although perhaps it should be BATMA – the best alternative to a mediated agreement. The parties might also be encouraged to think about their worst alternatives. Their best alternative might be going to court to get a judgment (which they both believe will be in their favour); their worst will be to go to court, lose and still have to pay their legal fees.

This reality testing helps a party to reconsider, and probably lower, their motivation to maintain their demands. At the same time, the parties – still in private discussion with the mediator – will be encouraged to think of possible options or other ways in which the issues might be resolved. Rather than think about what gave rise to the dispute – the past – each party will be encouraged to think about what might be done now – a future orientation. Recall that the parties in Tanker case ([Chapter 4](#)) reached this stage in their negotiations and began to explore what might happen in the

future, even though their existing and incompatible demands were still on the table. Thinking through what might be possible helps increase the parties' motivation to reach agreement.

As we have seen previously, when a party's motivation to reach agreement is greater than their motivation to maintain their demands (passing through Adelaide and South Australia in the Nullarbor Model), the process can then move into the exploration phase. At first the parties will be generating possible options in private – this way they can be exploratory without making any commitments – and then the mediator will bring them back together and they can present whatever options they are comfortable with for further discussion. By now the parties are travelling across the Nullarbor, with the mediator in the driver's seat encouraging open discussion between the parties. Then, as in a negotiation, there may be some issues that need to be bargained over. The parties may have agreed on the need for compensation and broadly how much it should be, but perhaps now they have to finally decide whether it should be \$750 000, as the builder wants, or \$650 000, the amount to which the owner seems to be agreeable.

As the parties reach agreement on the issues, the mediator will ensure that there are no loose ends and that each party is clear about what they are committing to. If necessary, the mediator will help them write up an agreement (but not write it for them), and they will also be available should any further disputes arise. Hopefully, this should not be necessary, for a critical part of the mediation process is that the parties learn how to resolve their differences effectively themselves. Should another issue arise between them, they will then be better equipped to find a satisfactory solution. Good mediators make themselves dispensable.

Mediations over management–union disputes usually emerge after lengthy negotiations between the parties and against the backdrop of

industrial action by the company or the union. An added dimension is that the union negotiators will be representing their membership, and it is those members who have the final say – even though they have not participated in the mediation process itself. Further, in some countries such as Australia, legislation controls many of the options open to the parties, including in some instances what items they can or cannot put into their agreements. Nevertheless, the same core process of mediation can help bring the parties to a point where they can agree.

Mediation in practice

A management–union mediation

The union representing technical staff at a sugar refinery was renegotiating with the company over its enterprise agreement, but the parties had reached an impasse over several terms, including pay and promotion procedures. A procedure-mandated mediation was the next step prior to either party being entitled to take industrial or other action. There was a week to go before the expiry of the agreement.

The mediator visited the company and the union official involved, and spent time with each of them to get them to unpack and reconsider the issues. Of course, at this stage each party thought its own position was justified, as was its rejection of the other party's stance. Along the way, it transpired that there were some other issues about the refinery's operation and the union's role in the workplace that were of concern to one or other of the parties, but these had not been part of the negotiations because such issues were not normally part of an agreement. When the parties later attended the mediation offices, they were kept

separate, as was standard practice, while the intake process was carried out again. On this occasion, there was going to be no difficulty in bringing the parties together, so the process of joint and separate sessions started. An added difficulty in this case was that the CEO was overseas and, in order to keep the process going, the management negotiators had to regularly communicate with him by phone, causing delays in the process during which the union took the opportunity to plan its threatened industrial action. During the course of the day, joint understandings emerged on a number of the broader issues, leaving only the final issue of the pay increase to be resolved. Both parties needed an agreement. Despite its planning, the union knew it could not mount an effective strike; management knew this too, but could not take the risk – nor could they allow this key group of technical employees to remain discontent. The parties reached a compromise agreement and the authority of the union official secured an endorsement of it – rather than a vote to strike – at a members' meeting the following morning.

A pragmatic postscript

Mediators schooled in the techniques of the facilitative interest-based approach to mediation will work hard to carefully take the parties through each step of the process. Inevitably, mediators develop their own style and also have to respond to the context of the dispute, both of which lead to variations in the way mediators approach their task (Picard [2002](#), [2004](#); Sourdin & Balvin [2009](#); Wolski [2001](#)). One mediator may, for example, prefer to hold private meetings immediately after each party has made its opening statements, while another will choose to draw both parties into a process of identifying a list of agenda items. Mediators seem to be inclined towards being either facilitative or evaluative (Charkoudian et al. [2011](#)). Wall, Dunne and Chan-Serafin (2011) directly observed 100 civil mediation cases (such as medical malpractice, employment and injury cases), and found that the more assertive approaches of evaluation and pressing were more successful than a neutral (facilitative) approach. Similarly, a study of practitioners mediating a simulated dispute (Kressel et al. [2012](#)) showed that more skilled mediators tended towards a settlement-oriented approach, trying to balance between being facilitative and being a deal-maker. Some variants of the mediation diamond (see [Figure 10.3](#)) recognise this tension – particularly in commercial disputes – and make provision for a more evaluative role by the mediator when they meet with the parties in private sessions (Peisley [2012](#)). Despite all these variations, the core motivation is still to help the parties reach their own agreement.

One area in which there may be more significant variations in the approaches of mediators is the extent to which they get actively involved in the development of solutions. The philosophy of the core model of

mediation is that the mediator should not be inventing options, but instead be helping the parties to find their own solutions. In practice, a degree of pragmatism is necessary. Faced with a dispute that needs settling, mediators might find that they cross the line and, based on their previous experience in similar disputes, give a hint or two to the parties as to how their dispute might be fixed. The parties, of course, might want more than a hint. In one industrial relations mediation, the parties explained to the author the history of their failed attempts to find a solution, and then both said, ‘So we’ve agreed that we will accept whatever outcome you suggest.’

Experienced mediators regard the ability to generate new solutions – having first built rapport – as a key element of their success (Goldberg [2005](#)). A more recent review of similarly experienced mediators suggests that they feel they have less scope for this creativity in commercial mediations (Goldberg & Shaw [2010](#)), where the issues are usually measured in money terms and there is a potential court action hovering in the background. In these cases, the mediator might be more of a deal-maker than a facilitator, using a range of closing techniques to apply pressure on the parties to make concessions and reach an agreement.

It is important to remember that what occurs will be determined partly by the actions of the parties themselves. Interestingly, mediators have to develop a range of techniques to manage those lawyers who are not comfortable with the more collaborative approach of the mediation process (Sefton [2011](#)). Another factor will be the nature of the issue in dispute.

Earlier, we referred to two different mediations – one over a commercial dispute, the other between two neighbours. We might envisage that the commercial mediation will be held in a downtown office, and that the lawyers representing the two companies would probably have been in other mediations and so know what will be involved. They have

probably already found negotiated solutions to several of the disputed points and now only a few remain. They are all aware of the issues, and of the others' interests and concerns. Everyone will be acting professionally (which still may not prevent some 'rich' language being used). The goal is to find a way to sort out the remaining differences. We can expect the mediator to run a joint session to get all the issues out on the table again and fully understood before working through a combination of separate and joint sessions to get the parties to focus on reaching a compromise position.

The goal in the neighbourhood dispute is also to sort out the differences, but neither party may have been in this situation before and we can envisage the mediator taking a far more considered approach to get both disputants to feel comfortable about the process. Emotions across the fence may have run high, and this will be remembered in the mediation room so the mediator will have to manage this while still encouraging both parties to speak freely. Besides sorting out the fence, the mediator may also see a role in helping the neighbours to build a better relationship for the future. There will be a lot of questioning and listening by the mediator, and no evaluating or pressing – just constructive encouragement for the neighbours to find a solution that works for them both.

There are obvious similarities between the steps a mediator takes to help the parties reach a settlement and the phases and task sequence of negotiation (see [Chapter 4](#)). Whether in negotiation or mediation, the parties first have to understand the issues and their situation (differentiation), decide that they do need to resolve their differences (reality testing) and find some creative ways to overcome their differences (exploration) or other ways to bridge the gap between their positions (exchange). They are then left with the decision about whether to agree. In both negotiation and mediation, this decision rests with the parties

themselves. The extent to which the parties in mediation engage in the process will influence the approach of the mediator. If the parties are open, then perhaps all the mediator has to do is help structure the conversation. On the other hand, if one or both parties take a combative approach, then the mediator may have to be firm in challenging their wish to settle, and more assertive in pushing the parties to consider the options. Whichever method is chosen, the final decision always lies with the parties, which reflects the essence of mediation: it is a process to assist the parties negotiate a settlement, not provide one for them.

Some implications of mediation for a negotiator

One view of a mediator's role is that the mediator is necessary to get the negotiators to do what they should have been doing anyway. It is not always the case that mediators are needed only because the negotiators have not been skilful enough, but there are some important things that a negotiator can learn from mediation. They can learn to be more strategic and they can make good use of the mediator's skills.

A strategic use of mediation

Since mediation is an alternative dispute-resolution process, it is one of the factors negotiators should consider when evaluating what their best alternative to a negotiated agreement might be (see [Chapter 5](#)). The prospects of a satisfactory settlement through mediation should be assessed alongside the prospects of a favourable court decision or seeking a new supplier, or whatever other alternatives are available. If the parties are stuck over putting together a deal (most likely in the exchange phase), then it may be appropriate to float the mediation option. This has to be done with care because to suggest going to mediation can appear to be a sign of weakness, of a willingness to compromise. Since negotiation is two-sided and the other party always has choices, they may sense a weakness and so refuse mediation, but instead become firmer, contending themselves. For this reason, mediation should not be suggested until the end-game, when both parties realise they are nearing deadlock, even if they haven't quite reached it, and both are evaluating their alternatives. A proposal to consider mediation – although a process proposal – should be made in just the same way as an issue-related proposal that might be offered in the exploration phase. Particularly in a contentious dispute, any proposal to consider mediation may well turn into a negotiation over how the issues should be resolved – not a bad shift in emphasis, but a negotiation nevertheless. It therefore should be handled as such.

There is another way by which mediation can be used tactically, and negotiators who find themselves involved in mediation must be alert to this (Fells [1999a](#)). The whole thrust of mediation is to help the parties to achieve a settlement; in terms of phases and tasks, mediation is an end-game process that focuses heavily on exchange. While this is often the

case, it should not be presumed – particularly if mediation is a mandatory process. Many contracts and legal jurisdictions now require parties to undertake mediation before their dispute can be listed for resolution through a court hearing. In strategic terms, the parties still have an alternative process by which their dispute might be resolved. Rather than the process sequence being negotiation–deadlock–mediation–settlement, it is negotiation–deadlock–mediation–court hearing–settlement. This being so, the strategies of the parties in what amounts to a mid-cycle mediation (see [Table 10.4](#)) might be completely different. Many legal cases are settled on the steps of the court, so the parties might turn up to the mediation with the intent of using the reality-testing efforts of the mediator to find out more about the other party’s limits of flexibility, not intending that the mediation will resolve the issue. Only participation in mediation is mandatory; reaching a settlement is not. Armed with this additional information, they would then have a further round of negotiation on the court steps. Even without a court or arbitration option as the next step, negotiators might still see the mediation as a means to gain information, not to settle the dispute. Clearly, any party participating in the mediation in the hope of achieving a settlement, and so being prepared to reveal more information and be concessionary, will be disadvantaged if the other party is intent on contending.

Negotiation skills tips

Be prepared for a mediation

If you find yourself due to attend a mediation:

- Double-check what’s really important to you and what your real limits are.

- Critically examine your reasons for rejecting the other party's offer.
- Make sure key decision-makers are at the mediation and that they have authority over those who might be affected by the outcome.
- Clear your diary so that you can continue in mediation for as long as necessary.

Table 10.4 Mid-cycle and end-game mediation (Fells [1999a](#))

	Mid-cycle mediation	End-game mediation
Prospects for a settlement other than by mediation	Good	Poor
Parties' approach at mediation	Contending strategy	Conceding strategy
Mediator's focus	Process oriented	Settlement oriented
Measure of success	Parties resume negotiation	Dispute resolved

Once it is clear that the parties are heading off to mediation, it is important to prepare as if it were just another negotiation session. This would include trying to discern whether the mediator is likely to tend towards a facilitative or evaluative approach, remembering too that a combative approach by the parties will influence the mediator's strategy.

[Table 10.5](#) lists some other things a negotiator can do to assist the mediator

in their role. On the issue, the mediator will engage the parties – probably in separate sessions – in reality testing, which might be confrontational. There is no point in not fully participating and revealing one’s true position. On the process, the mediator will expect to manage the sequences of interaction, and negotiators should accept this and follow the mediator’s direction. Also, it is important to have key decision-makers present at the mediation. This is more difficult if the negotiators are representing constituents – as in the case of union negotiators representing their members, who will have the final vote on the proposed settlement – but those involved in the mediation should have authority within their own side to reach an agreement across the table that has a high probability of acceptance by their constituency group.

Table 10.5 Some ways to help a mediator help you find a settlement

Dimension	Useful responses
The issue dimension	
Reality test your core interests	<p>Give honest information.</p> <p>Reconsider what you really want.</p> <p>Ask yourself whether your BATNA is really so good.</p>
The process dimension	
Take control of the interactions	<p>Follow the mediator’s lead.</p> <p>Don’t give ground easily but be open to suggestions.</p>

Take a hint when one is
offered.

Making use of mediator skills

Negotiators can learn from the way mediators approach their task. Because of their similarities, negotiation and mediation need to employ similar skills to make the process work effectively. The skills and tasks mediators need to have and do to manage the mediation process (see [Table 10.3](#) earlier in the chapter) are similar to the skills and tasks needed to work through the phases of a negotiation, as shown in [Chapters 6–8](#). The ability to manage tension is critical in a negotiation as well as in mediation. Tension is a creative force that will be inevitable whenever people are discussing an issue of substance. While tension indicates the seriousness of the issue and the person's strength of feeling, it can also be an expression of frustration if the process is being poorly managed or where some participants do not seem to be searching seriously for a resolution of the issues. So one implication for negotiators is to manage the tension in the way a mediator might.

There is no doubt that humour is a great way to release tension. But most of us have probably been in situations where, in an attempt to cope with tension, someone has launched into a long story that usually turns out to be not very funny, and by story's end the tension is still there (and the embarrassment makes it worse). There is another potential difficulty with humour. Some people's idea of what constitutes a funny quip can be taken by another person as a put-down or an observation at someone else's expense. So being able to use humour – a funny interpretation or a quirky remark – is a great asset, but it is also risky (hence the question mark on the list in [Table 10.6](#)). Other ways by which tension can be managed are also shown in [Table 10.6](#).

Table 10.6 Ways to manage tension in a negotiation

Humour (?)

Talk about the facts

Talk about the common ground

Summarise

Signal an adjournment

Put the issue on hold and move on to another issue

Make an informal reconciliation – an impromptu phone call or meeting

Change personnel

Some advice was given earlier about managing adjournments. To manage emerging tension, often it is just sufficient to say that an adjournment will be necessary: ‘If we keep up all this arguing, we are going to need some time out for some fresh air.’ That draws everyone’s attention to what has been going on and the tension subsides. Bringing in new people will change the dynamics of the negotiation, but this tactic should be a last resort and, importantly, it is a move that should be foreshadowed to the other side. To simply bring in a new leader, as would normally be the case if the process has not gone well, and not explain why this is being done, would probably be interpreted as a competitive move by the other party, and they will respond accordingly.

A good negotiator can not only learn from the mediator’s skill set but also be alert to the prospect of taking on a mediation role within the negotiation as it unfolds. This possibility arises out of mediation being an overlay on the negotiation process rather than a separate process that takes over the resolution of the issue (see [Figure 10.4](#)). Taking on the role of

mediator within the negotiation may actually pre-empt the need for mediation. An alert negotiator who is paying attention to the process as well as the issues – a negotiator who is effectively reflecting *in* – should see the potential for a deadlock unfolding. Rather than wait for it to occur and suggest third-party mediation, the negotiator can focus on bringing to the negotiation table the tasks that a mediator would have undertaken.

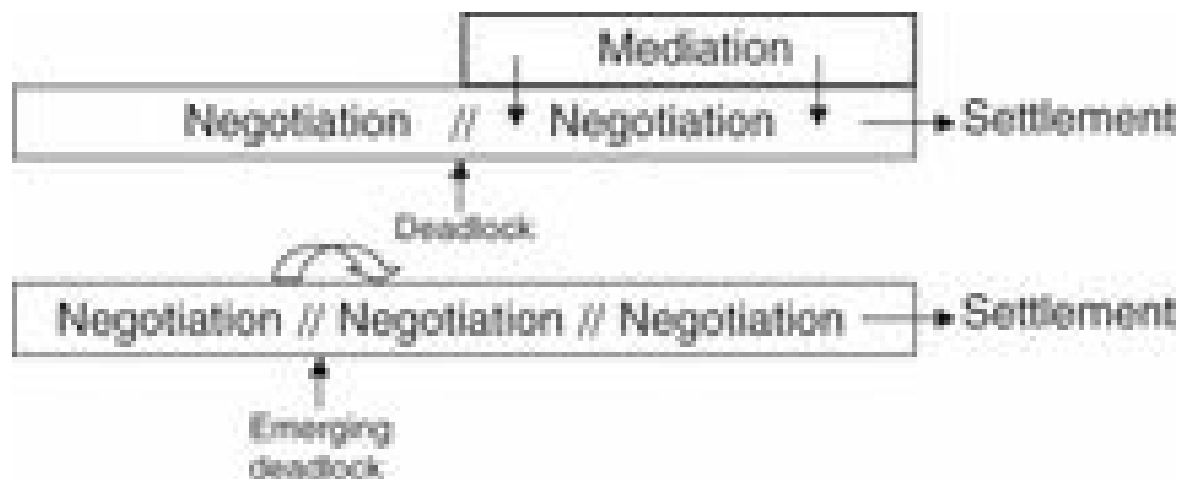


Figure 10.4 Mediation as a negotiation overlay and as a within process

As an example, a good mediator will always foreshadow the next steps in the process. They might say, ‘I’m just going to ask Mr Jones to outline his main concerns, and then I’ll turn to you, Mr Smith, to give you an opportunity to do the same.’ This process management gives the parties confidence, and in this case Mr Smith would feel less inclined to interrupt (which would raise the level of competitiveness) because he knows his turn is coming. In similar fashion, a good negotiator can bring some structure to the discussion without being controlling: ‘Perhaps we could go through our responses to your proposal, and if you agree we can then discuss them together, rather than you respond to them point by point.’ Some other process management examples are provided in [Table 10.7](#). While a good negotiator will indeed be paying attention to managing the process, they should not lose sight of the real reason why they are there: to

achieve a particular negotiated outcome. There is a risk that paying too much attention to keeping the process cooperative will lead to a conciliatory, concessionary approach on the issue.

Table 10.7 Recognising an emerging critical moment and some recommendations

Dimension	Useful responses
The issue dimension	
Constant restatement of incompatible positions.	Summarise, for example, differences.
Repeated but failed attempts to repackage the offers.	Suggest benefits of an (any) agreement; allude to adverse BATNAs.
An agreed proposal or solution gets rejected by constituents.	Revert to re-exploring interests and possible areas of flexibility.
The process dimension	
Unwillingness to move beyond stating the issues – for example, long histories of detail, repetition.	Talk process. How are we going? How do we feel about how we are going (coupled with forward-looking statements)?
Statements of wanting to get this over with, etc.	Emphasise the benefits of a good agreement.
Discontinuity – for example, a suggestion or offer in the middle of an explanation of interests.	Restate own interests, check understanding that the suggestion was actually a suggestion; if so, clarify. Explore whether the interests are understood; if they are not, then put the suggestion on

open hold while restating interests.

The action dimension

Frustration, annoyance.

Think what you might be doing to annoy them. Talk process. Adjourn.

Withdrawal – for example, less information in replies or even total mental withdrawal.

Check the way you are asking questions, explaining your own position.

Talk about the potential benefits for both parties if an agreement can be achieved.

Increase in interruptions, voice level.

Manage your own behaviour, summarise.

Discussion questions

- 1 Have you ever found yourself in a situation in which you are mediating between two others who have different opinions? If so, what happened? What might you do differently should a similar situation arise again?
- 2 What are some telltale signs that a conversation is slowly developing into an argument?
- 3 Compare and contrast the facilitative and deal-making approaches to mediation.
- 4 Demarcation disputes (over who can do a particular work task) are important because they can result in job losses for one or other group of workers. These disputes are usually resolved through arbitration. On one occasion, a dispute arose in a train yard. Both train drivers and railway yard workers believed it was *their* job to change the points when shunting locomotives around the rail yard. The railway company had announced that it wanted to reduce the number of yard workers it employed. The union for the yard workers responded by filing a demarcation dispute, claiming the sole right to operate points, thereby ensuring that yard workers would always have to be employed. All this happened one Friday afternoon when a freight train was waiting to leave the yard. A mediator was quickly called in to sort out which worker – driver or yard worker – could go out into the yard to change the points. He tossed a coin to decide. How might we explain and evaluate the mediator's actions?

Cross-cultural negotiations: much the same but different



This chapter reviews how culture impacts upon negotiations and how these negotiations might be managed. After reading the chapter, you should be able to:

- have a greater awareness of how cultures might differ
- understand how a person's culture may influence their approach to negotiation
- be alert to the need to properly assess the impact of culture – including one's own – on negotiation
- know ways to anticipate and manage the cross-cultural aspects of a forthcoming negotiation.

On a business trip to Manila, the author's first meeting was to be hosted at a restaurant. Establishing business relationships in the social environment of a restaurant is what one expects in the Philippines: it is a

recognised characteristic of doing business in Asia. Another occasion, when he went overseas to discuss a possible joint venture, he was also hosted at a restaurant – not in Asia this time, but in New Zealand. So just how Asian is the characteristic of doing business in a social environment?

A senior executive from an Australian engineering company was on time for his morning appointment in Lagos with the CEO of a Nigerian company interested in a joint mining venture. He was kept waiting all day in the reception area without even being offered a coffee. Because Africans supposedly have a different notion of time, the advice is to, ‘Be punctual, even though you may be kept waiting’ (Acuff [2008](#), p. 289). Eventually, the Australian was invited into the CEO’s office. Should he have complained about having been kept waiting all day? Should he even have waited all day? If the African CEO ever came to Australia, should he be kept waiting all day too? He has a different notion of time, so isn’t that what he would be used to?

The CEO of a Malaysian engineering design company was in Singapore on behalf of a client who was proposing to redevelop an old industrial site. As there was no change of use, the proposal had ‘in principle’ approval, but it envisaged significant site works, including realigning roads and re-routing major power-supply cables, and these issues had to be resolved. When met by a team of quite young government representatives, the CEO thought the meeting would simply be for an exchange of information with decisions being deferred to a higher level in the department. He was surprised when he found the young government representatives had been given full authority to commit (or not) other government departments to enable the project to go ahead. He was not as surprised or embarrassed as a lead Japanese negotiator who mistook the only lady in the visiting American team to be the lead negotiator’s personal assistant. She *was* the lead negotiator.

It is easy to make mistakes when negotiating with someone from a different cultural background. The difficulties are real. Although the essential DNA, the strategic considerations and the tasks of negotiation are unchanged, the script seems to be different. This chapter examines some of the ways in which people from different cultures approach the task of negotiating an agreement. It also offers a different perspective through images of negotiation as ‘rock’n’roll’ and as a ‘banquet’. The purpose of understanding cross-cultural negotiation is twofold: to be able to manage these negotiations more effectively and, equally importantly, to draw from the diversity to improve one’s own way of negotiating.

Negotiation skills tips

Cross-cultural negotiations

Some preliminary advice:

- Look for similarities in approach upon which to build rather than seeking differences about which to worry.
- As in any other negotiation, try to see everything from the perspective of the other party.
- Be aware that culture might be used as a tactic (by you as well as by the other side).
- Show respect to the person with whom you are dealing.

The structure of this chapter is designed to help the reader focus on what is important when preparing for and participating in a negotiation with people from a different culture. It utilises frameworks that have been used earlier in the book. This is an indication that although we are examining cultural aspects in a separate chapter, it does not mean we should anticipate a separate approach to negotiations when compared with intra-cultural ones. It may just be a question of emphasis.

The first step is to gain some cultural awareness. The second is to consider how the person's culture might affect how they view a negotiation. The third is to consider how they might conduct the tasks of negotiation – perhaps they don't do them differently at all. The final step is to consider what actions we need to take in response to improve the process and the outcome. These steps are incorporated into another tool for the Negotiator Tool Kit that is to be found towards the end of the chapter.

Developing a cultural awareness

Some points of caution

The first task for a negotiator preparing for a cross-cultural negotiation is to gain some insights into the cultural background of the other negotiator. One important point can be made at the outset. Most difficulties in cross-cultural negotiation arise because negotiators ignore one fundamental fact: all negotiations are two-sided. Failing to take the other negotiator's perspective into account will always lead to problems. Having said that, there is also a danger in giving too much attention to differences and forgetting the main purpose or strategic intent of the negotiation.

It is easy to stereotype and presume that all people from one culture behave similarly – the John Wayne versus Charlie Chan fallacy (Sebenius [2002a](#)) – but a moment's thinking about people from one's own culture will show that there are as many variations within as there are between cultures. In any culture, some are more extrovert than others, some will be more triggered into feeling angry than others. As people we are all affected by our upbringing and so react differently. As Fang ([1999](#)) points out, when negotiating with someone from China it is important to know whether they are negotiating as a Confucian gentleman, a Sun Tzu strategist or a Maoist bureaucrat. The negotiator could be a mix of all three.

As a negotiation unfolds, it is easy to attribute any behaviour – particularly behaviour that is different from your own – to culture, and so ignore the many similarities. Salacuse's ([1998](#)) survey of negotiators from a number of countries indicates that a person's professional background influences conduct, including their approach to negotiation. As they meet to negotiate a business deal, a lawyer from Europe and a lawyer from Asia might find their training and the role they are expected to perform as lawyers mean they have a similar approach, irrespective of their European

or Asian mindset. Using a similar survey to Salacuse, Metcalf, Bird and Dewar ([2008](#)) found that negotiators from Mexico and the United States had more in common than conventional wisdom based on cultural characteristics would suggest. Globalisation – particularly in education and business practice – and generational change are having a moderating effect on culturally specific behaviour, although the core values remain (Tung, Worm & Fang [2008](#)).

When making judgements about others, we implicitly believe our way to be better – which, of course, is not necessarily the case. Our own biases begin to show, particularly in attributing adverse factors to other negotiators and to their culture. These biases are not likely to be extinguished by paying undue attention to points of etiquette. Indeed, if the negotiator feels that they are the one making all the attempts at cultural adjustment and there is no reciprocation from the other party, the negotiator's bias may even be reinforced (reciprocity being one of the strands of negotiation's DNA).

Negotiation skills tips

Just how different are we?

Beware of:

- stereotyping
- blaming culture for everything
- assuming your way of doing things is always right.

Negotiators should also be alert to cultural differences being over-emphasised as a tactic to secure further concessions. Those from cultures

known to have a relatively fluid understanding of time may use this to deliberately delay meetings with the intention of making a more time-focused negotiator feel uncomfortable, and so be drawn into making unnecessary concessions. Similarly, negotiators need to be aware that doing what comes naturally – such as getting down to business as soon as the meeting starts – may be viewed by others as an attempt to control the proceedings and gain an advantage.

As we explore the research into cross-cultural negotiation, be aware of the observation of Brett and Gelfand (2006), who note that much of the research seems to be dominated by Western ways of thinking (as this book might also be). Some of these negotiation models in the West may well have emerged from an ‘onion-layered’ rather than ‘ocean-swell’ way of thinking (see below), so might not come easily to everyone. We have seen that negotiators are regularly advised to ask ‘Why?’ to uncover those underlying interests that are important to finding good solutions. However, a negotiator from a high-context culture might find this difficult. Their cultural background may teach them that in order to respect others, they should not intrude into their privacy: the other person will tell you what they think you should know and you should only act upon the information they offer. In this case, asking too many ‘Whys?’ could be considered rather rude, as if you are not trusting the other party and need to know everything before proceeding. It is always important to remember that negotiation is two-sided, and to consider how our actions are impacting on others. As Brett and Gelfand (2006) suggest, a greater understanding of other cultures provides insight into one’s own culture, and offers the possibility of other ways to negotiate that are just as effective. From the situation described above, we can learn that to take time rather than rushing would be helpful for trying to understand the other party – a point that applies to most negotiations.

To conclude, all these points of caution are a clear indication that we must take care when preparing for a negotiation with someone from a different culture. The need to be a reflective practitioner and to reflect in (as described in [Chapter 2](#)) is paramount, for we will inevitably encounter something that is ‘different’. It isn’t the actions of the other person, but how we react, that is important. If we expect others to be like us but find they do not, we might well withdraw (Bird & Osland [2013](#)–14, p. 119), perhaps by reverting to a more competitive negotiating style because of our uncertainty over what the other party might do. However, if we are able to reflect on what is happening, preferably *as* it is happening, and so understand it, we can then adopt a more appropriate response. Suspending judgement – one of Bird and Osland’s ([2013](#)–14, p. 128) recommendations – is a good suggestion.

Dimensions of cultural difference

A culture is a shared value that shapes behaviour. Steeped in history and beliefs, culture is reflected in all aspects of life, especially in one's view of what is important. Hofstede ([1991](#)) considered culture to be layered like an onion, with the removal of each layer getting closer to the core of the culture; Fang ([2005–06](#)) suggests another image – an ocean – which suggests that culture is far more fluid and, while never ceasing to be water, can reflect the effect of its surroundings – perhaps deep swells one day but calm water the next.



As with other aspects of negotiation, our understanding of cultural variation emerges from a number of sources, each providing particular insights. Writers with extensive experience in international negotiation provide useful country-by-country checklists that blend cultural and business practices (e.g. see Acuff [2008](#); Gesteland [2005](#); Requejo & Graham [2008](#)). A second source is the findings of experimental research, such as that by Brett ([2007](#)) and her colleagues; these findings provide insights into how cultural difference might account for variations in negotiation behaviour and outcomes. Communication and conflict-resolution specialists and marketers also make a contribution, again often providing useful country-specific guidance (Ghauri & Usunier [1996](#);

Hendon, Hendon & Herbig [1996](#); Leung & Tjosvold [1998](#); Schuster & Copeland [1996a](#); Usunier & Lee [2005](#)).

Many of these writings draw on the work of cultural specialists, such as Hall ([1959](#), [1960](#), [1983](#)), Hofstede ([1980](#), [1991](#), [1994](#)) and Triandis ([1995](#)), who provide insights into the fundamental distinguishing differences between cultures. Some of these dimensions of cultural difference are summarised in [Table 11.1](#), which draws on the review provided by Usunier and Lee ([2005](#)). There are other dimensions, such as ‘uncertainty avoidance’, which is one’s attitude to risk; this then flows through into how we evaluate – for example, a walk-away alternative or a new proposal. Another is masculinity, which when high is assertive and results oriented and so looks for precise enforceable outcomes and when low is more relationship oriented, willing to accept understandings to build on later as an acceptable outcome. The dimensions listed in [Table 11.1](#) are explored later in the chapter. As in all bipolar categorisations, it should be remembered that it is a question of degree between the two contrasting descriptions.

Table 11.1 Some dimensions of cultural difference

Individualism

Degree of self-reliance rather than reliance upon others. This flows through into confidence in making decisions, in the ability to get things done and in assessing success or failure.

Individualism is often contrasted with collectivism,

which places an emphasis on subordinating one's position within the group; this flows through into behaviour within the group and towards the out group.

High (individualism)	Low (collectivism)
Draws on own motivation, own reasoning.	Draws upon contextual support in decision-making and action.
Can achieve mastery over events.	Tendency to be fatalistic, accepting.
Events (outcomes, achievements, mistakes) attributable to the individual.	Events attributable to the context.
Expressive of attitudes, opinions.	Passive, inscrutable, not willing to appear different from the group.
Acknowledges the presence of conflict; will actively seek to resolve the difference and move on.	Expresses disagreement only indirectly; prepared to let a difference sit.
Power distance	
Level of acceptance of inequality as legitimate. This flows through into how relationships are organised, decisions are made and power is exercised.	
Low (egalitarianism)	High (hierarchical)
Hierarchy present, but not overt; more egalitarian.	Hierarchy strong and visible.

Has a sense of empowerment; able to contribute to decisions.	Power to make decisions is at the top.
Authority is recognised but may be challenged.	Authority is deferred to.

Temporal perspective

Attitude towards time – short- or long-term perspective. This flows through into evaluations of situations and issues, and influences how tasks might be approached.

Short term	Long term
The future is bigger and better.	The future is shaped by the past.
Early returns are valued more highly.	Longer-term benefits are more important.
Conscious of emerging difficulties or downsides and will want to address them.	Less impacted by pressing downsides.
Linear perception of processes or approach to a task.	Circular view of processes.
Focused on the immediate task; action-oriented.	Discontinuous, fuzzy action.
Conscious of time – time is money; tendency towards the monochronic (punctual, agenda-driven, one task at a time).	Not impacted by time, tendency towards the polychronic (operates by rubber time; engages in multiple tasks).

Negotiation skills tips

Learning about others

When travelling to another country to negotiate:

- Read a short history of the country.
- Learn a few phrases in their language; at least learn to say ‘thank you’.
- Read the national newspaper or access a news web page for information that will enable you to talk about that country’s current issues.

Given the embeddedness of culture, it is not surprising that some of the attitudes and behaviours listed under one dimension could easily appear under more than one dimension or be mutually reinforcing. The masculine characteristic of a results-oriented competitive win, for example, might also be a typical characteristic of individualism. High individualism tends to be associated with a low power difference; similarly, high uncertainty avoidance is linked to a high power distance. Those from high-uncertainty avoidance, high-power difference or high-context cultures (see below) seem more disposed to trust (Johnson & Cullen [2002](#), p. 353); the degree of individualism or collectivism is a less clear indicator. Any predisposition, or otherwise, to trust is tempered by the need for situation-specific acts of trust in the context of the negotiation (see [Chapter 3](#)).

Different approaches to negotiation

These cultural dimensions reflect different ways of viewing the world that relate to others and approaching tasks. They provide a context for how a person might view the task of negotiating, but we should not automatically assume that the way people behave in social settings is necessarily transferred to the negotiation table. A person who, for example, comes from a culture that respects their elders is likely to comply with the wishes of an older person, but does this mean they would make more concessions if an older person were negotiating on your behalf? The cultural characteristics have to be operationalised in the context of a negotiation – particularly a cross-cultural negotiation. Remember that they are negotiating cross-culturally too.

Several writers have endeavoured to identify what they regard as key elements of culture that impact upon negotiation (see [Table 11.2](#)). Schuster and Copeland ([1996a](#), [1996b](#)) suggest that the key distinguishing factor, as an indicator of importance, is the balance of time spent on relationships relative to time spent on the task. They identify 10 implications for how people communicate. Gesteland ([2005](#)) also regards being deal – or relationship – focused as the most significant distinguishing characteristic. Having a contract or a relationship heads Salacuse's ([1998](#), [2004](#)) list of 10 factors by which a negotiator's style might be assessed. Weiss ([1994a](#), [1994b](#)) has a list similar to Salacuse's. Sebenius ([2002b](#)), drawing on the works of Hall and Hofstede, suggests four key areas to consider: the underlying view of the process; the approach to building agreement; the form of agreement; and its implementation.

Table 11.2 Aspects of cultural differences in negotiation

	Salacuse (2004)	Schuster and Copeland (1996b)	Weiss (1994a , 1994b)	Gesteland (2005)	Sebenius (2002b)
General orientation and objectives					
Contract or relationship	√	√	√	√	
Ongoing or sporadic contact, implementation	√				
High or low time sensitivity	√		√	√	
High or low risk-taking	√		√		
External or internal basis for trust		√			
Specific or general agreement	√	√	√		√
Win–lose or win–win approach		√		√	
Approach to the negotiation task					
Bottom-up or top-down	√				√

approach

Direct or
indirect
communication
(words or
action)

✓

✓

✓

Form of
reasoning and
persuasion

✓

✓

High or low
emotionalism

✓

✓

Negotiators

Skill- or
status-based
selection

✓

Group- or
leader-
oriented
organisation

✓

✓

✓

Formal or
informal
style

✓

✓

✓

✓

Business or
individual
commitment

✓

✓

Personal
disclosure
or social

✓

The similarities in these writers' insights can be seen from the table. At the most basic level, they suggest that some distinguishing characteristics in cultural approaches to negotiation are whether the negotiators are seeking to negotiate a contract or build a relationship; whether they want a specific or general agreement; how important time is to them; how they communicate; and how formal they are. We might even begin to think that some of these elements are linked. We will see in [Chapter 12](#) that getting down to details can easily make a negotiation become more competitive, so there may be a link between seeking a specific contract and having a win–lose perspective.

Communication and negotiation researchers have tended to focus on individualism and collectivism as the key dimensions that flow through into negotiation, influencing how negotiators define what they want to achieve (the issue) and how they interact with others (the process). Researchers also consider the impact of power distance (egalitarianism or hierarchy), as this can influence how decisions are made and how conflict is dealt with. The temporal perspective is viewed as an influence on how issues are defined and the process is envisaged.

Individualism and collectivism

An important cultural characteristic is whether the individual or the group tends to be regarded as more important. Brett and her colleagues have undertaken extensive research focusing on the effects of culture on negotiation behaviour. As we know, negotiation is two-sided, but negotiators can view this two-sidedness differently. Those who are more individualistic by nature or culture will tend to view negotiation as being between two independent parties, while those with a more collective perspective might think that they must first get the two parties into one, and then they can start sorting out their differences. Note that many Western problem-solving and negotiation models are built on this premise too. Adair and Brett ([2004](#)) summarise their research (see [Table 11.3](#)) and suggest that individualism (which in the negotiation context they call ‘independence’) and collectivism (interdependence) give rise to different views on what the negotiation is trying to achieve. The reason for negotiating may be to deal with the substantive issue of resource distribution (who does and gets what) or it may be viewed as a process of relationship-building that is a precondition to dealing with the substantive issue. Adair and Brett make an important point when viewing relationship-building as a means to an end: the relationship is part of the negotiation, not a separate goal (see [Chapter 5](#)).

Table 11.3 Culture and negotiation processes (based on Adair & Brett [2004](#))

Independence	Interdependence
Leads to resource distribution as the primary goal.	Leads to relationship-building prior to resource distribution.

Associated with low-context communication.	Associated with high-context communication.
If competitive, will seek to secure individual gain through rational influence, substantiation or reference to alternatives.	If competitive, will seek to dominate through the use of affective influence, persuasion based on status superiority or the relationship.
If cooperative, will seek to enlarge joint gain through direct information-sharing, indicating interests, comparing positions and clear responses to offers.	If cooperative, will seek to develop trust and do so through indirect information exchange through offers – particularly multiple offers.

This point about relationships should give us pause to consider why ‘contract or relationship’ (see [Table 11.2](#)) features so regularly. Earlier chapters discussed the Airline ([Chapter 4](#)) and Telco ([Chapter 7](#)) cases. In both cases, the negotiators spent some time in social environments to get to know the negotiators on the other side of the table – as people, not just company representatives. It is important – in any negotiation, not just a cross-cultural one – that negotiators treat each other with respect, even when it is expected that the negotiation will be competitive. When the negotiation is over alleged non-compliance with a contract – as in the Tanker case ([Chapter 4](#)) – the negotiators setting aside a day beforehand to play a round of golf will not be appropriate. However, when the parties are going to negotiate in the expectation of working together to set up an arrangement for the future, then an opportunity to informally socialise would be helpful. Even here, the purpose should be clear: is it a social event or is business likely to be discussed?

According to Khakhar and Rammal ([2013](#)), Arab negotiators place a lot of emphasis on building relationships, as they consider building trust to be important. Once that trust is built, a handshake is often regarded as a sufficient sign of commitment. However, it is suggested that while Nigerian negotiators also value relationship trust, it is less easily established (Spralls, Okonkwo & Akan [2011](#)), so the advice is given that agreed obligations should be defined clearly. One other point to remember about building relationships is whether those involved in the negotiation will also be involved in implementing any agreement. If they are, then a good working relationship around the negotiation table will be of great value later should issues arise; however, often those who make the deal are not those who have to implement it (as in the Tanker case), so we should not presume that the goal of building relationships for a negotiation will actually carry through into implementation.

Adair and Brett's ([2004](#)) summary is useful in another important respect: it recognises that, in a negotiation, individualists and collectivists can each be either competitive or cooperative. This is preferable to an implicit assumption that it is the individualists who are competitive and the collectivists who are cooperative. Collectivists are cooperative, but within their own group; there is some evidence to suggest that they are more conflictual than individualists when dealing with people not in their group (Gudykunst & Bond [1996](#)). This might be why, when asked to give a pictorial image of what it is like to negotiate with people from your country, a group of Chinese drew a picture of the Great Wall of China, saying that it portrayed the idea that you would be well looked after if you have been accepted behind the Wall, but not if you were on the other side of it. Brazilians, who are regarded as being collectivistic, are found to be more accommodating in conflict with friends than with those they do not

know; American negotiators' conflict-handling style was unchanged (Pearson & Stephan [1998](#)).

High- and low-context communication

Another important measure of difference between cultures is how they communicate and convey information; this is important because information exchange is one of the strands of a negotiation's DNA. Hall ([1976](#)) identifies differences between low- and high-context communication. The former is explicit and direct, intending to minimise any scope for ambiguity. High-context communication relies on the physical context and the person who is communicating as much as on what is actually being said. As an example of context setting, there are two royal universities in Sweden, Lund and Uppsala; naturally enough, they vie for the position of premier university. Uppsala holds any meetings between the two universities in its senate room, where pictures of the kings of Sweden – all of whom studied at Uppsala – hang on the walls. This example of status and scene setting – both of which are important when relationships are being built – alerts us to dangers in stereotyping: Scandinavian cultures are generally recognised to be low-context communicators.

Where the parties meet and who attends are important signals. Being taken to one of the more expensive restaurants in the host city, for example, would be an indication that your hosts are showing their commitment to the forthcoming negotiations, or perhaps that some other important message needs to be conveyed. The operating managers for partners in a joint venture would regularly meet to review the day-to-day operation of the venture, and would typically go to a local restaurant for lunch as part of the working day. On one occasion, however, the Singaporean hosts had arranged for lunch at a local business club. The English manager wondered about the change in routine, but was not then

surprised when a director joined them for lunch and spent most of the time talking about the long-term vision of his company. The director didn't actually tell the English manager that he needed to go back home and tell his own senior people to start thinking about the longer term and have a bigger vision for the joint venture, but that that's what the manager did.

High- or low-context communicating does not occur in a vacuum separate from the communicator's other attitudes; it probably also reflects how the negotiator is approaching the issue under discussion. Although we must guard against stereotyping, someone from a hierarchical, collective culture may well have a longer time perspective and may, for example, see greater possibilities for where the negotiation relationship might lead. They then would want to paint a bigger picture and get an understanding of the whole context before reaching any conclusions. In contrast, negotiators from low-context cultures may be more focused on the issue at hand and be prepared to learn what they need to know in order to reach a decision by asking questions.

A high-context communicator expects the listener to discern the key message while a low-context one delivers the key message explicitly. A visitor to a home might comment to the host, 'I expect it is difficult to keep a large home like this really warm', indicating that she's feeling cold and would like the heating turned on, or she could just say, 'Its cold in here; can you put the heating on?' This gives another aspect to be aware of in how people communicate. Part of being a high-context communicator is a wariness about saying something that could embarrass the listener. Around the negotiation table, this can become important when trying to express disagreement. Rather than say 'no' to a proposal, a high-context negotiator might respond by talking about that part of the proposal that is causing the most difficulty. So in a situation where the client thinks a company's proposal has too many costly insurance contingencies, but nevertheless

wants to do business with them, the high-context response might be, ‘We like your proposal and would like to accept it, but we’ve found that some other companies are more confident of managing any risks and so improve value of their proposals to us.’ This means, ‘If you carried some more risks instead of costing them into the proposal, you could reduce the price and enable us to accept it.’ A low-context negotiator might have responded, ‘If you cover the insurance yourself, then you can reduce your price by \$50 000 and we have a deal.’

Negotiation in practice

High- and low-context approaches

Two organisations – one Australian, the other Asian – had established what was proving to be a mutually beneficial partnership. They agreed to meet each year to review progress and plan for the coming year. The Australian presentation at the meeting outlined specific strategies, with budgets, targets and timelines. The Asian presentation, by contrast, recounted the process by which the two organisations had set up their joint venture, an overview of current activities and a slide suggesting some general market trends.

The contrasting approaches reflected each party’s differing view on how best to move forward: build the partnership out of successful activities versus having confidence in the strength of the partnership to ensure the detailed activities will be worked out successfully. Given the good relationship between the people involved, these contrasting approaches became complementary rather than being a source of ongoing frustration.

Some of the distinguishing characteristics of high- and low-context communication (see [Table 11.4](#)) are consistent with the individualist–collective dimension (see [Table 11.1](#)). This is not surprising, as the way we communicate is in part a reflection of how we view ourselves and the world around us. How we think influences how we communicate (Drake [1995](#); Hofstede [1994](#); Kumar & Worm [2004](#)). An analytical approach – associated with the individualistic West and most comfortably done through direct communication – leads to an emphasis on factual presentation and rational argument, a search for an ideal solution and perhaps a persistence to find such a solution, which becomes more important than the people involved. In contrast, a holistic approach – regarded as being more of an Eastern nature – might present an argument in an abstract way, perhaps through analogy, and would be accepting of two concurrently competing perspectives (the analytical approach would require finding which of the two was better).

Table 11.4 Low- and high-context communication (adapted from Hall [1976](#); Gudykunst [1998](#))

Low-context communication	High-context communication
The meaning and intent will be conveyed primarily through the spoken word.	Much of the intended content will be conveyed in the physical environment and by those participating.
Statements will be precise and relevant.	Statements will be broad ranging and indirect.
Statements will reflect opinions, feelings and reactions.	Statements will be reserved; communication will be conducted in a way that maintains harmony within the communicator's own

group.

Information will be sought through questioning.

Information will be sought through inference and through indirect means – for example, through reactions to offers made.

Silence will be filled with words.

Silence conveys meaning.

Negotiation in practice

Being aware of signals

Following a series of negotiations over the technical capabilities of a new vehicle-tracking system for a logistics company, the company's IT manager phoned the sales representative with whom he had been negotiating to let her know that his company's chief finance officer would be attending the next meeting. She, rightly, took this as an indication that the logistics company was satisfied with the technical issues and wanted to move the negotiations onto the commercial terms and make a decision. She normally negotiates the financial as well as the technical aspects but now had to consider whether to also bring in a financial person to demonstrate a similar commitment to completing the deal – not her company's normal practice.

She decided to go it alone, as normal, but first phoned the IT manager to confirm that the intention was to finalise the deal, weaving into the conversation a story about one of her other negotiations that was financially complex but had resulted in a good agreement.

Lewis (2007) provides a different perspective on cultural difference, organising the cultural characteristics of countries into three groups: multiple actives, linear actives and reactives. Some of the characteristics of how these different groups communicate are presented in Table 11.5. As might be expected from seeing how they communicate, the linear actives are organised and deal focused, looking towards a written contract, whereas the multiple actives work from grand plans, are relationship oriented and, although they will sign a contract, believe that their spoken commitment is what matters. Reactives are more harmony oriented in putting together a deal, so rely more on broad principles and would therefore view any contract as renegotiable should circumstances change. Using the high- and low-context categorisations, it could be said that reactives are high-context communicators, linear actives are low-context communicators and multiple actives very low-context communicators. Remember, though, that this indicates how the other negotiator might converse with us and try to persuade us; it does not imply anything about whether the other negotiator will make the concession we are looking for to close the deal in our favour.

Table 11.5 Some communication characteristics of Lewis's (2007) cultural types

Multiple active	Linear active	Reactive
Warm, emotional, loquacious, impulsive – for example, Hispanic American, Mediterranean.	Cool, factual, decisive planners – for example, Germans, Swiss.	Courteous, amiable, accommodating listener – for example, Japanese, Vietnamese.
Speech is for	Speech is for	Speech is for harmony.

opinions.	information.	
Talks most of the time, often interrupts.	Talks half the time, rarely interrupts.	Listens most of the time, does not interrupt.
Speech leads to thought (thinks aloud).	Thinks briefly, then speaks.	Contemplates, then speaks briefly.
Talks rapidly.	Talks at medium speed.	Talks slowly.
Overlapping speech is acceptable.	Likes short pauses between speech turns.	Likes long pauses between speech turns.
Roams.	Sticks to the agenda.	Often asks for repeats.
Unrestrained body language.	Restrained body language.	Subtle body language.

Decision-making, power and management of conflict

The hierarchical nature of some societies seems to stand out more than the egalitarianism in others. People who are senior by rank or age are granted respect and are looked to for guidance; their preferences are accommodated and their decisions accepted. Nothing is done that could be construed as disagreement. Thus, although negotiating as a team, the team members will follow the lead of the senior person and will not easily express a conflicting opinion, if they do so at all. In contrast, in an egalitarian society there is a greater acceptance of open participation, discussion and challenge, although we should not think that democracy prevails – the CEO is still the boss.

The hierarchical or egalitarian characteristics of societies and organisations impact on some key aspects of negotiation: how decisions are made, how power is exercised and how conflict is managed. Negotiators face many unanticipated decisions during the course of a negotiation. Should they reveal this information at this point? Should they break for an adjournment? Should they say that they like the new proposal? We would expect members of a negotiating team with a more equitable form of organisation to be more comfortable in making on-the-spot decisions and more willing to take a new position on the issue before referring it back to their principals. In contrast, the negotiators in a more hierarchically influenced group would not want to act outside of their superiors (who may not be present but will have given clear guidance), with the consequence that they may appear inflexible and unresponsive and, so far as the issue is concerned, always contending by not giving even a hint of flexibility.

Power is an important link in negotiation's DNA. In [Chapter 3](#), power was examined in terms of the best alternative to a negotiated agreement (BATNA). This is an analytic conception of power, abstracted from any broader relationships. The BATNA is invoked by negotiators in egalitarian cultures only as a final power persuasion tool (Adair [2003](#); Brett [2000](#)). Negotiators from hierarchical societies, where power is based on relationships as well as alternatives, are found to use not only BATNA-related arguments but also social persuasion (Adair et al. [2004](#); Tinsley [2001](#)). In hierarchical societies, those in a superior position are granted power by virtue of their position (they probably also have better alternatives), and this flows through into a negotiation. The expectation will be that the benefits from any agreement should be distributed on the basis of the parties' relative status. It is therefore important in any negotiation to make an assessment of relative power early. As an example of the difficulties discerning the effects of culturally based strategies, Adair and colleagues ([2004](#)) found that the insights gained through using power arguments could be used either to create joint gain, as in the case of Japanese negotiators, or to enforce a competitive outcome, as in the case of Russian negotiators.

These differing approaches to decision-making and the use of power also flow into how conflict situations might be managed. Those from a more hierarchical culture will generally be less comfortable than those from an egalitarian culture when it comes to expressing disagreement or reacting openly to disagreement from across the negotiating table. Rather than try to work through a difficult situation, it might be postponed, to be managed through a third party or just through the passage of time. In this, as in other practical outworkings of hierarchy and egalitarianism, there are some affinities with collectivism and individualism.

Different meanings of time and their effect on negotiation

Our attitude to time reveals a lot about our approach to life (Brislin & Kim [2003](#); Hall [1983](#)). ‘Every year is getting shorter / Never seem to find the time’ are lines from the song ‘Time’, on Pink Floyd’s best-selling album *Dark Side of the Moon*. ‘Time’, a song about the relentless passage of time and the pressure we allow it to place on us, is a reflection of those cultures in which the immediacy of time and the use made of it are important. Time is money. *Carpe diem* – seize the day. Negotiators from these cultures will be punctual, will not have too much time for social chit-chat, and instead will immediately start working through the agenda, one item at a time, will be totally focused on the issues and will finish on schedule – all of it a reflection of a monochronistic approach to time. It is important to future-plan so as not to waste time doing things that are not necessary. Milestones feature and are kept to; deadlines generate activity so they can be met. Commitment is shown by getting on with the task. At the negotiating table, we can expect linear thinking, task-focused activity and low-context forms of communication.

Negotiation in practice

‘I’m here to discuss ...’

A German manager was in Kuala Lumpur for a first meeting with the CEO of a prospective supplier company, scheduled to take place from 11.00 am until noon. The manager was on time. Twenty minutes later, the CEO appeared and the meeting started. A short while later, the CEO’s secretary interrupted by saying that there was an urgent phone call. The German manager could not help

overhearing that the conversation did not appear to be urgent at all, but was about a social engagement later that week. By 11.50 am, the manager and the CEO got back to business only to be interrupted at 11.55 am by another urgent phone call during which the CEO flicked through a document, indicating his approval or disapproval of points as he read. Just as he put down the phone, his finance manager walked in to discuss some business. After he had left, the CEO suggested to the German manager that they continue the meeting over lunch at a local restaurant. The manager had to phone her next appointment to reschedule. During lunch, they were interrupted yet again when a French business colleague passed by and the CEO asked him to join them for lunch as there were still a couple of outstanding issues with the French office. By the end of lunch, the core elements of the proposed arrangements were satisfactorily agreed, and the German manager learned not to arrange back-to-back meetings when in Malaysia.

In contrast, some cultures – those broadly termed ‘polychronic’ – seem to place little value on time: a wristwatch is more likely to be a fashion statement than something to live by. Present events are part of life’s broader canvas. There is no imperative to seize the day because another will come. The now will occur again as part of the cycle of life. So they have time to build relationships, which are important to them, and once formed they are expected to endure. Meeting times are part of the flow of the day – a particularly useful attitude if living in a city where the traffic is bad and it is acceptable for other people or events to interrupt a meeting or for plans to change. The present is measured against the past, so time will be spent talking over the history and the broader context of

any topic, which leads naturally to talking about a lot of things that are not strictly on the agenda, if there is one. High-context communication is another reflection of this broad approach. Negotiations will be lengthy, with attention given to building relationships. The passage of time will be used to test one's sincerity and commitment.

It would appear that there is a broad divide between those cultures with Anglo-Saxon or northern European roots (generally the linear actives in Lewis's [2007](#) classification), who are generally monochronistic, and people from the rest of the world, who are more polychronic (Mayfield et al. [1997](#)) – although, as always, these broad generalisations must be evaluated in the context of the specific negotiation.

Making some sense of this cultural complexity

The multi-faceted nature of culture makes it difficult to classify cultural differences in a way that offers guidance for particular negotiations. Identifying contrasts, such as monochronic or polychronic approaches to time, alerts us to the fact that other people think and act differently (negotiation is two-sided). But it must always be remembered that this approach of highlighting contrasts can misrepresent a characteristic as either/or, whereas in reality it is a question of emphasis, as is shown in the example of Shuster and Copeland's characterisation of cultures in terms of their emphasis on the task or the relationship (see [Figure 11.1](#)). It must also be remembered that the specific context of the negotiation or the nature of the issue may so dominate that an otherwise significant cultural difference fades in relevance.



Figure 11.1 Culture Classification Model (adapted from Schuster & Copeland [1996b](#))

A way through the diverse insights into the effect of culture on negotiation can be found by taking the *raison d'être* of negotiation as a starting point. The whole purpose of a negotiation is to see whether an agreement can be achieved and then, importantly, to have that agreement implemented effectively. Several writers have identified that some negotiators from some cultures emphasise the task aspect of negotiating, while others place more importance on relationship-building. These

different perspectives influence how the negotiators will relate to the other party. Business deals normally go through a time of deal prospecting (see [Chapter 12](#)), during which the parties work out whether a mutually beneficial deal is a possibility. Then they move into deal-making when they formally commit to working together to sort out the detail. Task-oriented negotiators – typically low-context linear-actives – would prospect a deal by examining the technical and financial feasibility of the proposed project. If the numbers stack up, then the two parties would do what is necessary to make it work. Other negotiators might be more inclined to the view that if they don't get on with the people from the other party, then the deal will never work, even if the technical and financial aspects look good. For them, prospecting the deal would also mean prospecting the relationship and they will only proceed if the relationship aspects look promising, rather than just assume the parties will work together because the deal itself is mutually beneficial.

Brett and Gelfand ([2006](#)) developed a framework around five negotiation-related questions that also starts with the parties' motivations (see [Table 11.6](#)). Ask someone from the West if it was a good negotiation and they may reply, 'Yes, we are both making a profit'; ask someone from an Asian country and they may reply, 'Yes, we are working well together.' It can be seen from [Table 11.6](#) that there are differences in how the parties communicate and exchange information (perhaps during the differentiation phase) and how they persuade and manage conflict (as might occur in the exchange phase). The task or relationship emphasis will also be a reflection upon how the negotiator envisages any agreement being implemented. Most negotiations are done on behalf of others (see [Chapter 9](#)) so, although there may be a good relationship between the people negotiating the deal, it is also necessary to build a relationship between the people who have to implement it.

Table 11.6 Responses to problems in negotiation (based on Brett & Gelfand [2006](#))

	Western	Non-Western
Motivation		
How should we evaluate the outcome of the negotiation?	Economic	Relational
Communication		
How do I get the information I need about the other party's interests and priorities without giving up too much information about my own interests, thereby making myself vulnerable to exploitation?	Through questioning	Through offers
Persuasion		
How do I get the other party to make the concessions necessary to reach my desired end point?	Rational argument	Emotional appeals
Attribution		

Why did this event occur?	Dispositional	Situational
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Confrontation of conflict

How do I manage conflict?	Direct confrontation	Indirect confrontation
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Envisaging the agreement the other party might want – what sort of agreement are they looking for? – will provide some good clues as to how they might approach the negotiation. They might be seeking an agreement that specifically addresses all the points at issue or one that records only the broad parameters on the understanding that points of detail will be addressed later as the need arises. These outcome preferences reflect and reveal two different broad approaches to the task of reaching an agreement through negotiation.

If we consider why some negotiators want an agreement that covers all the details and contingencies, it is probably because they view it as the mechanism to ensure the proper implementation of what has been agreed. The agreement will also provide ways to ensure that any changes in circumstance during its term are equitably dealt with. They feel they have to rely on the agreement because they do not envisage much beyond a pragmatic working relationship being developed with the other party. Since the detail of the agreement is significant, it follows that communication and negotiation are likely to be direct and task focused. This typically leads to an issue-by-issue approach that easily becomes a series of mini win–lose encounters in the broader context of the negotiation as a whole.

Those seeking a more general agreement will probably not enter into an agreement at all unless they reach an understanding of the other party as being a partner. In this case, the partnership will be a living relationship, with the implementation of details and responses to changed circumstances being sorted out as necessary if and when the situation arises. Since points of potential conflict do not have to be addressed in advance, the discussions can be open-ended and, seemingly, win-win.

Managing a cross-cultural negotiation

Preparation is the key to any negotiation. It is naïve to enter into a business negotiation in another country without first having thoroughly researched the situation and developed a sound business case. The appraisal must extend beyond whether the proposal is technically and economically sound to consider the full context in which any eventual agreement will be implemented, including the risks involved. No amount of cross-cultural sensitivity training will compensate for agreeing to a supply contract without knowing how the local financial system operates, including who actually authorises any payments out of the country. Cross-cultural sensitivity will not compensate for you being unaware that your agreement with a local manufacturer to produce your product under licence also requires approval from the local government authority (why is that approval being delayed?). In short, any proposal requires an understanding of the local business system. Learning about it will take time, and almost inevitably will involve establishing local connections.

The techniques for developing sound international business proposals are beyond the scope of this book. From a negotiation perspective, the preliminary encounters with a potential business partner will be an exploration to establish whether there is any *prima facie* prospect of a deal (deal prospecting is described in [Chapter 12](#)). The foundations of any subsequent negotiation are being laid during this time, and it is unlikely that the negotiations will even start unless both parties are confident that there is sufficient trust and cooperation (as well as profit) to continue. When the negotiations do start, it is necessary – as in all negotiations – to consider the issue, process and behavioural dimensions.

Negotiation in practice

Reflections of a negotiator

The nationalities of our negotiators were Mexican, Hong Kong Chinese and Korean – all of which are classified as high-context cultures. The other team was from United States – a typical example of a low-context culture. Our ways of negotiating differed in very clear ways. We (high-context people) tried to have a clear understanding of each other's needs and gather some information before the actual negotiation. But they (low-context people) didn't follow our moves at all. They went straight to the actual negotiation, came right up to the table with their structured proposals and had less awareness of non-verbal communication. Statements such as, 'No, we can't do that' were made very clearly whenever they disagreed. Therefore, while we were busy giving explanations, such as, 'Okay, maybe we might think about that' or 'We are afraid that we might not be able to do that since ...', they were standing firm on their side.

These American negotiators might have experienced discomfort as well while we were around the table. At first they might have thought that we were not fully prepared for the negotiation since we weren't following their moves by putting our proposals on the desk right away. Then, after seeing us continuously making concessions and trying to adjust to their demands, they might have thought that if they just kept pushing us, they would certainly win by totally fulfilling their needs.

The issue dimension

Good preparation for any negotiation requires questions to be asked and the preparation to be done from the perspective of the other party (see [Chapter 3](#)). The difference when preparing for a cross-cultural negotiation is that we probably know far less about the other party. Recognising one's relative ignorance is not a bad thing. At the same time, it is important not to succumb to transference – assuming that they think like us – or to stereotyping – assuming that they all think and act the same. The uncertainties of cross-cultural negotiation simply place greater emphasis on preparation and on the need to manage the differentiation phase, to regard it as a period to learn and confirm as much as to inform. It places a greater emphasis on early relationship-building, if only as a means to gather information.

The Strategy Worksheet (see [Chapter 5](#)) is designed to enforce an other-directed perspective in that it requires a negotiator to estimate the other party's strategy. This can only be done by evaluating all the strategy factors from the other negotiator's perspective. [Table 11.7](#) gives some broad indications of how a negotiator should be alert to different perspectives.

Table 11.7 Strategy factor

Strategy factor	Level
Importance of issue to self	High/low
The more collective its orientation, the more likely the other team is to view the	

issue broadly and in a longer time perspective; the underlying motivation may be far deeper than appears on the surface.

Concern for other's outcome

High/low

An individualistic orientation would give rise only to an instrumental concern for your outcome; a collective orientation is concerned only with the welfare of the in group; concern for other (you) should not be presumed until a relationship is established and you are thus part of the group.

Expectation of other's strategy

Concede

Contend

Compromise

The more collectively oriented negotiators will expect individualists to want to achieve an outcome and so will expect them to make concessions.

Time pressure

High/low

The more collective and polychronic cultures would be less impacted by potential

deadlines and so not feel the pressure as much as individualistic cultures.

Alternatives

Good/poor

Similarly, the broader perspective of collective or hierarchical cultures might not regard 'poor' alternatives so negatively.

An example will show how people might feel the pressure of time differently and also highlight the danger of transference – that is, transferring one's own thoughts and attitudes onto others. The example involves a factory where stocks of a crucial component will run out by the end of the week, which will result in the factory's temporary closure if supplies cannot be found. In this situation, time does matter, whatever your culture: nothing can be done to change the fact that Friday is four days away. The component supplier has an individualistic, monochronic perspective, and so believes that the factory manager would feel under pressure because of the impending crisis and would want to secure supplies of the components as soon as possible. The supplier would expect an urgent negotiation and quick agreement; they would expect the manager to pay a higher price for a special delivery. A manager from a more polychronic culture might be prepared not to reach agreement until later in the week. They might use the time to explore alternative sources, while at the same time argue with the supplier about the need to keep prices down for the sake of the relationship. They might even be prepared to allow production to stop for a few days; the dislocation would not have too much

of an impact in the long run. So, instead of negotiating with an eager buyer, our component supplier might find that the Friday deadline was not pushing this particular manager into a conceding strategy over delivery terms.

The process dimension

Earlier chapters have used imagery to convey an understanding of negotiation and to develop an appropriate script to manage the process effectively. Using dance imagery, Adair and Brett ([2005](#)) suggest that negotiation – like dance – is a sequence of steps that draws on the cultural context. Compare the restrained Viennese waltz and the expressive intensity of the Spanish flamenco (both dances being opportunities for courtship) as reflections of the northern European and Mediterranean cultures and their approaches to negotiation. Negotiation as sport and as family are two other metaphors to capture the essence of US and Japanese negotiation respectively (Gelfand & McCusker [2002](#)). Another for Japan is ‘still waters run deep’, meaning that nothing should be done to disturb the surface but a lot is happening underneath. Gannon and Pillai ([2010](#)) suggest metaphors to provide insights into the cultures of different countries, some of which are listed in [Table 11.8](#). At the risk of oversimplification, and being fully conscious of dividing the world’s seven billion people into just two groups, two images can be suggested that convey the essence of Western and non-Western negotiation: the rock’n’roll approach to negotiation, and negotiation as a banquet.

Table 11.8 Some cultural metaphors (Gannon & Pillai [2010](#))

The Brazilian samba	Vibrant, small steps but constant undulating movement; closeness but spontaneity.
The German symphony	Diversity integrated, precisely organised and led; an imposing result.

The Japanese garden

Carefully designed, intricate,
steady, involving.

The Nigerian marketplace

Bustling, crowded; get anything
you want; do a deal noisily.

The Turkish coffee house

Male dominated; the coffee and
the conversation matter; the décor
is plain.

The rock'n'roll approach to negotiation

Western civilisation has given us many wonderful things – parliamentary democracy, soccer and, perhaps not quite so wonderful, celebrity culture and the paparazzi – but one of the most defining characteristics of Western culture is rock'n'roll music and the electric guitar, which provide the visual imagery of our model of Western negotiation.

The foot of the body of a standard guitar is wide, then it narrows, and then it widens again. The widening of the body reflects a Western negotiator's desire to get on with the task straight away, to lay everything on the table and open up all the issues. The volume controls will be turned on full because rock'n'roll music has to be loud – not that our negotiators will be shouting, but they will certainly be intent on getting their message across, full of emphasis with not too much subtlety or concern for relationship-building and trust.



Following some pretty intense discussion, the negotiators begin to see the key issues that need to be addressed to reach an agreement. Perhaps there are six of them (the six guitar strings). The key point is that the issues are identified and worked upon. The differences do indeed seem to be narrowing efficiently and quickly; agreement is expected. We then find that the body of the guitar widens again to reflect that, through our haste to look for the solutions, we have missed some broader aspects that should have been considered. It may seem that we are getting further apart rather than making progress. We need an agreement, so we take this in our stride and then focus again on the core issues (the strings), working through them step by step and overcoming each hurdle (the frets) in turn. The tension increases as the negotiators bring the issue to a head and endeavour to tie off the loose ends. At the last minute, there will be some final tweaking, or fine tuning, to get the agreement precisely right.

Negotiation as a banquet

The great Chinese civilisation has given us many things that we now take for granted, not least paper and ink, the game of chess and Kung Fu movies. Not only have the Chinese given us the ubiquitous Chinese takeaway restaurant, but also the Peking duck banquet. This banquet provides a good image of what negotiating is like in Asia and in many parts of the non-Western world.

When participating in a banquet, the point is not the food but the social interaction. It is the same with an invitation to negotiate. The primary purpose of the invitation is not to seek your involvement in a formal business meeting, but to participate in an opportunity to understand each other.



At the beginning of the banquet, the chef brings out the cooked duck for everyone to see. There has been a lot of preparation of the food to get it

to this point and it is the same in a negotiation. Our Chinese negotiators will be fully prepared and, as is reflected in our imagery of the whole duck being presented at the outset, they will have a good grasp of the big picture.

During the banquet, the courses are presented in small stages, typically one dish at a time, not like a Western feast where the main course would be offered as meat or fish and a range of vegetables to be eaten together. The duck is not served all at once; some parts are used in one course, other parts form the basis of another dish, and so on, until, towards the end of the banquet – and you never really know when it is going to end – a soup is presented that may well have all the remaining duck in it, the small pieces scraped from the bones. This is a reflection of how information is often conveyed in a Chinese negotiation: some talk about the big picture, the possibilities and the prospects for the relationship, and then separate details and insights being offered from time to time, not as a neat package of information.

When the banquet ends, you will have made some friends. And while you probably will not have eaten very much, you will feel reasonably full, only to feel hungry again soon after. This is much like negotiating with the Chinese. A relationship may have been built and lots of discussion will have taken place. While some things may be understood, you are still left wondering what, if anything, was actually agreed but you feel sure that it will all be sorted out in due course.

The action dimension

Creating images and scripts offers a way to understand the broad flow of a negotiation. The detail still needs to be filled in and, fortunately, there is some broad consistency in the general sequence of events. Irrespective of their cultural background, negotiators still have to do the same things to reach an agreement (Adair [2008](#); Adair & Brett [2005](#)): they need to position themselves and exchange information about what is important; they need to work through those differences and make some concessions to bring the deal together. Earlier chapters have described these tasks in terms of information exchange, indicating flexibility and managing concessions. Negotiators from different cultures might work their way through these tasks in different – but perhaps not too different – ways. As always, it seems to be a question of preference and emphasis rather than fundamentally contrasting ways of working through a negotiation.

Comparisons can be made between those with a collective orientation who tend to be most comfortable with high-context forms of communication and those who have a more individualistic orientation and prefer to communicate in a more direct, low-context manner. This again risks dividing the world's negotiators into two broad categories – the West and the non-West – but, as the cultural and negotiation research presented earlier in the chapter suggests, it is a workable division.

We should also remember that the subject of the negotiation will influence how the negotiations themselves unfold. Major commercial negotiations can be expected to follow a similar pattern, shaped largely by the complexity of the proposed deal. In the Airline and Telco cases, which were both 'West' meets 'East' negotiations, time was spent relationship-building; the meetings were structured, formal but friendly; and they were

distributive rather than integrative. A negotiation between a European company seeking to source components and a Chinese manufacturer would still involve the companies' representatives getting to know each other – important because they would also likely be involved in implementing any agreement they reached – but would be quicker, less formal and probably not cover every eventuality of the supply arrangement.

Full accounts of the Telco and Airline cases are available at www.cambridge.edu.au/academic/effective

The task of differentiation

We have seen that all negotiators need to differentiate, to establish what the real issues are. We have also seen that people from different cultures may well have different perspectives on the same issue, with one person viewing it narrowly and another seeing it as part of a far broader perspective. It is the negotiators with a more individualistic orientation who are less able to see the integrative potential in a situation (Gelfand & Christakopoulou [1999](#); Ma et al. [2002](#)). Negotiators convey essential information about their priorities, and also seek information in different ways, which is why there is less joint gain in cross-cultural negotiations than in intracultural ones (Brett & Okumura [1998](#); Lituchy [1997](#); Natlandsmyr & Rognes [1995](#)). This makes the task of differentiation all the more important, which in turn makes building effective relationships between the negotiators an early priority. Negotiators must always remember that differences in cultural background may cause objective information to be interpreted differently (Tinsley, Curhan & Kwak [1999](#)).

The process of exchanging information, and with it the task of building relationships, will start from the first encounter, not necessarily at the first formal negotiation meeting. [Table 11.9](#) presents some contrasts in the way two broad groups might disclose their objectives, interests and other information surrounding the issues under negotiation. Only if taken to the extreme will either of the two lists in [Table 11.9](#) undermine the general behavioural requirements for effectively managing the differentiation phase presented in [Table 6.4](#). Some further recommendations are provided here to deal specifically with having to exchange information with someone whose preference is to do it in a different way. Those from high-context cultures seem able to adapt to a

more direct (low-context) form of information exchange (Adair [2003](#)), so those who recognise themselves as being from low-context cultures need to pay even more attention to the diverse ways in which information is being communicated by their high-context culture counterparts.

Table 11.9 West meets the rest: information exchange and differentiation

Non-West	West
Lengthy build-up to the negotiation.	Is direct and to the point; efficient.
Lengthy discussion; time not an issue.	Will deal with the present.
Will present a range of open, long-term possibilities.	Will outline the history and context only to explain the present situation.
Will include a relationship dimension.	Will use PowerPoint for impact.
Will make an occasional ‘This is what we want you to do’ statement.	Will encourage open discussion.
Will expect the other party to infer priorities, etc. from the weight of discussion and equally from what has been glossed over.	Will, ideally, outline interests and priorities, and seek reciprocal information.
Will expect the other party to infer from the authority of the speaker.	Will use rational arguments to explain linkages, goals and priorities.
Will make statements that are	Will ask open, priority questions.

intended to relate back to earlier ones.

Will, in time, respond to direct requests for information.

Equally possible, will take positional approach and be hesitant about information exchange.

The task of exploration: solution-seeking

In many negotiations, the exploration phase is limited. Negotiators are generally more comfortable working around and exchanging offers and generating new workable solutions in their private sessions. Finding potential solutions requires flexibility and trust, which implies some risk-taking, making it even more difficult for those from collective, hierarchical cultures, who find it difficult to go out on a limb and make a new suggestion or offer a first response to a proposal. These people are much more comfortable conveying the party line. Using Douglas's (1957) terminology, they will prefer interparty rather than interpersonal exchanges. Further, high-context negotiators might prefer to put an offer on the table early and work around that, an action that might be regarded by a low-context negotiator as anchoring the issue and precluding any further exploratory discussion (Adair, Weingart & Brett 2007). To a low-context negotiator, this offer-driven approach would seem to push the negotiation into the end-game.

The broad behavioural requirements for effective exploration (see Table 7.1) apply, irrespective of cultural context, but from Table 11.10 it would appear that negotiators from the West are the ones who drive the exploration process, and so feel frustrated when this is not reciprocated, while those from the non-West are searching for new solutions in a different way.

Table 11.10 West meets the rest: exploration, solution-seeking

Non-West	West
Will take proposals away for consideration rather than respond	Will want to unpack any suggestion. Ideally, creative

to them in the moment.

solutions will emerge from an
interest-based discussion.

Creative solutions will emerge, if
at all, through information being
differently presented.

More likely: unilateral problem-
solving that will lead to a new
proposal.

The task of exchange, and managing concessions and conflict

The end game of any negotiation can become competitive. [Table 8.1](#) presented a number of ways to effectively manage this critical phase of the negotiation. The competitiveness emerges primarily because one party is saying ‘no’ to the other party’s settlement proposal. Culturally based differences can be seen in three important aspects of the end-game: how offers are put, how they are reacted to and how any emerging conflict is handled (see [Table 11.11](#)). As indicated above, negotiators from high-context cultures will view making offers as a way of gaining insight, and so will start this process early, requiring Western negotiators to view the offers as information rather than a closing end-game move.

Table 11.11 West meets the rest: exchange, managing concessions and conflict

Non-West	West
Will be prepared to let the negotiations ‘sit’.	Will want an outcome.
Will indicate broad principles of what is agreeable, unless it is a major financial item, in which case it will be specific.	Will make detailed proposals. Expectations of the other party will also be spelt out.
Will repeatedly make multi-issue offers.	Limits clearly stated (‘We can’t do that’), with justifications.
Will press for variations around a theme.	
Will place the offer in the context	

of the ongoing relationship.

Will not reject a proposal but will offer an alternative or restate a previous one.

Disagreement will be avoided; it will be handled by changing topics, etc.

Unacceptable offers will be rejected outright; will outline alternatives (BATNA).

Will be comfortable with differences; any disagreements will be expressed at the negotiating table and continue until addressed.

Becoming an effective negotiator

As would be expected, the research suggests that negotiations between cultures are less successful than negotiations within cultures – at the general level by not operating to the same script and at the behavioural level by misinterpreting what the other party is trying to do. Note here Weiss's ([1994a](#), [1994b](#)) caution against going a step further to try to negotiate the way we think the other negotiators might prefer; this only causes uncertainty.

Negotiation is two-sided, so it is likely that the other negotiator will be trying to adapt too (Adair, Taylor & Tinsley [2009](#); Warden & Chen [2009](#)). If we try too hard and over-compensate, we could make the negotiations worse. Nevertheless, if each understands the other's approach, they can help each other to improve the negotiation process to their mutual benefit. Some ways in which this might be done are presented in [Table 11.12](#).

Table 11.12 Some ways to be a helpful cross-cultural negotiator

Ways for non-Western negotiators to be helpful	Ways for Western negotiators to be helpful
Provide information and give clear emphasis to important points.	Present issues broadly, not in detail.
Respond as directly as possible to questions; accept that differences may emerge early.	Regard time spent on exploring the big picture as a positive.
Give at least a preliminary response to their proposals; try to	Regard positions or offers as opportunities for discussion rather

indicate where you may have some flexibility or opportunity for creativity.

than for debate or challenge.

Recognise their desire to see progress.

Recognise their need to consult and take time.

Recognise that saying 'no' to a proposal (and giving reasons) will not adversely affect the relationship.

Prepare for a slow change in positions rather than rapid trade-offs at the negotiating table.

Non-Western negotiators' hierarchical, collectivist, high-context perspective helps them take a broad view of the situation, so by working through, over and around the issues they can help more issue-focused negotiators to see the broader possibilities. These same cultural characteristics tend to inhibit open creativity and make it difficult to present new exploratory proposals. This makes the non-Western negotiators seem passive and reactive (if not downright stubborn), which can lead to frustration in Western negotiators. The passivity and unwillingness to express disagreement can make not agreeing look like agreeing, with resultant misunderstandings later. Also, the Western negotiators can easily sense that they are making all the moves, doing all the work and will only get agreements if it is they who make the concessions, which leads to any agreements then being seen as unfair – a value that is important to them.

The Western negotiators should not try to rush things so early in the negotiations. They need to be attentive to and accepting of the alternative ways of putting issues in their wider and historical context. Similarly, they should try to broaden their own presentations. At the same time, non-Western negotiators could contribute by bringing emphasis to their key

points – perhaps through summary and checking understanding, and by responding with direct information. As the negotiations progress, Western negotiators can maintain an exploratory approach by viewing positions and offers as opportunities for discussion, while the non-Western negotiators should be willing to give their reactions to proposals, confident that they will be taken only as preliminary reactions and, equally importantly, that their own party will not see this as disloyal.

The egalitarian, individualistic and low-context approach of Western negotiators brings different benefits and difficulties. These people find it easier to be openly creative and to explore what might be achieved. This at least provides the opportunity for the more constrained non-Western negotiators to have some new avenues to discuss in private sessions later, though it would be better still if they could enter into some exploratory discussion there and then. But the Western focus on achieving an outcome can be frustrating for non-Western negotiators, who will want to take more time to consider issues and proposals – particularly within their broader goals. The Western negotiator can learn from this and view it as an opportunity to slow down and reflect. The willingness of the Western negotiator to express disagreement with a proposal (seen by them as a positive aspect) can easily be taken by a non-Western negotiator to be a rejection of the negotiation relationship itself. ‘Reasons first’ would be a constructive behavioural technique. Given the high-context ability of the non-Western negotiator, saying ‘I’m sorry, but I can’t agree’ will probably not be necessary.

There is one more important point required to help overcome the potential difficulties in cross-cultural negotiations, and that is to show respect to the other negotiator. Showing respect to the person across the negotiating table is a far more personal commitment than a broad cultural sensitivity to relationships. Similarly, no negotiator should be so task

focused as to ignore the humanity of other negotiators. A negotiator should be consistent in personal behaviour and act with evident integrity. ‘Do unto others as you would have them do unto you’ is wise advice. If you follow it, respect will be earned as well as given, and in a climate of mutual respect an unintentional cultural faux pas will be seen for what it is – unintentional. That a negotiator should show respect is a golden rule – the only one in this book.

Negotiation in practice

Showing respect

A US company sourced its products from a Chinese factory. When visiting the United States, managers required all their meetings with the Chinese managers to be in English. When responsibility for managing the supply contract was passed to a UK subsidiary of the US firm, the English managers, who could not speak Chinese either, worked through an interpreter and were quite prepared to let the Chinese speak in their native tongue in meetings. All they required was that the minutes of what had been agreed would be in English. The Chinese managers felt more trusted and, by talking among themselves in their own language, were better able to understand the issues being raised and better able to find mutually beneficial solutions.

As we know, preparation is key to any negotiation and, negotiation being two-sided, that preparation should be other-directed. Zhu and Gao ([2013](#)–14), asked some Chinese negotiators about success and failure in negotiation, and found that not having enough information or an alternative were reasons for difficulty, suggesting a need for good preparation (building trust is important but difficult; anticipating what the other party wants and having clarity of final positions are helpful). Preparation should focus on the other party as much as on one's own goals and preferred approach to negotiation. A person's cultural background will affect how they negotiate, but culture is not the only determinant of how a negotiator behaves; the issue and the context – and the other party – all

have an effect on how a negotiation will unfold and how the issue will be dealt with.

The approach taken in this chapter has been to start broad, with considerations of culture, and to increasingly focus on what might actually occur in a negotiation. The two-part cross-cultural action plan (see [Figures 11.2](#) and [11.3](#)) takes a similar approach. You should still use the Preparation Checklist (see [Chapter 1](#)) as you would for any other negotiation. The first question in that checklist, ‘Who are the parties involved?’, is the prompt to find out what you can about their cultural background; a later question, ‘Where are they coming from?’, should prompt you to try to understand their perspectives and priorities, and how they view the issues under discussion, which could easily be different from your understanding of them. Another key preparation question is, ‘How will the negotiations be handled?’ and here the two-part cross-cultural action plan will help. The first part guides you to anticipate how a negotiator from another culture might prefer to do the key tasks differently. Part 2 then asks you to reflect on your own possible reactions and what you can do to help make the negotiations go well.



NEGOTIATOR TOOL KIT


A cross-cultural action plan – 1

Negotiators from

What is the effect of their cultural characteristics and values on how they approach the specific negotiation tasks?

Differentiation <i>Establishing the issues and the negotiation</i> <i>Providing information</i> <i>Seeking information</i> <i>Establishing a negotiating relationship</i>	They
Exploration <i>Seeking and unpacking possible solutions</i> <i>Uncovering, offering new insights, etc.</i> <i>Generating suggestions</i> <i>Exploring, reflecting upon suggestions</i> <i>Rejecting suggestions</i>	They
Exchange <i>Managing concessions and conflict</i> <i>Seeking concessions</i> <i>Making concessions</i> <i>Joint, unilateral concession patterns</i> <i>Handling conflict</i>	They

Figure 11.2 A cross-cultural action plan 1



NEGOTIATOR TOOL KIT

A cross-cultural action plan – 2

Negotiators from

In view of how they might negotiate, what should we now do to help manage the process more effectively?

Differentiation <i>Establishing the issues and the negotiation</i> <i>Providing information</i> <i>Seeking information</i> <i>Establishing a negotiating relationship</i>	We should
Exploration <i>Seeking and unpacking possible solutions</i> <i>Uncovering, offering new insights, etc.</i> <i>Generating suggestions</i> <i>Exploring, reflecting upon suggestions</i> <i>Rejecting suggestions</i>	We should
Exchange <i>Managing concessions and conflict</i> <i>Seeking concessions</i> <i>Making concessions</i> <i>Joint, unilateral concession patterns</i> <i>Handling conflict</i>	We should

Figure 11.3 A cross-cultural action plan 2

Is there a single global script?

If negotiators learn the effective behavioural skills of other cultures, will a point be reached where there is one global negotiation script? Or, to put it another way, will negotiation involve playing a bit of rock'n'roll while having something to eat as the negotiators journey across the Nullarbor?

There are obvious similarities between the Nullarbor Model and negotiation as rock'n'roll that reveal an underlying Western approach to negotiation. Indeed, focusing on the tasks of negotiation (see [Chapter 4](#)) in an attempt to get to the core of reaching agreement may itself reflect a Western bias. The counter position, that negotiations are about relationships, does not seem sustainable unless the relationship leads somewhere, so at some point the parties to the relationship will need to explore options or at least exchange offers to achieve even the loosest of agreements. If, rather than starting from Sydney, the train journey were from Beijing, we might find that the Eastern context of the negotiation journey would show some differences. It might take far longer to decide whether to actually take the journey at all. Rather than being one of those things you must do – a true Australian experience for oneself – the journey might be viewed more broadly: Where would such a trip fit within our family's heritage? Would those close to me also benefit? I might be concerned to find out who else would be travelling before buying my ticket. Once on the train, the question to ponder may not be so much, 'Do I want to get to Northbridge [Perth's Chinatown]?' as 'When I get to Northbridge, will I still want to spend time with the people I'm meeting on this train?' If I'm not sure, then I will get off and wait for the next train and resume my journey. I will appreciate the time the journey is taking – not like some of my fellow passengers, who seem to be getting a bit

impatient. I will, like everyone else, have travelled across New South Wales (differentiation), crossed the Nullarbor (exploration) and travelled down the Avon Valley (exchange), but when I get to Perth I'm not likely to sign off on my journey (agreement) at the station. I will probably want to meet my fellow passengers again because there might be one or two more points about the agreement that I would like to discuss.

Is there that much cultural difference?

Do cultural differences change the essence of negotiation? If a negotiator is strategic in their thinking, prepares from the perspective of the other person, is fully alert to the other person thinking quite differently on the issue and allows a lot more negotiation time to build relationships and to unravel and decode information, then perhaps they will find that there is not so much difference at all. The script might seem different but, since the essence of negotiation is unchanged, the main storyline can, if one pays attention, be followed without too much difficulty. At some point, the parties have to differentiate; this is going to take some time but information rarely flows freely – even in the most open of negotiations. They have to explore options, but in most negotiations – even the win–win ones – this is mainly done unilaterally, so it is always important to present proposals openly and to maximise what can be learnt from them or from their rejection. In the end, offers have to be exchanged and concessions made (which no one likes doing) to reach a point of agreement. This too may take longer than expected, but if both parties need an agreement, then one will be reached.

Discussion questions

- 1** In what ways does time affect how people from different cultural groups negotiate?
- 2** What are the dominant negotiation characteristics of the cultural group to which you belong?
- 3** Select a cultural group different from your own. List some similarities in the ways you and they would negotiate.
- 4** Pick a controversial topic from the news. How would you explain the topic in a high-context way and how would you explain it in a low-context way?

12

Negotiation in practice: workplace and business negotiations



This chapter applies what you have learnt so far in this book to practical negotiation in the workplace and in business situations. After reading the chapter, you should be able to:

- understand how the workplace context impacts upon the negotiation process
- know how to manage and review management–union negotiations
- know how business negotiations are developed
- understand some of the challenges in preparing for and managing complex negotiations.

This chapter applies many of the principles of effective negotiation from earlier chapters to two important contexts. Many of us will be employees working in an organisation, or we may be owners of a business

– in which case we will probably be employing others to work for us. The workplace is where a lot of our negotiating will be done, and the negotiations between management and employee representatives – normally a trade union – are particularly important. These negotiations can be very difficult, so the first part of the chapter explores how to manage them more closely. Not everyone is involved in management–union negotiations but, as we saw from the map of the negotiations within the engineering company in [Chapter 1](#) (see [Figure 1.1](#)), and from the complex negotiations of [Chapter 9](#), negotiations take place everywhere. Most people’s work role involves negotiation of some sort. The second part of the chapter explores how business negotiations are conducted. We use the term ‘business’ very broadly, and what is written applies to public-sector negotiations and community negotiations as well as to the more commercial ones.

Managing workplace negotiations

Workplace negotiations are one of the more obvious forms of constituency negotiations. They have all the ingredients of complexity – usually with teams on each side of the negotiating table and issues that are difficult to resolve. It is not surprising that sometimes the negotiations go very wrong, resulting in a poor outcome for all concerned. However, although strikes and lockouts make the headlines, the vast majority of management–union negotiations result in agreements with which the parties can comfortably live.

Having said that most negotiations result in agreements, it is still the case that management–union negotiations are often competitive, even when the parties realise that there are potential benefits to be gained from a more collaborative approach. (At this point, we should recall an important point made way back in [Chapter 1](#) that negotiations are not *either* competitive *or* cooperative, but a mixture of both.) There are some aspects of the workplace context (see [Figure 12.1](#)) that have the effect of making negotiators on both sides act more competitively (Fells & Prowse [2013](#)), so it is important to recognise these if the negotiations are to be managed properly.

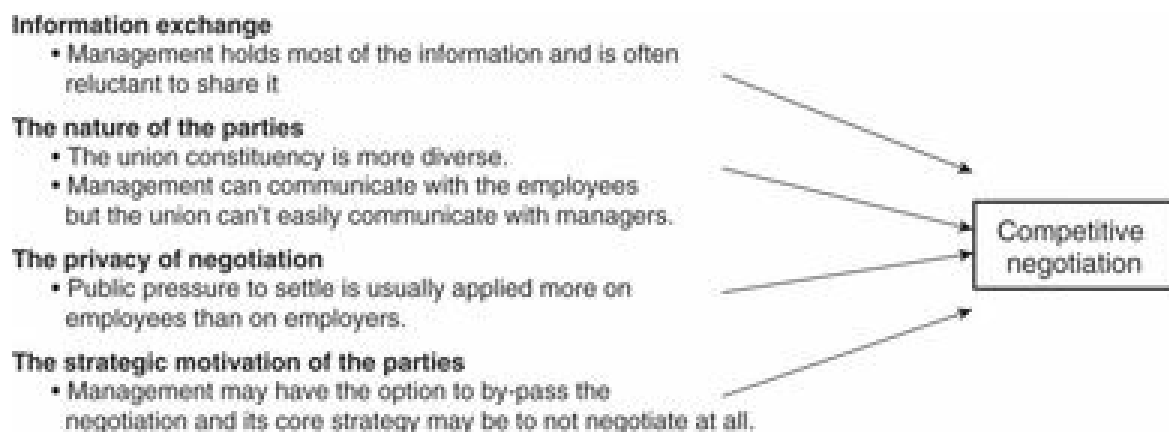


Figure 12.1 Workplace factors that lead to competitiveness

We have seen that information exchange is a key element in any negotiation, and typically each party will have some information that the other doesn't have; when they exchange this, they can often see new potential solutions. However, in the workplace, management holds the important information about costs, markets and the technology, and often is reluctant to share this with the workforce. Equally importantly, although there are constituencies on both sides – the management group and the employees – the former, being smaller and more cohesive, will be easier to manage than the work group, where there will normally be a wide range of views. Also, management can normally communicate directly with the constituency of the other party, since they are employees, but union negotiators cannot easily communicate directly with managers who are not part of the negotiating team (Fells [1998b](#)). The negotiations are usually public in the sense that other employers, the industry association and other unions are all interested in the outcome, and when strikes occur there is typically more public pressure on the strikers to 'return to work and negotiate' rather than on employers to 'improve the offer and negotiate'. Finally, management may have the option – or even the intention – not to negotiate at all, and unilaterally offer employment conditions to the employees; a union does not have a similar 'no negotiation' option and, as we have seen in earlier chapters, the alternative of what might be done if an agreement can't be reached through negotiation impacts upon the power of the parties.

Negotiation in practice

The asymmetry of workplace negotiations

A large public-sector department in the United Kingdom had an agreement with the unions representing its employees that work would be contracted out only if it could be done more competitively than in house. Each outsourcing proposal was to be discussed with the unions to see whether the work could be done more competitively in house. However, in those negotiations management would withhold information about contractors' proposals, which meant it was difficult for the unions to make any detailed comparisons. There were two unions, with the members of one likely to be more affected than the members of the other, so the management team sought to exploit this difference. It also established parallel working parties involving employees, thus undermining the formal negotiation process. The negotiations were protracted and did not go smoothly, but eventually the outsourcing proposal went through.

In addition to these innate tendencies towards competitiveness and the risk of industrial action and/or a poor agreement, when management and employees set out to negotiate an agreement, they are negotiating more than just pay and conditions. They are also renegotiating the terms of their interdependence (Walton & McKersie [1965](#)), as they are not only deciding the workplace rules but also establishing the power balance between them (Flanders [1968](#)).

Negotiation skills tips



Negotiating in the workplace

- Start preparing for the next agreement the day the current agreement is signed.
- Ensure that all negotiations across the workplace take the same approach.
- Recognise that if you don't want to deal with the other party, they probably won't cooperate (reciprocity DNA).
- Recognise the asymmetrical nature of parties in a workplace negotiation (particularly information DNA).

Two further contextual factors can increase the potential for competitiveness. In some workplace relations systems, the legislative framework – although designed to resolve disputation – creates a framework that encourages an adversarial negotiation dynamic (Fells [1999b](#)), which adds to the inherent competitiveness of the workplace itself. As with any other relationship, workplace relations carry their own history, and the legacy of past disputes is hard to dislodge.

Treat management–union negotiations as normal

Although different, management–union negotiations are not so different that it is necessary to throw out all the principles of good negotiation found elsewhere in this book. There is no need for a changed approach; rather, apply the basic principles of negotiation in a different context.

Many management–union negotiations follow a traditional script. A union log of claims is submitted and rejected. Management's counter-proposal is also rejected. The negotiators then sort out a number of issues, but one or two big-ticket items remain as an opportunity for power-based brinkmanship. That the parties choose to use only contend or concede issue strategies does not mean the other two strategies are not available to them. Although from the outset the parties may use actions more appropriate to the end-game, there is still a need to exchange information and seek solutions. They should perhaps realise that the script with which everyone has been comfortable is not the only one available to them.

Negotiating a management–union agreement takes a lot of effort; it can become the focus of attention for management and the workforce for many months. It is right that such an important event, which will govern the working lives of employees for perhaps the next two or three years, should be regarded as important; however, it is often seen as an isolated event.

Having spent months getting to a point of agreement, negotiators often say something like, 'It's a good job that this is a two-year agreement and we don't have to go through all this again next year.' Many human resources managers and union officials work back from the agreement's expiry date and put a note in their diary a month or two prior, to remind them to start thinking about the next round of negotiations. Once the

agreement is signed, it is left to the managers and supervisors to renegotiate the agreement terms with the employees to ensure that the changes actually occur, which is why employees can trade away a work practice in return for a productivity payment, and often can trade it away again in the next agreement.

Rather than be treated as an isolated event, a one-off opportunity to deal with a backlog of workplace issues, these negotiations and the ensuing agreement should be the culmination of work that has been done over the life of the previous agreement. The time to start thinking about the next agreement is the first day the current one starts to be implemented. Both parties should constantly review the operation of the agreement throughout its life. By doing so, they enable the next agreement to become an opportunity to consolidate all that they have been trying to achieve.

The parties need also to consider how their workplace negotiations compare with negotiations that occur at other times. There is little point in trying to set up a cooperative negotiation process two or three months ahead of the agreement's expiry date if, during the previous year, management has been taking an authoritative line on employee grievances and the employees have been working the system as best as they can. Organisations are a form of negotiated order in which there is constant negotiation between members as they seek to get the work done. Managers of departments negotiate with each other over production schedules; supervisors negotiate with their team when they have a rush job on; employees negotiate with their manager when they can see a better way of doing their job; everyone negotiates with the IT department to jump the queue and get their computer fixed quickly.

Usually, management sets the tone within an organisation. If day-to-day production and other issues are routinely dealt with on an interest-based basis, then when employee grievances emerge, they too will be

approached and resolved in the same way. Then, when the pay agreement is due to be negotiated, those involved will be comfortable with an interest-based script. If the day-to-day issues are resolved, in the terminology of Ury, Brett and Goldberg ([1989](#)), on the basis of rights or power, then the agreement will almost inevitably be negotiated on the same basis.

A review of over 20 reported cases of mutual gains or similar forms of bargaining found that these cooperative approaches were typically embarked upon when there was a crisis facing both parties (Fells & Prowse [2013](#)); the parties would cooperate to address the crisis but the durability of cooperation was less clear. Fundamental shifts in management–union relations can be achieved, but this requires a combination of changing circumstances and comprehensive strategy (Fells [2003](#); Fells & Skeffington [1998](#); Walton, Cutcher-Gershenfeld & McKersie [1994](#)). There is a role for third parties to help facilitate change (Macneil & Bray [2013](#)).

The practical implication is that the senior management of a company needs to establish a consistent approach and set of behavioural expectations for all negotiations, whether they be negotiations with others or negotiations within the organisation. Employees at all levels need to be given the opportunity to develop the necessary skills to constructively resolve issues as they arise, and staff development can go a step further by including negotiation as part of any performance review process. While important, merely organising training courses may not be sufficient. Any model of negotiation, such as the approach presented in this book, needs to be adapted from the training room to the boardroom, office or shop floor; a degree of pragmatism and reinforcement is necessary. Not only should negotiators become reflective practitioners; organisations should become

something similar, and they should learn from the past to build a realistic negotiation approach for the future.

Conduct a negotiation audit

As philosopher George Santayana wrote, ‘Those who cannot remember the past are condemned to repeat it’. It perhaps does not matter if you get a bit strident while negotiating with the real estate agent when selling your house because that is a one-off transaction, but in the workplace the implementation of the agreement is a day-by-day affair. While the lead negotiators may not have to deal with the consequences, the constituents do.

As we have learned, it is important to review each negotiation and, if the negotiation was a collective one, it helps to conduct the review collectively – at least within your own team, but ideally with the other party. The best time to do this is soon after the negotiations have concluded. However, realistically this is difficult, so the review of the previous negotiation over pay and other work conditions should be the first step in getting ready for the forthcoming one. The four elements to this audit – structure, process, individual action and outcome – are described below, and form another tool in the negotiator’s tool kit.

Negotiator tool kit

Overview of the four elements of a workplace negotiation audit

Use this approach to conduct a thorough assessment of a negotiation with a view to improving how the negotiations will unfold next time the parties meet.

A full review is a four-step process:

Step 1: the negotiation structure

- Describe and review the structure of the negotiations.

Step 2: the negotiation process

- Review the sequence of events – a timeline diagram will help.

Step 3: individual negotiators' actions

- Collectively and individually, think about how to make a constructive impact on the process.

Step 4: negotiation outcomes

- Take a two-sided approach to reviewing the outcome.

This audit process relates to workplace negotiations, but can also be followed in other contexts where negotiations are periodically repeated.

There is considerable benefit in the audit being conducted by negotiators and other key figures from both sides at a meeting specially convened for this purpose – a ‘lessons learnt’ workshop. A critical ground rule for this meeting is that nothing is to be decided. It is not a negotiation about a negotiation, but simply an open review that will provide both parties with an opportunity to reflect on the past and what might be done better next time. If the parties are unwilling to work through the process jointly, there is still benefit to be gained from doing it separately.

Structure

The first step of the audit process is to review the structure of the negotiations. Take a blank piece of paper and draw the structure to show who was involved (see [Figure 12.2](#) for a basic example). It is also

important to consider the alternatives open to both parties; these can be significantly impacted by workplace relations legislation. On the union side, there may have been two unions involved, so both would need to be included. On the company side, the diagram might need to show that there was input from the corporate HR office as well as from the plant's HR manager.

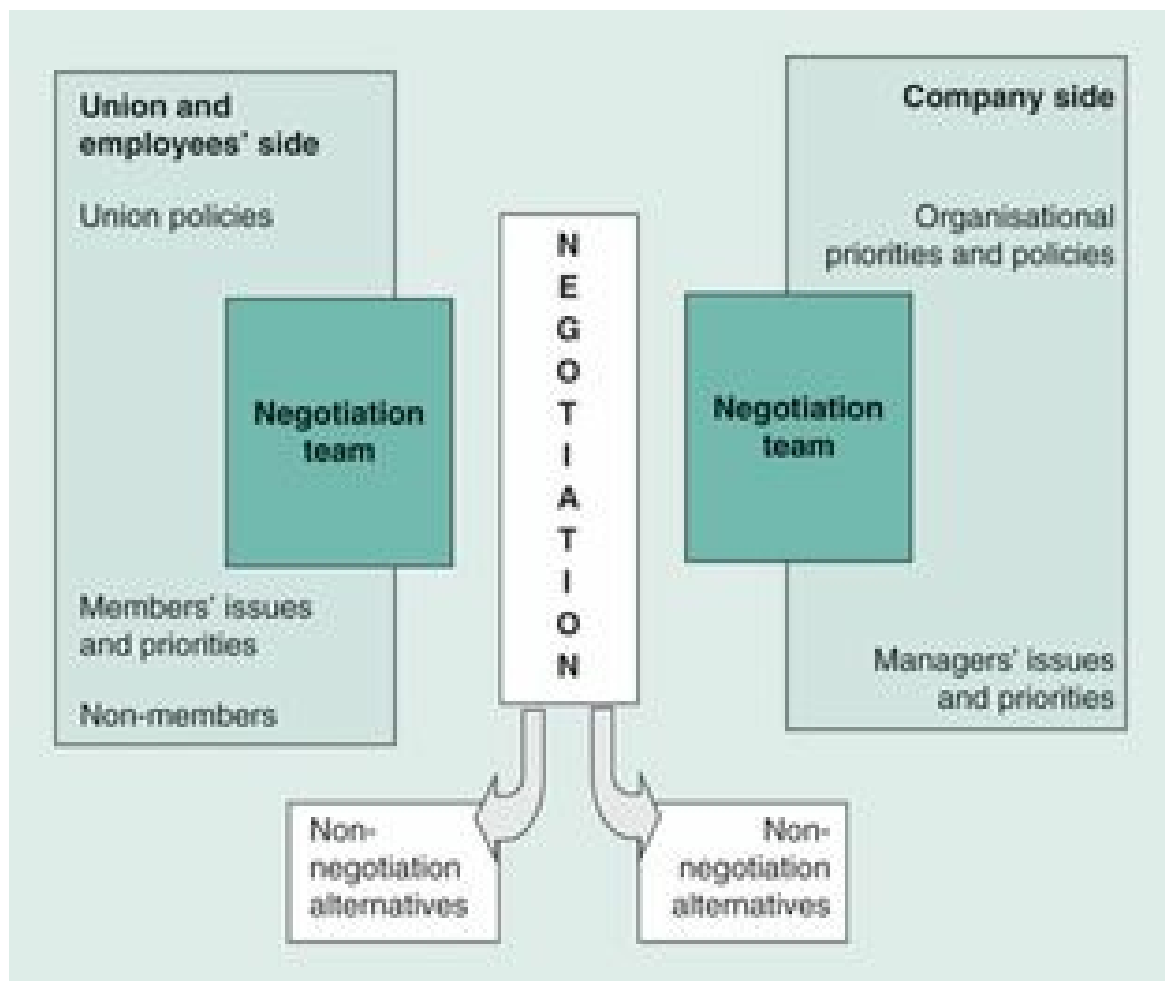


Figure 12.2 A simplified workplace negotiation structure

Process

Clarifying the structure of the negotiation provides a foundation for the next step: reviewing the process that the negotiation followed. Again, the audit process involves taking a blank piece of paper and drawing the actual

sequence of events from start to finish (see [Figure 12.3](#) for a simple example). It is useful to put a timeline against the sequence of events to estimate, if possible, the amount of time invested and by whom at each step. It would also be helpful to include any critical incidents that had an effect on the process or outcome. This process of recollecting what happened last time will enable the parties to discuss what occurred and consider how forthcoming negotiations might be improved. Some discussion questions are provided in the audit tool. The review process will be enhanced if the parties can discuss these questions jointly and openly, but reviewing them in a private session is better than not reviewing the negotiations at all.

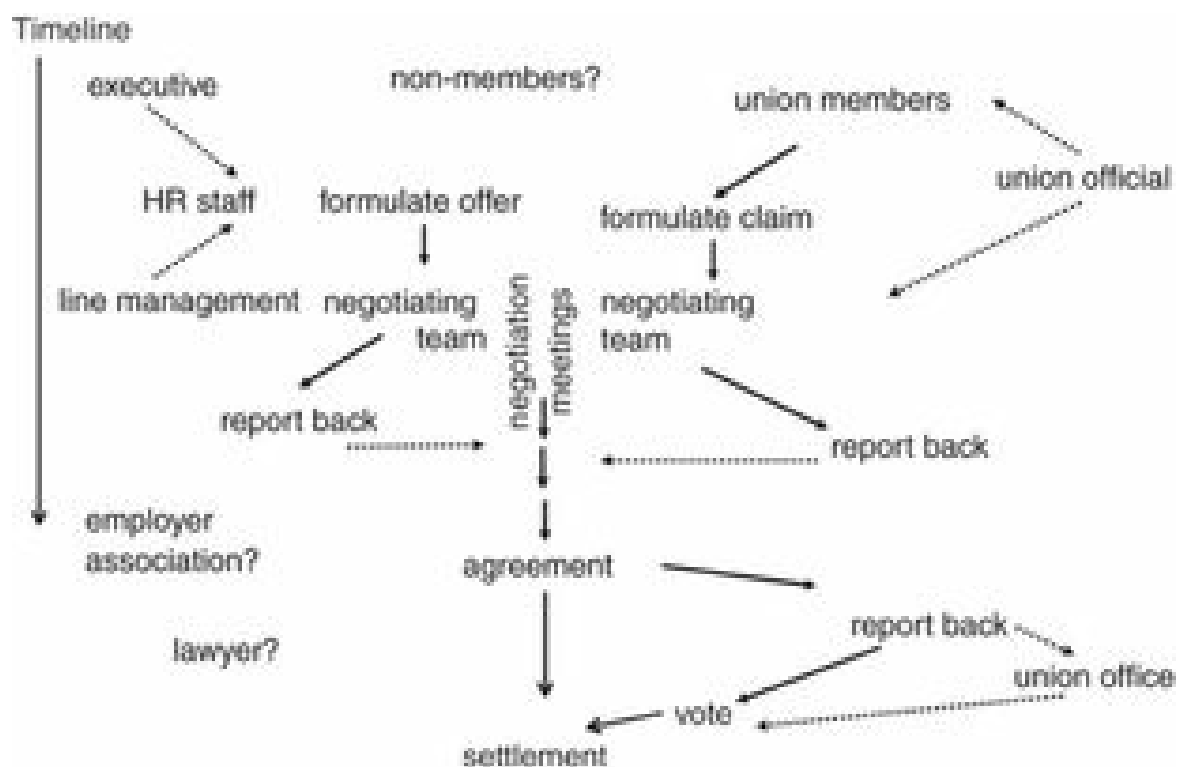


Figure 12.3 An example of the processes involved in negotiating a major agreement

Individual action

Negotiators must take responsibility for their own actions and contributions, so the third step in the audit is for those who took part to consider their role. Self-reflection checklists are provided elsewhere in this book, but in the context of a lessons learnt, a collaborative workshop process might be more appropriate. The behaviour audit could focus on the notion of a good negotiator. This discussion could be started by participants thinking of someone they regard as a good negotiator and someone else – no names! – who they regard as being an unhelpful or poor negotiator.

It is sometimes suggested that parties agree on the ground rules for a forthcoming negotiation. As a result of conducting an audit, it is probable that those involved get to see, for example, that interrupting each other is not helpful.

At some point in the process, participants might draw all these action points together on a flip chart (a useful contribution by the facilitator if there is one), but a personal commitment to the process is probably going to have more impact on behaviour than drawing up a code of negotiation conduct. A personal commitment might take the form of each participant writing down one thing each plans to do differently in the forthcoming negotiation.

Outcome

The final step in the audit is to review the outcome. The parties to a forthcoming negotiation may feel uncomfortable about reviewing the outcome of the previous negotiations in a joint session. If so, they should be left to use the questions presented below as part of their own preparation on the issues they intend to put forward for negotiation. The

questions direct the reviewers to consider their answers from the perspective of the other party.

Negotiator tool kit

The four steps of the workplace negotiation audit process

Step 1: the negotiation structure

Make a diagram of the structure of the negotiation: the formal and informal groups, groups within groups, the alternatives available to either or both parties and any other external factors that affected the negotiation.

Negotiation review questions

- Was this structure clear from the outset, or did it evolve and become apparent through the course of the negotiation?
- What aspects of this structure helped the negotiations? How might they be strengthened?
- What aspects hindered the negotiations? How might they be improved?

Step 2: the negotiation process

Draw the actual sequence of events from start to finish, together with a timeline. Include any critical incidents.

Negotiation review questions

- What were the hot spots in the process when difficulties occurred?

- What was causing the problem? (Focus on difficulties in the process, not differences in the issues.)
- Was there anyone or any organisation who was not involved but should have been – even if only to have been in the communication loop? How might this be achieved for the coming negotiations?
- Was there anyone or any organisation involved that did not make a constructive contribution to the process? How might this or any other outsider's intervention be prevented, minimised or made constructive in the coming negotiation?
- What points in the other party's process caused us difficulty?
- What can we do about those elements of our process that seemed to cause difficulty to the other party?
- What investments of time, information and other resources do we need that will improve the process?
- How can we improve the communication between the main negotiators and the constituencies?

Step 3: individual negotiators' actions

Each participant should consider their own role in and contribution to the negotiation – perhaps first as a group, then individually.

Negotiator review questions

For joint discussion:

- What does it mean to be a good negotiator?
- What do good negotiators do?

For individual reflection:

- On a scale of 0 to 10, how would you rate your contribution to the previous negotiations? Why did you give yourself this score?
- What is the particular contribution you will bring to the forthcoming negotiation? (This is a way of asking about your strengths as a negotiator.)
- What area of your negotiating do you think you should improve?

Step 4: negotiation outcomes

Review what was achieved, ideally as a joint exercise; if that is not possible, then separately.

Outcome review questions

- How would the other party evaluate the substantive outcomes of:
 - pay and other conditions of employment
 - work effort, innovation and other task-related requirements?
- How would the other party evaluate these relational outcomes:
 - manager–employee
 - employee–employee
 - management–union?
- What would the other party say were the key reasons for these outcomes?

Develop a new negotiation script

Conducting an audit or other form of review of a negotiation can easily lead into a discussion about why the negotiators negotiated in the way they did. As shown earlier in the chapter, constituency negotiations are inherently competitive and require a great deal of balancing. This is particularly so with management–union negotiations.

Although the process will have started much earlier, the formal start of a management–union negotiation is usually when the union presents a log of claims. Union negotiators are then obliged to defend these claims, the easiest way being to attack management’s past performance and impending offer. Similarly, when management places its own offer, it is there to be defended rather than unpacked. Another feature that impacts on the negotiation is that both parties will be working to a document. Usually, both parties will seek to rewrite the current agreement to reflect their own positions. Working to a document invites a clause-by-clause approach (no different from when lawyers work their way through a legal contract), which in turn invites a win–lose dynamic on each point, irrespective of its importance.

The audit presents an opportunity for the participants to review their negotiation script, although the extent to which the whole idea of scripts can be explored depends greatly on the willingness of the participants. Two similar scripts of cooperative workplace negotiation are mutual gains bargaining and interest-based bargaining (Cutcher-Gershenfeld [2003](#); Friedman [1993](#)), both derived from Fisher, Ury and Patton’s ([1991](#)) Principled Negotiation Model. Or perhaps the Nullarbor Model (see [Chapter 4](#)) or some other script will resonate with the participants. It is worth repeating the point made earlier that a new approach to the major

pay and conditions negotiations will only be sustained if it is consistent with the conflict-resolution climate within the organisation as a whole.

Negotiators must be alert to the risk of becoming separated from those they represent. If they are not negotiating in the way their constituents expect, then it may seem that they are being weak. Those they represent will then be less satisfied with any proposals or agreements that come out of the negotiations. At a mine in Arizona, management and the union negotiated an innovative and cooperative agreement that would enable the parties to break out of a destructive three-yearly strike cycle. Despite voting for the agreement, the union membership felt that the union had not been tough enough, so when his position was due for renewal, they voted out their lead negotiator.

Negotiation in practice

Changing the pattern of management–union relations

A national European airline was facing stiff competition from the low-cost carriers that had begun to dominate air routes across Europe. Established airlines have higher labour costs and administrative overheads, as a result of which they can find themselves operating at a 20 per cent cost disadvantage to newer airlines. Typically, employment relations are built around the unions having a dominant bargaining position. At one airline, the history of management–union relations was highly conflictual: management would make unilateral decisions and the workforce would react through industrial action. Flight reliability became problematic. While labour relations were not the source of all the airline's problems, it was clearly an area in which something might be done differently.

A new CEO realised the need for the organisation to focus on productivity improvement, and saw that this would only come about through cultural change. Rather than work to a pre-ordained model, he personally conducted over 150 interviews with staff across the organisation, and from this developed a way forward. First, the senior management group met with union representatives from all areas of operation in a four-day discussion to develop principles upon which management and union negotiators would approach not only the major annual negotiations and disputes but also all cases of employee-related issues throughout the organisation. The next step was for these draft principles to be discussed by managers and employee representatives to see how they might apply in practice in their own operational area. Taking feedback from these discussions, the senior management and union group met again to revise and then endorse the principles. Importantly, the chairman of the board was present and committed the company's board to the principles as well.

The principles then became the standard way to manage any employee-related issue that arose throughout the organisation. Extensive training in the principles and in behavioural skills was conducted at all levels. The principles are referred to by both sides when either feels that the other is not abiding by them. The result of embedding these principles throughout the organisation has been that a number of major employee and operational matters, as well as routine staff issues that previously would have been managed through an act-first, talk-later approach, have all been dealt with without any dislocation to the airline's services.

For these reasons, if the management and union negotiators decide to develop a new script to help them move away from a history of destructive competitive bargaining, the script should still recognise the fundamentally competitive dynamic of workplace relations. This competitive context is present even when the issue under discussion is an integrative one. The process has to deliver for the constituents on both sides, but this might not be achieved if there is too much emphasis on cooperation. One extensive study of different forms of workplace bargaining across a single organisation found that competitive rather than cooperative bargaining resulted in better outcomes, at least so far as the employees were concerned (Bacon & Blyton [2007](#)), in part because the managers seeking employee cooperation were themselves being competitive. Rather than rely on a standard consultancy package, it would be preferable for the participants preparing for a forthcoming negotiation to give some thought to developing an imagery or a broad script of their own – one that seeks to improve on past practice but is not too divorced from it.

Managing business negotiations

Throughout this book, we have drawn many examples of business negotiations; a common theme seems to be that they are complex. They typically involve negotiating on behalf of others (perhaps the board, or to fulfil the supply needs of the operations department); they are often conducted by teams of negotiators; and they can spread over a long period of time. Lindholst ([2015](#)) describes a 13-month negotiation over the sale of a power-generation plant. The two regular negotiators, supported by up to five others, met with negotiators from the potential purchaser in face-to-face and teleconference meetings, supplemented by regular emails. Many business negotiations involve procurement where building relationships with long-term suppliers can be as important as the terms of the particular contract. Except in the most straightforward of cases, the negotiators – whether sales representatives, procurement managers or corporate lawyers – are acting on behalf of the organisation that is employing them. They will be working to a set of expectations and priorities much the same as union negotiators work to a set of expectations and priorities set for them by their members. The same applies to government officials who will be representing their department and the policy of the government, and who face the same challenges of constituency and collectivity as part of their negotiations with companies and other organisations – even in their negotiations with other government departments.

As with workplace negotiations, business negotiations are different but not so different that the basic elements of good negotiation no longer apply. The parties always have the four issue strategies and the option of walking away. The tasks of information exchange, flexibility testing and concession-making are still all necessary to reach a good agreement.

Deal prospecting: when does a negotiation start?

A small geology company had researched a major mining house to make an assessment of its internal capabilities and of the broader geology of areas where the mining company was already operating. By their assessment, the geologists believed they could contribute to the mining company's exploration and development through their own particular skill set. They asked for a meeting with a senior executive from the mining company and outlined their proposed joint arrangement. The senior executive brought the hour-long meeting to an end by saying that he did not know why he was even spending time listening to their proposal.

A similar presentation was made to another mining company, whose representatives quickly saw the long-term potential of what was being proposed. The two sides soon reached an understanding that they could enter into a partnership, and so spent a couple of hours sorting out the main parameters of an agreement that would cover their respective financial and expertise contributions, the broad process for evaluating mining prospects and the way any subsequent revenue would be shared. It took a further four months to finalise the details of the contract, which was mainly done through email exchanges. Although points were contested and positions traded, the negotiations were cooperative and there were no potential deal breakers.

These examples show an important aspect of many business negotiations: that the two parties have to decide whether they even want to negotiate with each other. There has to be a process of deal prospecting that precedes any formal deal-making. Deal prospecting involves preliminary investigation and an initial shadow negotiation to reach a point where the parties commit to negotiating an agreement.

A full account of the European Contract case is available at www.cambridge.edu.au/academic/effective

In the case of a supply contract, the initial prospecting might be through industry networks and internet searches to identify a shortlist of potential suppliers who might then be approached with a general proposition. The critical point is when both parties come to the view that an agreement is possible. If the issue is straightforward – such as when the supplier is being asked to supply a standard product – the parties might quickly realise that an agreement is possible provided they can reach mutually beneficial terms. From this point on, the discussion focuses on the detailed terms in the expectation that agreement will be reached, although either party might change their view, conclude that a satisfactory agreement will not be possible and bring the negotiations to a close.

Major transactions – such as an acquisition, divestment or joint venture – are rarely opportunistic, but typically occur after one of the companies has spent a lot of time (and money) thoroughly auditing suitable potential target companies and establishing a sound business case for the proposal. An internal document or information memorandum will be prepared for the company's board; if the board agrees to proceed, then a senior-level approach would be made to the preferred target. As with establishing a supply contract, the parties have to reach the critical point of deciding whether a deal is in fact possible. Although far more might be at stake, the principle is the same.

The first step towards this decision may be for the CEO to put the broad scope of the deal to their counterpart in the target company. If the other CEO is receptive, they may commit to more formal discussions. The shape – or, to use Watkins' (2006) imagery, 'architecture' – of the

proposed deal would be explained and discussed, and it is only when both parties are reasonably confident that an agreement is possible – again provided they can reach mutually beneficial terms – that they will proceed. Deal prospecting would have led to deal-making (see [Figure 12.4](#)). The stages portrayed in [Figure 12.4](#) are common to most complex negotiations, although the terminology may differ, as in Zartman and Berman's (1982) diagnostic, framework and detail phases.

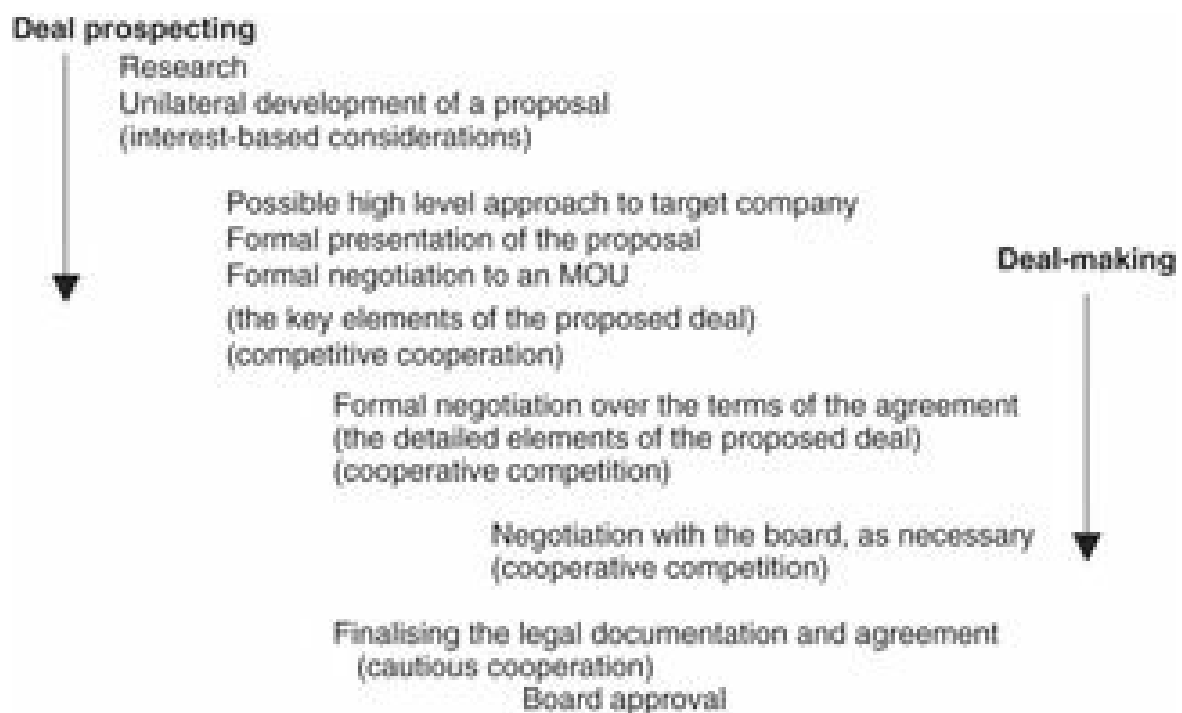


Figure 12.4 Deal prospecting and deal-making

It is during this prospecting phase that broader considerations of alignment come into play. Can the two organisations come together in a way that will achieve the implementation of the proposed agreement? In some cases, the relationship may be purely contractual but if the organisations are looking to establish a supply partnership, then they need to consider factors such as whether their decision-making processes and their operating philosophies are compatible. In relation to negotiations crossing cultural boundaries, Newell's (2013) account of Disney's

negotiations to establish Euro Disneyland in France shows how project-threatening difficulties can arise, even when the host country is encouraging the proposal. Negotiators should assess the cultural similarities and differences (see [Chapter 11](#)) – an assessment that should apply not only to how the parties might approach the task of negotiating, but also how they would approach the task of implementing the agreement and dealing with any changed circumstances during the life of the agreement. In the Disney negotiations, there were difficulties throughout, ranging from disputes over the language that should be used to name the features within the theme park through conflicts because the local government procedures were being bypassed to legal action with contractors over construction issues. Perhaps attempting to blend the archetypal American Disney culture into the French cultural heritage was a step too far; however, to avoid such difficulties, Newell ([2013](#), pp. 218–20) concludes that organisations and negotiators should avoid cultural stereotypes and exercise some humility rather than bravado. As mentioned in [Chapter 11](#), the golden rule is to treat people with respect.

Preparing the negotiating team

Major business negotiations – which may take many months – require a team of negotiators committed to securing an outcome that meets the company's expectations. The initiating party is at an advantage in being able to draw its team from those working on the development of the proposal.

The negotiating team has to be on top of the facts so that it understands the integrative potential of the proposed deal and can evaluate the worth of tradeoffs being proposed by the other party. Each person appointed to the team will be expected to contribute in their particular area of expertise – finance, operations, marketing or legal – but each must also understand the perspectives of others in the team and the issues their colleagues will want addressed as part of the overall settlement. In a negotiation to acquire a new mine, say, the geologist would provide insights into the nature of the ore body, but would also be expected to contribute to discussions of environmental issues, logistics to market and other issues. Team members must communicate fully with each other to ensure an integrated approach. This means the geologist must be prepared to work their way through complex legal documents, not just the parts dealing with the mineral aspects, while the lawyer must have an understanding of extraction processes. The lead negotiator has to understand the different perspective each team member will bring and the issues they raise; crucially, they also need to be able to see how these specialist issues might impact on other areas of the proposal.

Negotiation skills tips

Negotiating a deal

- Negotiate to ensure that you have clear authority.
- Put together a good team that has enough time to focus on the negotiation.
- Address the major differences to develop the shape of the deal (the memorandum of understanding, hereafter MOU).
- Set up a spreadsheet to keep track of each issue's progress.
- Recognise the competitiveness in sorting out the detail.

While it is important to have operational people involved to ensure that what is being agreed can be implemented, it is equally important to ensure that nobody on the negotiating team has subsidiary personal interests – such as managers who also have control of other parts of the organisation that might be adversely affected by a proposed merger or acquisition.

Another aspect of the lead negotiator's role is taking control of the conduct of the joint sessions and generally coaching the team in how the sessions will be conducted. If others are to participate on the basis of their expertise, then they must understand that their contribution is in information exchange, and that the discussion reverts back to the leader when it looks as if it may be shifting from information exchange to debate over the validity of positions. Similarly, any solutions reached in joint working parties must be reported back and are only tentative until formally proposed and accepted in the main negotiation forum.

The lead negotiator needs clear authority from the constituency – in this case, the senior management group. The negotiating team will

inevitably have to make some unanticipated decisions and tradeoffs, so they need to understand how they might trade one aspect of the deal for another in order to achieve a final agreement. Is a combination of up-front and conditional payments acceptable? How much could be paid to gain additional control? The scope and limits of their authority must be clear for the negotiators to be properly empowered and motivated to effectively deal with these uncertainties. The lead negotiator must maintain communication with the senior management group, and exercise judgement about the difficult balancing act faced by all constituency negotiators – when to update them on progress or seek further instructions. A competent lead negotiator who operates with clear instructions should all but eliminate the risk of separation that is a feature of many constituency negotiations.

Being clear on the strategic intent

Having done much research to establish the inherent worth of the proposed deal, the initiating party is again at a distinct advantage. The target company is in a reactive position (although, of course, their business development team may well have been alert to the prospect of an approach).

The negotiators must be clear about the strategic intent that underpins the negotiation. What's the big picture? Where is the value coming from? In what way does one party add to the other's value proposition? This should all be clear from the in-house documentation based on the prior research. This research should make clear the inherent value and risks in the target company and its *modus operandi*, so that the negotiators can understand the proposal from both parties' perspectives. The underlying rationale for the proposal drives the exploration for ways around problems and again during periods of exchange, when the negotiators are trying to close off on issues. It is often at this point that the subsidiary objectives tend to come to the fore, but the negotiators should not become focused on the detail at the expense of the big picture.

One aspect of strategic awareness is to locate the proposed negotiation in its broader context, and 'mapping' the negotiation(s) might help with this. In [Figure 12.5](#), the focus of attention can easily be just on the negotiation with the contracting partner. However, the entire procurement process involves, first, negotiations within the organisation to scope what supplies or services are wanted and why, and what flexibility exists. The second step is to identify the best supplier, while at the same time prospecting which other supplier might meet the requirements should the first negotiation not work out. (Similarly, a good negotiator will

prospect the sales alternatives open to the other party.) While the focus of the contract negotiations will be on the terms of the agreement, one aspect is to start building a relationship between the two organisations to facilitate the implementation of the contract.

Negotiation in practice

Managing a major business negotiation

A European telecommunications company's growth strategy was through international acquisition. It identified a likely Asian conglomerate that had marketing potential but could benefit from the European company's technical expertise. Other companies were also eyeing the Asian conglomerate, which was openly inviting interest.

After initial prospecting discussions, it became clear to the senior executives of both companies that the prospects for an acquisition by the European company of some of the Asian company's subsidiaries would be of mutual benefit if the details could be worked through. Teams of negotiators comprising mid-level executives and their specialist advisers – about eight in each team – began the task of putting together a deal.

Following the normal informal social activities that enabled them to get to know each other, the negotiators started in earnest, working daily to find the basis for an agreement. They then met in a formal setting, with the lead negotiators sitting opposite each other; these two controlled the discussion. The meetings were punctuated by adjournments to either review issues or simply take a break, particularly when full-day sessions had been scheduled. There was considerable preparation for each session; typically, the

negotiators spent twice as long preparing as they did negotiating with the other side.

Critical issues were brought to the table early, which enabled them to be explored and understood. This also enabled the negotiators to draw up an MOU to address the key and contentious issues. This MOU, signed by senior executives from both sides, was a clear signal of the companies' commitment to reaching an agreement, and so provided the framework for the remainder of the negotiations. As the operational and financial issues were worked out in more detail, if an issue emerged as a point of difference it was parked to enable the negotiators to go away and think through the issue again, or a small group was appointed to examine it further. These groups were exploratory. They reported back to their own side, not to the joint session. Proposals were made only in joint session after due consideration within their own side where, through extensive discussion, they had endeavoured to shape their proposals in anticipation of what they thought the other party would find acceptable.

As each item was resolved, it was added to a framework agreement and, once all the items had been individually agreed, then the framework as a whole was reviewed before a commitment to it was made. This agreement was then handed to each party's team of lawyers whose clear instructions were to draft the substance of the agreement in appropriate language, not to take the drafting process as an opportunity to reopen and renegotiate issues.

The MOU had provided some limited scope for final negotiation over the acquisition price once the parties had resolved all the other financial and operational issues. To accommodate the Asian company, the deal was structured in a way that brought the

price up to \$1 billion, which gave it headline value because this was the first such deal in that country.

A full account of the Telco case is available at www.cambridge.edu.au/academic/effective

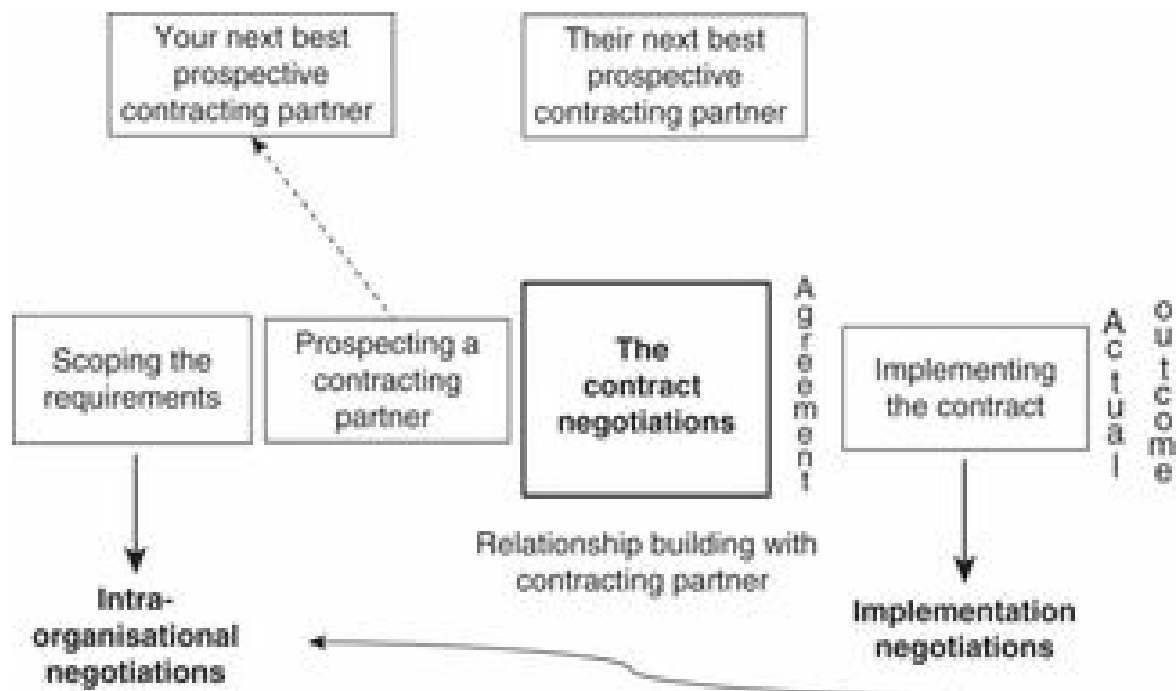


Figure 12.5 Mapping a contract negotiation

Issues will inevitably arise, leading to further negotiation – probably at the operational level between the supplying and purchasing organisations, although the procurement department will often become involved, particularly if the implementation of the contract is not going well. The benefit of mapping a negotiation in this way is that it reminds the negotiators of the real purpose of the agreement: its efficient implementation by others who were not part of negotiating the agreement itself.

Once exactly what is to be achieved is clear, the proposal has to be put into negotiable terms. The key purpose would be to acquire or merge with a particular company or create a joint venture, but this will typically embrace some subsidiary objectives, such as the need to minimise the cost of the acquisition or to maximise operational control over the new organisation. Securing a smooth implementation would involve ensuring the cooperation of key management and other employees or, alternatively, minimising the impact of their departure. There may be specific legal or financial aspects that are critical to defining a successful outcome. These subsidiary objectives tend to become limits or constraints on the negotiation: ‘Unless we obtain the company for less than X amount of dollars we will not proceed’, or ‘If we can’t carry their key management team, we will not proceed’. These issues can easily become a deal-breaker. There may also be important process objectives, including the need to minimise the actual cost of the negotiation, such as consultant fees, or time spent on the negotiation – although it is important to be alert to the implications of being under time pressure.

Developing an opening position

Once the team has become familiar with the proposal, the next step is for the lead negotiator to prepare a first draft of an agreement document. The negotiating team then meets to raise any particular issues it wants addressed. As a rule, experience in the industry will enable a negotiator to provide the core list of issues, but all likely issues must be raised for discussion at this stage.

The team then needs to develop an issues list: one column for each issue, one for the company's preferred position, another for the other company's likely position in their response to the offer, one for the priority of the issue and a final column for the outcome. The priority of each issue will be determined to a large extent by the strategic intent. Refer any differences of view as to priorities that can't be resolved within the team to the senior management group. There will be die-in-the-trenches issues, without which any agreement will have failed to achieve its objective; key issues, for which negotiation and compromise are possible (a key issue might be control, but the actual number of seats on the board – the precise extent of control – might be negotiable); and other nice-to-have issues if they can be achieved. All are real issues. It is not a case of making up issues that can be thrown away to create a cooperative response. All the issues will be negotiated until the closing stages, but in those closing stages it is the nice-to-have issues that may be traded to achieve the deal. Through further discussion, a proposal document is prepared and, once the team is comfortable that this document reflects the company's preferred position on each of the issues, it is sent to the other company. Formal negotiations can then start.

Recognising that competitiveness is inevitable

Some might suggest that negotiations should be interest-based (see [Chapter 6](#)), and would not be helped by this issue-based preparation of an opening positional document. However, a great deal of what normally needs to be achieved through the differentiation phase, including the uncovering of underlying interests that might beneficially be matched, will have already been done through the prior research, and perhaps even canvassed and confirmed through any preliminary deal prospecting discussions that led to the formal negotiations. At this stage, the parties have reached the point of recognising that they have mutually beneficial interests, and that these mutual interests now need to be examined more closely.

Even though both parties have recognised their mutual interests from an early stage in the negotiation, they can still uncover new insights and opportunities as the negotiations progress. However – and this is also the case in an ongoing management–union relationship – when the parties sit down to negotiate, they should not anticipate being able to completely reframe the negotiations out of an inherently competitive orientation through the uncovering of unrealised underlying interests. The negotiations will be cooperative because the parties are looking to create joint value, but they will also be competitive as each seeks to achieve its particular interests – hence the descriptor ‘competitive cooperation’ in [Figure 12.4](#). Even when emphasising cooperation in business negotiations, some recommended processes and tactics have a competitive edge, such as Acuff’s (2008) ‘resistance’ and ‘hard bargaining’ phases and Requejo and Graham’s (2008) advice to ‘make no concessions until the end’. Being under time pressure doesn’t help. Thomas, Fugate and Koukova (2011)

found that when procurement managers are under time pressure to source supplies (and they very often are), they cope by either working faster (less research, quicker negotiations) and take the safe options (such as doing what was done before), with the consequence that they don't share as much information with their contracting partners. Given that negotiation is two-sided and reciprocity is part of negotiation's DNA, the supplier responds to the apparent competitiveness by also being reluctant to share information.

Two other factors can contribute to the competitiveness of a negotiation (in addition to where negotiators adopt a competitive strategy because they think it will get them the best outcome). The first is the nature of the issues being negotiated. A review of the most negotiated terms in contracting (Cummins [2015](#)) lists limitations of liability, price and indemnification as the three most negotiated terms. These tend to reflect a transactional view that focuses on the consequences of failure, and therefore the need for control and budget certainty rather than longer term value. Protecting the interests of one's own organisation can easily lead to an approach summarised by one procurement executive, 'We try to specify the duties of the supplier very exactly. We try to keep our ends of the bargain rather flexible.'

Spelling out the obligations of the parties (or trying to word the clause so that your own obligations are kept vague) involves drafting clauses that then go into the agreement. In many situations, there are standard clauses that are accepted throughout the industry as the best way to address an issue. However, as negotiations on a particular issue develop, the word-smithing becomes more precise to cover each eventuality. Eventually, compromises over the wording have to be made, and if one negotiator feels they have made a string of compromises, then inevitably they will feel it is the other party's turn to back down. A competitive dynamic can

emerge between the negotiators, irrespective of the actual issues being negotiated.

In situations where this occurs, it is important that somebody (it should be the negotiation team leader) keeps the strategic intent of the negotiation firmly in mind, and ensures that the inevitable competitiveness as each side strives to get the best arrangement on what might be commercially important terms does not develop to the point where the negotiations stall. The case of the two mining companies negotiating an agreement to cooperate and share resources was mentioned earlier in the chapter. The negotiators got bogged down in the task of drafting the detail of cooperation possibilities; progress occurred only after the overall purpose of the agreement – long-term cooperation rather than protecting against short-term loss – was reasserted (Fells [2013](#)).

Despite their difficulties, those negotiations provide some useful insights into how negotiators might manage the balance of competitiveness and cooperation in complex negotiations. What increased the competitiveness was a focus on risk, the fact that some issues were zero-sum in nature (there are always some in any negotiation) and the need to draft clauses that properly reflected the obligations of each party. Three things helped the negotiators to work their way through the issues and make progress. Because of their industry experience, the negotiators understood the operational problems that the other party were facing and trying to address through the agreement. Second, both parties had an unattractive non-negotiation alternative – their company's costs would continue to rise if they couldn't make savings through cooperating. Third, at the negotiating table, the negotiators compiled an 'issues list' – a working agenda that outlined what each side wanted to achieve and that enabled both sides to monitor the outstanding differences and shifts towards agreement.

Negotiation in practice

Reaching agreement over complex infrastructure projects

An energy plant manufacturer and installation company negotiates with governments, as well as private and public corporations, to build and sometimes operate power facilities. Increasingly, as the sector becomes more corporatised, the clients – that is, the parties that eventually own the facility – are investment and pension funds. They look to invest in long-term capital projects that are going to guarantee a stable cash flow and a satisfactory rate of return; this means that their primary interest when sitting down to negotiate is not the technical details of the proposed solution, but rather the size and stability of the financial returns over the longer term.

Consequently, the energy supply negotiations evolve in two phases, with the second overlapping the first. The first phase is between the energy provider, which will (or at least should) have an understanding of energy market requirements in the country concerned, and the energy plant manufacturer, the negotiators for which will endeavour to offer an energy plant with the required technical specifications and capabilities to meet the energy provider's needs. The energy plant negotiators' main requirement is to secure for their company a prescribed (by the board) profitability on the project. The energy provider's primary concern is the technical capability of the proposal. Once it becomes clear that the manufacturer can build a plant that meets the provider's needs, then the question of financing emerges as the key issue –

will the energy plant offer the required cash flow for the funds to be willing to invest and fund the project?

Viewed in this way, there are two virtually non-negotiable positions that shape the negotiations from the outset, even though they may not be explicitly mentioned (and even though one of the parties, the investor, isn't even yet formally at the negotiation table). The first position is the requirement of the energy manufacturer to meet the expected rate of return from the project. The second is that the project, when operating, must generate the cash that is required by the investor.

This means that the negotiations will be about positions (rather than the regular advice 'negotiate over interests not positions'); so where is it possible to be creative? In practice, negotiators learn at the negotiating table and are creative away from it. Even though they will have done a great deal of preparation, there will inevitably be some nuances of which they were unaware until well into the negotiation. As the negotiations progress and the energy manufacturer gains a better understanding of the market that the provider will be meeting, the technical specifications can be refined. Gains might be found, for example, in locating different sourcing subsidiaries while still accommodating local regulations for domestic content in the project's construction or through revising the operating requirements that are envisaged for the plant. If the manufacturer guarantees a maximum down-time (carrying the risk of breakdown), then although the operating costs may be higher, energy production would be higher still. This then gives the parties the opportunity to negotiate a contingency contract to share the benefits of any better-than-expected performance. The

development of these new proposals occurs primarily in the design engineers' area, where they work and rework the technical aspects of the proposal to find better ways to increase the project's internal rate of return and cash flow. The negotiators then seek to persuade the client that the new proposal (perhaps it is on the issue of plant servicing) is a better solution for it. If the client is persuaded, then that plant service issue is agreed; if the client is not persuaded, then the manufacturer's negotiating team goes away to see whether a new proposal can be developed. This continues until the point is reached where there are no better servicing solutions that the manufacturer can develop (while still meeting its own requirements), at which point either the manufacturer's negotiators or those of the client may have to make a concession on the plant service issue or perhaps make a tradeoff with another issue in order to reach agreement.

Recognising the importance of commitment

The primary task for the parties is to establish whether the proposal can be made to work. Clearly, no company – not even one being approached in a friendly merger or acquisition – is going to reveal critical information about its operation, yet without that critical information it is impossible for the potential purchaser to make sound financial decisions. Therefore, as the parties begin their negotiations, they are also evaluating the prospect of whether the negotiators themselves can build a relationship that will enable them to put the deal together. This informal relationship-building – which does not mean the negotiators actually have to like each other – will be reinforced through an understanding that the first task is to negotiate a formal MOU that will list the key issues and the broad outcomes on each of these issues. The MOU will set the limits within which an agreement will be reached, and so reduces the risk to each party in proceeding. It would be a firm indication of what the final agreement will look like (see [Box 12.1](#)).

Box 12.1 Issues that might appear in an MOU

- The parties' expectations of the joint venture in terms of contributions and benefits
- Market issues confirming the value creating or market exploiting product or service
- Technical issues – such as technical and managerial capability, legal and standards compliance, quality assurance, performance measurement systems – to show how each party will actually deliver its contribution

- Financial issues – such as financial systems, taxation issues and valuations – that underpin the parties’ contributions or benefits
- Ownership, governance
- Exclusivity
- Intellectual property issues
- Risk-management issues

The signing of this MOU is an indication that both parties are committed to reaching agreement. It also indicates that they will exchange full information, including any due diligence, so the negotiations can move into their second stage of working through the detail. The MOU might, for example, have specified a range for the valuation of a particular major asset. On closer examination of the financial and other technical information, the two teams of negotiators will reach their own views on the precise value of that asset. If these differ, they have to reach an agreed valuation, either through a compromise valuation or through offsetting this against some other issue as part of the total package. The negotiations at this stage have been characterised as ‘cooperative competition’ in [Figure 12.4](#). They will be competitive because the parties might be pushed to their negotiating limits and the issues themselves might be financially significant. They will be cooperative because the parties are fully aware of the strategic intent of the negotiation and are operating within the commitment of the MOU. Clear-cut compromises would be frequent as the negotiations draw to a close.

There are two further elements to the process. The first is the negotiations between the lead negotiator and the board if the parameters of the board’s remit are being tested. Because the future of the proposal is at

stake, these intraparty negotiations between those who believe the negotiations should continue and those who do not may be tense and competitive. The second element is that the draft documents on which the negotiators will have been working have to be finalised into comprehensive legal documentation. This is a task for the lawyers on both sides. While they must protect the interests of their company and be alert to risk, it is not the lawyers' role to seek any further gains from the deal. Negotiations over the form of words to fully reflect the intent of what has been agreed should be cautious but cooperative.

Negotiation in practice

Closing the deal

The family owners of a company that made material-handling equipment (sold all around the world) had decided to sell – but not at any price. After two years of looking for a prospective buyer, the managing director was approached by the CEO of an Eastern European manufacturer who saw the possibility of the two companies combining to capitalise on their respective market strengths.

One full day of negotiation resulted in a number of key issues being agreed to the point where the parties could record these in minute form – that is, not in a binding form, but as a firm basis for the two companies' lawyers to draft the necessary documentation. Once these documents were ready, the parties met again with the clear intent of reaching agreement.

All morning and into the afternoon was spent going through the documents, clause by clause. Much was agreed, but by mid-afternoon it was clear that there were a number of key items that

could break the deal. Negotiators on both sides were standing firm, expecting the other side to concede.

The parties adjourned, during which time the managing director met informally with one of the owners of the other company who he perceived to be most committed to the deal. This proved a correct assessment and the managing director and the co-owner reached an understanding on the key issues, mainly in the managing director's favour. (Recall that the East European company had made the first approach.) When the negotiations resumed, these two then spent the next two hours persuading the hard-liners on both sides to come to an agreement.

A full account of the Business Sale case is available at www.cambridge.edu.au/academic/effective

Negotiation in practice: some concluding comments

Negotiations in the workplace and in the business context have many important similarities, and they also have lessons for other contexts. In practice, these negotiations are often complex, between negotiators representing with their respective organisations, with many issues to resolve, and where the implementation of the agreement will occur over a period rather than be a single transaction. The agreements take a long time to reach. It is rare that these negotiations are between equals, and this asymmetry will impact the process. This chapter hasn't had much to say about joint problem-solving or other forms of collaborative negotiation; instead, there seems to be an underlying competitive script to the negotiations, even when both parties can see the benefit of working together. A survey of negotiators reporting on their work-related negotiations (Fells et al. [2015](#)) showed that, when related to the four negotiation tasks, the negotiators' satisfaction with the process was most strongly related to preparation and information exchange (see [Figure 12.6](#)). However, their satisfaction with the outcome they achieved was most strongly related to their preparation and to the handling of concessions. It seems that they thought it was a good negotiation if there was openness about the situation between the parties – their circumstances, interests and priorities (as discussed in [Chapter 6](#)) – but they didn't think they had done well unless there had been some 'give and take' (the end-game of [Chapter 8](#)). We will offer a more comprehensive description of a good negotiation in the [concluding chapter](#).

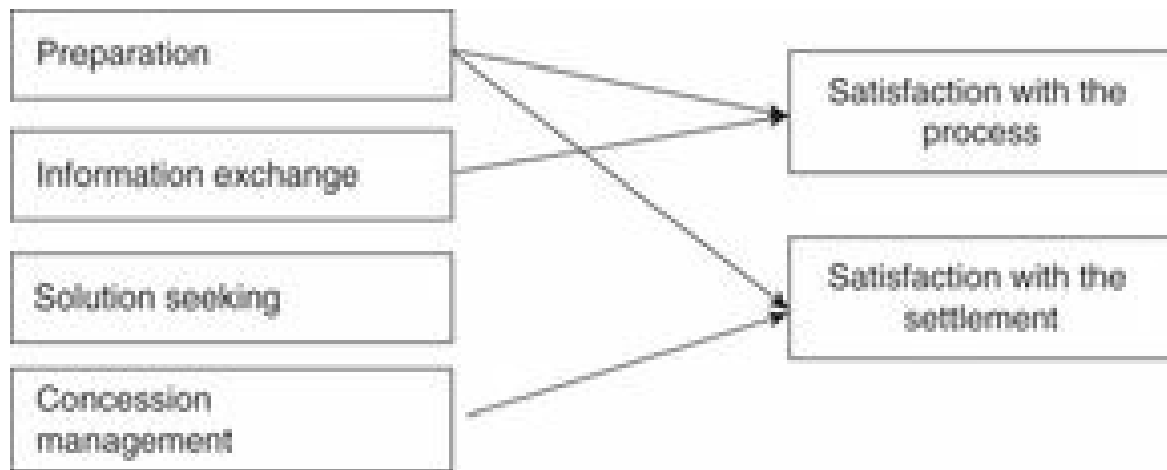


Figure 12.6 Practitioner negotiators' satisfaction

One important lesson is that good preparation contributes to both dimensions of satisfaction. For both workplace negotiation and business negotiation more generally, it is important to keep the negotiation in context. If negotiators get to the point where reaching agreement is all that matters, then they risk poor outcomes. It is necessary to prepare strategically for the negotiation, fully understanding where this particular negotiation will contribute to the overall goals of the organisation or the people you are representing. This strategic intent must be maintained throughout the negotiation. Finally, as with any negotiation, it is important to review it – perhaps through an audit process – so that the process can be improved and the negotiators will become more skilled and effective.

Discussion questions

- 1 Think about a time when you have negotiated with your employer – perhaps to get a job, or to sort out what shifts you will work, or to try to change your job responsibilities. How well did it go? What effect do you think the workplace context had on how the negotiations went? If they went well, what can be learned for next time?
- 2 What are the differing pressures on management and union negotiators when they sit down to negotiate the pay and conditions of employees? What qualities and skills do you think an employee representative needs?
- 3 Explore a possible relationship between negotiator motivations (to maintain demand and to reach agreement) and the notions of deal prospecting and deal-making. (Perhaps have another look at [Chapter 4](#) as you seek to answer this question.)
- 4 The boards of directors of two very similar companies could see that if they merged they would reap the benefits of economies of scale and lower costs through rationalising duplicated operations. Each company established teams of negotiators to negotiate the terms of the merger. They would need to reach agreement on financial and operational issues as well as governance issues (how the merged company would be managed). What challenges do you think the negotiators might face in managing these negotiations. (To help you answer this question, think of two well-known similar companies – perhaps two retail chains, transport companies, car dealers or telcos.)

Conclusion: becoming an effective negotiator



In [Chapter 1](#) we started this examination of negotiation by making five key points: that negotiation is a mix of competitiveness and cooperation; that it is about a process as well as an issue; that it involves choice; that it is two-sided; and that it is messy. These core features have been evident throughout the book, and no doubt in your own negotiations. Some preliminary advice was offered to help you to be pragmatic, to remember the two-sidedness of negotiation, to be inquisitive and acquisitive, to create a new script and, importantly, to treat others with respect. This [final chapter](#) draws on the material presented in the earlier chapters to provide a more comprehensive view of what it means to be an effective negotiator. We first consider the characteristics of what constitutes a good negotiation, because it is the negotiation – particularly the implementation of the negotiated agreement – that matters. We then turn our attention to you, the negotiator, before concluding with a reminder – and an encouragement – to you to become a reflective practitioner so that you will continue to both learn and improve your effectiveness as a negotiator.

Key elements of negotiation

- Negotiation is a mix of competitiveness and cooperation.
- Negotiation is about an issue as well as about the process.
- Negotiation involves choice.
- Negotiation is two-sided.
- Negotiation is messy.

Table 13.1 An up-front summary of advice to negotiators

Be pragmatic – negotiation is messy.

Negotiation, like politics, is the art of the possible.

Remember at all times: negotiation is two-sided.

Others can make choices too.

Be inquisitive and acquisitive.

Always ask ‘Why?’ and ‘What if?’ and ‘Can we get a better outcome than this?’

Create a new script

Be confident managing the process, but be prepared to improvise.

Treat others with respect.

This is the only golden rule.

How might we recognise a good negotiation?

As you look back on any negotiation, you will see that it is not often that you achieve everything you want. If you did, then you probably did not ask for enough. But negotiation is a purposeful activity, so the primary measure of success is whether you broadly achieved your objectives. As the negotiation unfolded and you learnt more, you may have revised your goals, but unless you broadly achieved what you set out to do, you are unlikely to view the negotiation as having been a good one. In [Chapter 2](#), we learnt that one of the links in a negotiation's DNA is not the agreement itself – as might be expected – but rather the outcome. An agreement is only part of the outcome of a negotiation; how good that negotiation is depends on how well the agreement is implemented. So, although you might reach what looks like a good agreement that seems to have achieved your goals, you won't really know whether it has been a good negotiation and whether those goals have been achieved until the agreement has been implemented. Negotiation is two-sided, and so is the implementation of the agreement. For you to have done well, it is likely that the other party will also have been broadly successful. If you forced them to a point where they agreed only reluctantly, then you may anticipate some difficulties during the implementation of the agreement. While the negotiation process itself might inevitably be a bit messy, there is no need for the implementation of the agreement to be messy.

A good negotiation will have been built upon a solid foundation. This involves having a well-organised team that has the authority to negotiate and, where necessary, having been involved in negotiations with your constituency before the negotiations formally began. Preparation would have been directed towards understanding what the other party might have

been hoping to achieve from the negotiation, and what their limits might be, rather than just focusing on your own goals and strategies.

Once the negotiations started, you began to see that the task of building on the foundation of your preparation took time. The negotiations evolved step by step, rather than being driven through to a settlement. You found that trust and respect were established as you exchanged information about what you each wanted and, importantly, found out why these issues were important. Carefully managing the process and not rushing into possible solutions also helped to build trust and a good working relationship across the negotiating table. The times of competitiveness were seen as opportunities to take stock rather than to attack the other party. Time was made available for negotiators to report back when they felt they needed to do so.

Looking back, it probably seemed that a great deal of time was spent talking around the issues and understanding differences without making any apparent progress. But this process helped to ensure that the issues were managed constructively. As each side really began to understand the other, the shape of the settlement began to emerge, even though neither party was giving up on what was important to them. Because you had built a working relationship with the other party and understood broadly where the negotiation was heading, you were willing to be more open to new suggestions. You generally developed them within your own team, but you felt that you could put proposals to the other party without them being taken as commitments or concessions. This enabled some new solutions to emerge – solutions that made it easier for both parties to agree. Once the negotiation was completed, you reflected that you might have done some things differently – perhaps asked more questions early on about issues that later seemed to become important – but there will always be some unexpected developments. Negotiations – even good ones – are messy.

A good negotiation checklist

A good negotiation is one in which:

- The agreement was expected to lead to an outcome that broadly achieved the parties' objectives – particularly those of your own party.
- A solid foundation was laid before the negotiation through preparation of:
 - the negotiation teams being broadly based and having the authority to negotiate
 - the negotiators having endeavoured to understand where the other party's interests lay, and being aware of both parties' alternatives.
- The negotiations evolved step by step through:
 - working relationships that were built around the negotiation tasks
 - negotiation that was built slowly so the competitiveness was well managed by informing constituencies, which were kept in touch with the negotiation's progress.
- The issues were managed constructively by:
 - a significant amount of time being spent on understanding one another's differences
 - the negotiators reaching an understanding about where the final settlement might lie before committing to the

detail of the settlement

– the negotiators being active – probably more in their private meetings than in their joint sessions – to find new solutions to difficulties without opting for a quick compromise.

However, you won't really know until the end of the contract.

You the negotiator

Negotiations happen between people, so we must look not only at the negotiation but also our role within it, to see how effective we are becoming in achieving what we set out to achieve through negotiation. In [Chapter 2](#), we suggested a checklist of the characteristics of an effective negotiator. It is repeated here for you to consider again now that you have read the book (and hopefully put some of its suggestions into practice).

Not only will setting time aside to reflect *on* your negotiations help you improve in the future, it will also improve your ability to reflect *in* your negotiations while at the negotiating table, and so be able to manage them better.

An effective negotiator checklist

An effective negotiator

- has integrity and shows respect
- will have high aspirations
- will always understand where the other party is coming from
- thinks, plans and acts strategically
- is aware of the consequences of not reaching agreement
- is able to visualise the process, and so can manage it
- explores interests and differences as well as positions and common ground
- keeps any constituency negotiations on track

- builds trust through information drip-feed
- handles other people's suggestions well
- regularly uses process statements
- does not interrupt or rush the process, and so gets a good result.

To this list we should now add:

- takes time out to reflect on their negotiations and how to improve next time.

Postscript to the reader

It might seem strange that this book ends by advising you to go away and do some more learning. Negotiation books are supposed to tell you exactly what to do, and guarantee your success if you follow the recommended plan. You will have realised that this book is not like that. I have endeavoured to review the research into negotiation to identify its key elements, and to develop these findings into practical advice that will help you to achieve good results. Your next negotiation, and every one after that, will be unique in some way. And *you* are unique. Which is why turning this research into results is going to be up to you.

So, rather than the discussion questions that have come at the end of the preceding chapters, this chapter concludes with just one challenging question: What are you going to do differently next time you negotiate? Why? Good negotiating!

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