



How to Negotiate Efficiently and Effectively

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Objectives & Purpose of Course

1. Introducing a systematic alternative framework and approach to negotiations.
2. Explaining and applying the seven key elements of interest-based negotiations (IBN).
3. How to prepare, plan, conduct and analyze negotiations.

Types of Negotiation

- Soft bargaining (their way)
- Hard bargaining (my way)
- Interest-based negotiations (our way)

Three types of Negotiations

Soft	Hard	Interest-Based
Are soft on the people and the problem	Are on the problem and the people	Are soft on the people, hard on the problem
Trust others	Distrust others	Trust with reason
Negotiators are viewed as friends	Negotiators are viewed as adversaries	Negotiators become joint problem solvers
The goal is agreement	The goal is victory	The goal is agreement that works for everyone
Make concession to cultivate the relationship	Demand concession as a condition of the relationship	Focus on mutual interest and mutual gain
Change your position easily	Dig in on your positions	Focus on interests, not position
Insist on getting an agreement	Insist on maintaining your position	Insist on using objective criteria

Continued...

Soft	Hard	Interest-Based
Disclose your bottom line	Mislead as to your bottom line	Avoid bottom lines
Make offers/concession	Make threats/coerce	Focus on the criteria
Try to avoid a contest of wills	Try to win a contest of wills	Result of based on standards independent of wills
Yield to pressure	Apply pressure	Encourage movement based on reason
Accept one-sided losses to reach an agreement	Demand one-sided gain as the price of agreement	Create option for mutual gains agreement
Search for the single answer: one they will accept	Search for the single answer: one you will accept	Generate many options: increase the potential for researching a mutually acceptable solution

Some Characteristics of Positional Bargaining

1. Pre-Conditions to Process or Solutions
2. Non-Negotiable Demand
3. Solutions First
4. Policy Imperative/Restrictions
5. Focus on the “Right”

Response:

1. Look to “Interests” Behind Position and Probe/Clarify Interests

Positional vs. Interest-Based Negotiations

Positional Negotiation

Positional negotiation is a series of positions taken and then gradually given up, usually through making concessions.

This type of negotiation is based on two important aspects:

1. The bottom line: The point below which it would be better to use a different means of resolving the conflict. One could go below the bottom line on one issue if off-set by gains on another.

Interest-Based Negotiation

Interest-based negotiation focuses on the interests and needs that are the basis for the positions taken.

This type of negotiation is based on these assumptions:

1. Each party has multiple interests: substantive, procedural and psychological.
2. Interests may be combined in a variety of ways.

Positional vs. Interest-Based Negotiation

Positional Negotiation

2. The opening position:
The opening position is usually a demand for maximum gain. Generally, the demand from the other party is for more than he/she is prepared to give, but it should not be excessively so. It should be within reason and also offer room for making concessions.

Interest-Based Negotiation

3. Satisfying the interests of all parties can maximize gains for all sides
4. Resources are not totally limited; combination of resources can meet a variety of needs and goals.
5. It moves towards an understanding of each of the parties' interests in order to move away from the limiting nature position-taking.

Positional vs. Interest-Based Negotiation

Positional negotiation is often used when:

- The resources are limited;
- One party wants to maximize his/her gain at any cost to the others;
- The parties are not inter-dependent;
- The future relationship has less value than the immediate gains;

Some characteristics of positional negotiators include:

- Initial large or high demand;
- Secretive, non-trusting behaviour;
- Tactics such as bluffing, threats and pressure;
- Small concessions;
- Being hard on the people and the problem.

Interest-based negotiation is often used when:

- Interests of the negotiators are interdependent;
- The future relationship is important;
- The negotiators value the best solution(s) to meet everyone's interest;
- The negotiators are able to separate the people from the problem;
- A compromise of principles is unacceptable.

Positional vs. Interest-Based Negotiation

Positional Negotiation

Costs

- Relationship
- Inhibits creativity
- Decreases the likelihood of the best solutions
- Obscures the true interests
- May not obtain a commitment to the agreement

Benefits

- Does not require disclosure of valuable information
- Divides fixed-sum resources
- May prevent unnecessary concessions

Interest-Based Negotiation

Costs

- Requires some trust or the potential for trust-building
- Requires the disclosure of information and interests

Benefits

- Produces solutions that meet specific needs
- Builds/enhances relationships
- Promotes trust/trust-building
- Model behaviours that may be valuable for the future relationship
- Often produces agreements with a commitment from all parties

Win-Lose and Win-Win Negotiations

Win-Lose (positional)

- Me vs. you
- Us vs. them
- Atmosphere of competition, mistrust

Decision by:

- Compromise
- Pressure
- Coercion
- Manipulation
- Agreement are more likely to be undermined
- Likelihood of a less effective future working relationship

Win-Win (interest-based)

- Us vs. the problem
- Atmosphere of collaboration and openness

Decision based on:

- Exploration
- Fairness/Objective criteria
- Mutual interests/needs
- Agreements are more likely to be supported
- Likelihood of an improved future working relation

Seven Elements of Effective Negotiations

(From “Getting to Yes – Negotiating Agreement Without Giving In” by Roger Fisher and William Ury)

1. Relationship
2. Communication
3. Interests
4. Options
5. Fairness/Legitimacy
6. Alternatives
7. Commitments

1. Relationships

- Relationship: Am I ready to deal with the relationship?

Forms Relationship 1: Separate people issue from substantive issues

Relationship 2: Prepare to build a good working relationship

Relationship

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>1. <u>Relationship</u>:</p> <p>The overall pattern of interaction between the parties both within and outside a specific negotiation.</p> <p>Plan and prepare to build and maintain a good working relationship.</p> <p>*See “The Truth About Negotiations,” pp. 75 and 161.</p>	<p>Build the type of working relationship that can deal well with differences, during the negotiation and in the future.</p>	<p>How can we improve the interaction?</p> <p>Are we entangling the substantive problem and the relationship?</p> <p>What is their perception of the relationship?</p> <p>What kind of relationship do we want?</p>	<p>Plan and prepare to build effective negotiation relationships.</p> <p>Be respectful, trustworthy, and unconditionally constructive on relationship issues: do those things, and only those things, that are good for the relationship and good for us, whether or not they are reciprocate.</p> <p>Learn about the people on the other side.</p> <p>Disentangle substance from relationship and deal with each on its own merits. Be reliable.</p> <p>Consider consulting before deciding. Propose options, not make demands.</p>

Tactics

- Build and maintain relationships
- Be creative, considerate, trustworthy and respectful
- Use symbolic acts of kindness
- Improve your core skills in communication

2. Communication Strategy

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>2. <u>Communication</u>:</p> <p>The tone and content of messages and the persons and media through which negotiators convey implicit and explicit information to each other.</p>	<p>Listen actively and intently.</p> <p>Communication: Be clear, concise and efficient.</p> <p>The parties clearly understand each other.</p> <p>Balance reason with emotion.</p>	<p>What do we need to know about “them”?</p> <p>Are we actively listening?</p> <p>Do we understand their perceptions?</p> <p>Are we aware of our own partisan perceptions?</p> <p>Are we actively trying to understand other point of view?</p> <p>How can we help them help us learn about things that we may be unaware of?</p> <p>What can we do to improve the quality of communication?</p>	<p>Adopt a “learning stance” – begin with questions.</p> <p><u>Be curious</u>: ask respectful questions.</p> <p><u>Listen</u>: before responding, show them we have heard and understood by paraphrasing and clarifying.</p> <p><u>Acknowledge</u> what has been said and felt.</p> <p><u>Listen</u> to understand, speak and be understood.</p> <p>Put our reasons before our conclusions.</p> <p>Avoid attributions: speak for ourselves, not for them. Use “I” phrases, not “you” phrases.</p> <p>Do not attack or defend.</p>

Core Communication Skills

Adapted from Borgen, WA, Pollard, NE Amundson, MJ Westwood (1989).

Employment Groups: The Counseling Connection. Lugas

A. **Reaction Skills**

- Active Listening: Attending to non-verbal and verbal messages - involving understanding and is not simply hearing.
- Paraphrase: Restating of the content of the message in another way. No feelings.
- Clarification: Checking understanding of a message by asking to hear it again or asking for more information/details. (A closed question) Probe.
- Empathy: (Primary) Reflection of surface feelings along with experiences or behaviors which accompany the feelings.
- Summarizing: Pulling together several members' statements.
- Information Giving: Providing information in a clear, succinct, and non-threatening manner.

B. Interaction Skills

Moderating: Going around the group (non decision to go on implied) acting to ensure all sides of an issue are heard within a group.

Blocking: Pointing out similarities between what members of the group are saying (drawing together common ideas or reactions of members and contracting or comparing). To make people feel included.

Supporting: Offering encouragement and reinforcement to group members for their efforts hindering another, done with caring, (vs. limiting) validating person being blocked also.

Limiting: Defining boundaries within which the group will operate, reminding of norms, time.

Consensus taking: Checking out the perceptions of each group member regarding a topic. (i.e. to see if someone is still in transition)

- i.e. to proceed? Veto by one – is everyone ok so far?
- bringing opinions together (is it ok to go on?)
- done one by one; checking that everyone is ready.

Unconditionally Constructive

1. Even if they are acting emotionally, BALANCE EMOTION WITH REASON
2. Even if they misunderstand, TRY TO UNDERSTAND THEM
3. Even if they don't listen, CONSULT BEFORE DECIDING AND LISTEN TO THEM
4. Even if they try to coerce, BE OPEN TO PERSUASION, AND TRY TO PERSUADE THEM
5. Even if they reject us, ACCEPT THEM AS WORTHY

Power

II. Possible
causes

III. Possible
approaches

Some disliked symptoms:

- dominated
- frustrated
- ineffective

Key/Core Skill for Effective Negotiations is Paraphrasing

1. Paraphrasing is revealing your understanding of (1) what the other person said; and (2) what it means to you.
2. Why It Is Important
 - Conveys interest and respect (reciprocate)
 - Enables clarity and accuracy
 - Facilitates full understanding
 - Enables effective assessment of interest
 - Facilitates problems solving
3. Skills Are Required
 - a) Active Listening
 - Attending; encouraging; clarifying
 - Focus on the other person and what he is saying and observe how he is saying it.

- Suspend judgment and reaction
- Avoid interruptions or responding
- Encourage/prompt
- Clarify/checkout information

b) Summarize and Feedback

- What I heard you say was “..”
- May be repeating in your own words what was said
- May be stating what it means to you?
- Goal:
 - i. To know fully and accurately what the other person means
 - ii. To let them know you know the meaning/intent of their comment

c) Seek Clarification On Your Summary and Feedback

- Does that accurately summarize your message?
- Did I miss anything?

3. Interests

- Interests: What do people really want?

Forms Interest 1: Identify the relevant parties

Interest 2: Clarify the Interests

Interest 3: Probe for underlying interest

Interests

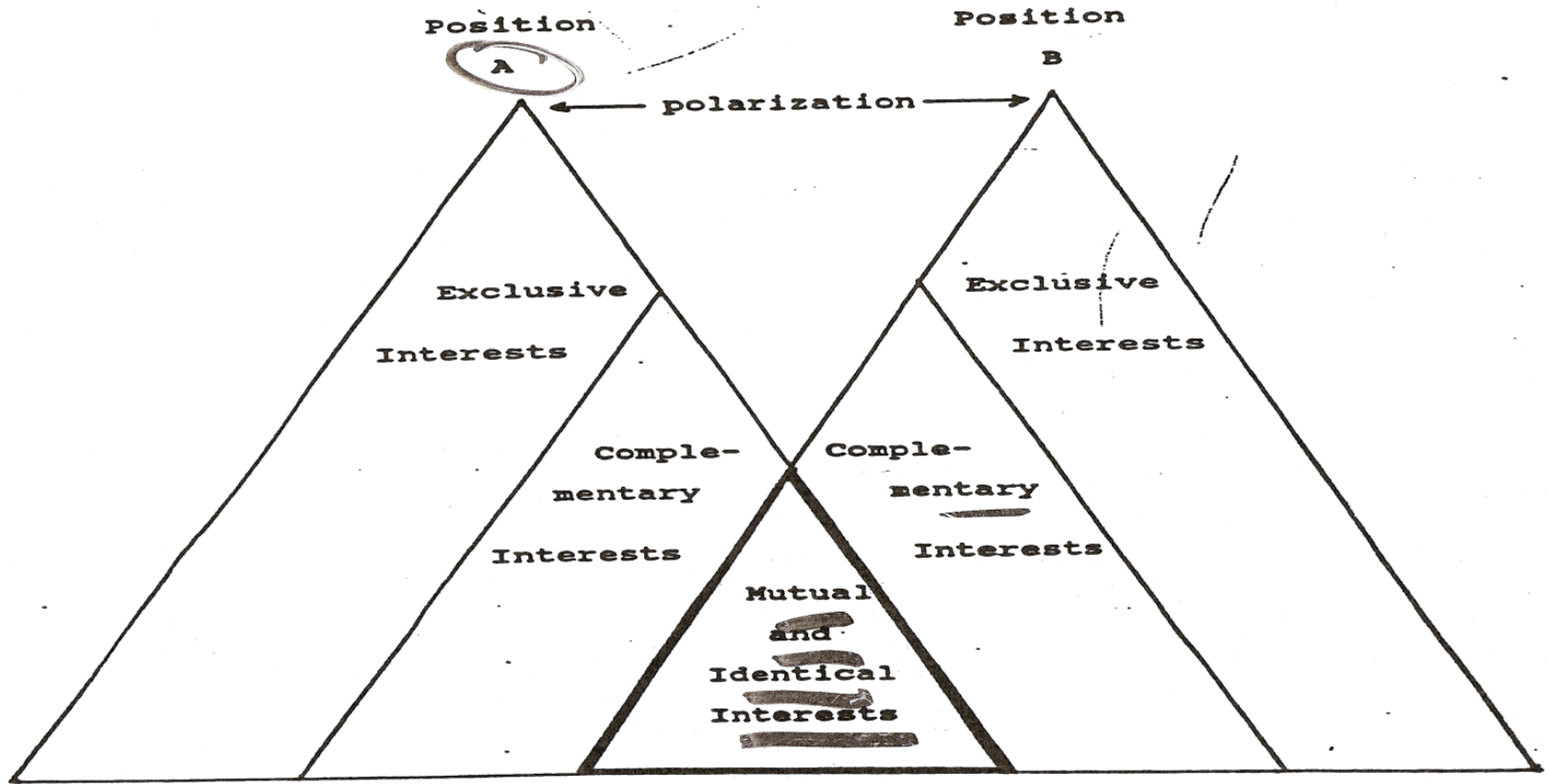
Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>3. <u>Interests</u>:</p> <p>The concerns, wants, needs, hopes and fears that underlie and motivate the positions, demands, and contentions of different parties.</p> <p>Interests are:</p> <ul style="list-style-type: none"> • Substantive • Procedural • Personal • Collective <p>*See “The Truth About Negotiations,” p. 101 (Reveal Your Interests).</p>	<p>Individual and common interests are known.</p> <p>Interests satisfied:</p> <ul style="list-style-type: none"> • Ours, well • Theirs, acceptably* • Others, tolerably* <p>*Enough interests met to ensure any agreement is durable.</p>	<p>What are our interests (“what do we want and what do we fear”)? Are they all identified and shared?</p> <p>What are their interests?</p> <p>How have we checked our understanding?</p> <p>What would this problem look like if I were in their shoes?</p> <p>What are the questions they currently see us asking?</p> <p>What are the interests of the other parties about whom we need to be concerned?</p>	<p>Focus on interests, not positions.</p> <p>Collectively identify, articulate and reveal our interests, concerns, and needs of all relevant parties (mine, yours, theirs). Remember: most parties do not know all their interests or necessarily agree on their interests.</p> <p>Identify and prioritize community interests together.</p> <p>Get on the same page. Probe for your and their unarticulated or underlying interests.</p> <p>Share and clarify the respective interests of the parties. Move beyond speculation about to acknowledgement of their interests.</p>

Interests continued...

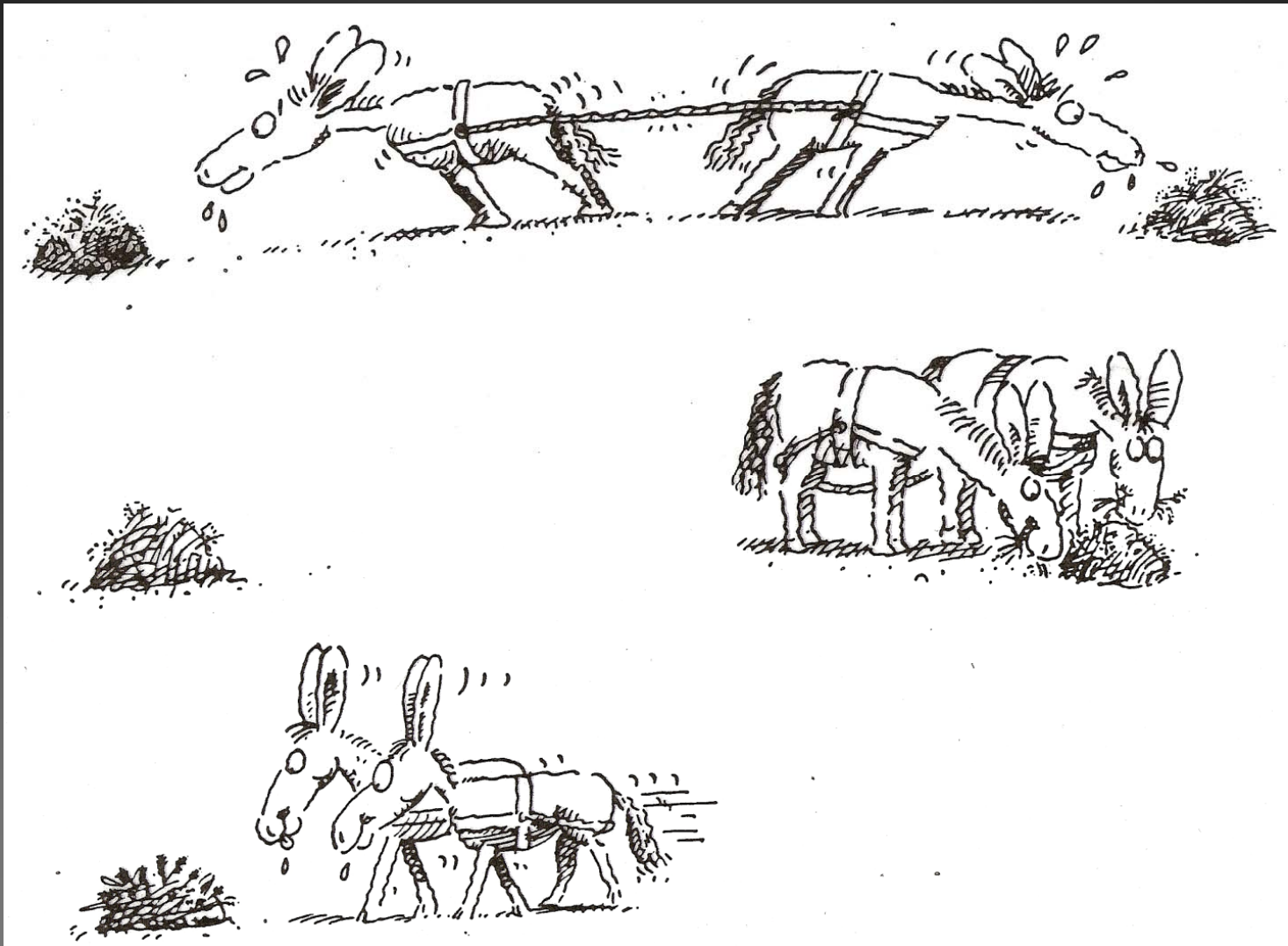
Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
			<p>Communicate clearly what our interests are (but perhaps not their intensity).</p> <p>Inquiry about their interests.</p> <p>Identify and share common interests as a basis to develop options.</p> <p>Interests form the agenda and checklist for terms of agreements.</p>

Interests

(Needs, Desires, Concerns, Fears, Hopes)



Interests (Needs, Desires, Concerns, Fears, Hopes)



Interest 1: Identify the Relevant Parties

Fill in the names of the persons or groups involved in this negotiation: Put yourself as “Negotiator” and the person you are dealing with directly as “Counterpart.” In the spaces below, write the names of others who may be significantly affected by the outcome of the negotiation.

People on “my side” who may care about the outcome

People on “their side” who may care about the outcome

Constituents?

Constituents?

Friends?

Friends?

Family?

Family?

Boss?

Boss?

Others?

Others?

Interests 2: Clarify the Interests

Mine What do I care about?	Theirs If I were in their shoes, what would I care or worry about?	Others What are the concerns of others who may be significantly affected?
Personal	Personal	Other 1:
Business	Business	Other 2:
		Other 3:

Interest 3: Probe for Underlying Interests of “Positions” and Demands

In the left hand column, list the more important interests for you and your counterpart that you identify on the form INTERESTS 2. For each of these, ask yourself “why” and “for what purpose?” If you discover deeper interests, list them in the second column. Finally, try to rate your own interests by allocating 100 points among them in proportion to their importance.

Important interests (from Interest 2)	Basic or underlying interests (Ask yourself “why” and “for what purpose”?)	Relative importance (Allocate 100 points)
Mine		
Theirs		

4. Options

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>4. <u>Options</u>:</p> <p>Possible ways of dealing with or resolving an issue that requires mutual agreement of the parties, whether or not currently acceptable to the parties.</p> <p>An option must meet the interests of both parties.</p> <p>Seek mutual gain.</p>	<p>Solution is the best of many options. Elegant, with no waste.</p> <p>Preferably win-win.</p> <p>Good options:</p> <ul style="list-style-type: none"> • Meet interests • Are fair and legitimate • Better than any other alternative • Maximize joint gains • Doable 	<p>What are some possible agreements that might creatively reconcile our interests?</p> <p>What things do we care relatively little about, but the other side values highly?</p> <p>Can we offer the other side a new choice?</p> <p>How can we help solve “their problem”?</p>	<p>Separate <i>inventing</i> of options from <i>deciding</i> among them.</p> <p>Brainstorm without judgements.</p> <p>Invent jointly, side by side.</p> <p>Suggest options, not positions or demands.</p> <p>Explain how your preferred option meets their interests.</p> <p>Make it a “yesable” proposal.</p>

5. Fairness and Legitimacy

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>6. <u>Fairness & Legitimacy</u>:</p> <p>The standards or criteria by which the fairness of a possible agreement can be measured.</p> <p>Fairness is a governing consideration.</p> <p>Legitimacy can come from:</p> <ul style="list-style-type: none"> • Precedents • The market • Experts • The law (legal and equitable principles) • Best practices • Science • Other 	<p>With legitimate options, no one feels “taken” – treated unfairly.</p>	<p>Are we using objective criteria?</p> <p>Where do we research/find criteria?</p> <p>Are the criteria we propose likely to be persuasive to the other side? To third party? (If we were in their shoes, would we be persuaded?)</p> <p>Are we open to persuasion? If not, what are our fears? How might we cope with them?</p>	<p>Use demonstrable “fairness” of the process and outcome to persuade them of the merits of a proposal.</p> <p>Use objective criteria and objective standards to:</p> <ul style="list-style-type: none"> • Persuade the other side it is being fairly treated. • Protect us from being unfairly treated. <p>Be open to arguments based on reason, but don’t yield to coercion.</p> <p>Offer their negotiator an attractive way to explain his decision to his principals.</p> <p>The parties may use the same or different standards.</p>

Issue: Legitimacy

Insist on Using Objective Criteria

- Deciding on the Basis of Will of Costly
- The Case for Using Objective Criteria
- Developing Objective Criteria
- Negotiating with Objective Criteria
- Addressing “Company Policy”

6. Alternatives

Alternatives: What will I do if we do not agree?

- | | |
|---------------------|---|
| Form Alternative 1: | Think of my alternative to a negotiated agreement |
| Alternative 2: | Select and Improve my BATNA |
| Alternative 3: | Identify alternative open to the other side |
| Alternative 4: | Estimate their BATNA |

Alternatives to a Negotiated Outcome

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>5. <u>Alternatives</u>:</p> <p>Possible ways of dealing with any issues that require mutual agreement of the parties, whether or not currently acceptable to the parties.</p> <p>A BATNA is your best option for achieving your interests outside an agreement.</p> <p>*See “The Truth About Negotiations,” pp. 35-56.</p>	<p>Any agreement should be better than what we can achieve through our BATNA: Best Alternative To a Negotiated Agreement.</p> <p>A good BATNA is also “leverage” to improve your negotiating power, if used properly.</p>	<p>Do we need to negotiate or can we satisfactorily meet our interests in other ways?</p> <p>What is our BATNA? Can we improve it? How, when and at what cost to us and them? Do not reveal our BATNA.</p> <p>What is their BATNA? How well do we understand it? Can we worsen it? Legitimately?</p>	<p>Fully understand the risks, implications and consequences of both your and their BATNA. Don’t be surprised!</p> <p>Select and improve our BATNA.</p> <p>Identify and articulate our best/doable alternatives to a negotiated agreement.</p> <p>Consider worsening their BATNA, if it can be done legitimately and will not have a net adverse impact on the negotiation.</p>

7. Commitment

Commitment: What commitments should I seek or make.

Forms Commitment 1: Identify the issues to be included in the agreement

Commitment 2: Plan the steps to agreement

Commitment

Element	Good Outcome	Diagnostic Questions	Prescriptive Approaches
<p>7. <u>Commitment</u>:</p> <p>Statement of what a party is willing or intends to do in the future.</p>	<p>Commitments to:</p> <ul style="list-style-type: none"> • Process – “the first negotiation” • Agreements – “the substantive negotiation” • Implementation <p>Commitments should be well-planned, realistic, and operational.</p> <p>Get commitments at the end – not the beginning.</p>	<p>What authority to commit do we have? Do we want to have?</p> <p>What realistic commitments come next?</p> <p>Are they credible? Yesable?</p> <p>If they say “yes” to our proposition, then who does what, when to implement it?</p> <p>Independent of trust, do all parties have incentives to comply with the agreement?</p>	<p>Commit early to a desirable process.</p> <p>Avoid substantive commitments until after listening, learning, and inventing.</p> <p>Seek to formulate commitments jointly.</p> <p>Clarify the status of any commitments (Tentative? In principle? Subject to approval? Whose? Final?)</p> <p>Identify all of the implementation issues to be included in the agreement. No post-agreement surprises.</p> <p>Plan the timeframe and steps to implement the agreement.</p>

Preparation is the Key to Successful Negotiations

Common Mistakes:

- Unorganized – no agenda or agreed process
- Unfocused – not addressing interests
- Unplanned
- No common approach with or between the parties

Remedy:

1. Decide to adopt Interest-Based Negotiation process or not
2. Consistent and common approach to negotiations:
 - Within your team → Orientation
 - Across the table
3. Joint training session on Interest-Based approach
4. Systemic and planned preparation
5. Doing “home” work in a disciplined manner prior to meeting

How to Prepare Before Meeting the Other Side

1. Agree on common approach – interest-based on common positional bargaining.
2. Hold a workshop with your team on the elements of interest-based negotiation.
3. Select, orient and build your team.
4. Collectively explore and clarify your interests.
5. Collectively clarify the issues and problems to be negotiated.
6. Discuss goals for relationship – short and long term
 - a. What is your BATNA and WATNA?
 - b. What is their BATNA and WATNA?

How to Prepare Before Meeting the Other Side (continued)

7. Discuss with other party using a common interest-based approach to negotiations.
8. Possibly hold joint workshops.
9. Discuss the interests, positions, people, organization and “assumptions” about the other party – identify what you need to clarify or find out – list of questions.
10. Identify and list problems to be addressed.
11. Prepare agenda for initial meeting
12. Discuss need for protocol agreement or similar framework.

Preparation

1. Improves Relationships
2. Enhances Credibility
3. Empowers Your Side
4. Improves Efficiency and Reduce Costs
5. Enhances/Improves Your. BATNA
6. Increases Likelihood of Success
7. Optimizes Outcomes

First: Seek Agreement on the Negotiation Process

A. Principles and Approach:

- Interest Based vs. Positional
- Joint Problem Solving
- Culture Respect

B. Joint Design the Process:

- Principles
- Parties and Roles
- Issues
- Time Frame and Scheduling
- Meeting Protocol and Communication
- Mediation
- Funding
- Ratification

C. Outcomes

1. Protocol Agreement
2. Exchange Letters
3. Building Relationship

A “Good” Negotiation Process is:

- i. An outcome of good relations/communication
- ii. Efficient and empowering
- iii. Jointly owned and operated
- iv. Focus is on issue and problems together: not people and positions
- v. Based on joint commitment to an acceptable problem solving process that:
 - a. Recognizes mutual interests
 - b. Recognizes “Their Problem is Your Problem”
 - c. Create greater range of options
 - d. Common ownership of Agreement

Main Point: A good negotiation process leads to effective joint problem solving.

Negotiation Checklist

Preparation

Preparation is a key to successful problem solving. Information gathering from colleagues or others familiar with the subject matter of the dispute is an important first step. When people don't prepare, it can lead to positional/adversarial approaches or outcomes.

People

What are the parties to this dispute?

Who needs to be involved to produce a successful outcome?

What are my objectives?

What do I know about their objectives?

What is my best alternative to a negotiated agreement? (BATNA)

What is my worst alternative to a negotiated agreement? (WATNA)

What do I know about their BATNA/WATNA?

What levels of agreement already exist between us?

How important is the relationship to me/them?

Negotiation Checklist

Preparation continued...

Issues

- What issues need to be resolved?
- What information do I need, related to the issue?
- What information do I need before I can decide?
- Have the issues been discussed in advance by the parties?
- What do I need to know about their approach to the issues?

Process

- What will my approach be?
- What is theirs likely to be?
- Where and when should we meet?
- What process issues need to be resolved?

Agenda

Meeting Chair

Data collection

Negotiation Checklist

Step I – Setting the Tone, Framing the Issues

This step establishes the pace, tone and frames the process which will guide your problem-solving. It also sets a mutual agreement and makes sure that the issues which are of importance to each of the participants are on the table:

- establish the need to negotiate
- set a positive tone
- set the process guidelines for the negotiation
- share information, thoughts, assumptions
- meet the other's communication style to increase comfort and ease
- express areas in which there is substantial agreement
- give an un-positional statement of the issues as you see them
- invite a similar response and listen carefully
- watch for indicators of feeling as well as information
- verbally recognize interests as they arise
- break the problem into manageable parts
- hunch what some unstated issues might be
- summarize what both sides have said and emphasize common ground
- seek agreement to proceed

Negotiation Checklist

Step II – Identifying Interests

The purpose of this step is to restructure a positional negotiation into one which seeks to address interests. Mutual communication at this stage is crucial as it is as important to reveal your interests as it is to discover theirs:

- explain yourself, what is important to you and why
- ask open-ended and clarifying questions
- test your assumptions about the other's needs, concerns
- acknowledge the legitimacy of other's concerns
- emphasize areas of common ground
- remain un-positional
- think in terms of more than one option to meet your needs
- be open to persuasion but firm about your interests
- formulate a neutral goal statement

Negotiation Checklist

Step III – Generate Options and Solutions

The purpose of this step is to generate options for agreement out of the raw material provided in Step 2. It is also the stage at which you measure the fairness of proposed solutions against the interest of the parties and against objective criteria selected to evaluate fairness. It allows the participants an opportunity to reality test solutions against hypothetical situations:

- summarize areas of present agreement
- break down broad issues into component parts
- look for solutions which maximize mutual gain and meet joint interests
- consider suggesting a “quick fix”
- brainstorm possible solutions without judging them
- consider other forms of “listing”
- identify objective criteria for measuring fairness
- list and evaluate options and select fair, agreement solutions
- reality test solution against hypothetical situations

Negotiation Checklist

Step IV – Forming the Agreement

The purpose of this stage is to codify the agreement in a form which promotes mutual approval. Even for simple agreements, it is wise to select some form of tracking device: letter, written agreement, future meetings for follow-up:

- ❑ identify content and process commitments
- ❑ specify who will do what, when and how
- ❑ specify timing, criteria and means of evaluating results
- ❑ for process commitment, determine objectives, principles and outcomes
- ❑ put into written form for mutual approval

Preparing for Cross Cultural Negotiations

1. Recognize cultural differences do exist and affect negotiating behavior (see chart).
2. Clarify your expectations and bias, perceptions of cultural differences.
3. Be aware of powerful tendency towards stereo-typing and preconceptions (our and theirs).
4. Give the others side the cultural benefits of the doubt.
5. Learn as much as possible about the norms and culture and about the individual.

A Checklist of General Principles for Cross-Cultural Negotiating

1. Take your own “Cultural Pulse”
2. Take your counterparts’ pulse
3. Assess both parties’ likely cultural responses to major aspects of the negotiation
4. Assess key combinations of response
5. Practice cross-cultural humility and empathy
6. Be alert for possible cultural negotiating surprises
7. Listen objectively and reserve judgment
8. Adapt your normal cultural behavior to facilitate cross-cultural communication and cooperation
9. Recognize the residual risks of piercing cultural “body armor”
10. Guard your health against cross-cultural stress
11. Be true to yourself and your culture
12. Stay flexible

What cross-cultural knowledge is relevant to cross-cultural negotiation?

1. General knowledge of the culture of each party
2. History of relationship and “lesson” learned by each party
3. Cultural protocol, formalities, and symbols of each party
4. Cultural perspectives and approaches to seven elements of negotiation process
5. Cultural perspective on interest and priorities (i.e. differing values and beliefs)
6. Approach to dispute resolution within a culture
 - a. Internal – traditional and contemporary
 - b. External disputes

Cross-cultural knowledge relevant to cross-cultural negotiation (continued)

7. Perception and approach to problem solving within each culture
8. Importance of relationships to the culture
9. What are the cultural standards of “legitimacy” or fairness?
10. Creating objective and legitimate criteria for a fair settlement (not getting “ripped off”)
11. Understanding the implications and consequences of alternatives to interest based negotiated settlement – BATNAs and WATNAs (theirs and ours)
12. (A) Structuring a new fair and inclusive process for negotiations
(B) Enabling, financing, and facilitating negotiations
(C) Training negotiators on all sides

Overcoming Power Differentials

[Power = Ability to Influence]

Issue: What initiatives can First Nations independently undertake to enhance their ability to influence?

1. Energy, Commitment Persistence to Basics
 - Re-work process; communication
 - Review Fisher article
2. Expand knowledge
 - Interests
 - Policy
 - Process
 - Legitimacy
3. Improve/Change BATNA/WATNA
 - Litigation
 - Direction Action
 - Lobbying
4. Expand Resources and Capacity
 - Expertise – process/issue
 - Political
 - Legal

Strategies for dealing with difficult negotiators

The thoughts of two experienced negotiators and writers:

A. Roger Fisher:

If the other side, for whatever reason, will not play the game (e.g. announces a firm position and will not budge), Fisher in Getting to Yes suggests “Negotiation Jujitsu”: stepping aside from the blows or strength of your negotiation opponent and using their strength in your favor (i.e. do not react to their tactics but redirect the negotiation).

1. Do not attack their position. Look behind it; clarify the interest
2. Do not defend your ideas, invite criticism and advice
3. Recast an attack on you as an attack on the problem; separate people from the problem
4. Ask questions and pause, and
5. Silence is one of your best weapons. See pages 108-112

Strategies for dealing with difficult negotiators

B. [William Ury](#)

In his book Getting Past No: Negotiating With Difficult People*, William Ury suggests a five part break through strategy to deal with difficult people who attack you or launch into positional bargaining:

1. Do Not React – Go to the Balcony
2. Disarm Them – Step to their side
3. Change the Game – Do Not Reject...Reframe
4. Make it Easy to Say Yes – Build them a Golden Bridge
5. Make it Hard to Say No – Bring them to their Senses Not their Knees

Conclusion – Turn Adversaries Into Partners

(see especially pages 143-145 for a quick summary of this book)

*Bantam Books, 1991