

DEFINITIONS: A Framework for Negotiation Analysis, Preparation and Conduct: THE SEVEN ELEMENTS

Interests

Interests are the needs, concerns, desires, hopes and fears of the parties. Interests are not positions; positions are parties' demands. Underlying the positions are interests – the reasons they are demanding something. The better an agreement satisfies the parties' interests, the more optimal and durable the deal.

Options

Options are the full range of possible components of an agreement that satisfy the interests of one or both of the parties to a negotiation. Options are, or might be, put “on the table,” but are not linked to an offer requiring commitment. Negotiators often fail to exploit the potential for mutual gain by not fully exploring options. Option generation is the primary value-creating activity in negotiation, both in preparation and during the negotiation.

Criteria

Criteria are information used to assess and support the perceived fairness or objective rationale of an agreement. An agreement will leave both parties feeling fairly treated to the extent that it is based on external benchmarks or principles beyond the will or control of either party. Such external criteria include laws and regulations, industry standards, data analysis, current practice, or some general principle like reciprocity or precedent.

Alternatives

Alternatives are the walk-away possibilities that each party has if an agreement is not reached with the other party. In general, neither party should agree to something that is worse than its “BATNA” – its Best Alternative To a Negotiated Agreement – “away from the table.”

Commitment

Commitments are oral or written statements about what a party will or won't do. They may be made during the course of a negotiation or may be embodied in an agreement reached at the end of the negotiation. In general, an agreement will be better to the extent that the promises made have been well planned and well-crafted so that they will be practical, durable, operational, easily understood by those who are to carry them out, and verifiable if necessary.

Relationship

Relationship refers to the manner with which people *deal* with one another. Most important negotiations are with people or organizations with whom we have negotiated before and will negotiate again. A strong working relationship empowers the parties to deal well with their differences and take full advantage of opportunities. In any negotiation, one should consider the impact the negotiation will have - positive, negative or neutral - on the relationship with the other party.

Communication

Communication refers to process by which people speak and listen to one another, what they say or convey to one another, and how they share information with each other. Communication quality in a negotiation depends on both the level of mutual understanding and process efficiency. In high quality communication, the messages understood by the receivers carry the meaning intended by the senders; the parties understand each other – even if they disagree. High quality communication is also efficient in that negotiators minimize the resources expended in coming to agreement or deciding to discontinue negotiations.

INTERESTS: The Key to Optimizing Value

Concept: Focusing on interests rather than positions increases the likelihood of creating value and achieving an optimal outcome.

Problem: People tend to focus on positions, not interests. At the beginning of a negotiation, each side often presents its own solution. Each defends its position and attacks that of the other side. The goal is to “win” by having the final agreement more closely resemble your opening position than that of the other side. Even if attained, the victory may be a hollow one since positional bargaining often damages the relationship and produces poor agreements that fail to capture *potential* value.

Cause: People assume that a negotiation is a fight over conflicting positions. Indeed, positions often do conflict with each other. For example, a sales person wants compensation for technical support and services, but the customer wants them free of charge. Fundamentally, however, negotiation need not be a fight over positions. Because each party’s positions are opposed to the other’s, it is easy to assume that their respective interests must also be opposed. Yet, most negotiations also include interests that do not conflict.

Approach: Good negotiators will focus on interests, thinking clearly and specifically about both their own interests and those of other parties. If the other party’s interests are unclear, the negotiator will look beneath their positions for the other party’s underlying concerns, motivations and goals. The negotiator will also determine which interests may be shared or compatible. It is often easier to accommodate a variety of interests than to reconcile two divergent positions.

Consider the following guidelines:

When preparing:

- For each issue you identify, determine the interests.
- Ask “Why?” repeatedly to get below top-level interests down to ‘core’ interests.
- First determine your interests, then theirs, and finally others’.
- Prioritize your interests and speculate on how they might prioritize their interests.
- Separate interests into the following categories: common, differing, and opposing.
- Use interests to examine how they perceive their choice(s) and then determine what interests prevent them from reaching agreement with you. What interests of theirs could you satisfy to increase the chance that they will agree to your next proposition?

During the negotiation:

- Focus discussion on interests, not positions. Discuss interests explicitly.
- Consider starting with common interests. They often are easier to discuss and can build momentum.
- Be prepared to take the lead by talking about some of your own interests. If you are not willing to tell them about your own needs, desires, concerns, and fears, then you cannot expect them to be willing to talk about theirs.
- Be judicious in sharing your interests:
 - Share ‘low-risk’ information first and determine whether they are using it constructively.
 - Consider being transparent about your purposes in sharing information.

OPTIONS: Leaving No Value on the Table

Concept: Inventing options for mutual gain can create a better agreement for both parties.

Problem: Both sides leave “money on the table.” Too often people feel like siblings who argue over an orange. After they finally agree to compromise by dividing the orange in half, the first sibling takes her half, eats the fruit and throws away the peel, while the other throws away the fruit and uses her peel to bake half a cake. Lost opportunities plague negotiations.

Cause: Inventing options can seem unnecessary. People may take the first acceptable offer presented without probing further for better solutions. They may assume that once they find an option that satisfies their interests and looks reasonable, they can stop looking. Ultimately, this assumption leads to suboptimal agreements. Both sides forfeit value that could be provided at little or no cost to the other side. Whether inventing options with people from one’s own side or with the other side, creativity is often constrained by reasonable fears. With people from one’s own side, many may fear the critic who judges any new idea harshly. With people from the other side, many may fear that participating in inventing new options will result in being ‘locked-in’ to whatever is discussed or disclosing information that may jeopardize a bargaining position.

Approach: The negotiator should invent multiple options based on the parties’ interests, operating on the assumptions that the pie is not fixed and that both sides would like to split a larger pie. Figuring out how to expand the pie is a shared problem. It is in one’s interest to help create options that will meet the other side’s legitimate interests. If their concerns are not addressed by the proposed agreement, then they will have no reason to say “yes”. Separate the process of inventing from the process of deciding. Both while preparing and negotiating, arrange for brainstorming sessions where no commitments or criticisms are allowed. Evaluate the ideas these sessions produce only after you exhausted opportunities to invent.

Consider the following guidelines:

When preparing:

- Prepare for a negotiation by generating as many options as possible, understanding that the list may change as you learn more in the negotiation.
- Focus your inventing on ways to satisfy interests, not positions. For each interest you identify, generate numerous options.
- Separate options preparation into three distinct steps: (1) invention; (2) evaluation; and, (3) decision-making. Be intentional about who is included at each stage. Decision-makers can inadvertently stifle creativity during the invention stage.

During the negotiation:

- Jointly brainstorm multiple options
Separate inventing from deciding
- Consider informal processes for brainstorming

CRITERIA: Objective Criteria as a Sword and a Shield

Concept: Resolving issues on the basis of objective criteria that are perceived as fair, rather than on the mere will of the parties, correlates strongly to satisfaction with negotiation outcomes, implementation, and the durability of agreements.

Problem: Negotiations can be decided either on the basis of willpower (i.e., which side can force the other to comply) or on the basis of legitimacy (i.e., which side can persuade the other that its proposed approach is fair and appropriate, based on standards independent of the will of either party). Issues are often decided by a contest of will that puts the agreement and relationship at risk. Whether vendors are proposing a package deal or customers are deciding on specific contract terms, no one wants feel “taken.”

Cause: Intentionally or unintentionally, negotiators often discount the importance of the other side’s desire to be treated fairly. Parties often default to a view of negotiation in which status and power justify the outcome. The need for expediency can lead negotiators to take shortcuts rather than spending the time to identify and evaluate objective criteria. Negotiators often assume that what they want is fair simply because they want it and fail to engage in a joint inquiry into external standards of fairness.

Approach: Use criteria firmly but flexibly, as a sword and as a shield. After generating options for dealing with specific issues, parties must decide how to choose among them. Criteria of legitimacy – precedent, market rates, industry standards, the law, the opinion of a neutral party, etc. – can be used to persuade others of the appropriate answer and protect against coercion. Particularly in complex negotiations, using external criteria helps produce wise, durable agreements while enhancing relationships. By contrast, reliance on willpower tends to reward intransigence, produce arbitrary outcomes, damage working relationships and set bad precedents.

Consider the following guidelines:

When preparing:

- Search for a range of criteria that might be applied, especially those which may support your preferred outcomes and persuade the other side.
- Try to anticipate what criteria the other side will bring to the negotiation.
- Pay attention to the quality and relevancy of the various criteria being considered or used. Some data is more reliable than other data (e.g., data from a widely-accepted, neutral authority vs. information gleaned from a partisan source); some is more pertinent than others to the issue being discussed (e.g., the safety data for the facility under negotiation is more relevant than overall national safety data).

During the negotiation:

- Explicitly frame the conversation as an attempt to determine what is appropriate or fair. Rather than asking what the other side is willing to do (“If I reduce my price by 10%, will you say yes?”), ask how the issue ought to be decided (“What are the appropriate benchmarks we could use to determine the price? Why?”).
- Use criteria as a sword: Put forward the most favorable (aspirational) argument that you would be willing to put before an impartial observer.
- Use criteria as a shield: Ask for the objective criteria which support the other party’s demand or position. Inquire into their reasoning around the appropriateness of the criteria they suggest (“You have proposed that I swap one metric ton of commodity X for 3 metric tons of commodity Y. Why is that ratio a fair one?”).

ALTERNATIVES: Making Agreements You Won't Regret

Concept: Determining and improving your best walk-away alternative to a negotiation protects you from bad outcomes and helps you to negotiate better ones.

Problem: People sometimes reach agreements they later regret because either they overestimated the other party's walk-away possibilities (and therefore made unnecessary concessions) or did not put enough effort into developing their own (and therefore felt weak in the negotiation).

Causes: Parties may feel that they have been pressured into accepting a "bad deal," or they may wish they had not accepted an offer so quickly. Parties may believe they do not have an alternative - that a deal must be reached, even if it is suboptimal. Parties feel they could have done better had they acted more resolutely or cautiously, without being rushed into a decision by the other side's aggressiveness. People may decide to agree based solely on their prospects "at the table."

Often, negotiators are faced with tough on-the-spot choices that they are not prepared or equipped to evaluate. When the other side makes an offer, threatens to walk out, or says, "take it or leave it," negotiators must decide whether to talk or walk.

Approach: Analyze each party's alternatives to a negotiated agreement. Focus on the consequences of walking away. Ask, "What will I do if we fail to agree? What is my Best Alternative To a Negotiated Agreement (BATNA)?" To protect themselves from agreeing to a deal they should have rejected, parties should compare the deal on the table to their respective BATNAs. Parties should not base the decision solely on their chances of getting a better offer from the other side if they were to continue negotiating. Losing sight of one's BATNA as the benchmark for evaluating the offer on the table leads to ill-informed and poor decisions. If negotiators truly know their BATNA and are prepared to improve it, they can present their interests more forcefully and confidently. Similarly, they should estimate the other side's BATNA, so that they can understand whether their proposal(s) better serve the other party's interests.

Consider the following guidelines:

When preparing:

- List all possible alternatives – both yours and theirs. Determine which is best for each party (these are the parties' respective BATNAs).
- Verify that your BATNA is, in fact, realistic. Devote resources to improving your BATNA. If your BATNA could be improved at a reasonable cost, improve it. Resources expended on making your BATNA more attractive can pay off by insuring that the outcome will be better for you, regardless of whether you reach an agreement.
- Consider ways to weaken – or at least weaken their perception of – their BATNA. If their BATNA seems so good to them that you doubt they will negotiate seriously, you may be able to take steps to change their perception of it. Particular care is required as you consider a BATNA-weakening strategy as implementing such a strategy can damage the relationship.
- Gauge the potential for agreement. If both parties have attractive BATNAs, frame the conversation as one of joint exploration to do better than the respective BATNAs and/or reconsider whether negotiations are worthwhile.

During the negotiation:

- If you decide to discuss your BATNA with the other party, do so in the context of having to make a choice between how well your interests are served 'at the table' versus how well they are served 'away from the table'.
- To lower the inflated expectations of another party, reality test their BATNA. Ask what they will do if an agreement is not reached and how that meets or does not meet their interests.
- When discussing BATNAs, do so in a non-threatening manner.

COMMITMENTS: When to Agree on Matters of Substance

Concept: Avoid making commitments on substance until the end of the process to improve the quality of outcomes.

Problem: People often get locked into commitments too early in their negotiations. Negotiations often resemble bargaining in a bazaar. Each party commits to a position and then haggles for concessions. Each adopts an extreme opening position and concedes slowly. Consequently, parties spend most of their time and effort determining if any agreement is possible, rather than creating value and inventing the best possible agreement. The pressure each party puts on the other to abandon its positions tends to foster resentment and damage the relationship. When too much attention is paid to positions, underlying interests get ignored and the final agreement, if it ever materializes, is likely to be suboptimal.

Cause: Negotiators often assume that the purpose of negotiations is to make commitments. Therefore, they tend to push for commitments early in the process. Whether a commitment is optimal and practical, however, can rarely be judged early in a negotiation. Premature commitments frequently turn out to be poor ones.

Approach: On matters of substance, postpone commitment to the end. The best time for crafting commitments on issues of substance is typically after interests are understood, (many) options are on the table, and parties have agreed upon fair criteria to choose among options. When preparing for a meeting, determine whether the parties have reached the stage for commitment. If, early in the process, certain agreements seem necessary or desirable, consider less binding types of agreements. Often, preliminary or conditional agreements are most appropriate. By viewing commitment as a simple either/or activity, negotiators limit their ability to utilize this element of negotiation to their advantage.

Consider the following guidelines:

When preparing:

- Clarify your thinking on commitments with other members of your negotiation team so that commitments are not made prematurely due to a lack of communication.
- Determine your ‘aspire to’, ‘content with’ and ‘live with’. Estimate theirs. Draft potential commitments in advance as it helps to have one or more actual drafts to focus discussion or to present when participants decide to seek agreement. These drafts are best viewed as possible options rather than set positions.
- Estimate the “Zone of Possible Agreement” (ZOPA).
- Prepare possible “anchors” with supporting criteria

During the negotiation:

- Commit early to a process that defers substantive commitments to the end. Propose that no binding commitments be made on matters of substance until all parties agree that the negotiation has reached the commitment stage.
- Make commitments consciously and deliberately. Let other parties know when you are making commitments and when you are asking for them to be made.
- Model two-way communication by consulting before deciding. Whenever possible, ask others for advice before making decisions on issues that would significantly affect them, while retaining the authority to make a unilateral decision.
- Consider ‘anchoring’ to shape perceptions of the ZOPA. Ensure that you use criteria to support your offers; otherwise, you risk losing legitimacy and trust.

RELATIONSHIP: Dealing With Differences Effectively

Concept: Separating interpersonal issues from substantive problems will improve both the negotiated outcome and the relationship.

Problem: Most negotiations are episodes in an ongoing relationship between two individuals or organizations. When negotiators fail to appreciate the role of relationship in important negotiations, they hinder their ability to realize opportunity and work through difficult situations. Parties can feel pressured to make substantive concessions to preserve the relationship. Making the relationship contingent on substantive concessions creates problematic and counterproductive dynamics and expectations.

Cause: People entangle the relationship with the substance. Relationship issues concern the way people deal with others: logically or emotionally, clearly or ambiguously, honestly or deceptively. Substantive issues are the subjects of discrete negotiations: the length of a project, the fee for services, and the terms of a contract. Acting impulsively or reactively damages a negotiator's ability to deal constructively with other issues. When people perceive others to be disregarding the relationship, they may tend to protect themselves and punish others by responding in kind. They may get angry, stop listening, deceive, coerce, denigrate others' concerns, and misinterpret their actions.

Consider the following guidelines:

When preparing:

- Consider the current state and identify the preferred state of the relationship.
- Identify causes of the gap and develop a relationship strategy.

During the negotiation:

- Separate relationship issues from substantive issues. Deal with each independently. Weigh your long-term interests in a successful working relationship. Avoid holding the relationship hostage.
- Be unconditionally constructive on relationship issues. Your actions should strengthen every element of the working relationship without sacrificing substantive concerns, regardless of the behavior of the other negotiator.
 - *Emotions:* Even if they act emotionally, acknowledge their feelings and seek to empathize.
 - *Understanding:* Even if they misunderstand you, try to understand them.
 - *Communication:* Even if they are not listening, consult them on relevant matters.
 - *Reliability:* Even if they try to deceive you, be reliable.
 - *Influence:* Even if they try to coerce you, do not yield to coercion or try to coerce them. Be open to persuasion; try to persuade them.
 - *Trust:* Even if you don't trust them, be trustworthy.
 - *Acceptance:* Even if they reject you and your concerns as unworthy of consideration, accept theirs as worthy of your consideration, care about them, and be open to learning from them.

COMMUNICATION: The Value of Listening

Concept: Each party to a negotiation gains by creating and maintaining clear two-way communication.

Problem: Misunderstanding often plagues negotiations. Communications difficulties pose a serious problem because communication is the lifeblood of negotiations. Just as blood clots block circulation and cause heart attacks, poor communication blocks progress and ruptures negotiations and relationships.

Causes: Negotiators tend to avoid sharing information when they lack trust in the other party, fearing the other will use it to keep them from achieving what they want.

When people communicate, they tend to focus on sharing their own views. They may tend to focus on what they think they are saying rather than what other party hears. The other party may not hear the negotiator's message, and the negotiator may not hear theirs. When others do not understand the problems, they are less able to help solve them.

Approach: Aim for two-way communication. Two-way communication means that both parties are listening as well as speaking. No message is truly communicated until it is heard and understood. In order to seek to communicate productively, a good negotiator must listen and demonstrate understanding to the other side.

Consider the following guidelines:

When preparing:

- Design the basic process design or “architecture” of the negotiation –(e.g., parties involved, phases, in person or over phone, formal or informal, etc.) Plan sequence of meetings/interactions to best achieve your purpose.
- Plan and execute “set up” moves to ensure the right parties are at the right table at the right time with the right interests and alternatives discussing the right issues.
- Plan the purpose, product, people, place and process of key meetings. Consider how you will manage virtual, telephone, and in-person interactions.

During the negotiation:

- Speak for yourself, not them. Avoid attributing motives to the other side or telling them what they think.
- Balance inquiry and advocacy.
 - Inquire genuinely, with the goal of understanding and gaining insight into the other person's reasoning, point of view, and priorities. Listen actively, demonstrating that you hear what they are saying and understand their perspective. Consider repeating back to them what you have heard.
 - Advocate and speak with a purpose. Before making a significant statement, know what you want to communicate or learn and what purpose this information will serve. Invite challenge into your own reasoning.
- Keep private channels of communication open. Consider using private channels for one-on-one problem solving.
- Communicate regardless of disagreement; separate understanding from agreement.