

The Art and Science of Negotiation – An Analysis

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Abstract

While the issue of negotiation has long been considered important in a variety of individual, group, societal and cross-country settings, this issue has acquired greater significance of late. This paper examines differing schools of thought and brings into focus the kind of cross-cutting strategic research done in this area. It highlights the basic principles of negotiation techniques and identifies strategies and sequential stages for effective negotiation. An attempt is also made to look at common mistakes in negotiation and place matters in perspective.

Perspective

In common parlance, negotiation is confined largely to the world of business. But it is not always realized-much less felt- that competition cuts across all parts of life, society and economy. We all negotiate right from the early stages of our life to the almost very end. But the purpose of negotiation may and does change at different points of time like convincing the children to do their homework, higher salary, better service, solving a dispute with a coworker or family member or even working out a kidnapping case focused on hostage recovery. Infact, despite the bewildering diversity across societies and countries, negotiation emerges as a recurring, underlying theme in the modern capitalist world. This is why Harvard Business School Professors James Sebenius and David Lax maintain “negotiation is increasingly a way of life for effective managers”.

It is certainly possible to obtain optimal outcomes by an understanding of the needs and expectations of others. Accordingly, it is necessary to develop a better understanding of the negotiation process, its intricacies, and harmful consequences of incomplete or incorrect negotiations. There is also a compelling need to understand and better manage the risks involved in contracts, which is a salient feature of modern capitalist

society. The aim of negotiation is to explore the situation, and to find a solution that is acceptable to both people. Hence, we need to pay greater attention to negotiation skills, techniques and strategies to be able to handle these situations more effectively at all “life triggers” and to make the best of a difficult situation.

Negotiation, which is customarily considered as a compromise to settle an argument or issue to benefit ourselves to the largest possible extent, encompasses the entire spectrum of business, i.e., selling, purchasing, staff (e.g., contracts), borrowing (e.g., loans) and other transactions. Negotiation has also conventionally been a crosscutting strategic element of the dynamics of the evolving relations between countries. Viewed thus, negotiation - in more ways than one - has always been an integral element of the development discourse among countries. It can, however, reasonably be maintained that Dr. Henry Kissinger, former U.S. Secretary of State elevated the significance of negotiation in the international context to a lofty position. Essentially, a negotiation is a creative process as opposed to a deal, which is a closing and rational process. The aim of negotiation is to explore the possibility of finding a solution acceptable to both parties. No wonder, then, negotiation and conflict management research has emerged as one of the focal points of research in

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organizational behavior. While most research focuses on the cognitive aspects of negotiation, some studies explicitly address the social and relational setting in which negotiations invariably occur. This gives rise to the issues of the role of group identification and accountability, negotiator judgment and decision making, the importance of power-dependence relations on negotiation, inter-group bargaining, coalitional dynamics in bargaining, social influence processes in negotiation, cross-cultural perspectives on negotiation, and the impact of social relationships on negotiation.

Negotiation is the key differentiator for winning organizations in terms of the uncanny ability to get deals done, solve problems, preserve relationships, and manage conflict. Diversity, equity and inclusion, which are catalytic in broadening talent pool, require a complete reworking of the strategy. This is important because of the inability of formal authority, hierarchy, and command to ensure productive cooperation and genuine commitment; the transformation of markets, technologies, and competition; and higher risks of unproductive cultural misunderstandings and costly conflict because of the rising demographic diversity of the work force and genuine globalization of business enhance risks of unproductive cultural misunderstandings and costly conflict. This is certainly difficult but eminently doable.

Differing schools of thought

In the steadily burgeoning literature on management in general and negotiation in particular, two basic strands of thought can easily be discerned: (a) interest-based (or integrative, or cooperative) bargaining, and (b) positional (or distributive or competitive) bargaining. Roger Fisher and William Ury (1981) cogently argue that there are three approaches to negotiation: hard, soft, and what they call “principled negotiation”. Hard is essentially extremely competitive bargaining, soft extremely integrative bargaining (so integrative that one gives up one’s own interests in the hope of meeting the other person’s interests) and principled negotiation is supposed to be somewhere in between, but closer to soft, certainly, than hard.

In view of the complexities of the multi-layered issues at stake, it is not always easy to decide whether to pursue a

cooperative or a competitive strategy in creating beneficial outcomes. David A Lax and James K Sebenius in their important book *The Manager as Negotiator* (1987) and others have increasingly demonstrated that negotiations use a judicious mix of both approaches to maximize outcomes. Initially negotiators try to “create value” by maximizing the pie. But inevitably, the pie needs to be distributed, which requires distributive negotiation. Fisher and Ury (1981) identify and isolate a sequential four-step negotiation interest-based strategy. In cases with reasonable prospects for an agreement, which benefits all parties, and the parties have a relationship, which allows them to explore such opportunities, principled negotiation can be an effective conflict resolution approach.

Cross-Cutting Strategic Research

Given the extensive coverage and the wide ranging ramifications of negotiation, the form and substance of negotiation has-not unjustifiably- been viewed from different prisms in building successful relationships across diverse cultures, including national, regional and professional differences. For example, both Robert Aumann from Mathematics and Thomas Schelling from Economics (2005:“Robert Aumann’s and Thomas Schelling’s Contributions to Game Theory: Analyses of Conflict and Cooperation”, Bank of Sweden Prize in Economic Sciences in Memory of Alfred Nobel) held that the game-theoretic perspective could potentially reshape the analysis of human interaction.

Schelling showed that many familiar social interactions could be viewed as non-cooperative games that involve both common and conflicting interests. Aumann demonstrated that long-run social interaction could be comprehensively analyzed using formal non-cooperative game theory. While most of Thomas Schelling’s research focused on arms control and nuclear deterrence, his work has also other applications, e.g., strategy and tactics of bargaining and negotiation involved in industrial and labour conflict, interactive behaviour of crowds, ethnic groups, neighborhoods and entire population, applied to topics, such as, segregation and integration, etc.

Thomas C. Schelling (1980) showed that a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful

than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation. Schelling was particularly intrigued by the ways in which the parties' negotiating strength could be affected by different factors, such as, the initial alternatives at their disposal and their potential to influence their own and each other's alternatives during the process. He was concerned with the ability of individuals to coordinate their behavior in situations without any strong conflict of interest, but where unsuccessful coordination would raise costs for all parties. Schelling found that coordinative solutions, 'focal points', could be arrived at more often than predicted by theory. The ability to coordinate seems to be related to the parties' common frames of reference. Social conventions and norms are integral parts of this commonality of interest.

Professor Aumann's work has centered on a different element of game theory, i.e., the question whether co-operation increases if games are continually repeated. Aumann demonstrated that co-operation is less likely, when there are many participants, when interactions are infrequent, when the time horizon is short or when other's actions cannot be clearly discerned. The repeated-games approach highlights the *raison d'être* of many institutions across the development spectrum ranging from merchant guilds and organized crime to wage negotiations and international trade agreements.

Another fundamental contribution of Aumann concerns the cognitive axioms of game theory, i.e., the implications of the parties' knowledge about the various aspects of the game, including "knowledge about each other's knowledge". Aumann's formalization of the concept of common knowledge allowed systematic analysis of the relation between the knowledge of the parties and the outcome of the game. Aumann also introduced a new equilibrium concept, i.e., correlated equilibrium. Correlated equilibrium can explain why it may be advantageous for negotiating parties to allow an impartial mediator to speak to the parties either jointly or separately, and in some instances, give them different information.

Negotiation Techniques-Basic Principles

While negotiation and leverage techniques vary greatly across the world, some of the basic generic negotiation principles relate to the sustained pursuit of the problem without being aggressive on the person; focus not on positions but on needs; stress on common ground; creative options; and clarity of agreements. Positive steering of the negotiation to the desired end may, inter-alia, require these measures:

A. Reframe

Sometimes it may help to reframe a question (e.g., "if we succeed in resolving this problem, what differences would you notice"?). For the sake of greater clarity and transparency, it may be necessary to ascertain if everyone was on board and on the same page ("please tell me what you heard me/them say"). It is often desirable to request something she/he said to be re-stated more positively, or as an "I" statement and re-interpret an attack on the person as an attack on the issue.

B. Respond, not react

While there is no doubt about the generic validity of this proposition in the high stakes no holds barred intensely competitive present day world, this is easier said than done. Some of the basic elements of this strategy require an adroit emotional management; level some accusations, attacks, threats or ultimatums; ensure the availability of an exit option by facilitating it for the other party to retreat without feeling humiliated (e.g., by identifying changed circumstances, which could justify an altered stance).

C. Re-focus on the issue

It is important not to get lost in the maze of internecine feuds by adopting a cool and balanced approach (e.g., "what's fair for both of us?"); review of common ground and agreement; work not as opponents but as partners in progress; see how things go in a measured and calibrated manner-take one thing at a time and hope for the best while being prepared for the worst; pluck the low-hanging fruits first by initially tackling less cumbersome issues; adopt a policy of give and take ("if you will, then I will"); and explore best and worst alternatives in a complex and protracted negotiation.

D. Identify unfair tactics

Some of the standard measures involve identifying the behavior as a tactic, addressing the motive for using the tactic, changing the physical circumstances, locations, seating arrangements, division into smaller groups, private meetings, adjournment to introspect and reflect, etc.

Strategies for Effective Negotiation

In their classic book, Fisher and Ury delineate and identify four principles for effective negotiation: 1) separate the people from the problem; 2) focus on interests rather than positions; 3) generate a variety of options before settling on an agreement; and 4) insist that the agreement be based on an objective criterion. Often negotiators establish a “bottom line” - the party anticipates as the worst acceptable outcome- in an attempt to insulate themselves against a poor agreement. Negotiators decide pre-negotiations to reject any proposal below that line. It is important, therefore, to know the Best Alternative to A Negotiated Agreement (BATNA) because “the reason you negotiate is to produce something better than the results you can obtain without negotiating”. Research on negotiation conducted by the Harvard Negotiation Project underscored the importance of knowing options prior to a negotiation, the possibility of foreclosing the deal, other choices available, relative merit of each choice and the BATNA of the other party. Fisher and Ury cogently argue that “developing your BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum”.

When the other party does not use principled negotiation, one side may simply continue to use the principled approach, the principled party may use “negotiation jujitsu” to bring the other party in line by refusing to respond in kind to their positional bargaining and introduce a third party. When the other party resorts to skulduggery, stonewalling and obstructive behaviors, such as, deliberate deception about the facts, their authority, or their intentions, psychological warfare and positional pressure tactics, it may be prudent to explicitly raise the issue in negotiations, and to engage in principled negotiation to unambiguously set procedural ground rules for the negotiation.

Negotiation refers to a process of communication in which the parties aim to influence each other’s decisions. A negotiator’s ability to exert influence depends upon the combined total of a variety of factors. Roger Fisher (1983) argues that these include knowledge about the people and interests, a good working relationship, and a good alternative to a negotiated settlement.

Sequential Stages of Negotiation

Any method, which reduces the animosity and stress in a conflict situation, needs to be carefully explored and examined. This is particularly important, because negotiation is a process, not an event. Hence, on the basis of theoretical underpinnings and empirical evidence, sequential steps of successful negotiation can easily be discerned. Such steps include development of a meticulous plan, creating the climate, identifying interests, evaluating the opposition, effective use of language, body language, and props, proper timing in negotiations and selecting outcomes.

Diligent homework is the prerequisite to effective negotiation, as indeed in all spheres of life and economic activity, because the essence of negotiation lies in keeping abreast of all aspects, patience and tolerance. Homework encompasses a multitude of aspects of negotiation, including a personal inventory, clear objectives, benefit to the other party, knowledge of extremes, value to the business, the aim of the opposition and aspects at stake like money, sales, time, conditions, discounts, terms, etc. These factors have a significant bearing on the outcome of the negotiation.

Two key elements of strategies in negotiation are co-participation and responsiveness. There should be mutual movement-both sides must move from their original positions over the duration of the negotiation. Consequently, it is not enough to know what you want out of negotiation; you also need to anticipate what the other party wants (double think). The smart negotiator also tries to anticipate what the other party thinks you want (triple think).

Negotiation is based on trust, lest there be manipulation and suspicion. This is why it is important to be trustworthy, honor the commitments, be truthful and

respect confidences. Confidence stems from a complete knowledge of the business, the product, its worth, and effective communication to the other party. It also becomes necessary to explore a range of options, such as, best-case scenario, worst-case scenario and settlement range. An agreement within the settlement range ought to be considered as a win.

Common Mistakes in Negotiation

Cross-country empirical evidence as also incisive analyses of organizational behavior in diverse settings unmistakably bring out that tactics, deal design, and set-up constitute three essential ingredients of effective negotiations. Yet many negotiators mistakenly focus only on tactics, which is severely detrimental to their own best interests.

A common mistake in negotiation is the wrongly held belief that one proposal (usually yours) will solve all the problems. But it needs no clairvoyance to perceive that there may not be “the best single answer” and a good compromise could be made up of several changes that benefit you the most (and the other person a little) and an equal number of changes that benefit the other person. This is why brainstorming could help in finding the best combination of changes. Max Bazerman (1986) highlights five common mistakes while trying to resolve more competitive negotiations: (1) believing the other person must lose for you to win, (2) discovering too late that more information was needed, (3) making extreme demands, investing too much in getting your way, and, thus, becoming reluctant to retreat, (4) realism to see other views of justice, are more successful compromisers, (5) need to quickly “cut losses” when facing big losses. However, when you have accepted a small loss, emphasize to your opponent what he/she has to gain by your cooperativeness and (6).

There are important cross-cultural differences. Negotiators can be oblivious to such important differences only at their peril. For example, the Japanese tend to rely on generating solutions to problems from the information available, while North Americans use the idea of exchange (proposal-counterproposal). Also, the Japanese emphasize the relationships involved as well as specified goals during negotiations. They really want to

know who they are dealing with, who sent them, and what the future of this relationship might hold. There is far more reliance on non-verbal signals for the Chinese and Japanese in acquiring information than for North Americans.

While the negotiator's emotions, for example, preferences, fears etc. are certainly important in critical evaluation, it is uneasy to gauge emotions. Elfeinbein's study (2008) revealed that negotiators detected emotions accurately, only 58% of the time with the accuracy dropping steeply in email negotiations because of carpicous absence of helpful visual, verbal and other sensory cues. This makes it necessary to navigate personality differences, diverse agendas and social pressures by a range of cooperative and competitive negotiation strategies. Overcoming inter-cultural barriers successfully requires an inquiry into the counterparts background and experience; take on-board an advisor from the counterparts culture and closely monitor the evolving negotiation dynamics.

Negotiators pay inadequate attention to verbal and non-verbal communication, body language and cultural settings. There has, therefore, to be a paradigm shift from an unrealistic obsession on bargaining “positions” to the full range of underlying “interests”. It is also possible for value discovery and unlocking this value. This process requires an examination of aspects, such as, the price; unbundling different aspects; the possibility of high-benefit, low-cost trades; addition of value-creating contingencies and risk-sharing provisions to the contract; and address not just economic issues but also the large-size inflated egos.

To be sure, bilateral negotiations are often tough. Accordingly, coherence and logic requires getting the parties right. This necessitates a careful evaluation of the “all-party map” by taking a long, hard look at various stake-holders, viz., potential and actual parties, internal and external players, principals and agents, decision makers and influencers, allies and blockers, and high- and low-value parties. The views of those who approve and implement the deal must also be considered for an enduring and lasting solution. Towards this end, mapping the relationship by investigating the informal and the formal decision and governance processes would be helpful.

In the absence of a well-crafted multi-dimensional approach, the set-up of a negotiation can conceivably result in wrong parties, wrong issues, wrong walkaways, wrong sequence and wrong basic process choices with disastrous consequences.

Conclusion

On the basis of this analysis, it is clear that negotiation is a basic requirement in all spheres of life and economic activity. Negotiation assumes greater importance for virtually all managers. Effective management and leadership is incompatible without the capacity to envisage and develop sustainable agreements, e.g., discrete transactions, such as, mergers, labor contracts, and out-of-court settlements or forging new supplier and customer relationships, dealing with large shareholders and creditors, managing cross-border strategic alliances. Accordingly, there has to be a renewed thrust on critical success factors (CSFs). Some such factors include influencing style, expanding the spheres of influence, compensation rather than compromise, making impactful briefings, creating the right first impression, using pressure rather than coercion, seeing the other point of view, knowing what to give away, understanding group dynamics and giving positive feedback.

In sum, aspects, such as, core decision-making challenges, complex negotiation scenarios, and a range of competitive and cooperative negotiation strategies are central to negotiation in devising innovative ways to structure the innovation process to facilitate joint problem solving, brain storming and collective fact finding. Towards this end, there has to be a close and careful examination of goals, trading, alternatives, relationship, expected outcomes, consequences, power and possible solutions. Negotiation skills can be enhanced by discussions, role playing, sharing experiences and obtaining performance evaluations.

It is also important to know your LIMits in finding a fair compromise.

L – like to have: your number 1, top of the pile, best outcome.

I – intend to have: your realistic, shoot for the stars but reach the moon outcome.

M – must have: your bottom line. Deal is off if this is not met.

The LIMits negotiation technique encourages flexible thinking and even if all the criteria for success are not met, then the opposite is not failure, just a different outcome. The LIMits negotiation strategy requires careful planning and preparation to achieve the avowed objectives.

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