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# EFFECTIVE NEGOTIATION

FROM RESEARCH TO RESULTS

>>> RAY FELS

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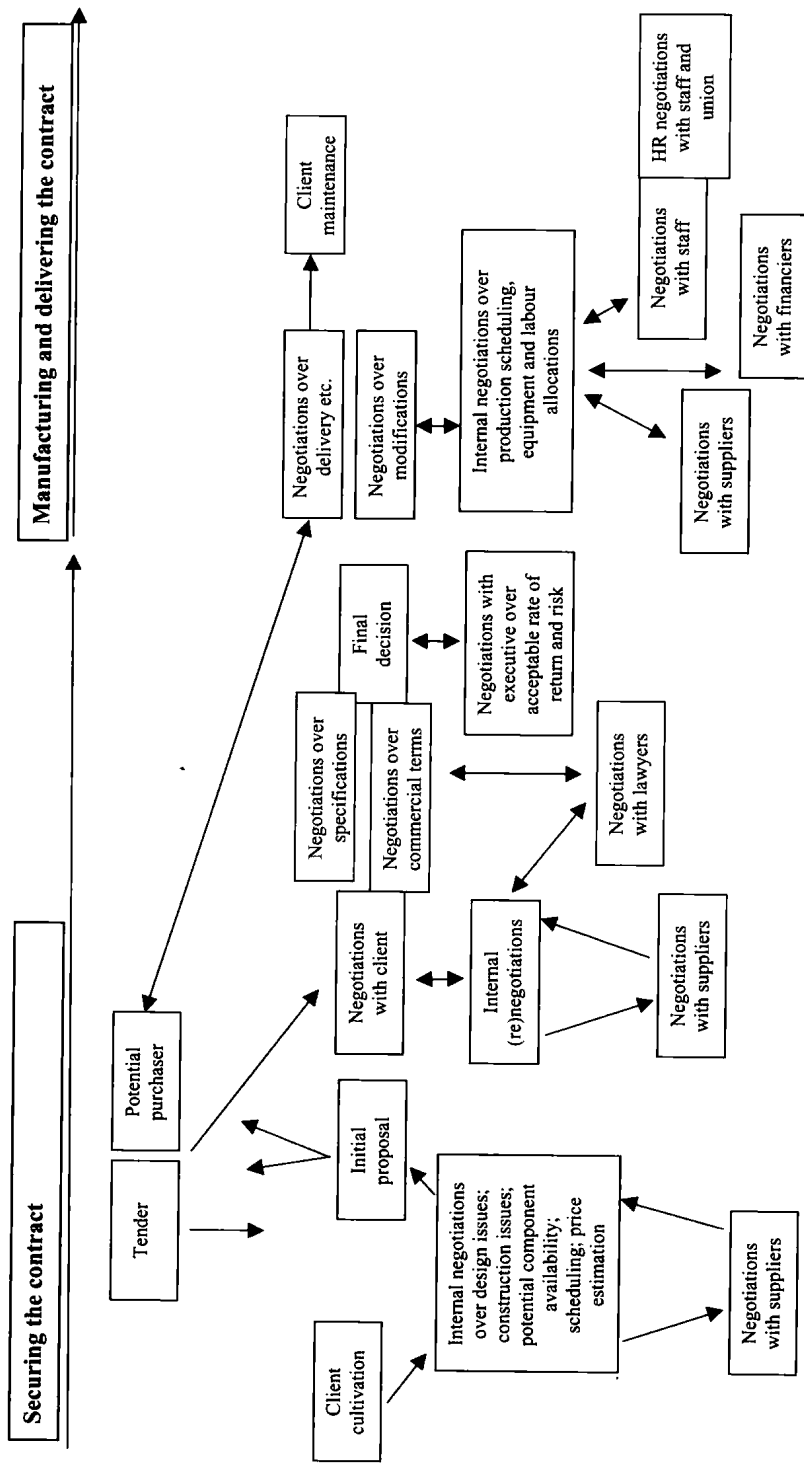
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# 1 An introduction to negotiation

We negotiate a great deal – more than we realise. Sometimes it goes smoothly, sometimes it seems difficult. While there is much advice about how to negotiate and be a ‘winning negotiator’, the 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, providing 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 is a ‘map’ developed from an exercise within a company to identify who has to negotiate with whom and over what. It shows that throughout an organisation, negotiation is deeply embedded 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 where managers and supervisors are constantly negotiating with each other over scheduling and the use of resources.

The advice offered in this book is based on good research yet is pragmatic, recognising the difficult contexts within which negotiations take place. Box 1.1 lists five recommendations that seem to be 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.



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

**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 – that 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.

**What is negotiation?**

Starting with a definition may seem ‘academic’ but it highlights some key points about negotiation that provide some preliminary but important practical insights.

Negotiation is a process where two parties with differences which they need to resolve are trying to reach agreement through exploring for options and exchanging offers – and an agreement.

Firstly, 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 the agreement will be. The process of negotiation and how to manage it effectively will be explored in Chapters 4 and 5.

Secondly, we need **two parties** for a negotiation. 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 10 considers the impact of cultural differences.

Thirdly there must be **differences**. If there are no differences there is no need to negotiate and because there are differences, 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 their differences also helps negotiators understand their power; this important aspect of negotiation is explored in the next chapter.



That negotiation involves **trying to reach agreement** suggests that negotiators might not always succeed and also that reaching a good agreement takes some effort. If an agreement is reached easily 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 agreements can be found. The negotiators can **explore** possibilities and develop **options** that might possibly resolve the issue. This is the creative aspect of negotiation and is how negotiators add value. Ways of doing this are explored in Chapter 7. Secondly, 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 to any negotiation.

### Some initial practical implications

The above definition shows some of the complexities inherent in any negotiation and why it is not straightforward. Firstly, 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); there is competitiveness because each negotiator is standing in the way of the other achieving their goal but at the same time, 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.

Secondly, negotiation is about an issue – *what* the differences are between the parties – but it is also 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.

Thirdly, negotiation involves **choice**. Negotiators are constantly faced with choices throughout the negotiation. They have to manage the balance of cooperation and competitiveness; they face choices over how to deal with the issue and how to manage the process. These choices flow through

into actions and reactions. This issue–process–action distinction will recur throughout this book.

Although negotiators constantly make choices about how the negotiation should proceed, they do not have control. This is because of the fourth important point about negotiation: that it is **two-sided**. This fundamental and obvious point is often ignored by negotiators when they plan and implement their strategies. Ignoring the other party is a mistake that even effective negotiators make (Sebenius, 2001).

Fifthly, although the definition of negotiation offered earlier is neat, 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 reduce the messiness, but negotiation will never be entirely straightforward.

There are two further practical implications to consider, one relevant before a negotiation, the other once it is over. Firstly, identify the key elements of negotiation based on the definition given above by preparing a **preparation checklist** (see Appendix 1). This will provide the negotiator with a framework to use during the negotiation process. (Other aspects of preparation are explored throughout the book.) Secondly, since any negotiation is less than straightforward it always gives a negotiator the opportunity to learn and improve. Rackman and Carlisle (1978) found that once a negotiation was concluded it was the skilled negotiators who took time out to reflect upon what had happened, why it happened, and what could have been done differently and better. 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 and Thompson, 2003). A **negotiation review checklist** is provided in Appendix 2.

## 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 negotiators can employ and so need to be understood to manage the process more effectively. They can be used, or 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 that negotiation is not straightforward. The links between the two strands of the DNA can be viewed as the key elements or 'links' which 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 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 fragile and is easily overestimated. Thinking about trust leads to thinking about the behavioural **ethics** in negotiation.

Another important feature of a negotiation is **power**. Paradoxically this has a great deal to do with the 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 of the 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 and 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, they are not 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 manage the process while recognising that he can never eliminate all the uncertainty and difficulties.

The DNA imagery has its limitations – the two strands never meet, perhaps signifying that the parties never reach agreement! However, having an image or script that resonates with the key aspects of 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 is just one of several images that appear throughout this book to help the reader's practical understanding of negotiation.

## 2 The essence of negotiation

The previous chapter suggested that negotiation is like DNA with some critical elements 'hard wired' into the process. This chapter examines the two strands of our negotiation DNA: the parties and the key elements that hold them together, namely 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 individuals 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 the 'party' to a negotiation, it is important to consider the interactions between the other party's negotiators and those who they represent. These 'intra-party dynamics' are explored in Chapter 9.

But what of the individual negotiator? One characteristic of negotiation is that it is 'messy', one reason being because people are different. We each try to do things in different ways and we 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 may develop a particular way of defining problems or reacting to conflict, more research is needed (Sandy, Boardman and 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 as we wish and we cannot rely on our personality as a substitute for becoming more competent. Negotiators need to be 'smart' (Fulmer and 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 – help a negotiator manage a negotiation more constructively (Barry and Friedman, 1998; Kemp and 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 and 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 understand how we might approach the task of negotiation, how we might react and what effect we have on other negotiators. This self-awareness can be instructive and while it may not change who we are, it might help us change what we do. For example, being aware of those events in a negotiation which might cause us to be anxious or angry, 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 that we think sometimes hampers effective negotiation. The first is a tendency to regard issues as win-lose situations even when they are not (Bazerman and Neale, 1983; Pinkley, Griffith and Northcraft, 1995). This can lead to an understanding of negotiation as a game or contest in which there are winners (us) and losers (you). This shapes our whole approach to the task of negotiating. It means that we tend to view negotiation as having a completely competitive script and so we act accordingly. For example, when 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 and Van Poucke, 2004). Negotiators tend to make high demands when the other negotiator has made a low one (Pruitt and 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 and Sullivan, 2002) – our 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 the opponent. The result is that negotiators who fail to see what opportunities there might be for joint gain often *both* end up losing (Thomson and Hastie, 1990; Thompson and Hrebrec, 1996). In fact, research suggests that self-oriented competitive bargainers do not fare well (Beersma and De Dreu, 1999; Schneider, 2002; De Dreu, Weingart and Kwon 2000). 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 and 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 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, then 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 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 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, giving 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 of 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 and 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 (developed from Thompson, Neale and Sinaceur, 2004)**

#### **Overconfidence**

We think others (e.g. 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.

Which 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.

Which 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 it is clear.

Which 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.

Which 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.

Which is why we stay stuck in our positions and don't do much to create a bridge of understanding between both 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 themselves rather than their situation.

Which is why we are not very good at predicting the effect our strategy and tactics will have on the other party.

How can we counter innate bias? Firstly, 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 and who is prepared to challenge your thinking.) Secondly, biases and prejudices can stem from our ignorance of the other party. Ensure full attention is given to the perspectives of the other party, taking time to understand, as best one can, their situation and their



motivations. Thirdly, 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. This can be done by seeking wise counsel and by reflecting on one's own negotiation performance. Some self-reflection tools are provided in Appendix 3.

### **Dealing with others' differences**

Can 'personality' be used as a tactic? Can the other party's perceived personality weaknesses be used to our advantage? Even the phrasing of the question conveys a competitive orientation that is probably not helpful to the negotiation. A typical personality tactic would be to get the other negotiators annoyed, lose their tempers and so then reveal some critical information or make an unwarranted concession. However, negotiation is both 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 then hold your temper and not do the very things you were hoping to entice from across the negotiating table?

Similarly, what if the other negotiators are 'emotional' – speaking a lot, interrupting, 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 2.2. (Remember we all show emotion of some sort when we negotiate.) Female negotiators seem to react less to statements which might trigger an emotional response (typically anger or frustration) because they view negotiation in relationship terms, emotion being part of a relationship (Schroth, Bain-Chekal and Caldwell, 2005). For male negotiators, emotion gets in the way of fixing the dispute and so they react to it more.