



AMBO UNIVERSITY

SCHOOL OF BUSINESS AND ECONOMICS

DEPARTMENT OF LOGISTICS AND SUPPLY CHAIN MANAGEMENT

NEGOTIATION AND CONTRACT MANAGEMENT

(LSCM2053)

Students' self-Instructional Material

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Introduction to the Course

Dear student! Welcome to the course Negotiation and Contract Management which is one of the most important as well as one of the most interesting parts of professional purchasing. Organizations obtain the right quality, right quantity, at the right price, and from the right source when they are strong in negotiation. The course will help you develop your negotiation skills. The course will discuss planning and preparation for negotiation, bargaining, the role of power in negotiation, the persuasion process in negotiation, the tactics of conflict resolution in negotiation, ethics in negotiation, and so on.

Course Objectives

After completing this course, students should be able to:

- ✓ Explain about distributive and integrative negotiations.
- ✓ Develop an understanding of the negotiation process and its representations.
- ✓ Discuss the phases of the negotiation process and the roles of analytical methods in each phase.
- ✓ Understand human biases and their implications for the process and outcome of negotiations.
- ✓ Evaluate the relationship between the structure of the negotiation process and the outcomes achieved.
- ✓ Use tools for negotiation analysis and negotiation support systems
- ✓ Conversant with fundamental concepts conflicts and conflict resolution
- ✓ Identify the approved methods of Federal Government Public Purchasing
- ✓ Conversant with the tender procedure and evaluation.

Introduction to the Handout

Dear student! In this handout, the first five chapters introduce you to “Negotiation Fundamentals.” The first chapter introduces the field of negotiation and conflict management, describes the basic problem of interdependence with other people, and briefly explores the challenges of managing that interdependence. Chapter 2 describes the fundamental pre-work that negotiators must do to get ready for a negotiation: selecting the strategy, framing the issues, defining negotiation objectives, and planning the steps one will pursue to achieve those objectives. Chapters 3 and 4 then present the two core strategic approaches to negotiation: the basic dynamics of competitive (win-lose) bargaining (Chapter 3) and the basic dynamics of integrative (win-win) negotiation (Chapter 4). In Chapter 5, you examine the ethical standards and criteria that surround negotiation. The effective negotiator must recognize when ethical questions are relevant and what factors must be considered to address them effectively. The next three chapters describe the conflict resolution, international negotiation and contract management. In Chapter 6, you review the basic processes of Conflict Resolution and Conflict Management, you specifically examine How Mediation Works, the Role of the Mediator, and When Negotiation Fails. In Chapter 7, you attempt to clarify how international and cross-cultural differences can shape the diverse ways that parties approach negotiations. Chapter 8 focuses on contract establishment, execution and administration as well as on management of changes, claims, arbitration and dispute resolution.

Each chapter begins with brief overview and objectives of the chapter so that students know what is expected from them at the end of each chapter.

The activities and case studies are given just after discussing issues so that students immediately check themselves to what extent they have understood the subject. The answers to these activities are provided at the end of each chapter. Students are advised not to refer the answers before trying answer the questions by themselves. Summaries are given at the end of each chapter to remind students about the main points raised in the chapter.

Finally, taking in to account the epidemic COVID-19 problem and assuming some degree of diversity between learners a considerable effort has been exerted to ensure that this self-instructional material is easily understandable.

Chapter 1. The Nature of Negotiation

Overview

This chapter is the foundation for the nature of negotiations. Friends, children, businesses, police, nations, everyone negotiates almost daily. Negotiation is a method by which people settle differences. It is a process by which compromise or agreement is reached while avoiding argument and dispute. Negotiations occur for several reasons: (1) to agree on how to share or divide a limited resource, such as land, or property, or time; (2) to create something new that neither party could do on his or her own, or (3) to resolve a problem or dispute between the parties. Perspectives used to understand different aspects of negotiations include theory, research from economics, psychology, political science, communication, labor relations, law, sociology, and anthropology.

Learning Objectives

1. Separate the style and approach in negotiation
2. Identify the characteristics of a negotiation situation.
3. Explain Interdependence in negotiation.
4. Elaborate mutual adjustment throughout negotiations and making and interpreting concessions.
5. Discuss value claiming and value creation.
6. Define conflict and levels of conflict.
7. Isolate major strategies for conflict management.

I. Style and Approach of Negotiation

- A. Use of terminology.
 1. Bargaining: describes the competitive win-lose situations (haggling).
 2. Negotiation: refers to win-win situations (to find mutually acceptable solutions).
- B. “Heart of Negotiation” – give-and-take approach.
 1. Give-and-take is extremely important, but negotiation is a very complex social process, where many of the most important factors that shape the negotiation occur *before* the negotiation, or shape the context *around* the negotiation.
- C. Insights drawn from three sources.
 1. Personal experience.
 2. Media – television, radio, newspaper, magazine, and Internet.
 3. Social science research.

II. Three Important Themes

- The definition of negotiation and the basic characteristics of negotiation situations
- Interdependence, the relationship between people and groups that most often leads them to negotiate
- Understanding the dynamics of conflict and conflict management processes which serve as a backdrop for different ways that people approach and manage negotiations

III. Characteristics of a negotiation situation

A. Characteristics common to all negotiation situations.

1. There are two or more parties, individuals, groups or organizations.
2. There is a conflict of needs and desires between two or more parties, and the parties must search for a way to resolve the conflict.
3. Parties negotiate because they think they can get a better deal by negotiating than by simply accepting what the other side will voluntarily give them or let them have.
4. When negotiating, a give-and-take is expected. To reach an agreement, both sides will modify their opening statement to find a middle ground; they compromise.
5. The parties prefer to negotiate and search for agreement rather than to fight openly, have one side dominate and the other capitulate, permanently break off contact, or take their dispute to a higher authority to resolve it.
6. Successful negotiation involves the management of *tangibles* and also the resolution of *intangibles*.
 - a) Tangible factors: the price or the terms of agreement.
 - b) Intangible factors: The underlying psychological motivations that may directly or indirectly influence the parties during a negotiation. They have an enormous influence on negotiation processes and outcomes, so it is crucial for negotiators to understand how they affect decision making and tangible outcomes. Examples of intangible factors include:
 - (1) The need to “win” or avoid losing.
 - (2) The need to look “good” to those you’re representing.
 - (3) The need to defend an important principle or precedent in a negotiation.
 - (4) The need to appear “fair” or “honorable” or to protect one’s reputation; and
 - (5) The need to maintain a good relationship.

IV. Interdependence

A. Working interdependently allows parties to achieve a possible outcome that is better than they could achieve by working on their own.

B. Most relationships between parties may be characterized in one of three ways:

Independent, dependent, or interdependent.

1. *Independent* parties are able to meet their own needs without the help and assistance of others.
2. *Dependent* parties must rely on others for what they need; the dependent party must accept and accommodate to that provider's whims and idiosyncrasies.
3. When the parties depend on each other to achieve their own preferred outcome they are *interdependent*; they are characterized by interlocking goals.

C. Types of interdependence affect outcomes.

1. The interdependence of people's goals, and the *structure* of the situation in which they are going to negotiate, strongly shapes negotiation processes and outcomes.
 - a) Zero-sum distributive: Competitive situation where there is only one winner.
 - b) Non-zero-sum integrative: Goals are linked to achieve a mutual gain.

D. Alternatives shape interdependence.

1. BATNA: Best Alternative to a Negotiated Agreement.
 - a) Whether you should or should not agree on something in a negotiation depends upon the attractiveness of your best available alternatives.
 - b) Negotiators need to understand their BATNA, as well as the other parties'.

V. Mutual Adjustment

A. Interdependent parties have an influence on the others' outcomes and decisions. As parties act to influence each other in a negotiation, they engage in a mutual adjustment.

1. It is important to recognize that negotiation is a process that transforms over time, and mutual adjustment is one of the key causes of the changes that occur during a negotiation.
2. An example would be to look at Sue Carter's job situation. She would like to leave her present employer and take an available job at a large multinational bank. The job description announced the salary as "competitive." Her prospective manager, Max, perceives her as a desirable candidate and is ready to offer her the job. She did not state

- her minimally acceptable salary. She has decided the bank will pay no more than necessary and that her minimum would be accepted quickly.
- a) A closer look reveals that she is making her decision on how she anticipates Max will react to her actions.
 - b) Sue is assessing the indirect impact of behavior on herself.
 - c) Sue is choosing among behavioral options with a thought: not only how they will affect Max, but also how they will then lead Max to act toward Sue.
 - d) Sue knows that Max believes she will act in this way and makes her decision on the basis of this belief.
3. The effective negotiator needs to understand how people will adjust and readjust, and how the negotiations might twist and turn, based on one's own moves and the others' responses.
 4. The best strategy for successful mutual adjustment to the other is grounded in the assumption that the more information one has about the other person, the better.
 5. Mutual adjustment and concession making.
 - a) When one party alters his/her position based on the other party's suggestion to do so, a concession has been made.
 - b) Concessions constrain the bargaining range.
 6. Two dilemmas that all negotiators face in mutual adjustment:
 - a) Dilemma of honesty – how much of the truth to tell the other party?
 - b) Dilemma of trust – how much should negotiators believe what the other party tells them?
 7. Two efforts that help a negotiation create trust and beliefs:
 - a) Outcome perception.
 - b) Process perception.
 8. The pattern of give-and-take is also essential to joint problem solving in most interdependent relationships. Satisfaction with negotiation is as much determined by the process through which an agreement is reached as with the actual outcome obtained.

VI. Perception

Perception is the process by which individuals connect to their environment, by ascribing meaning to messages and events. This process is strongly influenced by the perceiver's current state of mind, role and comprehension of earlier communications.

1. Perception is a complex physical and psychological process of screening, selecting and interpreting stimuli so that they have meaning to the individual.
2. Perception is a “sense-making” process where people interpret their environment so they can respond appropriately.

Perceptual distortion.

1. A perceiver’s own needs, desires, motivation and personal experiences may create a predisposition about the other party. This can lead to biases and errors in perception and subsequent communication.
 - a) *Stereotyping* – occurs when one individual assigns attributes to another solely on the basis of the other’s membership in a particular social or demographic category.
 - (1) Highly resistant to change.
 - (2) Commonly used as a resort during conflicts involving values, ideologies, and direct competition for resources.
 - b) *Halo effects* occur when people generalize about a variety of attributes based on the knowledge of one attribute of an individual.
 - (1) Research shows halo effects are most likely to occur in perception.
 - (i) Where there is very little experience with a person along some dimension.
 - (ii) When the person is well known.
 - (iii) When the qualities have strong moral implications
 - c) *Selective perception* occurs when the perceiver singles out certain information that supports or reinforces a prior belief and filters out information that does not confirm that belief.
 - d) *Projection* occurs when people assign to others the characteristics or feelings that they possess themselves. Projection usually arises out of a need to protect one’s own self-concept— to see oneself as consistent and good.

VII. Value Claiming and Value Creation

A. Distributive bargaining.

1. The purpose this type of negotiation is to *claim value*—to do whatever is necessary to claim the reward or gain the largest piece possible.

B. Integrative bargaining.

1. The purpose of this approach to negotiation is to *create value*, or find a way for all parties to meet their goals and share the reward.

- C. Most negotiations are a combination of claiming and creating value. There are significant implications to this:
1. Negotiators must be able to recognize situations that require more of one approach than the other;
 2. Negotiators must be versatile in their comfort and use of both strategic approaches;
 3. Negotiator perceptions of situations tend to be biased toward seeing problems as more distributive / competitive than they really are.
- D. Successful coordination of interdependence has the potential to lead to synergy, which is the notion that “the whole is greater than the sum of its parts.”
- E. Lax and Sebenius in their book “The Manager as Negotiator,” describe key differences among negotiators:
1. Differences in interests;
 2. Differences in judgments about the future;
 3. Differences in risk tolerance/aversion; and
 4. Differences time preference.
- F. Negotiators need to be aware of the potential differences between them can serve as barriers to reaching an agreement. Exploring common and different interests to create value can set the foundation for a lasting agreement.

VII. Conflict

- A. Definitions of conflict may be a sharp disagreement or opposition, as of interests, ideas, etc. and includes the perceived divergence of interest or a belief that the parties’ current aspirations cannot be achieved simultaneously (both from Pruitt and Rubin, 1986).
- B. Levels of conflict:
1. Intrapersonal or intrapsychic conflict occurs within an individual. Sources of conflict can include ideas, thoughts, emotions, values, predispositions, or drives that are in conflict with each other.
 2. Interpersonal conflict that occurs between bosses and subordinates, spouses, siblings, or roommates.
 3. Intragroup conflict is within a small group – among team and committee members and within families, classes, fraternities and sororities and work groups.

4. Intergroup conflict between unions and management, warring nations, feuding families, or community action groups and government authorities.

C. Functions and dysfunctions of conflict:

1. Competitive, win-lose goals.
2. Misperception and bias.
3. Emotionality.
4. Decreased communication.
5. Blurred issues.
6. Rigid commitments.
7. Magnified difference, minimized similarities.

8. Escalation of the conflict.

D. Functions and benefits of conflict:

1. Discussing conflict makes organizational members more aware and able to cope with problems.
2. Conflict promises organizational change and adaptation.
3. Conflict strengthens relationships and heightens morale.
4. Conflict promotes awareness of self and others.
5. Conflict enhances personal development.
6. Conflict encourages psychological development—it helps people become more accurate and realistic in their self-appraisals.
7. Conflict can be stimulating and fun.

E. Factors that make conflict easy or difficult to manage.

VIII. Effective Conflict Management

A. The two-dimensional framework is represented as the dual concerns model. The model postulates that individuals in conflict have two independent levels of concern:

1. Concern about their own outcomes.
2. Concern about the other's outcomes.

B. Five major strategies for conflict management have been identified in the dual concerns model:

1. Contending (also called competing or dominating).
2. Yielding (also called accommodating or obliging).

3. Inaction (also called avoiding).
4. Problem solving (also called collaborating or integrating).
5. Compromising is the strategy located in the middle.

Summary

People negotiate almost daily, sometimes for major things like a new job, other times for relatively minor things, such as who will take out the trash. Negotiations occur to create something new or to resolve a problem or dispute between parties.

Characteristics common to all negotiation situations include two or more individuals, groups, or organizations, interpersonal, intragroup, or intergroup process. There is a conflict of interest between two or more parties. The parties negotiate because they think they can use some form of influence to get a better deal. The parties prefer to search for agreement rather than fight openly, have one side capitulate, permanently break off contact, or take their dispute to a higher authority to resolve it. When you negotiate, expect to give and take. Successful negotiation involves the management of intangibles and well as the resolving of intangibles.

Interdependent relationships are characterized by interlocking goals; the parties need each other in order to accomplish their goals. A necessary step in all negotiation is to clarify and share information about what both parties really want as outcomes. When one party accepts a change a concession has been made. When a party makes a concession, the bargaining range is confined closer to one or both sides' limits or resistance point. Two dilemmas all negotiators face are honesty and trust. Negotiators must understand the nature of the interdependence of the parties. Negotiators are seldom identical and may include differences in interest, opinions, risk aversion, and time preferences. The other potential consequence of interdependent relationships is conflict, which has several levels including intrapersonal or intrapsychic, interpersonal, intragroup and intergroup. One of the most popular areas of conflict management research and practice has been to define the different ways that the parties themselves can manage conflict. Each conflict management strategy has its advantages and disadvantages, and is more or less appropriate given the type of conflict and situation in which the dispute occurs.

Self-test Questions

I. Fill in the Blank

1. Negotiating parties always negotiate by _____.
2. The mix of convergent and conflicting goals characterizes many _____ relationships.
3. When one party accepts a change in his or her position, a _____ has been made.
4. _____ is analyzed as it affects the ability of the group to make decisions, work productively, resolve its differences, and continue to achieve its goals effectively.
5. The two-dimensional framework called the _____ postulates that people in conflict have two independent types of concern.

II. True/False Questions

1. . Many of the most important factors that shape a negotiation result do not occur during the negotiation, but occur after the parties have negotiated.
2. Negotiation situations have fundamentally the same characteristics.
3. A zero-sum situation is a situation in which individuals are so linked together that there is a positive correlation between their goal attainments.
4. Remember that every possible interdependency has an alternative; negotiators can always say "no" and walk away.
5. The pattern of give-and-take in negotiation is a characteristic exclusive to formal negotiations.

III. Multiple Choice Questions

1. Which perspective can be used to understand different aspects of negotiation?
 - A. economics
 - B. psychology
 - C. anthropology
 - D. law
 - E. All of the above perspectives can be used to understand different aspects of negotiation.
2. To most people the words "bargaining" and "negotiation" are
 - A. mutually exclusive.
 - B. interchangeable.
 - C. not related.
 - D. interdependent.
 - E. None of the above.

3. Which is not a characteristic of a negotiation or bargaining situation?
 - A. conflict between parties
 - B. two or more parties involved
 - C. an established set of rules
 - D. a voluntary process
 - E. None of the above is a characteristic of a negotiation.
4. Interdependent parties' relationships are characterized by
 - A. interlocking goals.
 - B. solitary decision making.
 - C. established procedures.
 - D. rigid structures.
 - E. Interdependent relationships are characterized by all of the above.
5. How much to believe of what the other party tells you
 - A. depends on the reputation of the other party.
 - B. is affected by the circumstances of the negotiation.
 - C. is related to how he or she treated you in the past.
 - D. is the dilemma of trust.
 - E. All of the above.
6. Which of the following statements about conflict is true?
 - A. Conflict is the result of tangible factors.
 - B. Conflict can occur when two parties are working toward the same goal and generally want the same outcome.
 - C. Conflict only occurs when both parties want a very different settlement.
 - D. Conflict has a minimal effect on interdependent relationships.
 - E. All of the above statements about conflict are true.
7. Which of the following contribute to conflict's destructive image?
 - A. increased communication
 - B. misperception and bias
 - C. clarifying issues
 - D. minimized differences; magnified similarities
 - E. All of the above contribute to conflict's destructive image.

8. An individual who pursues his or her own outcomes strongly and shows little concern for whether the other party obtains his or her desired outcomes is using another of the following strategies. Which one?
- A. yielding
 - B. compromising
 - C. contending
 - D. problem solving
 - E. None of the above.
9. Negotiators pursuing the yielding strategy
- A. show little interest or concern in whether they attain their own outcomes, but are quite interested in whether the other party attains his or her outcomes.
 - B. pursue their own outcome strongly and shows little concern for whether the other party obtains his or her desired outcome.
 - C. shows little interest or concern in whether they attain their own outcomes, and does not show much concern about whether the other party obtains his or her outcomes.
 - D. show high concern for attaining their own outcomes and high concern for whether the other attains his or her outcomes.
 - E. Negotiators pursuing the yielding strategy demonstrate none of the above behaviors.
10. Whereas distributive bargaining is often characterized by mistrust and suspicion, integrative negotiation is characterized by which of the following?
- A. obligation and perseverance
 - B. avoidance and compromise
 - C. influence and persuasiveness
 - D. trust and openness
 - E. cognition and emotion

IV. Discussion Questions

1. Is the give-and-take process used to reach an agreement the "heart of the negotiation" as most people assume.
2. Why do parties negotiate by choice?
3. What are the three ways that characterize most relationships between parties?
4. Define "zero-sum" situation.

5. What are concessions?
6. Describe the strategies and tactics a negotiator would employ in a distributive bargaining situation.
7. Why should negotiators be versatile in their comfort and use of both value claiming and value creating strategic approaches?
8. Explain how conflict is a potential consequence of interdependent relationships.
9. How does decreased communication contribute as one of the destructive images of conflict in a negotiation?
10. Conflict also has productive aspects and one of those is that conflict encourages psychological development. Elaborate.

Suggested Answers

I	1. choice	2. interdependent	3. concession	4. Intragroup conflict	5. dual concerns model
II	1. FALSE	2. TRUE	3. FALSE	4. TRUE	5. FALSE

III

1. E	2. B	3. C	4. A	5. E	6. B	7. B	8. C	9. A	10. D
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IV.

1. While that give-and-take process is extremely important, negotiation is a very complex social process; many of the most important factors that shape a negotiation result do not occur during the negotiation, but occur before the parties start to negotiate, or shape the context around the negotiation.
2. That is, they negotiate because they think they can get a better deal by negotiating than by simply accepting what the other side will voluntarily give them or let them have. Negotiation is largely a voluntary process. We negotiate because we think we can improve our outcome or result, compared to not negotiating or simply accepting what the other side offers. It is a strategy pursued by choice; seldom are we required to negotiate.
3. Most relationships between parties may be characterized in one of three ways: independent, dependent, and interdependent.
4. Individuals are so linked together that there is a negative correlation between their goal attainments.
5. A concession has been made when one party agrees to make a change in his or her position. Concessions restrict the range of options within which a solution or agreement will be reached.
6. In distributive situations negotiators are motivated to win the competition and beat the other party, or gain the largest piece of the fixed resource that they can. In order to achieve these objectives, negotiators usually employ "win-lose" strategies and tactics. This approach to negotiation called distributive bargaining accepts the fact that there can only be one winner given the situation, and pursues a course of action to be that winner. The purpose of the negotiation is to claim value that is, to do whatever is necessary to claim the reward, gain the lion's share, or gain the largest piece possible.
7. Not only must negotiators be able to recognize which strategy is most appropriate, but they must be able to use both approaches with equal versatility. There is no single "best", "preferred" or "right" way to negotiate; the choice of negotiation strategy requires adaptation to the situation, as

we will explain more fully in the next section on conflict. Moreover, if most negotiation issues/problems have claiming and creating values components, then negotiators must be able to use both approaches in the same deliberation.

8. Conflict can result from the strongly divergent needs of the two parties, or from misperceptions and misunderstandings. Conflict can occur when the two parties are working toward the same goal and generally want the same outcome, or when both parties want very different outcomes. Regardless of the cause of the conflict, negotiation can play an important role in resolving it effectively. In this section, we will define conflict, discuss the different levels of conflict that can occur, review the functions and dysfunctions of conflict, and discuss strategies for managing conflict effectively.
9. Productive communication declines with conflict. Parties communicate less with those who disagree with them, and more with those who agree. The communication that does occur is often an attempt to defeat, demean, or debunk the other's view or to strengthen one's own prior arguments.
10. It helps people become more accurate and realistic in their self-appraisals. Through conflict, persons take others' perspectives and become less egocentric. Conflict helps persons to believe that they are powerful and capable of controlling their own lives. They do not simply need to endure hostility and frustration but can act to improve their lives.

Chapter 2

Negotiation: Strategizing, Framing, and Planning

Overview

In this chapter, we discuss what negotiators should do before opening negotiations. Effective strategy and planning are the most critical precursors for achieving negotiation objectives. With effective planning and target setting, most negotiators can achieve their objectives; without them, results occur more by chance than by negotiator effort.

Regrettably, systematic planning is not something that most negotiators do willingly. Although time constraints and work pressures make it difficult to find the time to plan adequately, for many planning is simply boring and tedious, easily put off in favor of getting into the action quickly. It is clear, however, that *devoting insufficient time to planning is one weakness that may cause negotiators to fail*.

The discussion of strategy and planning begins by exploring the broad process of strategy development, starting with defining the negotiator's goals and objectives then moves to developing a strategy to address the issues and achieve one's goals. Finally, we address the typical stages and phases of an evolving negotiation and how different issues and goals will affect the planning process.

Learning Objectives

1. Explain the importance of setting goals for an upcoming negotiation.
2. Identify the major elements of a process for selecting a negotiation strategy and how to execute that strategy.
3. Isolate the set of tools for effectively planning for an upcoming negotiation.
4. Define the issue in the process of framing the problem

Effective strategy and planning are the most critical precursors for achieving negotiation objectives. With effective planning and goal setting, most negotiators can achieve their objectives; without them, results occur more by chance than by negotiator effort.

I. Goals – The Focus That Drives a Negotiation Strategy

The first step in developing and executing a negotiation strategy is to determine one's goals. Negotiators must anticipate what goals they want to achieve in a negotiation and focus on how to achieve those goals. Negotiators may consider substantive goals (e.g., money or a specific outcome), intangible goals (e.g., winning, beating the other party, or getting a settlement at any cost), and procedural goals (e.g., shaping the agenda or simply having a voice at the table). Effective preparation requires a thorough, thoughtful approach to these goals; negotiators should specify their goals and objectives clearly. This includes listing

all goals they wish to achieve in the negotiation, determining the priority among these goals, identifying potential multi-goal packages, and evaluating possible trade-offs among multiple goals.

A. Direct effects of goals on choice of strategy.

1. There are four important aspects to understand about how goals affect negotiations.
 - a) Wishes are not goals, especially in negotiation.
 - b) Goals are often linked to the other party's goals.
 - c) There are boundaries or limits to what goals can be.
 - d) Effective goals must be concrete, specific and measurable. If they are not, then it will be hard to:
 - (1) Communicate to the other party what we want;
 - (2) Understand what the other party wants;
 - (3) Determine whether an offer on the table satisfies our goals.
2. Goals can be intangible or procedural.
3. The criteria used to determine goals depend on your specific objectives and your priorities among multiple objectives.

B. Indirect effects of goals on choice of strategy.

1. Short-term thinking affects our choice of strategy; in developing and framing our goals, we may ignore the present or future relationship with the other party in a concern for achieving a substantive outcome only.
2. Negotiation goals that are complex or difficult to define may require a substantial change in the other party's attitude. In most cases, progress will be made incrementally, and may depend on establishing a relationship with the other party.

II. Strategy versus Tactics

A. Strategy versus Tactics.

1. A major difference between strategy and tactics is that of scale, perspective or immediacy.
2. Tactics are short-term, adaptive moves designed to enact or pursue broad strategies, which in turn provide stability, continuity, and direction for tactical behaviors.
3. Tactics are subordinate to strategy: they are structured, directed, and driven by strategic considerations.
4. Accommodation, competition, and collaboration.

- a) Accommodation is as much a win-lose strategy as competition, although it has a decidedly different image it involves an imbalance of outcomes, but in the opposite direction. (“I lose, you win” as opposed to “I win, you lose.”).
- b) Competition is distributive win-lose bargaining.
- c) Collaboration is integrative or win-win negotiation.
- d) There are drawbacks to these strategies if applied blindly, thoughtlessly or inflexibly:
 - (1) Distributive strategies tend to create “we-they” or “superiority-inferiority” patterns, which may result in a distortion of the other side’s contributions, as well as their values, needs and positions.
 - (2) If a negotiator pursues an integrative strategy without regard to the other’s strategy, then the other may manipulate and exploit the collaborator and take advantage of the good faith and goodwill being demonstrated.
 - (3) Accommodative strategies may generate a pattern of constantly giving in to keep the other happy or to avoid a fight.

III. Defining the Issue-The Process of “Framing” the Problem

A frame is the subjective mechanism through which people evaluate and make sense out of situations, leading them to pursue or avoid subsequent actions.

A. Types of Frames.

1. *Substantive*—what the conflict is about. Parties taking a substantive frame have a particular disposition about the key issue or concern in the conflict.
2. *Outcome*—a party’s predisposition to achieving a specific result or outcome from the negotiation.
3. *Aspiration*—a predisposition toward satisfying a broader set of interests or needs in negotiation.
4. *Process*—how the parties will go about resolving their dispute.
5. *Identity*—how the parties define “who they are.”
6. *Characterization*—how the parties define the other parties.
7. *Loss–gain*—how the parties define the risk or reward associated with particular outcomes.

B. How frames work in negotiation.

1. It is difficult to know what frame a party is using unless the party tells you.
2. Frames of those who hear or interpret communication may create biases of their own.

3. Linguistic analyses of negotiation transcripts provides insight into how parties define a negotiation, and how frames are used in the process:
 - a) Negotiators can use more than one frame.
 - b) Mismatches in frames between parties are sources of conflict.
 - c) Parties negotiate differently depending on the frame.
 - d) Specific frames may be likely to be used with certain types of issues.
 - e) Particular types of frames may lead to particular types of agreements.
 - f) Parties are likely to assume a particular frame because of various factors.
- C. Another approach to frames: Interests, rights, and power.
1. Ury, Brett, and Goldberg (1988) proposed an approach to framing disputes that view parties in conflict as using one of three frames:
 - a) Interests – People are often concerned about what they need, desire, or want. People talk about their “positions,” but often what is at stake is their underlying interests.
 - b) Rights – People may also be concerned about who is “right”—that is, who has legitimacy, who is correct, or what is fair.
 - c) Power – Negotiations resolved by power are sometimes based on who is physically stronger or is able to coerce the other, but more often, it is about imposing other types of costs – economic pressures, expertise, legitimate authority, and so on.
 2. The different frames are likely to lead to very different discussions between parties.
 3. The way a party approaches the problem will likely influence how the other party responds.
- D. The frame of an issue changes as the negotiation evolves.
1. The issue development approach focuses on the patterns of change (transformation) that occur in the issues as parties communicate with each other.
 - a) Several factors shape a frame, the negotiation context clearly affects the way both sides define the issue and conversations that the parties have with each other about the issues in the bargaining mix.
 - b) At least four factors can affect how the conversation is shaped:
 - (1) Negotiators tend to argue for stock issues, or concerns that are raised every time the parties negotiate.
 - (2) Each party attempts to make the best possible case for his or her preferred position or perspective.

(3) In a more “macro” sense, frames may also define major shifts and transitions in the overall negotiation.

(4) Multiple agenda items operate to shape the issue development frames.

III. Understanding the Flow of Negotiation and: Stages & Phases

There is no magic or mystery to negotiations or to what makes a master negotiator. There are 5 steps and practices that consistently work. The model presented here identifies the five stages of any negotiation in a simplified framework that helps you to analyze, absorb and apply the Best Negotiating Practices (BNPS).

The 22 Best Negotiating Practices (BNPs) principally fall into a negotiating stage – although some apply throughout the negotiating cycle and others cross over from one stage to the next.

Five Stages of a Negotiation	
Stage 1: Prepare	<ul style="list-style-type: none"> • Identify potential value • Begin to understand interests • Develop fact-base
Stage 2: Information Exchange and Validation	<ul style="list-style-type: none"> • Discovering and creating value • Assess interests • Build rapport and trust
Stage 3: Bargain	<ul style="list-style-type: none"> • Create and distribute value • Address interests • Make and manage concessions
Stage 4: Conclude	<ul style="list-style-type: none"> • Capture value • Confirm interests have been met • Thank them
Stage 5: Execute/Implement	<ul style="list-style-type: none"> • Expand value • Addressing changing interests • Strengthen relationships

IV. Getting Ready to Implement the Strategy: The Planning Process

Effective planning requires hard work in considering the ten key steps for success.

A. Defining the issues or negotiation goal.

1. Usually begins with an analysis of what is to be discussed in the negotiation.

2. The number of issues in a negotiation, along with the relationship between the negotiator and the other party, are often the primary determinant of whether one uses a distributive or integrative strategy.
 3. In any negotiation, a complete list of the issues at stake is best derived from the following sources:
 - a) An analysis of all the possible issues that need to be decided.
 - b) Previous experience in similar negotiations.
 - c) Research conducted to gather information.
 - d) Consultation with experts in that industry.
- B. Defining the major issue related to achieving the goal.
1. The number of issues in a negotiation, together with the relationship between the negotiator and the other party, are often the primary determinant of whether one uses a distributive or integrative strategy. Single-issue negotiations tend to dictate distributive negotiations because the only real negotiation issue is the price or “distribution” of that issue. In contrast, multiple-issue negotiations lend themselves more to integrative negotiations because parties can use processes such as logrolling to create issue “packages” that are mutually beneficial.
- C. Assembling the issues and defining the bargaining mix.
1. The combination of lists from each side in a negotiation determines the bargaining mix.
 2. There are two steps a negotiator can use to prioritize the issues on an agenda:
 - a) Determine which issues are most important and which are less important.
 - b) Determine whether the issues are linked together or are separate.
- D. Defining the interests.
1. Interests may be:
 - a) Substantive, that is, directly related to the focal issues under negotiation.
 - b) Process-based, that is, related to how the negotiators behave as they negotiate.
 - c) Relationship-based, that is, tied to the current or desired future relationship between the parties.
 2. Interests may also be based on intangibles of negotiation.
- E. Knowing your alternatives (BATNAs).
1. Alternatives (i.e., best alternatives to this negotiated agreement, or BATNAs) are other agreements negotiators could achieve and still meet their needs. Alternatives are very

important in both distributive and integrative processes because they define whether the current outcome is better than another possibility (with a different negotiating partner).

F. Knowing your limits, including a resistance point.

1. Good preparation requires that you establish two clear points:

- a) Resistance point – the place where you decide that you should absolutely stop the negotiation rather than continue.
- b) Alternatives – other agreements negotiators could achieve and still meet their needs. Alternatives define whether the current outcome is better than another possibility.

G. Analyze and understand the other party's goals, issues and resistance points.

1. Gathering information about the *other party* is also a critical step in preparing for negotiation. Learning the other's issues, preferences, priorities, interests, alternatives and constraints is almost as important as determining one's own.

2. What information does one party need about the other party in order to prepare effectively?

Several key pieces of background information will be of great importance, including their:

- a) Broad, overall goals and objectives.
- b) Issues and the likely bargaining mix.
- c) Interests and needs.
- d) Resistance point and alternative(s).

3. The other party's goals.

Asking the other party to discuss their goals (either at the table or before negotiations begin), or gathering data about the other party prior to negotiations, are two common ways to gather this data. Most importantly, we should attempt to understand whether the other party has the same goals as we do.

4. The other party's issues and bargaining mix.

The more the negotiator can get even a general sense of how much the other is capable of addressing and meeting the party's issues or needs, and of what issues they will bring to the bargaining table, the better we can predict how the process is likely to unfold.

5. The other party's interests and needs.

1. In addition to learning about the party's major issues and resources, we also need to get information about his or her current interests and needs (see Chapter 3). This information may be obtained through a variety of approaches:

- a) Conducting a preliminary interview, including a broad discussion of what the other party would like to achieve in the upcoming negotiations (focus on broad interests, not just issues).
 - b) Anticipating the other party's interests (as if you were "in their shoes").
 - c) Asking others who know or have negotiated with the other party.
 - d) Reading how the other party portrays himself or herself in the media.
6. The other party's resistance point and alternatives.

If the other party has a strong and viable alternative, he or she will probably be confident in negotiation, set high objectives, and be willing to push hard for those objectives. In contrast, if the other party has a weak alternative, then she or he will be more dependent on achieving a satisfactory agreement with you and be less likely to push as hard.

H. Setting one's own targets and opening bids.

After negotiators have defined the issues, assembled a tentative agenda, and consulted others as appropriate and necessary, the next step is to define two other key points: the specific target point, where one realistically expects to achieve a settlement, and the opening bid, representing the best deal one can hope to achieve.

1. Setting a target.

When setting a target – there are several principles to keep in mind:

- a) Targets should be specific, difficult but achievable, and verifiable.
- b) Target setting requires proactive thinking about one's own objectives.
- c) Target setting may require considering how to package several issues and objectives.
- d) Target setting requires an understanding of trade-offs and throwaways.

2. Setting an opening bid.

An opening bid may be the best possible outcome, an ideal solution, something even better than was achieved last time. It is easy to get overly confident, however, and to set an opening that is so unrealistic that the other party immediately laughs, gets angry, or walks away before responding. See Box 4.4 for helpful advice on the setting of an opening bid.

I. Assessing the social context of a negotiation.

1. When people negotiate in a professional context, there may be more than two parties.

- a) There may be more than two negotiators at the table. Multiple parties often lead to the formation of coalitions.

- b) Negotiators also have constituents who will evaluate and critique them.
 - c) Negotiation occurs in a context of rules – a social system of laws, customs, common business practices, cultural norms, and political cross-pressures.
2. “Field analysis” can be used to assess all the key parties in a negotiation.
- a) Who is, or should be, on the team on my side of the field?
 - b) Who is on the other side of the field?
 - c) Who is on the sidelines and can affect the play of the game? Who are the negotiation equivalents of owners, managers and strategists?
 - d) Who is in the stands? Who is watching the game, is interested in it, but can only indirectly affect what happens?
 - e) What is going on in the broader environment in which the negotiation takes place? A number of context issues can affect negotiation:
 - (1) What is the history of the relationship with the other party, and how does it affect the overall expectations they bring to this negotiation.
 - (2) What kind of a relationship with the other party is expected or desired for the future, and how do these expectations affect the current negotiation.
 - (3) How often do we expect to negotiate in the future?
 - (4) What are the deadlines or time limits?
 - (5) What are the “rules of the game” by which this agreement will be managed?
 - (6) What is common and acceptable practice in the ethical system in which the deal is being done?

J. Presenting issues to the other party.

1. Presenting and framing the issues.

Because of the breadth and diversity of issues that can be included in negotiations, it is not possible to specify all the procedures that can be used to assemble information. There are, however, some good general guides that can be used. A negotiator can ask these questions:

- a) What facts support my point of view?
- b) Whom may I consult or talk with to help me elaborate or clarify the facts?
- c) Have these issues been negotiated before by others under similar circumstances?
- d) What is the other party’s point of view likely to be?
- e) How can I develop and present the facts so they are most convincing?

2. When planning the process and structuring the context a negotiator should consider a number of elements of protocol and process.
1. The agenda to follow. Pendergast (1990) suggests five major concerns to be considered in developing a negotiation agenda:
 - a) Scope: What issue should be considered?
 - b) Sequence: In what order should those issues be addressed?
 - c) Framing: How should the issues be presented?
 - d) Packaging: Should the issues be taken one at a time, or in various groupings/packages?
 - e) Formula: Should we strive to first get an agreement on general principles, or should we immediately begin to discuss each of the issues?
2. The location of negotiation.
3. The time period of negotiation.
4. What might be done if negotiation fails?
5. How will we keep track of what is agreed to?
6. How can we modify the deal if necessary?

Summary

Planning is a critically important activity in negotiation. As we noted at the outset, however, negotiators frequently fail to plan for a variety of reasons. Effective planning allows negotiators to design a road map that will guide them to agreement. While this map may frequently need to be modified and updated as discussions with the other side proceed, and as the world around the negotiation changes, working from the map is far more effective than attempting to work without it.

We began this chapter with a basic understanding of the concepts of strategy. We then discussed the importance of setting clear goals, based on the key issues at stake.

When negotiators are able to consider and evaluate each of ten factors of protocol, they will know what they want and will have a clear sense of direction on how to proceed. This sense of direction, and the confidence derived from it, is a very important factor in affecting negotiating outcomes.

Self-test Questions

I. Fill in the Blank

1. Without effective planning and target setting, results occur more by _____ than by negotiator effort.
2. _____ strategies tend to create "we-they" or "superiority-inferiority" patterns, which often lead to distortions in judgment regarding the other side's contributions and efforts, and to distortions in perceptions of the other side's values, needs and positions.
3. _____ strategies may generate a pattern of constantly giving in to keep the other happy or to avoid a fight.
4. A _____ is the place where you decide that you should absolutely stop the negotiation rather than continue because any settlement beyond this point is not minimally acceptable.
5. When the other side raises an unexpected issue the negotiator is completely unprepared to discuss, the experienced negotiator may ask for a _____ to get information and prepare themselves on the new issue.

II. True/False Questions

1. If what we want exceeds what the other party is capable of or willing to give, we must either change our goals or end the negotiation.
2. Distributive strategies may generate a pattern of repeatedly giving in to keep the other happy or to avoid a fight.
3. A single planning process can be followed for both a distributive and an integrative process.
4. Single-issue negotiations can often be made integrative by working to decrease the number of issues.
5. In new bargaining relationships, discussions about procedural issues should occur after the major substantive issues are raised.

III. Multiple Choice Items

1. What are the most critical precursors for achieving negotiation objectives?
 - A. effective strategizing and planning
 - B. goal setting and target planning
 - C. defining frames and setting goals
 - D. framing and strategizing
 - E. none of the above

2. Which of the following is not a reason that negotiations fail?
- A. Allowing insufficient time for planning
 - B. Failing to set clear objectives
 - C. Understanding the strengths and weaknesses of their and the other party's positions
 - D. Depending on being quick and clever during negotiations
 - E. Designing a road map that will guide to an agreement
3. The less concrete and measurable goals are:
- A. the harder it is to communicate to the other party what we want
 - B. the easier it is to understand what your opponent wants
 - C. the easier it is to determine whether a particular outcome satisfies our goals
 - D. the harder it is to restate what the initial goal was
 - E. all of the above
4. Which is not a difference between strategy and tactics?
- A. Scale
 - B. Goals
 - C. Perspective
 - D. Immediacy
 - E. Adaptation
5. A strong interest in achieving only substantive outcomes tends to support which of the following strategies?
- A. collaborative
 - B. accommodating
 - C. competitive
 - D. avoidance
 - E. none of the above
6. In an accommodative negotiation, the relationships have:
- A. a short-term focus
 - B. a long-term focus
 - C. may be either short term or long term
 - D. secrecy and defensiveness
 - E. none of the above

6. Effective planning requires hard work on the following points:
- A. Defining the issues
 - B. Defining the bargaining limit
 - C. Defining interests
 - D. Defining limits and alternatives
 - E. All of the above
7. If the other party has a strong and viable alternative, he/she will
- A. be dependent on achieving a satisfactory agreement.
 - B. appear aggressive and hostile in negotiations.
 - C. set and push for high objectives.
 - D. have unlimited negotiating authority.
 - E. all of the above.
8. Does any of the following represent the point at which we realistically expect to achieve a settlement?
- A. specific target point
 - B. resistance point
 - C. alternative
 - D. asking price
 - E. none of the above
9. Reactive strategies:
- A. encourage negotiators to be more flexible and creative
 - B. can efficiently clear up confusion about issues
 - C. will lessen a negotiator's defensive posture
 - D. can make negotiators feel threatened and defensive
 - E. none of the above
10. Under which of the following questions of protocol would you find a bargaining relationship discussion about procedural issues that should occur before the major substantive ones have been raised?
- A. What agenda should we follow?
 - B. Where should we negotiate?
 - C. What is the time period of the negotiation?
 - D. What might be done if negotiation fails?

E. How will we keep track of what is agreed to?

IV. Discussion Questions

1. What are the most critical precursors for achieving negotiation objectives?
2. What are the three types of goals negotiators must anticipate to achieve in a negotiation?
3. Can wishes be goals?
4. How does the single episodic assumption affect our choice of strategy?
5. Define strategy and tactics.
6. What are the three types of initial strategies for negotiators?
7. What specific steps are entailed in effective planning?
8. What are the advantages and disadvantages of large bargaining mixes?
9. Why may bargainers want to consider giving away "something for nothing?"
10. What is the danger about making assumptions to predict the other party's negotiating behavior?

Suggested Answers

I	1.chance	2. Distributive	3. Accommodative	4. resistance point	5. recess
II	1. TRUE	2. FALSE	3. TRUE	4. FALSE	5. FALSE

III

1. A	2. C	3. A	4. B	5. C	6. C	7. C	8. A	9. D	10. E
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IV.

1. Effective strategy and planning.
2. Substantive, intangible and procedural goals.
3. Wishes may be related to interests or needs that motivate goals but they are not goals themselves.
4. Developing and framing goals in the view of a single negotiation episode allows us to ignore the relationship (and future dealings) with the other party in favor of a simplistic concern for achieving only the substantive outcome.
5. Tactics are short-term, adaptive moves designed to enact or pursue broader (or higher level) strategies, which in turn provide stability, continuity, and direction for tactical behaviors.
6. Accommodation, competition, and collaboration.
7. Defining the issues; assembling issues and defining the bargaining mix; defining interests; defining limits and alternatives; defining one's own objectives (targets) and opening bids (where to start); assessing constituents and the social context in which the negotiation will occur; analyzing the other party; planning the issue presentation and defense; defining protocol - where and when the negotiation will occur, who will be there, agenda, etc.
8. Large bargaining mixes give us more possible components and arrangements for settlement, thus increasing the likelihood that a particular package will meet both parties' needs and, therefore, increasing the likelihood of a successful settlement. At the same time, larger bargaining mixes can lengthen negotiations because there are more possible combinations of issues to consider and combining and evaluating all these mixes makes things very complex.
9. Even if an issue is unimportant or inconsequential to you, it may be valuable or attractive to another. Awareness of the actual or likely value of such concessions to the parties can considerably enrich the value that you offer to the other at little or no cost to yourself.
10. We can use the information to prepare, to alert ourselves to what might happen; but we should also act with caution and actively look for new information that confirms or denies the validity of our assumption. There is often a tendency to seek and recognize information confirming our desires and assumptions, while failing to seek or recognize "disconfirming" information that counters them.

Chapter 3

Strategy and Tactics of Distributive Bargaining

Overview

The basic elements of a distributive bargaining situation, also referred to as competitive or win-lose bargaining, will be discussed. In a distributive bargaining situation, the goals of one party are usually in fundamental and direct conflict with the goals of the other party. Resources are fixed and limited, and both parties want to maximize their share of the resources. One important strategy is to guard information carefully – one party tries to give information to the other party only when it provides a strategic advantage. Distributive bargaining is basically a competition over who is going to get the most of a limited resource.

There are two reasons that every negotiator should be familiar with distributive bargaining. First, some interdependent situations that negotiators face are distributive, and to do well in them negotiators need to understand how they work. Second, because many people use distributive bargaining strategies and tactics almost exclusively, all negotiators will find it important to know how to counter their effects.

Some of the tactics discussed in the chapter will also generate ethical concerns. Some tactics are ethically accepted behavior whereas other tactics are generally considered unacceptable.

Learning Objectives

1. Describe how the distributive bargaining process works and learn the fundamental strategies of distributive bargaining.
2. Identify the four important tactical tasks for a negotiator in a distributive bargaining situation.
3. Discuss the strategic impact of positions taken during a negotiation and the role of concessions.
4. Elaborate the role of commitment in distributive bargaining.
5. Explain closing the agreement.
6. Isolate the typical hardball negotiation tactics and enable to counter them.
7. Call the distributive bargaining skills applicable to integrative negotiations.

I. The Distributive Bargaining Situation

A. Distributive bargaining strategies and tactics are useful when a negotiator wants to maximize the value obtained in a single deal, when the relationship with the other party is not important, and when they are at the claiming value stage of negotiations.

1. The *target point* is a negotiator's optimal goal, or the point at which she/he would like to conclude negotiations. The optimal goal is also referred to as resistance.

2. The *resistance point* is a negotiator's bottom line – the point beyond which a person will not go. This is not known to the other party and should be kept secret. The resistance point is a high price for the buyer and a low price for the seller.
 3. The *asking price* is the initial price set by the seller, or the first number quoted by the seller.
 4. Both parties to a negotiation should establish their starting, target, and resistance points before beginning a negotiation.
 5. The spreads between the resistance points, called the bargaining range, settlement range, or zone of potential agreement are very important. It is the area where actual bargaining takes place. When the buyer's resistance point is above the seller's he is minimally willing to pay more than she is minimally willing to sell for, there is a positive bargaining range.
- B. The role of alternatives to a negotiated agreement.
1. Alternatives are important because they give negotiators the power to walk away from any negotiation when the emerging deal is not very good. a) The role of alternatives are two fold:
 - (1) Reach a deal with the other party.
 - (2) No settlement at all.
- C. Settlement point.
1. For agreement to occur, both parties must believe that the settlement is the best that they can get (within a positive bargaining range).

II. Fundamental Strategies

The primary objective in distributive bargaining is to maximize the value of the current deal. In the current example, the buyer has four fundamental strategies available:

1. To push for a settlement close to the seller's (unknown) resistance point, thereby yielding the largest part of the settlement range for the buyer. The buyer may attempt to influence the seller's view of what settlements are possible by making extreme offers and small concessions.
2. To convince the seller to change his resistance point by influencing the seller's beliefs about the value of the unit (e.g., by telling him that the unit is overpriced), and thereby increase the bargaining range.
3. If a negative settlement range exists, to convince the seller to reduce his resistance point to create a positive settlement zone or to change her own resistance point to create an overlap.

Thus, Seller could be persuaded to accept a lower price, or buyer could decide she has to pay more than she wanted to.

4. To convince the seller to believe that this settlement is the best that is possible—not that it is all he can get, or that he is incapable of getting more, or that the buyer is winning by getting more. The distinction between a party believing that an agreement is the best possible (and not the other interpretations) may appear subtle and semantic. However, in getting people to agree it is important that they feel as though they got the best possible deal. Ego satisfaction is often as important as achieving tangible objectives (recall the discussion of tangibles and intangibles in Chapter 1).

In all these strategies, the buyer is attempting to influence the seller's perceptions of what is possible through the exchange of information and persuasion. Regardless of the general strategy taken, two tasks are important in all distributive bargaining situations: (1) discovering the other party's resistance point, and (2) influencing the other party's resistance point.

- a. Discovering the other party's resistance point.

Learning about the other party's resistance point, target, motives, feelings of confidence, and so on, the more likely you will be able to have a favorable settlement. You do not want the other party to know your resistance point. Because each party wants to know the other's resistance point, communication can become complex.

- b. Influencing the other party's resistance point.

The following factors are important in attempting to influence the other party's resistance point:

- i. The value the other attaches to a particular outcome;
- ii. The costs the other attaches to delay or difficulty in negotiations;
- iii. The cost the other attaches to having the negotiations aborted.

Understanding your own situation, and the value of your particular outcome, will help you to understand the other person's. Four major positions show how this affects the distributive bargaining process:

- a) The higher the other party's estimate of *your* cost of delay or impasse, the stronger the other party's resistance point will be;
- b) The higher the other party's estimate of his or her *own* cost of delay or impasse, the weaker the other party's resistance point will be;
- c) The less the other party values an issue the lower the resistance point will be;

- d) The more the other party believes that you value an issue the lower their resistance point will be.

III. Tactical Tasks

A. There are four important tactical tasks for a negotiator in a distributive situation to consider:

1. Assess the other party's target, resistance point, and cost of terminating negotiations
 - a) Indirect assessment means determining what information an individual likely used to set target and resistance point and how he or she interpreted this information.
 - (1) Indirect indicators can be a source to assess the other party's resistance point, and can include observations, consulting documentation and publications, speaking to experts.
 - b) Direct assessment, in bargaining, is where the other party does not usually reveal accurate and precise information about his or her outcome values, resistance points, and expectations.
2. Manage the other party's impression of the negotiator's target, resistance point, and cost of terminating negotiation, while also guiding him or her to form a preferred impression of them.
 - a) Screening activities – say as little as possible. Instead, use words to ask the other negotiator questions.
 - b) Direct action to alter impressions – through selective presentation:
 - (1) Negotiators reveal only the facts necessary to support their case;
 - (2) Lead the other party to form the desired impression of their resistance point or to open up new possibilities for agreement that are more favorable to the presenter than those that currently exist;
 - (3) Emotional reaction to facts, proposals, and possible outcomes;
 - (i) There are several hazards in taking direct action: perception of dishonesty, which can lead to the other party conceding on minor points to defeat the maneuverer at his or her own game.
3. Modify the other party's perception of his or her own target, resistance point, and cost of terminating negotiation.
4. Manipulate the actual costs of delaying or terminating negotiations through:
 - a) *Planning disruptive action*: Increasing the costs of not reaching a negotiated agreement;

- b) *Forming an alliance with outsiders* who can somehow influence the outcome of the negotiation;
- c) *Manipulating the scheduling of negotiations* can put the other party at a considerable disadvantage by enhancing your position and protect you from the other party's actions.

IV. Positions Taken During Negotiation

A. Opening offers.

1. Making the first offer is advantageous to the negotiator making the offer because he or she can anchor a negotiation. Exaggerating an opening offer is advantageous because:
 - a) It gives the negotiator room for movement thereby giving him or her time to learn about the other party's priorities;
 - b) May create an impression in the other party's mind that:
 - (1) There is a long way to go before a reasonable settlement will be achieved;
 - (2) A greater number of concessions will have to be made to find a common zone of potential agreement (ZOPA);
 - (3) The other may have incorrectly estimated his or her own resistance point.
 2. Two disadvantages to exaggerating an offer include:
 - a) Potential rejection by the other party;
 - b) The perception of a "tough" attitude that can harm a long-term relationship.
- B. An *opening stance* is the attitude the negotiator will adopt during a negotiation (competitive, belligerent, moderate, etc.). To communicate effectively, a negotiator should try and send a consistent message through both the opening and stance.
- C. Usually met with a counteroffer, *initial concessions* define the initial bargaining range; they communicate to the other party how you intend to negotiate.
- D. *Role of concessions* – Negotiations would not exist without them. There is ample data to show that parties feel better about a settlement when the negotiation involved a progression of concessions than when it didn't.
- E. The *pattern of concessions* made during a negotiation contains valuable information, though not always easy to interpret.
- F. *Final offers* – a negotiator wants to convey the message that there is no further room for movement. One way to accomplish this is to make the last concession more substantial.

G. Commitment

The goal of any negotiation is to eventually reach an agreement with the other side of the table. It's how we are able to reach that agreement despite all of the negotiation styles and negotiating techniques that are being used that can at times be so very challenging. When we talk with the really good negotiators, they always have the same thing to say: getting that big final commitment can only be achieved by **getting a series of smaller commitments**. Now all we have to do is figure out how to accomplish this.

So, prior to any commencing any negotiation, it is important to know what you may and may not commit to. If you are a seller, you need to know what your organization's WAP (walk away price) is, regardless of subsidiary terms and conditions. If your walk away price is lower than the buyer's, there is room for negotiation. If not, there will be no deal. Remember, what you agree to in the negotiation will be reflected in subsequent legal paperwork, so you must be certain that your organization can deliver. It is important to determine your negotiating partner's absolute limits (such as WAP), work out what areas of another company's offerings may be subject to flexibility (open to negotiation), and which are fixed (absolute limit). An expert negotiator ensures that all parties leave the room feeling happy with the outcome. In sport, there is only win-lose. The Expert negotiator aims to secure a Win-Win.

V. Closing the Deal

- A. *Provide alternatives* – rather than making a single final offer, provide two or three alternative packages for the other party that are roughly equal in value.
- B. *Assume the close* – having a general discussion about the needs and positions of the buyer, then act as if the decision to purchase something has already been made.
- C. *Split the difference* – the most popular tactic used; used when an agreement is close, suggesting that the parties split the difference.
- D. *Exploding offers* – An offer that contains an extremely tight deadline in order to pressure the other party to agree quickly.
 - 1. The purpose of an exploding offer is to convince the other party to accept the settlement and to stop considering outcomes.
- E. *Sweeteners* – negotiators need to include the sweetener in their negotiation plans or they may concede too much during the close.

VI. Hardball Tactics

- A. Dealing with typical hardball tactics – there are several choices about how to respond.
 - 1. Discuss them.

2. Ignore them.
3. Respond in kind.
4. Co-opt the other party.

B. Typical hardball tactics.

1. Good cop/bad cop.
 - a) Weaknesses:
 - (1) Relatively transparent;
 - (2) Difficult to enact – requires a lot of energy toward making the tactic work.
2. Lowball/highball.
 - a) Risk in using this tactic:
 - (1) The other party will think it is a waste of time to negotiate and stop the process.
 - b) Strategies for using this tactic:
 - (1) Insisting that the other party start with a reasonable opening offer and refusing to negotiate further until he or she does;
 - (2) Stating your understanding of the general market value of the item being discussed, supporting it with facts and figures, thus showing the other party that you won't be tricked;
 - (3) Threatening to leave the negotiation, showing dissatisfaction in the other party in using this tactic;
 - (4) Responding with an extreme counter offer.
3. Bogey.
 - a) Negotiators use this tactic to pretend that an issue is of little or no importance to them, when it actually is quite important.
4. The nibble.
 - a) Weaknesses in using the nibble:
 - (1) The party using the nibble did not bargain in good faith.
 - b) Combating the nibble tactic:
 - (1) Respond with each nibble with the question “What else do you want?”;
 - (2) Have your own nibbles prepared for exchange.
5. Chicken.

- a) Combining a large bluff with a threatened action to force the other party to “chicken out” and give them what they want.
 - b) Weakness of chicken tactic:
 - (1) Turns the negotiation into a serious game in which one or both parties find it difficult to distinguish reality from postured negotiation positions;
 - (2) Difficult to defend against.
6. Intimidation
- a) An attempt to force the other party to agree by means of an emotional ploy. Negotiators intimidate by:
 - (1) Using anger;
 - (2) Increasing the appearance of legitimacy;
 - (3) Guilt.
7. Aggressive behavior.
- a) Aggressive tactics include:
 - (1) Relentless push for further concessions;
 - (2) Asking for the best offer early in negotiations;
 - (3) Asking the other party to explain and justify his/her proposals.
8. Snow job.
- a) Snow jobs occur when negotiators overwhelm the other party with so much information that he/she has trouble determining which facts are real or important, and which are distractions.

Summary

This chapter examined the basic structure of competitive or distributive bargaining situations and some of the strategies and tactics used in distributive bargaining. Distributive bargaining begins with setting your own opening, target, and resistance points. All points are important, but the resistance points are the most critical. The spread between the parties’ resistance points defines the bargaining range.

It is rare that a negotiation includes only one item; more typically, there is a set of items, referred to as a bargaining mix. Each item in a bargaining mix can have opening, target, and resistance points. The bargaining mix may provide opportunities for bundling issues together, trading off across issues, or displaying mutually concessionary behavior.

Examining the structure of distributive bargaining reveals many options for a negotiator to achieve a successful resolution; most of which fall within two broad efforts: to influence the other party's belief about what is possible and to learn as much as possible about the other party's position, particularly about the resistance points. The negotiator's basic goal is to reach a final settlement as close to the other party's resistance point as possible. Negotiators work to gather information about the opposition and its positions; to convince members of the other party to change their minds about their ability to achieve their own goals; and to promote their own objectives as desirable, necessary, or even inevitable.

Distributive bargaining is basically a conflict situation, wherein parties seek their own advantage, in part through concealing information, attempting to mislead, or using manipulative actions. All these tactics can easily escalate interaction from calm discussion to bitter hostility. Yet negotiation is the attempt to resolve a conflict without force, without fighting. Further, to be successful, both parties to the negotiation must feel at the end that the outcome was the best that they could achieve and that it is worth accepting and supporting. Effective distributive bargaining is a process that requires careful planning, strong execution, and constant monitoring of the other party's reactions.

Self-test Questions

I. Fill in the Blank

1. Distributive bargaining is basically a competition over who is going to get the most of a _____.
2. Whether or not one or both parties in a distributive bargaining situation achieve their objectives will depend upon the _____ and _____ they employ.
3. If one side is not prepared to make concessions, the other must ___ or the negotiations will _____.
4. The _____ tactic occurs when negotiators overwhelm the other party with so much information that they have trouble determining which information is real or important.
5. _____ is a conflict situation wherein parties seek their own advantage through tactics including concealing information, attempting to mislead or using manipulative actions.

II. True/False Questions

1. Anything outside the bargaining range will be summarily rejected by one of the negotiators.
2. In "calculated incompetence," the negotiator is intentionally given false or misleading information to reveal to the other party.
3. Studies indicate that negotiators who make low or modest opening offers get higher settlements than do those who make extreme opening offers.
4. Hardball tactics are infallible if used properly.
5. The best response to the chicken tactic is to challenge the other party by responding with one's own chicken tactic, thereby calling the other's bluff.

III. Multiple Choice Items

1. Distributive bargaining strategies
 - A. are the most efficient negotiating strategies to use.
 - B. are used in all interdependent relationships.
 - C. are useful in maintaining long term relationships.
 - D. can cause negotiators to ignore what the parties have in common.
 - E. None of the above describes distributive bargaining strategies.
2. The target point is the
 - A. point at which a negotiator would like to conclude negotiations.
 - B. negotiator's bottom line.
 - C. first offer a negotiator quotes to his opponent.
 - D. initial price set by the seller.

- E. None of the above describes the target point.
3. The objective of both parties in distributive bargaining is to obtain as much of which of the following as possible?
- A. bargaining range
 - B. resistance point
 - C. target point
 - D. bargaining mix
 - E. None of the above.
4. The more you can convince the other party that your costs of delay or aborting negotiations are _____, the more modest will be the other's resistance point.
- A. high
 - B. modest
 - C. extreme
 - D. low
 - E. None of the above.
5. A large majority of agreements in distributive bargaining are reached when the deadline is
- A. near.
 - B. flexible.
 - C. past.
 - D. undefined.
 - E. None of the above.
6. The opening stance is
- A. another name for the first round of concessions.
 - B. the first price that a buyer quotes to a seller.
 - C. the attitude to adopt during the negotiation.
 - D. a package of concessions.
 - E. All of the above describe the opening stance.
7. The bargaining range is defined by
- A. the opening stance and the initial concession.
 - B. the initial round of concessions.
 - C. the bargaining mix and the opening stance.
 - D. the opening offer and the counteroffer.

- E. The bargaining range is defined by all of the above.
8. What statement about concessions is false?
- A. Concessions are central to negotiations.
 - B. Concessions is another word for adjustments in position.
 - C. Concession making exposes the concession maker to some risk.
 - D. Reciprocating concessions is a haphazard process.
 - E. All of the above statements are true.
9. When successive concessions get smaller, the most obvious message is that
- A. the negotiator is reaching the fatigue point.
 - B. the resistance point is being approached.
 - C. the concession maker's position is weakening.
 - D. the negotiator has passed the resistance point.
 - E. None of the above.
10. The negotiator's basic strategy is to
- A. get information about the opposition and its positions.
 - B. reach the final settlement as close to the other's resistance point as possible.
 - C. convince members of the other party to change their minds about their ability to achieve their own goals.
 - D. promote his or her own objectives as desirable, necessary, and inevitable.
 - E. All of the above.

IV. Discussion Question Items

1. Define distributive bargaining.
2. List two situations when distributive bargaining strategies are useful.
3. How can a negotiation that begins with a negative bargaining range be resolved?
4. What can happen when one or both parties do not think they got the best agreement possible?
5. Define bargaining mix.
6. What are the four important tactical tasks for a negotiator in a distributive bargaining situation?
7. What are the three ways to manipulate the costs of delay in negotiation?
8. What are the disadvantages of making a more extreme opening offer?
9. What are the risks involved when using hardball tactics?
10. What are the strategies for responding to hardball tactics?

Suggested Answers

I	1. limited resource	2.Strategies; tactics	3. capitulate; deadlock	4. snow job	5.Distributive bargaining
II	1. TRUE	2. FALSE	3. FALSE	4. FALSE	5. FALSE

III

1. D	2. A	3. B	4. D	5. A	6. C	7. D	8. D	9. B	10. B
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IV.

1. A competition over who is going to get the most of a limited resource (often money).
2. When a negotiator wants to maximize the value obtained in a single deal and when the relationship with the other party is not important.
3. If one or both parties are persuaded to change their resistance points, or if someone else forces a solution upon them that one or both parties dislike.
4. One party or the other may try to get out of the agreement later or try to recoup losses or get even.
5. The package of issues for negotiation.
6. (1) Assess the other party's outcome values and the costs of terminating negotiations; (2) manage the other party's impression of one's own outcome values; (3) modify the other party's perception of his or her own outcome values; (4) manipulate the actual costs of delaying or aborting negotiations.
7. (1) Plan disruptive action; (2) ally with outsiders; (3) manipulate the scheduling of negotiations.
8. It may be summarily rejected by the other party, communicates an attitude of toughness that may be harmful to long-term relationships.
9. Harm to reputation, Losing the deal, Negative publicity, Dealing with the other party's revenge.
10. Ignore them, discuss them, respond in kind, co-opt the other party, preparation, familiarity with hardball tactics, identification and discussing the tactics, halting the negotiation process, team negotiations.

Chapter 4

Strategy and Tactics of Integrative Negotiation

Overview

Integrative negotiation – variously known as cooperative, collaborative, win-win, mutual gains, or problem solving – is the focus of this chapter. In distributive bargaining, the goals of the parties are initially at odds – or at least appear that way to some or all of the parties. The belief is that there is a limited, controlled amount of key resources to be distributed and both parties may want to be the winner. Both may want to win on the same dimension, with their goals being mutually exclusive which leads to conflict. In integrative negotiations the goals of the parties are not mutually exclusive. If one side achieves its goals, the other is not necessarily precluded from achieving its goals. One party's gain is not necessarily at the other party's expense. The fundamental structure of an integrative negotiation situation is such that it allows both sides to achieve their objectives. A description of the efforts and tactics by which negotiators discover these alternatives accounts for the major part of this chapter. Our descriptions will draw heavily on the writings of several authors who have studied the integrative process in great detail. In addition, we will note recent research findings that have affirmed the validity of particular strategies and tactics.

Learning Objectives

1. Describe how the integrative negotiation process works and learn the fundamental strategies of integrative negotiation.
2. Identify and understand key steps in the integrative negotiation process.
3. Isolate the factors that facilitate successful integrative negotiation.
4. Elaborate why integrative negotiation is difficult to achieve.

I. What Makes Integrative Negotiation Different?

For a negotiation to be characterized as integrative, negotiators must also practice these requisite behaviors and perspectives:

- Focus on commonalities rather than differences.
- Attempt to address needs and interests, not positions.
- Commit to meeting the needs of all involved parties.
- Exchange information and ideas.
- Invent options for mutual gain.
- Use objective criteria for standards of performance.

II. An Overview of the Integrative Negotiation Process

- A. Creating and choosing a free flow of information promotes the development of good integrative solutions.
 - 1. Negotiators must be willing to reveal their true objectives and to listen to each other carefully.
 - 2. Willingness to share information is not a characteristic of distributive bargaining situations, in which the parties distrust one another, conceal and manipulate information, and attempt to learn about the other for their own competitive advantage.
- B. Attempting to understand the other negotiator's real needs and objectives.
 - 1. Understanding the other's needs, realizing the other party's priorities are not the same as your own, can stimulate more exchange of information, have a better understanding of the nature of the negotiation, and achieve higher joint profits.
- C. Emphasizing the commonalities between the parties and minimizing the differences.
 - 1. To sustain a free flow of information and an effort to understand the other's needs and objectives, negotiators may require a different outlook or frame of reference.
 - 2. Individual goals may need to be refined through collaborative efforts directed toward a collective goal. At times the collective goal is clear and obvious, and other it is not clear or easy to keep in site.
- D. Searching for solutions that meet the needs and objectives of both sides.
 - 1. The success of integrative negotiation depends on the search for solutions that meet the needs and objectives of both sides.
 - 2. In this process, negotiators must be firm but flexible.
 - 3. A low level of concern for the other's objectives may drive one of two forms of behavior.
 - a) Making sure that what the other obtains does not take away from one's own accomplishments.
 - b) Attempting to block the other from obtaining his or her objectives because of a strong desire to win or to "defeat the opponent."

III. Key Steps in the Integrative Negotiation Process

Pareto efficiency: The goal of creating value is to push the claiming value line to a point where there would be "no agreement that would make any party better off without decreasing the outcomes to any other party."

There are four major steps in the negotiation process:

Step 1: Identify and define the problem.

1. This is a critical step for integrative negotiation because it sets broad parameters regarding what the negotiation is “about” and provides an initial framework for approaching the discussion.
2. Should be comprehensive enough to capture complexities of the situation.
 - a) Define the problem in a way that is mutually acceptable to both sides.
 - b) State the problem with an eye toward practicality and comprehensiveness.
 - c) State the problem as a goal and identify the obstacles to obtain this goal.
 - d) Depersonalize the problem.
 - e) Separate the problem definition from the search for solutions.

Step 2: Understand the problem and surface interests and needs.

1. Types of interests:
 - a) Substantive interests – relate to the focal issues under negotiation – economic and financial issues.
 - b) Process interests – related to the way a dispute is settled. They can be both intrinsic and instrumental.
 - c) Relationship interests – one or both parties value their relationship with each other and do not want to take actions that will damage it.
 - (1) Intrinsic relationship – parties value the relationship both for its existence and for the pleasure or fulfillment that sustaining it creates.
 - (2) Instrumental relationship – parties derive substantive benefits from the relationship and do not wish to endanger future benefits by souring it.
 - d) Interests in principle – principles deeply held by the parties and serve as the dominant guides to their actions.
 - (1) Some principles include: concerning what is fair, what is right, what is acceptable, what is ethical.
2. Some observations on interests.
 - a) There is almost always more than one type of interest underlying a negotiation.
 - b) Parties can have different types of interests at stake.
 - c) Interests often stem from deeply rooted human needs or values.
 - d) Interests can change.

- e) Surfacing interests.
- f) Surfacing interests is not always easy or to one's best advantage.
- g) Focusing on interests can be harmful to a group of negotiators whose consensus on a particular issue is built around a unified position rather than a more generalized set of interests.

Step 3: Generate alternative solutions to the problem.

1. Inventing options: generating alternative solutions by redefining the problem or problem set.
 - a) Logroll – successful logrolling requires the parties to establish (or find) more than one issue in conflict; the parties then agree to trade off among these issues so that one party achieves a highly preferred outcome on the first issue and the other person achieves a highly preferred outcome on the second issue.
 - b) Expand and modify the resource pie – add resources in such a way that both sides can achieve their objectives.
 - c) Use nonspecific compensation – allow one person to obtain his objectives and pay off the other person for accommodating his interests.
 - d) Cut the costs for compliance – one party achieves her objectives and the other's costs are minimized if he agrees to go along.
 - e) Find a bridge solution – when the parties are able to invent new options that meet all their respective needs they have created a bridge solution. Successful bridging requires a fundamental reformulation of the problem so that the parties are not discussing their positions but disclosing information that will satisfy needs.
 - f) Superordination – when "the differences in interest that gave rise to the conflict are superseded or replaced by other interests."
 - g) Compromise – compromises are not considered to be a good integrative strategy except for circumstances where parties are very entrenched and it is unlikely that a more comprehensive agreement is possible.
2. Generating alternative solutions to the problem as given.
 - a) Brainstorming – generating as many solutions to the problem as possible. The following rules should be observed when engaging in brainstorming:
 - a) Avoid judging or evaluating solutions.
 - b) Separate the people from the problem.

- c Be exhaustive in the brainstorming process.
 - d Ask outsiders.
- b) Surveys – asking a large number of people to list all possible solutions they can imagine.
 - c) Electronic brainstorming – A facilitator uses a series of questions to guide input from participants, who type their anonymous responses into a computer.

Step 4: Evaluate those alternatives and select among them.

1. Narrow the range of solution options – focus on those that one or more negotiators strongly support.
2. Evaluate solutions on the basis of quality, standards, and acceptability – how good are the solutions? How acceptable are they to those who have to implement them?
3. Agree to the criteria in advance of evaluating options – this can be helpful in narrowing or selecting options.
4. Be willing to justify personal preferences.
5. Be alert to the influence of intangibles in selecting options – it is good practice to help the other party identify intangibles and make them public as part of the evaluation process.
6. Use subgroups to evaluate complex options.
7. Take time out to cool off.
8. Explore different ways to logroll.
 - a) *Explore differences in risk preference* – it is possible to create a package that recognizes differences in risk preferences.
 - b) *Explore differences in expectations* about the likelihood of future events. This can permit the parties to invent a solution that addresses the needs of both.
 - c) *Explore differences in time preferences* – invent solutions that address the parties' preference of either short-term needs or long-term rewards.
9. Keep decisions tentative and conditional until all aspects of the final proposal are complete.
10. Minimize formality and record keeping until final agreements are closed.

IV. Factors That Facilitate Successful Integrative Negotiation

A. Some common objective or goal.

1. A *common goal* is one that all parties share equally, each one benefiting in a way that would not be possible if they did not work together.
2. A *shared goal* is one that both parties work toward but that benefits each party differently.

3. A *joint goal* is one that involves individuals with different personal goals agreeing to combine them in a collective effort.

B. Faith in one's problem-solving ability.

1. Parties who believe they can work together are more likely to do so.
2. Expertise in the focal problem area strengthens the negotiator's understanding of the problem's complexity, nuances, and possible solutions.
3. Expertise increases both the negotiator's knowledge base and his or her self-confidence, both of which are necessary to approach the problem at hand with an open mind.
4. Direct experience in negotiation increases the negotiator's sophistication in understanding the bargaining process and approaching it more creatively.
5. There is also evidence that knowledge of integrative tactics leads to an increase in integrative behavior.

C. A belief in the validity of one's own position and the other's perspective.

1. Integrative negotiation requires negotiators to accept both their own and the other's attitudes, interests, and desires as valid.
2. One must believe in the validity of your own perspective—that what you believe is worth fighting for and should not be compromised.

D. The motivation and commitment to work together.

1. For integrative negotiation to succeed, the parties must be motivated to collaborate rather than compete.
2. Motivation and commitment to problem solving can be enhanced in several ways:
 - a) The parties can come to believe that they share a common fate.
 - b) The parties can demonstrate to each other that there is more to be gained by working together than by working separately.
 - c) The parties can engage in commitments to each other before the negotiations begin. Such commitments have been called *presettlement settlements* and are distinguished by three major characteristics:
 - (1) The settlement results in a firm, legally binding written agreement between the parties.
 - (2) The settlement occurs in advance of the parties undertaking full-scale negotiations, but the parties intend that the agreement will be replaced by a more clearly delineated long-term agreement which is to be negotiated.

(3) The settlement resolves only a subset of the issues on which the parties disagree and may simply establish a framework within which the more comprehensive agreement can be defined and delineated.

d) Create an umbrella agreement that provides a framework for future discussions.

Umbrella agreements manage three negotiation challenges:

(1) Allow flexibility when the relationship is evolving.

(2) Provide flexibility for claiming value when the actual future gains are not known at the time.

(3) Can be used when all the issues and contingencies have yet to be identified but the parties know they wish to work together.

E. Trust.

1. Mistrust inhibits collaboration.

2. Generating trust is a complex, uncertain process that depends in part on how the parties behave and in part on the parties' personal characteristics.

3. To develop trust effectively, each negotiator must believe that both he/she and the other party choose to behave in a cooperative manner.

F. Clear and accurate communication.

1. Negotiators must be willing to share information about themselves, for example, revealing what they want and why.

2. Negotiators must understand the communication, or meaning each party attaches to their statements.

G. An understanding of the dynamics of integrative negotiation.

1. Several studies indicate that training in integrative negotiation enhances the ability of the parties to successfully pursue the process.

Summary

A high level of concern for both sides achieving their own objectives propels a collaborative, problem-solving approach. Negotiators frequently fail at integrative negotiation because they fail to perceive the integrative potential of the negotiating situation. Successful integrative negotiation requires several processes. First, they must create a free flow of information and an open exchange of ideas. Second, the parties must understand each other's true needs and objectives. Third, they must focus on their similarities, emphasizing their commonalities rather than their differences. Finally, they must engage in a search for

solutions that meet the goals of both sides. This is a very different set of processes from those in distributive bargaining.

The four key steps in the integrative negotiation process are identifying and defining the problem, identifying interests and needs, generating alternative solutions, and evaluating and selecting alternatives. Various factors facilitate successful integrative negotiation. First, the process will be greatly facilitated by some form of common goal or objective. The goal may be one that the parties both want to achieve, one they want to share, or one they could not possibly attain unless they worked together. Second, they must have faith in their problem-solving ability. Third, the parties must be willing to believe that the other's needs are valid. Fourth, they must share a motivation and commitment to work together to make their relationship a productive one. Fifth, they must also be able to trust each other and to work hard to establish and maintain that trust. Sixth, there must be clear and accurate communication about what each one wants and an effort to understand the other's needs. Finally, there must be an understanding of the dynamics of integrative negotiations.

Self-test Questions

I. Fill in the Blank

1. Those wishing to achieve integrative results find that they must manage the _____ and _____ of the negotiation in order to gain the willing cooperation and commitment of the other party.
2. Effective _____ exchange promotes the development of good integrative solutions.
3. The strategy of _____ is effective not only in inventing options, but also as a mechanism to combine options into negotiated packages.
4. People who are interdependent but do not trust each other will act _____ or _____.
5. When there are strong negative feelings or when one or more parties are inclined to dominate, negotiators may create _____, _____ procedures for communication.

II. True/False Questions

1. In integrative negotiation, the goals of the parties are mutually exclusive.
2. Parties should enter the integrative negotiation process with few preconceptions about the solution.
3. "Expanding the pie" as a method of generating alternative solutions is a complex process, as it requires much more detailed information about the other party than do other methods.
4. In brainstorming, participants are urged to be spontaneous, even impractical, and to censor anyone's ideas (including their own).
5. For successful integrative negotiation to occur, each party should be as interested in the objectives and problems of the other side as each is in his own.

III. Multiple Choice Items

1. Which of the following is not a characteristic of a successful integrative negotiator?
 - A. honesty and integrity
 - B. an abundance mentality
 - C. seeking mutual exclusivity
 - D. systems orientation
 - E. superior listening skills
2. Which of the following processes is central to achieving almost all integrative agreements?

- A. moderating the free flow of information to ensure that each party's position is accurately stated
 - B. exchanging information about each party's position on key issues
 - C. emphasizing the commonalties between the parties
 - D. searching for solutions that maximize the substantive outcome for both parties
 - E. All of the above processes are central to achieving integrative agreements.
3. Substantive interests
- A. are the interests that relate to the focal issues under negotiation.
 - B. are related to the way we settle the dispute.
 - C. mean that one or both parties value their relationship with each other and do not want to take actions that will damage the relationship.
 - D. regard what is fair, what is right, what is acceptable, what is ethical, or what has been done in the past and should be done in the future.
 - E. All of the above relate to substantive interests.
4. In nonspecific compensation
- A. resources are added in such a way that both sides can achieve their objectives.
 - B. one party achieves his/her objectives and the other's costs are minimized if he/she agrees to go along.
 - C. the parties are able to invent new options that meet each sides' needs.
 - D. one person is allowed to obtain his/her objectives and "pay off" the other person for accommodating his interests.
 - E. All of the above are related to nonspecific compensation.
5. "What are the other's real underlying interests and needs?" is a question that can facilitate the _____ process.
- A. expanding the pie
 - B. logrolling
 - C. nonspecific compensation
 - D. bridging and superordination
 - E. The question should not be used with any of the above processes.
6. When confronted with complex problems, or a large number of alternative options, which of the following steps is necessary?

- A. broaden the range of solution options
 - B. evaluate solutions on the basis of quality, standards, and acceptability
 - C. decide on criteria while evaluating options
 - D. maintain a focus on the influence of tangibles in selecting options
 - E. All of the above steps should be used when confronted with complex problems.
7. A common goal is one in which
- A. all parties share the result equally.
 - B. the parties work toward a common end but benefit differently.
 - C. all parties work together to achieve some output that will be shared.
 - D. individuals with different personal goals agree to combine them in a collective effort.
 - E. All of the above are characteristics of a common goal.
8. Which of the following is not necessary for integrative negotiation to succeed?
- A. Each party should be as interested in the objectives and problems of the other as each is in his/her own)each must assume responsibility for the other's needs and outcomes as well as for his/her own.
 - B. The parties must be committed to a goal that benefits both of them rather than to pursuing only their own ends.
 - C. The parties must be willing to adopt interpersonal styles that are more congenial than combative, more open and trusting than evasive and defensive, more flexible (but firm) than stubborn (but yielding).
 - D. Needs have to be made explicit, similarities have to be identified, and differences have to be recognized and accepted.
 - E. All of the above are essential for integrative negotiation to succeed.
9. Which of the following is a major characteristic of a presettlement settlement?
- A. The settlement results in a firm, legally binding written agreement between the parties.
 - B. It occurs in advance of the parties undertaking a full-scale negotiation.
 - C. The parties intend that the agreement will be replaced by a more clearly delineated longterm agreement which is to be negotiated.
 - D. It resolves only a subset of the issues on which the parties disagree, and may simply establish a framework within which the more comprehensive agreement can be defined and delineated.

- E. All of the above are characteristics of a presettlement settlement.
10. When people do not trust each other they are more than likely to engage in which of the following behaviors?
- A. promoting collaboration
 - B. communicating accurately
 - C. positional bargaining
 - D. committing to a joint solution
 - E. none of the above

IV. Discussion Questions

1. What must an experienced negotiator manage to achieve successful integrative outcomes?
2. What are the four major steps in the integrative negotiation process?
3. How should integrative negotiators separate the problem definition from the search for solutions?
4. What two approaches can be used to generate alternative solutions?
5. What tactics can be used to communicate firm flexibility to an opponent?
6. What guidelines should be used in evaluating options and reaching a consensus?
7. Why should criteria be decided in advance of evaluating options?
8. What are the potential pitfalls of voting on final agreements or packages?
9. What are the preconditions necessary for the integrative negotiation process?
10. How can motivation and commitment to problem solving be enhanced?

Suggested Answers

I	1. context; process	2. Information	3. logrolling	4.tentatively; defensively	5.formal; structured
II	1. FALSE	2. TRUE	3. FALSE	4. FALSE	5. FALSE

III

1. B	2. C	3. A	4. D	5. D	6. B	7. B	8. A	9. E	10. C
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IV.

1. Negotiators must work hard to overcome inhibiting factors and search assertively for common ground. Those wishing to achieve integrative results find that they must manage both the context and the process of the negotiation in order to gain the cooperation and commitment of all parties.
2. Identifying and defining the problem, surfacing interests and needs, generating alternative solutions to the problem, and evaluating those alternatives and selecting among them.
3. Parties engaged in integrative negotiation should avoid stating solutions that favor one side or the other until they have fully defined the problem and examined as many alternative solutions as possible.
4. Redefine, recast, or reframe the problem so as to create win-win alternatives out of what earlier appeared to be a win-lose problem; and taking the problem as given and creating a long list of alternative options from which they can choose a particular option.
5. (1) Use competitive tactics to establish and defend basic interests, rather than using them to demand a particular position or solution to the dispute; (2) send signals of flexibility and concern about your willingness to address the other party's interests; (3) indicate a willingness to change your proposals if a way can be found to bridge the two parties' interests; (4) demonstrate a problem-solving capacity; (5) maintain open communication channels; (6) reaffirm what is most important to you through the use of deterrent statements; (7) reexamine any aspects of your interests that are clearly unacceptable to the other party and determine if they are still essential to your fundamental position; (8) separate and isolate contentious tactics from problem-solving behavior to better manage the contentious behavior.
6. (1) Narrow the range of solution options; (2) evaluate solutions on the basis of quality and acceptability; (3) agree to the criteria in advance of evaluating options; (4) be willing to justify personal preferences; (5) be alert to the influence of intangibles in selecting options; (6) use subgroups to evaluate complex options; (7) take time to cool off; (8) explore different ways to

- logroll; (9) keep decisions tentative and conditional until all aspects of the final proposal are complete; (10) minimize formality and record keeping until final agreements are closed.
7. If the parties first debate their criteria and determine which ones are most important, they will be able to decide on criteria independent of the consideration of any particular candidate or option. Then, when they consider the individual candidates or options, they will pick the best one based on these criteria, not on the individual preferences of one side or the other.
 8. While voting closes the discussion it can also create disenfranchisement of the losing party and make it more likely that "losers" will be less committed than "winners" to the implementation of the negotiated outcome.
 9. The presence of a common goal, faith in one's own problem-solving ability, a belief in the validity of the other's position, the motivation and commitment to work together, trust, clear and accurate communication, and an understanding of how to approach an integrative negotiation process.
 10. The parties can come to believe that they share a common fate, the parties can demonstrate to one another that there is more to be gained by working together (to increase the payoffs or reduce the costs) than by working separately, the parties can engage in commitments to each other before the negotiations begin.

Chapter 5

Persuasion

Overview

In this chapter, we explore the question of whether there are, or should be, accepted ethical standards for behavior in negotiations. This topic has received increased attention from researchers in recent years. It is our view that fundamental questions of ethical conduct arise in every negotiation. The effective negotiator must recognize when the questions are relevant and what factors must be considered to answer them. We want to be clear that it is not our intention to advocate a specific ethical position for all negotiators or for the conduct of all negotiations. Many treatises on business ethics take a strongly prescriptive or normative position, advocating what a person should or should not do. Instead, our aim in this chapter is to describe the ethical issues that arise in negotiations. We identify the major ethical dimensions raised in negotiations, describe how people tend to think about these ethical choices, and provide a framework for making informed ethical decisions. Along the way, we will highlight research that has yielded worthwhile findings in this area.

Learning Objectives

1. Identify a sampling of ethical quandaries.
2. Discuss what do we mean by ethics and why do they matter in negotiation?
3. Elaborate what questions of ethical conduct arise in negotiation?
4. Explain why use deceptive tactics? Motives and consequences.
5. Isolate how can negotiators deal with the other party's use of deception?

I. The Tactics and Ethics of Persuasion

Persuasion, the process by which a person's attitudes or behavior are, without duress, influenced by communications from other people. One's attitudes and behaviour are also affected by other factors (for example, verbal threats, physical coercion, and one's physiological states). Not all communication is intended to be persuasive; other purposes include informing or entertaining.

A Sampling of Ethical Quandaries

- A. People in and out of organizations are routinely confronted with important decisions about the strategies they will use to achieve important objectives, particularly when a variety of influence tactics are open to them. These decisions frequently carry ethical implications.

B. The major ethical questions that arise in negotiation can be worked out through consideration of these questions:

1. What are ethics and why do they apply to negotiation?
2. What questions of ethical conduct are likely to arise in negotiation?
3. What motivates unethical behavior, and what are the consequences?
4. How can negotiators deal with the other party's use of deception?

II. What Do We mean by “Ethics” and Why Do They Matter in Negotiation?

A. Ethics defined.

1. Ethics are broadly applied social standards for what is right or wrong in a particular situation, or a process for setting those standards.
2. Ethics grow out of particular philosophies, which purport to (a) define the nature of the world in which we live, and (b) prescribe rules for living together.
3. There are four standards for evaluating strategies and tactics in business and negotiation:
 - a) Choose a course of action on the basis of results I expect to achieve.
 - b) Choose a course of action on the basis of my duty to uphold appropriate rules and principles.
 - c) Choose a course of action on the basis of the norms, values, and strategy of my organization or community.
 - d) Choose a course of action on the basis of my personal convictions.
4. There are four different approaches to ethical reasoning: End-result ethics, duty ethics, social contract ethics, personalistic ethics. These are discussed further below.

B. Applying ethical reasoning to negotiation.

1. The four approaches to ethical reasoning (above) are the basis for the in-depth treatment of ethics in the upcoming chapter discussions.

C. Ethics versus prudence versus practicality versus legality.

1. Discussion of business ethics frequently confuse the following terms:
 - a) Ethical – defined as what is appropriate as determined by some standard of moral conduct.
 - b) Prudent – wise, based on trying to understand the efficacy of the tactic and the consequences it might have on the relationship with the other.
 - c) Practical – what a negotiator can actually make happen in a given situation.

d) Legal – what the law defines as acceptable practice.

D. La Rue Hosmer (2003) developed a model of the process of analyzing a moral problem.

The first step is developing a complete understanding of the moral problem at hand. With the problem fully defined, the path to a convincing solution travels through the three modes of analysis:

1. A determination of economic outcomes of potential courses of action.
2. A consideration of legal requirements that bear on the situation.
3. An assessment of the ethical obligations to other involved parties regarding what is “‘right’ and ‘just’ and ‘fair’” (ethical reasoning).

III. What Questions of Ethical Conduct Arise in Negotiation?

A. Ethically ambiguous tactics: It’s (mostly) all about the truth.

1. Ethically ambiguous – tactics that may or may not be improper, depending on an individual’s ethical reasoning and circumstances.
2. Focuses on what negotiators say or what they will do than on what they actually do.
3. Arriving at a clear, precise, effective negotiated agreement depends on the willingness of the parties to share accurate information about their own preferences, priorities, and interests.
4. Deception in negotiation can rise to the level of legally actionable fraud.

B. Identifying ethically ambiguous tactics and attitudes toward their use.

1. What ethically ambiguous tactics are there?

a) The six categories of tactics—traditional competitive bargaining, emotional manipulation, misrepresentation, misrepresentation to opponent’s networks, inappropriate information collection, and bluffing—are generally seen as potentially inappropriate and unethical in negotiation. The first two are likely to be used and, while mildly inappropriate, are nevertheless seen as appropriate and effective. The other four are generally seen as inappropriate and unethical in negotiation.

2. Does tolerance for ethically ambiguous tactics lead to their actual use?

a) A study by Volkema (2001) addressed this issue, and five conclusions were drawn.

3. Is it all right to use ethically ambiguous tactics?

a) The studies summarized here indicate that there are tacitly agreed-on rules of the game in negotiation. In these rules, some minor forms of untruths—misrepresentation of

one's true position to the other party, bluffs, and emotional manipulations—may be seen as ethically acceptable and within the rules.

b) Outright deception and falsification are generally seen as outside the rules.

C. Deception by omission versus commission.

1. O'Connor and Carnevale (1997) found two forms of deception in misrepresenting the common-value issue:

a) misrepresentation by *omission* (failing to disclose information that would benefit the other);
and

b) misrepresentation by *commission* (actually lying about the common-value issue).

D. The decision to use ethically ambiguous tactics: A model.

1. The selection and use of a given tactic is likely to be influenced by the negotiator's own motivations and his or her perception/judgment of the tactic's appropriateness.

2. Once the tactic is employed, the negotiator will assess consequences on three standards:

a) Whether the tactic worked;

b) How the negotiator feels about him or herself after using the tactic;

c) How the individual may be judged by the other party or by neutral observers.

IV. Why Use Deceptive Tactics? Motives and Consequences

A. The power motive.

1. In the exchange of facts, arguments, and logic, it is assumed that the information is accurate and truthful. Any inaccurate and untruthful statements (i.e., lies) introduced into this social exchange manipulate information in favor of the introducer. Through the tactics such as bluffing, falsification, misrepresentation, deception, and selective disclosure, the liar gains advantage.

B. Other motives to behave unethically.

1. In a study on tactics, Lewicki and Spencer (1991) asked negotiators about their predisposition to use marginally ethical tactics.

2. The authors predicted that (a.) when motivated to be competitive, and when expecting the other to be competitive, the negotiator would see the marginally ethical tactics as appropriate and (b.) when both parties were competitively motivated, they would exhibit the greatest tendency, to employ marginally ethical tactics. (c.) The results revealed that differences in the negotiators' own motivational orientation –cooperative versus

competitive – did not cause differences in their view of the appropriateness of using the tactics, but the negotiators’ perception of the other’s expected motivation did! In other words, negotiators were significantly more likely to see the marginally ethical tactics as appropriate if they anticipated that the other would be competitive versus cooperative.

C. The consequences of unethical conduct.

1. A negotiator who employs an unethical tactic will experience positive or negative consequences.
2. The consequences are based on whether the tactic is effective; how the other person, constituencies, and audiences evaluate the tactic; and how the negotiator evaluates the tactic.
 - a) Effectiveness.
 - (1) Consequences will occur depending on whether the tactics worked or not –that is, whether the negotiator got what he or she wanted as a result of using tactics.
 - b) Reactions of others.
 - (1) A second set of consequences may come from the judgments and evaluations of that negotiator – from the opponent, from constituencies, or from audiences that can observe the tactic.
 - c) Reactions of self.
 - (1) A third set of consequences may result depending on how the negotiator evaluates his or her own use of the tactic – whether using the tactic creates any discomfort, personal stress, or even guilt – or, in contrast, whether the actor sees no problem in using the tactic again and even begins to consider how to use it more effectively.

D. Explanations and justifications.

1. There is an increasing stream of research on those who employ unethical tactics and the explanations and justifications they use to rationalize them.
2. Rationalizations have been adapted from Bok (1978) and her excellent treatise on lying:
 - a) The tactic was unavoidable.
 - b) The tactic was harmless.
 - c) The tactic will help to avoid negative consequences.
 - d) The tactic will produce good consequences, or the tactic is altruistically motivated.
 - e) “They had it coming,” or “They deserve it,” or “I’m just getting my due.”

- f) “They were going to do it anyway, so I will do it first.”
- g) “He started it.”
- h) The tactic is fair or appropriate to the situation.

V. How Can Negotiators Deal with the Other Party’s Use of Deception?

- A. If you think the other party is using deceptive tactics, in general you can do the following:
 - 1. Ask probing questions.
 - 2. Phrase questions in different ways.
 - 3. Force the other party to lie or back off.
 - 4. Test the other party.
 - 5. “Call” the tactic.
 - 6. Ignore the tactic.
 - 7. Discuss what you see and offer to help the other party change to more honest behaviors.
 - 8. Respond in kind.

VI. A New Paradigm in the Psychology of Persuasion

Social psychologists probably have expended more time, effort, and ingenuity on the study of persuasion than on the study of any other single issue. Communication and persuasion was one of the first problems to be submitted to systematic investigation in the social psychological laboratory. It needs to give much attention to the processing of information contained in a persuasive communication, particularly to questions of attention, comprehension, and acceptance, as well as the contents of persuasive messages and the receiver’s reaction to the information they contain. There are also a variety of other factors that need the same thing such as external to the message, which were thought to influence the effectiveness of a given communication. These factors concerned the characteristics of the communicator, such as his or her credibility; the characteristics of the receiver, such as the receiver’s intelligence or involvement; and the general features of the situation, such as the amount of fear generated by the message or forewarning of persuasive intent.

Variables related to the source, receiver, and the context of a persuasive communication, termed peripheral cues, are accorded secondary importance. Of primary importance is the extent to which receivers of a persuasive communication carefully and thoughtfully assess and elaborate on the

central merits of the advocated position. Central processing of this kind is expected to change attitudes in the advocated direction to the extent that issue-relevant thoughts produced are predominantly favorable. It is thus the nature of the receiver's thoughts that is held primarily responsible for attitude change. Only when the receivers are not motivated or are incapable of elaborating on the arguments contained in the message may attitude change proceed along the peripheral route, without much attention to the merits of the arguments. Under those conditions, receivers' attitudes may be influenced by "affect transfer" from situational stimuli to the message (i.e. by classical conditioning) or by simple cognitive heuristics (e.g., "if an expert advocate a certain position, it may be right").

Among the factors found to increase message elaboration likelihood are high involvement of the receiver, low distraction, moderate message repetition, more than one message source, and high need for cognition on the part of the receiver. The thoughts generated under high message elaboration are found to be predominantly favorable when the message contains strong, cogent arguments and to be predominantly unfavorable when the message contains largely weak arguments. Moreover, elaboration can be biased, usually in the direction of the receiver's initial position, depending on such factors as amount of prior knowledge and forewarning of persuasive intent.

When involvement is low, or distraction is high, receivers are unlikely to generate many message-relevant thoughts. Under these conditions, attitude change is shown to be affected by the expertise and likability of the source, by the number of arguments contained in the message, by pleasant background music, and by other peripheral cues.

In a comparison of the two roads to persuasion-reliance on central processing is the overwhelming favorite. It produces attitude change that is more lasting, more resistant to counter propaganda, and more predictive of future behavior.

VII. Three Ways to Increase Your Influence in Negotiation

- *Be trustworthy*: Make small commitments and follow through on them to display a pattern of trustworthy behavior. Even something as small as calling the potential client *exactly* when you say you will begins to build trust;
- *Identify offers that are low cost to you and high value to them*: After asking lots of questions and identifying their interests, you can extend offers specifically tailored to their wants and

needs. Doing this early shows that you are serious about your goal to make this a deal that works for them as much as it works for you:

- *If they say no, negotiate your relationship moving forward:* Circumstances and needs change, and this person might be more interested your idea, product, or service at a later time. Before walking away, set up a time to revisit your conversation, or at least make sure they know that you're still interested and available.

Summary

In this chapter, we have discussed factors that negotiators consider when they decide whether particular tactics are deceptive and unethical. We approached the study of ethically ambiguous tactics from a decision-making framework, examining the ethical overtones of the choices that negotiators make.

We began by drawing on a set of hypothetical scenarios to show how ethical questions are inherent in the process of negotiation, and then presented four fundamental approaches to ethical reasoning that might be used to make decisions about what is ethically appropriate. We proposed that a negotiator's decision to use ethically ambiguous (or flatly unethical) tactics typically grows out of a desire to increase one's negotiating power by manipulating the landscape of (presumably accurate) information in the negotiation. We discussed the different forms that ethically ambiguous tactics take, and we analyzed the motives for and consequences of engaging in unethical negotiation behavior. Finally, we addressed how negotiators can respond to another party that may be using tactics of deception or subterfuge. In closing, we suggest that negotiators who are considering the use of deceptive tactics ask themselves the following questions: 1) will they really enhance my power and help me achieve my objective?; 2) how will the use of these tactics affect the quality of my relationship with the other party in the future?; 3) how will the use of these tactics affect my personal and professional reputation as a negotiator?

Negotiators frequently overlook the fact that, although unethical or expedient tactics may get them what they want in the short run, these same tactics typically lead to tarnished reputations and diminished effectiveness in the long run.

Self-test Question Items

I. Fill in the Blank

1. _____ can be defined as individual and personal beliefs for deciding what is right and wrong.
2. The concept of _____ ethics states that the rightness of an action is determined by evaluating the pros and cons of its consequences.
3. Misrepresentation by _____ is defined as failing to disclose information which would benefit the other.
4. A negotiator who judges a tactic on the basis of its consequences is making judgments according to the tenets of act _____.
5. The "respond in kind" approach is best treated as a _____ strategy.

II. True/False Questions

1. The fundamental questions of ethical conduct arise only when we negotiate in distributive bargaining situations.
2. The concept of "personalistic ethics" states that the rightness of an action is based on the customs and norms of a particular society or community.
3. Questions and debate regarding the ethical standards for truth telling are central and fundamental in the negotiating process.
4. Studies show that subjects were more willing to lie by omission than by commission.
5. Individuals are more willing to use deceptive tactics when the other party is perceived to be uninformed or unknowledgeable about the situation under negotiation; particularly when the stakes are high.

III. Multiple Choice Items

1. The concept of "duty ethics" states that
 - A. the rightness of an action is determined by evaluating the pros and cons of its consequences.
 - B. the rightness of an action is determined by existing laws and contemporary social standards that define what is right and wrong and where the line is.
 - C. the rightness of an action is based on the customs and norms of a particular society or community.
 - D. the rightness of an action is based on one's conscience and moral standards.

- E. None of the above defines "duty ethics."
2. Ethical criteria for judging appropriate conduct define
- A. what is wise based on trying to understand the efficacy of the tactic and the consequences it might have on the relationship with the other.
 - B. what a negotiator can actually make happen in a given situation.
 - C. what is appropriate as determined by some standard of moral conduct.
 - D. what the law defines as acceptable practice.
 - E. All of the above are defined by ethical criteria for judging appropriate conduct.
3. Only one of the approaches to ethical reasoning has as its central tenet that actions are more right if they promote more happiness, more wrong as they produce unhappiness. Which approach applies?
- A. End-result ethics.
 - B. Duty ethics.
 - C. Social context ethics.
 - D. Personalistic ethics.
 - E. Reasoning ethics.
4. What is the implication of the dilemma of trust?
- A. We believe everything the other says and can be manipulated by their dishonesty.
 - B. We do not believe anything the other says and therefore are immune to their dishonesty.
 - C. We tell the other party our exact requirements and limits in negotiation, and therefore we will never do better than this minimum level.
 - D. We never reveal our requirements and limits in negotiation, and therefore are able to far exceed that minimum level.
 - E. None of the above describes the implication of the dilemma of trust.
5. Which is a Category of Marginally Ethical Negotiating Tactics?
- A. Traditional Competitive Bargaining
 - B. Emotional Manipulation
 - C. Misrepresentation to Opponent's Networks
 - D. Bluffing
 - E. All of the above

6. McCornack and Levine found that victims had stronger emotional reactions to deception when
- A. they had a distant relationship with the subject.
 - B. the information at stake was unimportant.
 - C. lying was seen as an unacceptable type of behavior for that relationship.
 - D. the victim had used deceptive tactics as well.
 - E. Research found that victims did not have strong emotional reactions in any of the above cases.
7. When using the justification that "the tactic was unavoidable," the negotiator is saying that
- A. the negotiator was not in full control of his or her actions and hence should not be held responsible.
 - B. what the negotiator did was really trivial and not very significant.
 - C. the tactic helped to avoid greater harm.
 - D. the quality of the tactic should be judged by its consequences.
 - E. The justification that "the tactic was unavoidable" implies all of the above.
8. When using the "intimidation" tactic to detect deception, one should
- A. emphasize the futility and impending danger associated with continued deceit.
 - B. lie to the other to make them believe you have uncovered their deception.
 - C. play down the significance of any deceptive act.
 - D. make a "no-nonsense" accusation of the other.
 - E. None of the above actions would be used as part of the intimidation tactic.
9. When using the "altered information" tactic to detect deception, one should
- A. try to get the other to admit a small or partial lie about some information and use this to push for admission of a larger lie.
 - B. exaggerate what you believe is the deception and state it, hoping that the other will jump in to "correct" the statement.
 - C. point out behaviors you detect in the other which might be an indication they are lying.
 - D. indicate one's true concern for the other's welfare.
 - E. None of the above actions would be used as part of the altered information tactic.
10. Which of the following tactics is the least preferable method of responding to another party's distributive tactics or "dirty tricks"?
- A. ignoring the tactic

- B. "calling" the tactic
- C. responding in kind
- D. discussing what you see and offer to help them change to more honest behaviors
- E. None of the above tactics should be used to respond to another party's dirty tricks.

IV. Discussion Questions

1. Define ethics.
2. According to Hitt, what are the four standards for evaluating strategies and tactics in business and negotiation?
3. How does Carr argue that strategy in business is analogous to strategy in a game of poker?
4. What is the implication of the dilemma of honesty?
5. Considering the categories of marginally ethical negotiating tactics, what is the difference between misrepresentation and misrepresentation to opponent's networks?
6. What is the purpose of using marginally ethical ambiguous negotiating tactics?
7. As a result of employing an unethical tactic, the negotiator will experience positive or negative consequences. These consequences are based on:
8. What is/are the risks associated with frequent use of the self-serving process?
9. What actions can a negotiator take to respond to the other party's distributive tactics or "dirty tricks?"
10. Negotiators who are considering the use of deceptive tactics should ask themselves what three questions in order to evaluate the desirability of the tactic?

Suggested Answers

I	1. Morals	2. end-result	3. Omission	4. Utilitarianism	5. "last resort"
II	1. FALSE	2. FALSE	3. TRUE	4. TRUE	5. TRUE

III

1. B	2. C	3. A	4. A	5. E	6. C	7. A	8. D	9. B	10. C
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IV.

1. Broadly applied social standards for what is right or wrong in a particular situation, or the process for setting those standards.
2. (1) Choose a course of action on the basis of results I expect to achieve; (2) Choose a course of action on the basis of my duty to uphold appropriate rules and principles; (3) Choose a course of action on the basis of the norms, values, and strategy of my organization or community; and, (4) Choose a course of action on the basis of my personal convictions.
3. He advocates that business ought to play its game as poker players do. Because good poker playing often involves concealing information and bluffing or deception, these rules ought to apply to business transactions. If an executive refuses to bluff periodically - if he or she feels obligated to tell the truth, the whole truth, and nothing but the truth all the time - he or she is probably ignoring opportunities permitted under the "rules" of business and is probably at a heavy disadvantage in business dealings.
4. We tell the other party our exact requirements and limits in negotiation, and it is likely that we will never do better than this minimum level.
5. Misrepresentation is distorting information or negotiation events in describing them to others, while misrepresentation to opponent's networks is corrupting your opponent's reputation with his peers.
6. To increase the negotiator's power in the bargaining environment.
7. Whether the tactic is effective, how the other party evaluates the tactic, and how the negotiator evaluates the tactic.
8. The more frequently negotiators engage in this self-serving process, the more their judgments about ethical standards and values will become biased, diminishing their ability to see the truth for what it is.
9. (1) Ask probing questions; (2) phrase questions in different ways; (3) force the other party to lie or back off; (4) test the other party; (5) "call the tactic"; (6) ignore the tactic; (7) discuss what you see and offer to help them change to more honest behaviors; and, (8) respond in kind.
10. (1) Will this tactic really enhance my power and achieve my objective? (2) How will the use of these tactics affect the quality of my relationship with the other party in the future? (3) How will the use of these tactics affect my reputation as a negotiator?

Chapter 6

Conflict Resolution

Overview

Negotiation and conflict management are common occurrences in workplaces and our personal lives because people see things from different perspectives and do not always agree with one another. Conflict, contrary to general belief, need not be dysfunctional. Where properly managed, conflicts can lead to positive outcomes, such as improved understanding, better alternatives and increased satisfaction. In this elective, we will introduce and examine the various conflict management strategies and techniques. Participants will be introduced to how the application of creative thinking to conflict situations can help generate collaborative (win-win) solutions. Formal dispute resolution mechanisms including mediation and arbitration will also be covered.

Learning Objectives:

1. Discuss what conflict is and how it can escalate within the workplace
2. Identify the five most common conflict resolution styles, and when to use them
3. Discuss how mediation works
4. Identify the role of a mediator
5. Isolate what options are available when a mediation fails.

I. Conflict Resolution and Conflict Management

Conflicts are disagreements that lead to tension within, and between, people. Conflict is a **form of interaction** among parties that differ in interest, perceptions, and preferences. The disagreement concerns the issue, whereas the tension effects the relation.

Conflict is a normal, natural part of human relationships. People will not agree about everything all the time. The fact that conflict exists, however, is not necessarily a bad or negative thing: As long as it is resolved effectively or handled constructively, it can lead to personal and professional growth and can help people to stand up for themselves and others, and work together to achieve a mutually satisfactory solution. In many cases, effective conflict resolution skills can make the difference between positive and negative outcomes.

Conflict resolution is a process of managing a conflict and negotiating a solution. It is best understood as a working model with two key elements, conflict management and negotiation. Conflict Management is a communication process for changing the negative emotional states in a

conflict to emotional states that allow working out a solution to the conflict. Negotiation is a communication process for enabling disputing parties to achieve an outcome with respect to their differences.

In other words, conflict management, deals with the attitudes and strong negative emotions usually associated with a conflict situation. It involves defusing the accompanying emotional energy and achieving a mutual understanding of differences. This element is often referred to as conflict settlement. Conflict settlement occurs when destructive behavior has been reduced and hostile attitudes lessened. However, the causes of the conflict still remain to be resolved. Once the conflict has been reduced, the next step is to use negotiation or problem solving to arrive at an outcome that satisfies both parties. At this point, the conflict is resolved, that is, the structure of the situation that gave rise to the struggle in the first place is changed and modified so that the interests of all parties are met. Conflict management is then directed toward settlement and negotiation is directed toward achieving the more difficult outcome, resolution. Thus, a conflict always has the duality of dealing with both an issue and a relation. Effective conflict resolution must address both issue and relation.

Principles of Conflict Resolution

Successful conflict resolution is based on the following principles:

- The essence of conflict is the high emotional energy around perceived differences.
- The essence of conflict management is the defusing of high emotional energy and mutual understanding of differences.
- Resolution of the conflict often involves negotiation (problem solving) to bring about an outcome that is mutually satisfying.

The keys to effective conflict resolution are the ability to:

- Reflectively listen to ensure understanding.
- Maintain rapport at all times.
- Differentiate positions from interests.
- Work toward resolution based on motivating interests.

The good news is that by resolving conflict successfully, you can solve many of the problems that it has brought to the surface, as well as getting benefits that you might not at first expect. However, if conflict is not handled effectively or poorly handled, the results can be damaging; it can cause anger, hurt, divisiveness and more serious problems. Conflicting goals can quickly turn into

personal dislike. Teamwork breaks down. Talent is wasted as people disengage from their work. And it's easy to end up in a vicious downward spiral of negativity and recrimination.

Three Views of Conflict

- Traditional view – conflict must be avoided
- Human relations view – conflict is a natural and inevitable outcome in any group
- Interactionalist view – some conflict is absolutely necessary
 - Functional conflict – supports the goals of the work group and improves its performance
 - Dysfunctional conflict – prevents group from achieving its goals

Potential Positive Outcomes of Conflict	Potential Negative Outcomes of Conflict
<ul style="list-style-type: none"> ▪ can motivate us to try harder-to "win" ▪ can increase commitment, enhance group loyalty ▪ increased clarity about the problem ▪ can lead to innovative breakthroughs and new approaches ▪ conflict can clarify underlying problems, facilitate change ▪ can focus attention on basic issues and lead to solution ▪ increased energy level; making visible key values ▪ involvement in conflict can sharpen our approaches to bargaining, influencing, competing 	<ul style="list-style-type: none"> ▪ can lead to anger, avoidance, sniping, shouting, frustration, fear of failure, sense of personal inadequacy ▪ withholding of critical information ▪ lower productivity from wasteful conflict ▪ careers can be sidetracked; relationships ruined ▪ disrupted patterns of work ▪ consume huge amount of time-loss of productivity

The ability to successfully resolve conflict depends on your ability to:

- **Manage stress quickly while remaining alert and calm.** By staying calm, you can accurately read and interpret verbal and nonverbal communication.
- **Control your emotions and behavior.** When you're in control of your emotions, you can communicate your needs without threatening, intimidating, or punishing others.

- **Pay attention to the *feelings* being expressed** as well as the spoken words of others.
- **Be aware of and respectful of differences.** By avoiding disrespectful words and actions, you can almost always resolve a problem faster.

Sources of Conflict

There can be many causes or reasons for conflict. However, some of the most common include:

- Personal differences such as values, ethics, personalities, age, education, gender, social and economic status, cultural background, temperament, health, religion, political beliefs, etc.
- A clash of ideas, choices, or actions. For instance, conflict can occur when people have incompatible goals, when they are in direct competition, or even when they have different work styles.
- Finally, poor communication or miscommunication is one of the biggest causes of conflict.

Preventing Conflict

While it isn't possible to prevent all conflict, there are steps that you can take to try to keep conflict to a minimum. One way to manage conflict is to prevent it from occurring in the first place. Preventing conflict is not the same as avoiding conflict. Preventing conflict means behaving and communicating in a way that averts needless conflicts.

Consider the following tips:

- Respect differences
- Treat others as you'd like to be treated.
- Keep negative opinions to yourself
- Keep your distance

Steps in Conflict Resolution

- **Define the problem** - Each party takes a turn describing the problem from his or her point of view. Participants should show respect for each other. It is important
- **Suggest a solution** - Each party suggests a solution.
- **Evaluate a solution** - The solutions are discussed. Each party explains the part of a suggestion that (1) they agree with, and (2) they cannot accept.
- **Compromise** - If the parties are fairly close to agreeing, they may compromise or settle the dispute by each agreeing to give up something.
- **Brainstorm** - If the parties cannot compromise, they brainstorm different ways to approach the problem and try again to reach a compromise.

- **Seek mediation** - If no solution is reached, the parties invite a third party to listen and make suggestions.

Conflict resolution or management requires that everyone involved respects each other, listens to various views, and works toward mutual decisions.

The Five Styles of Conflict Resolution

Conflicts can arise at any time. How you utilize conflict resolution strategies depends on both your conflict style and your conflict resolution skills. There are many different ways to respond to conflict situations; some conflict styles involve a considerate or cooperative approach while others involve either a competitive or passive approach. The first step in conflict resolution is understanding the various styles of conflict. The five styles of conflict include:

- **Avoiding the Conflict:** Avoiding or withdrawing from a conflict requires no courage or consideration for the other party. By avoiding the conflict, you essentially pretend that it never happened or doesn't exist. Some examples of avoidance or withdrawal include pretending there is nothing wrong, stonewalling or completely shutting down.
- **Giving In:** Giving in or accommodating the other party requires a lot of cooperation and little courage. Basically, you agree to accommodate the other party by acknowledging and accepting his point of view or suggestion. This style might be viewed as letting the other party have his way. While this style can lead to making peace and moving forward, it can also lead to the accommodator feeling resentment toward the other party
- **Standing your Ground:** While standing your ground requires courage, it can also be inconsiderate. By standing your ground, you are essentially competing with the other party; you'll do anything to ensure that you win the battle. The fact is, a competitive approach offers short term rewards, but in the long term effects can be detrimental to your business.
- **Compromising:** Compromising is a big step toward conflict resolution. Both courage and consideration are used when both parties look for common ground. You agree to negotiate larger points and let go of the smaller points; this style expedites the resolution process. Occasionally, the person compromising might use passive-aggressive tactics to mislead the other party, so beware.
- **Collaborating:** Collaboration plays a major role within conflict resolution and requires great courage and much consideration. Collaborating with the other party involves listening to their side, discussing areas of agreement and goals, and ensuring that all parties

understand each other. Collaboration requires thinking creatively to resolve the problem without concessions. Collaborators are usually admired and well-respected.

III. How Mediation Works

Mediation is the involvement of an impartial third party to support and help those involved in a conflict to find a resolution. The key difference between negotiation and mediation is that in negotiation, the parties involved work out their own agreement. In mediation, they have the support of the third party, the mediator, to help them come to an agreement.

Mediation, whether formal or informal, can often help solve conflicts that have gone beyond the negotiation stage.

Characteristics of Mediation

A key aspect of mediation is that the mediator does not ‘sort things out’ or make any decisions for the parties involved. Instead, he or she helps the parties involved work together to develop their own agreement.

Mediation involves:

- Voluntary participation
- Face-to-face discussions between the parties in conflict
- An unbiased mediator without any decision-making power who helps those involved to understand each other’s point of view and come to an agreement
- Equal opportunities for all participants to speak and explain their perspective
- All relevant information being shared
- A shared agreement between the parties

IV. The Role of the Mediator

Although there are many trained mediators working to resolve conflicts, anyone can act as a mediator, whether in a disagreement between colleagues or to bring two quarrelling friends or neighbours together again. Here is a brief discussion of a typical mediation process:

- The mediator begins by **welcoming the parties** and introducing the parties to each other. The mediator then outlines the process and the roles of the mediator, the parties, and attorneys (if present). The mediator ends the introduction by explaining the ground rules for the process.
- The mediator then **asks for statements** from each party. Both parties have an opportunity to tell their story about what happened, from their viewpoint. Often, these stories are

emotional. The mediator may ask clarifying questions, but typically the parties do not question each other. If the parties are too emotional, this part of the process may be cut short.

- After both parties have spoken, the mediator may ask more questions, both to **clarify the issues** and to provide the other party with greater understanding.
- At this point, the mediator may ask the parties to caucus (get together separately) for the purpose of discussion). The mediator talks with each party, proposing solutions, trying out scenarios, trying to get a commitment to a settlement by both parties.
- The **mediator goes back and forth** between the parties during this time, clearing up misunderstandings, and carrying information, proposals, and points of agreement.
- The mediator **works to find points of agreement** between the parties, in an effort to reach an agreement. At some point, the mediator may pose a final agreement for the parties and urge them to accept.

Unlike a judge or an arbitrator, the mediator won't decide the outcome of the case. The mediator's job is to help the disputants resolve the problem through a process that encourages each side to:

- air disputes
- identify the strengths and weaknesses of their case
- understand that accepting less than expected is the hallmark of a fair settlement, and
- agree on a satisfactory solution.

In arbitration the decision of the arbitrator is binding and the parties may not take the matter further to a court, for example. The mediation process, unlike arbitration, is non-binding; that is, the mediator does not impose a decision on the parties, but he/she attempts to present or facilitate a solution that is acceptable to both parties.

Unless it's specifically agreed to in a contract, mediation costs are usually shared equally by the two parties. The biggest cost is for the **time of the mediator**, which varies depending on the location and the complexity of the dispute. Mediator costs include preparation and initial discussions in addition to the cost of the mediation itself. Other costs include a place for the session. If you want to hire an attorney for any part of the mediation, that cost is yours. The primary goal is for all parties to work out a solution they can live with and trust. Because the mediator has no authority to impose a decision, nothing will be decided unless both parties agree to it. The

process focuses on solving problems in an economical manner—for instance, taking into account the cost of litigation rather than uncovering the truth or imposing legal rules.

That's not to say that the merits of the case aren't factored into the analysis—they are. The mediator will assess the case and highlight the weaknesses of each side, the point being to hit home the risks of faring far worse in front of a judge or jury, and that the penalty or award imposed will be out of the control of the litigants.

IV. When Mediation Fails

1. Try to work out why the mediation failed.
2. Write down each person's argument.
3. Find out what each person wants.
4. Negotiate, bargain or reason with the other side until you reach an agreement.

If a mediation fails, it can be extremely frustrating if one party is ready to settle or both parties were prepared to negotiate. In the rare case that mediation fails, there are still alternatives before you go to Court. Often working out why mediation fails will allow you to negotiate without going to court.

Summary

Each one of us has his own way of dealing with and reacting to a conflict situation. Depending on our personality and background, those different reactions are usually one of five main strategies or styles of dealing with conflict. The five strategies are: Collaborating, Competing, Avoiding, Harmonizing and Compromising. And it needs to know how to find out your dominant conflict resolution strategy in respect to the type of conflict you encounter.

Self-test Question Items

I. Fill in the Blank

1. _____ view states that all conflict should be avoided.
2. _____ is the best conflict management style.
3. Let us assume that you and your partner have had a heated disagreement. Where emotions are raw, and feelings have been hurt. You approached your partner after a brief silence, saying “I’m sorry I attacked you like that, I got angry and said things I didn’t mean.” This exemplifies collaborating tactic known as _____.
4. Conflict-handling intention of _____ is mid-range on both assertiveness and cooperativeness.
5. The conflict management styles that can get you into the most trouble are _____.

II. True/False Questions

1. Disagreement should not be seen as unpleasant – it is simply evidence that people think and behave differently.
2. In a conflict situation, listening to the opposition is not difficult.
3. Mediation requires different skills to negotiation.
4. Mediation, whether formal or informal, can often help solve conflicts that have gone beyond the negotiation stage.
5. Under the circumstance of threats of harming others, confidentiality is no longer mandatory.

III. Multiple Choice Items

1. Constructive and destructive conflict are distinguished from each other in which of the following ways?
 - A. constructive conflict is We-oriented; destructive conflict is Me-oriented
 - B. constructive conflict is characterized by de-escalation of the conflict; destructive conflict is characterized by escalation of the conflict
 - C. constructive conflict is characterized by cross-complaining; destructive conflict is characterized by flexibility
 - D. both a and b
1. Constructive and destructive anger can be distinguished from each other by the
 - A. intensity of the anger

- B. flexibility of the anger
 - C. duration of the anger
 - D. both a and c
2. Which of the following is not a characteristic of conflict?
- A. expressed struggle
 - B. independent parties
 - C. perceived incompatible goals
 - D. perceived interference for outside parties
3. Your relationship partner is under a lot of stress lately, and his/her outbursts of anger are beginning to trouble you greatly. Which of the following are ways to manage the anger of your partner?
- A. validate your partner
 - B. be asymmetrical
 - C. probe
 - D. all of the above
4. Conflict management style used by people with a “win-lose” philosophy is termed as ____.
- A. an aggressive style
 - B. a confrontational style
 - C. a competitive style
 - D. a cooperative style
5. The process of forgiveness includes which stages?
- A. hating what was done to us
 - B. hurting from the wrong done to us
 - C. forgetting what was done to us
 - D. both a and b
6. Which of the following can be validly concluded from research on intercultural conflict management?
- A. collectivist and individualist cultures typically favor different conflict management styles
 - B. the key to effective intercultural conflict management is flexible use of conflict management styles

- C. disagreement should be discouraged when communicating with individuals from diverse cultures
 - D. both a and b
7. Conflict is
- A. an unavoidable fact of life
 - B. sometimes constructive
 - C. a destructive force in relationships if continually avoided
 - D. all of the above
8. Which of the following is a tactic of avoiding conflict?
- A. Competing
 - B. Stonewalling
 - C. Autonomy
 - D. compromising
9. You and your partner have had a heated disagreement. Emotions are raw, and feelings have been hurt. You approach your partner after a brief silence: "I'm sorry I attacked you like that. I got angry and said things I didn't mean." This is an example of the collaborating tactic called
- A. Integration
 - B. confrontation
 - C. expanding the pie
 - D. smoothing

IV. Conflict Management - A Business Case:

In the business case below, you will be able to apply your knowledge on Conflict Management by advising a client on how to deal with conflict.

Case:

You are a management consultant specializing in negotiation, and you receive a call from a new client, Gemechu. Gemechu is the Chief Innovation Officer at XY, a video game company.

Gemechu: "I am calling you because I am having a very hard time dealing with one of my employees, Hawi. Hawi is one of our leading software engineers, and she just joined the company from ENSA. I have a lot of respect for Hawi, and I'm actually the one that hired her. She is the only engineer that has a Ph.D., and her experience at ENSA is exceptionally precious to the

company. She is by far our most talented engineer. She even had higher grades than myself in College.

Consultant: "Sounds great, so why are you fighting?"

Gemechu: "When asking her to create a video game based on the blueprint I created, instead of building the game, she built a **new** blueprint instead! This upset me tremendously because we have deadlines to maintain, and I don't think an employee should ever challenge her manager. Even if her blueprint was better (though I'd never tell her that, I have too much pride), she has no business trying to step on my turf. In response to this, I decided to build the video game myself at night after work using my blueprint. I did not even discuss the issue with her since I knew it would lead to nothing getting done my way. The problem is that I am so exhausted now, I can keep on doing this going forward."

Required:

1. What Conflict Management style is Gemechu currently using? Explain.
2. What Conflict Management do you recommend Gemechu to use? Explain.

Suggested Answers

I	1. Traditional	2. The problem-solving style	3. Integration	4. Compromising	5. The forcing style
II	1. FALSE	2. FALSE	3. TRUE	4. TRUE	5. FALSE

III

1. D	2. D	3. B	4. C	5. C	6. C	7. D	8. D	9. B	10. A
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IV.

1. The student should identify this Conflict Management style as **Competing** with some degree of **Avoidance** as well.
2. The student should form an answer that considers Hawi's superior expertise and is more cooperative, such as the **Collaborative**, **Compromising**, or **Accommodating** style.

Chapter 7

International Negotiation

Overview

In this chapter, we first discuss some of the factors that make international negotiation different, including both the environmental context (macro political factors) and the immediate context (micro strategic factors). We then turn to a discussion of the most frequently studied aspect of international negotiation: the effect of culture be it national, regional, or organizational. We discuss how culture has been conceptualized, and discuss four approaches to culture used by academics and practitioners. Next we examine the influence of culture on negotiations, discussing this from managerial and research perspectives. The chapter concludes with a discussion of culturally responsive strategies available to the international negotiator.

Learning Objectives

1. What makes international negotiations different?
2. Conceptualizing culture and negotiation.
3. The influence of culture on negotiation from a managerial perspective.
4. The influence of culture on negotiation from a research perspective.
5. Culturally responsive negotiation strategies.

International negotiations are much more complex than domestic negotiations but challenge the negotiators to understand the science of negotiation while developing their artistry.

I. Making Deals in Strange Places (What Makes International Negotiations Different?)

A. Environmental context.

1. Political and legal pluralism.
 - a) Implications for the taxes that an organization pays, the labor codes or standards that it must meet, and the different codes of contract law and standards of enforcement.
 - b) Political considerations may enhance or detract from the conduct of business negotiation in various countries at different times.
2. International economics.
 - a) According to Salacuse (1998), the risk is typically greater for the party who must pay in the other country's currency.

- b) Any change in value of a currency (upward or downward) can significantly affect the value of the deal for both parties.
3. Foreign governments and bureaucracies.
- a) Firms in the United States are relatively free from government intervention, although some industries are more heavily regulated than others (e.g. power generation, defense) and some states have tougher environmental regulations than others.
4. Instability.
- a) Instability may take many forms, including:
 - (1) A lack of resources that Americans commonly expect during business negotiations (paper, electricity, computers);
 - (2) Shortages of other goods and services (food, reliable transportation, potable water);
 - (3) Political instability (coups, sudden shifts in government policy, major currency revaluation).
5. Ideology.
- a) According to Salacuse (1988), Americans believe strongly in:
 - (1) Individual rights.
 - (2) The superiority of private investment.
 - (3) The importance of making a profit in business.
6. Culture.
- a) According to Salacuse (1998), people in some cultures approach negotiations deductively (they move from the general to the specific) whereas people from other cultures are more inductive (they settle on a series of specific issues that become the area of general agreement).
7. External stakeholders.
- a) Phatak and Habib defined stakeholders to include:
 - (1) Business associations.
 - (2) Labor unions.
 - (3) Embassies.
 - (4) Industry associations.
- B. Immediate context.

1. Relative bargaining power.
 - a) Joint ventures have been the subject of a great deal of research on cross-border negotiations, and relative power has frequently been operationalized as the amount of equity (financial and other investment) that each side is willing to invest in the new venture (see Yan and Gray, 1994 for a review).
 - b) The presumption is that the party who invests more equity has more power in the negotiation and therefore will have more influence on the negotiation process and outcome.
2. Levels of conflict.
 - a) High-conflict situations, or conflicts that are ethnically, identity, or geographically based, will be more difficult to resolve.
3. Relationship between negotiators.
 - a) Negotiators are part of the larger relationship between two parties.
4. Desired outcomes.
 - a) Tangible and intangible factors will play a large role in determining the outcomes of cross-borders negotiations.
5. Immediate stakeholders.
 - a) Immediate stakeholder negotiations include:
 - (1) Managers.
 - (2) Employers.
 - (3) Boards of directors (Phatak and Habib, 1996).
 - b) Skills, abilities, and international experience of the negotiators themselves clearly can have a large impact on the process and outcome of cross-border negotiations.

II. Rethinking the Culture-Negotiation Link (Conceptualizing Culture and Negotiation)

- A. Culture as learned behavior.
 1. The first approach to understanding the effects of culture concentrates on documenting the systematic negotiation behavior of people in different cultures.
 2. Rather than focusing on why members of a given culture behave in certain ways, the pragmatic, nuts-and-bolts approach concentrates on creating a catalogue of behaviors that the foreign negotiator should expect when entering a host culture (Janosik, 1987).
- B. Culture as shared values.

1. The second approach concentrates on understanding the central values and norms of a culture and then building a model for how these norms and values influence negotiations within that culture (see Faure, 1999; Sebenuis, 2002a).
2. Geert Hofstede (1980a, 1980b, 1989, 1991) conducted an extensive program of research on cultural dimensions in international business. Four dimensions could be used to describe the important differences among the cultures in the study: individualism/collectivism, power distance, career success-quality of life, and uncertainty avoidance.
 - a) Individualism/collectivism.
 - (1) This dimension describes the extent to which a society is organized around individuals or the group.
 - (2) Individualistic societies encourage their young to be independent and to look after themselves.
 - (3) Collectivistic societies integrate individuals into cohesive groups that take responsibility for the welfare of each individual.
 - c) Power distance.
 - (1) The power distance dimension describes “the extent to which the less powerful members of organizations and institutions (like the family) accept and expect that power is distributed unequally” (Hofstede, 1989).
 - (2) Cultures with low power distance are more likely to spread the decision making throughout the organization, and while leaders are respected, it is also possible to question their decisions.
 - d) Career success/quality of life.
 - (1) Cultures promoting career success were characterized by “the acquisition of money and things, and not caring for others, the quality of life, or people.”
 - (2) Cultures promoting quality of life were characterized by concern for relationships and nurturing.
 - e) Uncertainty avoidance.
 - (1) Uncertainty avoidance “indicates to what extent a culture programs its members to feel either uncomfortable or comfortable in unstructured situations.”

- f) The culture-as-shared-value perspective provides explanations for why cross-cultural negotiations are difficult and have a tendency to break down.

C. Culture as dialectic.

1. The third approach to using culture to understand global negotiation identified by Janosik (1987) recognizes that, among their different values, all cultures contain dimensions or tensions that are called dialectics.
2. According to Janosik (1987), the culture-as-dialectic approach has advantages over the culture-as-shared-values approach because it can explain variations within cultures.
3. Recent theoretical work by Gelfand and McCusker (2002) provides a similar way to examine the effects of culture on negotiation but through examining cultural metaphors rather than dialectics. Cultural negotiation metaphors help people understand things that happen in negotiation and “make sense” of them.

D. Culture in context.

1. Proponents of the fourth approach to using culture to understand negotiations across borders recognize all behavior may be understood at many different levels simultaneously, and a social behavior as complex as negotiation is determined by many different factors, one of which is culture.
2. Tinsley, Brett, Shapiro, and Okumura (2004) proposed *cultural complexity theory* in which they suggest that cultural values will have a direct effect on negotiations in some circumstances and a moderated effect in others.
3. The culture-in-context models are becoming more and more complex in order to explain nuanced differences in cross-cultural negotiations, thus are becoming less useful for practitioners.

III. The Influence of Culture on Negotiation: Managerial Perspectives

A. Definition of negotiation.

1. The fundamental definition of negotiation, what is negotiable, and what occurs when we negotiate can differ greatly across cultures (see Ohanyan, 1999; Yook and Albert, 1998).

B. Negotiation opportunity.

1. Cross-cultural negotiations will be influenced by the extent that negotiators in different cultures have fundamental agreement or disagreement about whether or not the situation is distributive or integrative.
- C. Selection of negotiators.
1. Different cultures weigh the criteria to select negotiators differently, leading to varying expectations about what is appropriate in different types of negotiations.
- D. Protocol.
1. Cultures differ in the degree to which protocol, or the formality of the relations between the two negotiating parties, is important.
- E. Communication.
1. Cultures influence how people communicate, both verbally and nonverbally. There are also differences in body language across cultures.
- F. Time Sensitivity.
1. Other cultures have quite different views about time.
 2. The opportunity for misunderstandings because of different perceptions of time is great during cross-cultural negotiations.
- G. Risk propensity.
1. Negotiators in risk-oriented cultures will be more willing to move early on a deal and will generally take more chances.
 2. Those in risk-avoiding cultures are more likely to seek further information and take a wait-and-see stance.
- H. Groups versus individuals.
1. The United States is very much an individual-oriented culture, where being independent and assertive is valued and praised.
 2. Group-oriented cultures, in contrast, favor the superiority of the group and see individual needs as second to the group's needs.
- I. Nature of agreements.
1. Cultural differences in how to close an agreement and what exactly that agreement means can lead to confusion and misunderstandings.
- J. Emotionalism.

1. Culture appears to influence the extent to which negotiators display emotions (Salacuse, 1998). These emotions may be used as tactics, or they may be a natural response to positive and negative circumstances during the negotiation (see Kumar, 2004).

IV. The Influence of Culture on Negotiation: Research Perspectives

A. Effects of culture on negotiation outcomes.

1. Researchers initially explored the fundamental question of how culture influences negotiation outcomes. Two approaches were taken to explore this question.
 - a) Intracultural – researchers compared the outcomes of the same simulated negotiation with negotiators from several different cultures who only negotiated with other negotiators from their own culture.
 - b) Cross-cultural – researchers investigated this by comparing negotiation outcomes when negotiators negotiated with people from the same culture with outcomes when they negotiated with people from other cultures.
2. Research has found, however, that negotiators in collectivist cultures are more likely to reach integrative outcomes than negotiators in individualist cultures.
 - a) Research has found that negotiators in collectivist cultures are more likely to reach integrative outcomes than negotiators in individualist cultures (Lituchy, 1997; Arunachalam, Wall, and Chan, 1998).
 - b) Brett, Adair, Lempereur, Okumura, Shihkirev, Tinsley, and Lytle (1998) compared intracultural negotiators in six different cultures (France, Russia, Japan, Hong Kong, Brazil, United States) and found differences in joint gains achieved.
3. The other approach to exploring cultural effects on negotiation outcomes compared the negotiation outcomes of intracultural and cross-cultural negotiations.
 - a) Cross-cultural negotiations will result in poorer outcomes compared to intracultural negotiations, at least some of the time.
4. Research suggests that culture does have an effect on negotiation outcomes, although it may not be direct, and it likely has an influence through differences in the negotiation process in different cultures.
5. There is some evidence that cross-cultural negotiations yield poorer outcomes than intracultural negotiations.

B. Effects of culture on negotiation process and information exchange.

1. Graham and his colleagues found significant differences in the negotiation strategies and tactics in the cultures they studied (also see Graham, Evenko, and Rajan, 1992).
2. Cai (1998) demonstrated how individualism/collectivism influenced negotiation planning: Negotiators from a more collectivist culture (Taiwan) spent more time planning for long-term goals, while negotiators from a more individualistic culture (the United States) spent more time planning for short-term goals.
3. Adair, Brett, Lempereur, Okumura, Shikhiriv, Tinsley, and Lytle (2004) found considerable difference in direct information sharing, with negotiators from the United States most likely to share information directly. In addition, they found that while U.S. and Japanese negotiators both maximized their joint gains, they took different paths to do so.
 - a) direct information exchange.
 - b) indirect information exchange.
4. Adair (2003) found that culture led to different communication patterns in intracultural negotiations, with negotiators from low-context cultures tending to use direct communication while negotiators from high-context cultures used more indirect communication.
5. The Rosette, Brett, Barsness, and Lytle (2004) study suggests that culture has an effect on the process of e-mail negotiations, which in turn appears to influence negotiation outcomes.

C. Effects of culture on negotiator cognition.

1. Researchers are working to understand how culture influences the way that negotiators process information during negotiation and how this in turn influences negotiation processes and outcomes.
 - a) Gelfand and Realo (1999) found that accountability to a constituent influenced negotiators from individualistic and collectivistic cultures differently.
 - b) Gelfand, Nishii, Holcombe, Dyer, Ohbuchi, and Fukuno (2001) suggest that there are some universal ways of framing conflict (e.g., compromise-win) but there are also significant culturally specific ways.
2. Another way to explore the influence of culture on negotiator cognition is to examine the extent to which well-known cognitive effects identified in Western cultures occur in other cultures.

3. Gelfand and Christakopoulou (1999) found that negotiators from an individualistic culture (the United States) were more susceptible to fixed-pie errors than were negotiators from a more collectivist culture.

D. Effects of culture on negotiator ethics and tactics.

1. Researchers have recently turned their attention to examining ethics and negotiation tactics in cross-cultural negotiations by exploring the broad question of whether negotiators in different cultures have the same ethical evaluation of negotiation tactics.

V. Culturally Responsive Negotiation Strategies

A. Several factors suggest that negotiators should *not* make large modifications to their approach when negotiating cross-culturally, however:

1. Negotiators may not be able to modify their approach effectively. It takes years to understand another culture deeply, and negotiators typically do not have the time necessary to gain this understanding before beginning a negotiation.
2. Even if negotiators can modify their approach effectively, it does not mean that this will translate automatically into a better negotiation outcome.
3. Research by Francis (1991) suggests that moderate adaptation may be more effective than “acting as the Romans do.”

B. Recent research findings have provided some specific advice about how to negotiate cross-culturally. Rubin and Sander (1991) suggests that during preparation, negotiators should concentrate on understanding three things.

1. Their own biases, strengths, and weaknesses.
2. The other negotiator as an individual.
3. The other negotiator’s cultural context.

C. Weiss’s (1994) culturally responsive strategies may be arranged into three groups, based on the level of familiarity (low, moderate, high) that a negotiator has with the other party’s culture. Within each group there are some strategies that the negotiator may use individually (unilateral strategies) and others that involve the participation of the other party (joint strategies).

1. Low familiarity.
 - a) Employ agents or advisers (unilateral strategy).
 - b) Bring in a mediator (joint strategy).

- c) Induce the other party to use your approach (joint strategy).
- 2. Moderate familiarity.
 - a) Adapt to the other party's approach (unilateral strategy).
 - b) Coordinate adjustment (joint strategy).
- 3. High familiarity.
 - a) Embrace the other negotiator's approach (unilateral strategy).
 - b) Improvise an approach (joint strategy).
 - c) Effect symphony (joint strategy).

Summary

This chapter examined what makes international and cross-cultural negotiation different. Phatak and Habib (1996) suggest that both the environmental and the immediate context have important effects on international negotiations. We focused on Salacuse's description of the environmental factors that influence international negotiations: (1) political and legal pluralism, (2) international economics, (3) foreign governments and bureaucracies, (4) instability, (5) ideology, (6) culture, and (7) external stakeholders. Phatak and Habib's five immediate context factors were examined next: (1) relative bargaining power, (2) levels of conflict, (3) relationship between negotiators, (4) desired outcomes, and (5) immediate stakeholders. Each of these environmental and immediate context factors acts to make international negotiations more difficult, and effective international negotiators need to understand how to manage them.

Next we discussed how to conceptualize culture. Robert Janosik (1987) suggests that researchers and practitioners of negotiation use culture in at least four different ways: (1) culture as learned behavior, (2) culture as shared values, (3) culture as dialectics, and (4) culture in context. We then examined two perspectives on how cultural differences can influence negotiations. From the managerial perspective, 10 ways were outlined where culture can influence negotiation: (1) the definition of negotiation, (2) the negotiation opportunity, (3) the selection of negotiators, (4) protocol, (5) communication, (6) time sensitivity, (7) risk propensity, (8) groups versus individuals, (9) the nature of agreements, and (10) emotionalism. From the research perspective, we examined the effect of culture on negotiation outcomes, negotiation process, and negotiator ethics.

The chapter concluded with a discussion of how to manage cultural differences in negotiation. Weiss presents eight different culturally responsive strategies that negotiators can use with a

negotiator from a different culture. Some of these strategies may be used individually, whereas others are used jointly with the other negotiator. Weiss indicates that one critical aspect of choosing the correct strategy for a given negotiation is the degree of familiarity (low, moderate, or high) that a negotiator has with the other culture. However, even those with high familiarity with another culture are faced with a daunting task if they want to modify their strategy completely when they deal with the other culture.

Self-test Question Items

I. Fill in the Blank

1. The term _____ refers to the shared values, beliefs, and behaviors of a group of people.
2. In order to understand the complexity of international negotiations, one must understand how the factors in both the _____ and _____ contexts can influence negotiation processes and outcomes.
3. Proponents of the _____ approach recognize that negotiation behavior is multiply determined and using culture as the sole explanation of behavior is oversimplifying a complex social process.
4. Cultures differ in the degree to which _____, or the formality of the relations between the two negotiating parties, is important.
5. Many types of _____ may be used in cross-cultural negotiations, ranging from someone who conducts introductions and then withdraws, to someone who is present throughout the negotiation and takes responsibility for orchestrating the negotiation process.

II. True/False Questions

1. Countries can have only one culture; however cultures can span national borders.
2. The "culture-as-shared-values" approach has advantages over the "culture-as-dialectic" approach because it can explain variations within cultures.
3. The best approach to manage cross-cultural negotiations is to be insensitive to the cultural norms of the other negotiator's approach.
4. Francis found that negotiators from a familiar culture (Japan) who made no attempt to adapt to American ways were perceived more positively than negotiators who made moderate adaptations.
5. To use the "improvise an approach" strategy, both parties to the negotiation need to have high familiarity with the other party's culture and a strong understanding of the individual characteristics of the other party.

III. Multiple Choice Items

1. We use the term "culture" to refer to the
 - A. religious beliefs of a group of people.
 - B. ethnicity of a group of people.

- C. geographic nationality of a group of people.
 - D. shared values, beliefs, and behaviors of a group of people.
 - E. Culture refers to none of the above.
2. According to Salacuse, which of the following is not a factor in the environmental context of negotiations?
- A. political and legal pluralism
 - B. foreign governments and bureaucracies
 - C. relative bargaining power
 - D. international economic factors
 - E. All of the above are factors in the environmental context of negotiations.
3. Political and legal pluralism can make cross cultural negotiations more complex because
- A. there may be implications for the taxes that the organization pays.
 - B. there may be implications for the labor codes or standards that the organization must meet.
 - C. there may be different codes of contract law and standards of enforcement.
 - D. political considerations may enhance or detract from the conduct of business negotiations in various countries at different times.
 - E. Political and legal pluralism can make cross-cultural negotiations more complex because of all of the above.
4. Which of the following is not one of Janosik's four ways that culture is used in international negotiation?
- A. culture as learned behavior
 - B. culture as economic indicator
 - C. culture as shared values
 - D. culture as dialectic
 - E. Each of the above is one of Janosik's four ways that culture is used in international negotiation.
5. The "culture-as-shared-value" approach
- A. concentrates on documenting the systematic negotiation behavior of people in different cultures.

- B. concentrates on understanding the central values and norms of a culture and then building a model for how these norms and values influence negotiations within that culture. B
 - C. recognizes that all cultures contain dimensions or tensions among their different values.
 - D. recognizes that no human behavior is determined by a single cause.
 - E. All of the above are elements of the "culture as shared" value approach.
6. Power distance describes
- A. the extent to which the less powerful members of organizations and institutions accept and expect that power is distributed unequally.
 - B. the extent to which the society is organized around individuals or the group.
 - C. the extent to which cultures hold values that were traditionally perceived as masculine or feminine.
 - D. the extent to which a culture programs its members to feel either uncomfortable or comfortable in unstructured situations.
 - E. None of the above describes power distance.
7. Risk-avoiding cultures will
- A. be willing to move early on a deal.
 - B. generally take more chances.
 - C. seek further information.
 - D. be less likely to take a wait-and-see stance.
 - E. Risk avoiding cultures will generally take all of the above actions.
8. According to Weiss, when choosing a strategy, negotiators should
- A. choose one strategy and stick with it throughout the entire negotiation.
 - B. be aware of their own culture, but minimize the other culture's norms.
 - C. not try to predict or influence the other party's approach.
 - D. understand the specific factors in the current relationship.
 - E. Weiss states that negotiators should do all of the above when preparing for negotiations.
9. "Coordinating adjustment" involves
- A. adopting completely the approach of the other party.
 - B. making conscious changes to your approach so that it is more appealing to the other party.
 - C. both parties making mutual adjustments to find a common process for negotiation.

- D. crafting an approach that is specifically tailored to the negotiation situation.
 - E. "Coordinating adjustment" involves all of the above.
10. When working to create a new approach that may include aspects of either home culture or adopt practices from a third culture, negotiators are using what approach?
- A. effect symphony
 - B. improvise an approach
 - C. embrace the other party's approach
 - D. employ agents or advisors
 - E. Negotiators are using all of the above approaches.

IV. Discussion Questions

1. How does the exchange value of international currencies affect cross-cultural negotiation decisions?
2. How does ideology contribute to making international negotiations difficult?
3. What is the main challenge for every global negotiator?
4. What is the "culture-in-context" approach to using culture to understand global negotiation?
5. Foster suggests that culture can influence negotiations across borders in what different ways?
6. How does the nature of agreements vary between cultures?
7. What did researchers Adler, Brahm and Graham find about the differences in negotiation strategies and tactics in the cultures of the Chinese and Americans?
8. What is the danger in modifying the negotiator's approach to match the approach of the other negotiator?
9. What is the challenge in using the "adapt to the other party's approach" strategy?
10. The "embrace the other party's approach" strategy involves:

Suggested Answers

I	1. Culture	2.environmental; immediate	3."culture-in- context"	4. Protocol	5. Mediators
II	1. FALSE	2. FALSE	3. FALSE	4. FALSE	5. TRUE

III

1. D	2. C	3. E	4. B	5. B	6. A	7. C	8. D	9. C	10. A
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IV.

1. The risk is typically greater for the party who must pay in the other country's currency. The less stable the currency, the greater the risk for both parties. In addition, any change in the value of a currency (upward or downward) can significantly affect the value of the deal for both parties, changing a mutually valuable deal into a windfall profit for one and a large loss for the other.
2. Ideological clashes increase the communication challenges in international negotiations in the broadest sense because the parties may disagree at the most fundamental levels about what is being negotiated.
3. To understand the simultaneous, multiple influences of several factors on the negotiation process and outcome, and to update this understanding regularly as circumstances change.
4. The "culture-in-context" approach recognizes that no human behavior is determined by a single cause. Rather, all behavior may be understood at many different levels simultaneously, and a social behavior as complex as negotiation is determined by many different factors, one of which is culture.
5. (1) Definition of negotiation, (2) negotiation opportunity, (3) selection of negotiators, (4) protocol, (5) communication, (6) time sensitivity, (7) risk propensity, (8) groups versus individuals, (9) nature of agreements, and (10) emotionalism.
6. Culture has an important effect both on concluding agreements and on what form the negotiated agreement takes. In the United States, agreements are typically based on logic, are often formalized, and are enforced through the legal system if such standards are not honored. In other cultures, however, obtaining the deal may be based on who you are, rather than what you can do. In addition, agreements do not mean the same thing in all cultures.
7. They found that Chinese and American negotiators used similar negotiation strategies when they negotiated, their communication patterns were quite different, the Chinese asked more

questions, said no less frequently, and interrupted each other more frequently than did American negotiators.

8. Even if negotiators can modify their approach effectively, it does not mean that this will translate automatically into a better negotiation outcome for their side. It is quite possible that the other side will modify their approach too. The results in this situation can be disaster, with each side trying to act like the other "should" be acting, and both sides not really understanding what the other party is doing.
9. The challenge in using this strategy is to know which behaviors to modify, eliminate, or adopt.
10. Adopting completely the approach of the other party.

Chapter 8

Contract Management

Overview

Contract Management regards the administration of contracts between businesses and their stakeholders, for the purpose of maximizing benefits and minimizing financial risks. Contract Management covers the entire period of the contract, from the start of an agreed term between two companies when plans are being created, right through to the very end of the contract during the productivity evaluation, to ensure all parties fulfil their obligations for the duration of the contract.

Sufficient management of contracts also ensures that business's objectives are achieved and potential risks can be negotiated prior to issues arising during the contract term. Successful Contract Management practice can generate closer relationships with business partners and providers, which in turn produces increased value and benefits, as the contract is deriving the best aspects from all parties.

Contracts are fundamental to the work-processes and exchange of services between the government, public sector services, and commercial businesses. Essentially, Contract Management training ensures that contracting processes are conducted efficiently, professionally, and in a legally binding manner.

Learning Objectives:

- Clarify the roles of the contract manager and contract administrator
- Identify fundamental facets of contract administration and claims processes
- Scrutinize the contractual issues surrounding variations, delays and defects, and develop procedures to effectively deal with these issues
- Analyze key principles of effective document control, reporting and communication systems
- Discover cooperative negotiation and partnering skills for dispute avoidance and resolution

I. Contract Management and Contract Administration

The terms “contract management” and “contract administration” are often used synonymously. However, “contract management” is commonly understood as a broader and more strategic concept that covers the whole procurement cycle including planning, formation, execution, administration and close out of a contract and goes beyond the day to day “administrative” activities in the procurement cycle.

The purpose of contract management is to ensure that all parties to the contract fully meet their respective obligations as efficiently and effectively as possible, delivering the business and operational outputs required from the contract and providing value for money. It also protects the rights of the parties and ensures required performance when circumstances change.

Contract management is similar to project management. Each contract is a mini-project. It has a unique goal, consumes resources, has a beginning and end date, and requires coordination and planning of relevant activities, as well as documentation in a contract file throughout the process. Contract management includes monitoring and documenting performance. Depending on the organization and goods or services procured, daily/regular monitoring of the contract may be primarily the responsibility of the requisitioner.

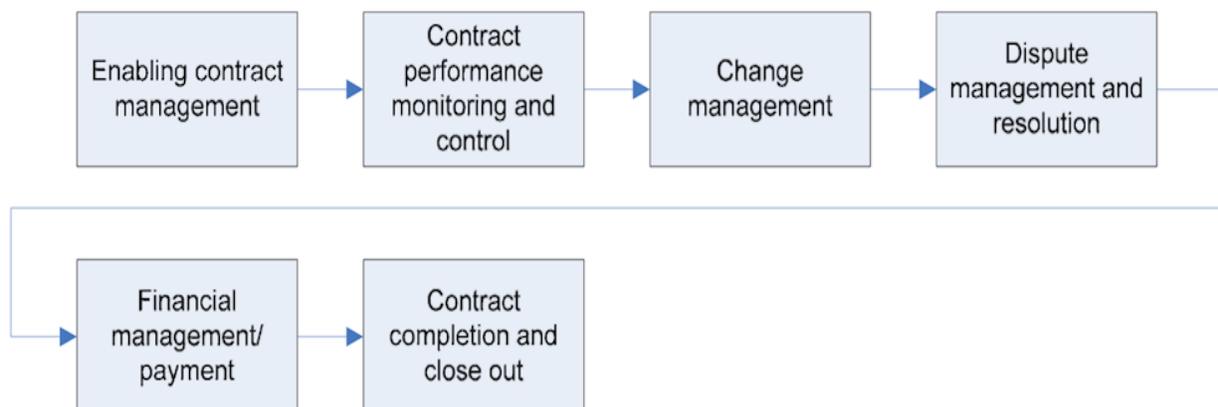
In all situations, the procurement officer is responsible for following up and ensuring that the actions of the supplier and the Country Finance organization are in line with the contractual responsibilities, that the contract is amended to reflect agreed changes in circumstances, and that any claim or dispute is resolved amicably according to the terms of the contract.

Payment for the goods or services should be handled independently from the procurement function, while contract close out again is the responsibility of the procurement officer.

The stages of contract management are intended to ensure that the parties work together to achieve the objectives of the contract. Contract management is based on the idea that the contract is an agreement, a partnership with rights and obligations that must be met by both sides to achieve the goal. Contract management is aimed not at finding fault, but rather at identifying problems and finding solutions together with all contracting parties involved.

II. Process

The flowchart below shows each of the stages in the contract management process.



III. Enabling contract management

In this phase the procurement officer ensures that there is a shared understanding, distribution of responsibilities and systems and procedures in place to monitor and control contract performance and effectively deal with potential changes and disputes.

The supplier should be considered a member of the project team, with all members striving for success. Upon signature of the contract, several steps should be taken to ensure that roles, responsibilities and obligations are clearly allocated among the parties and proper systems and procedures are put in place to monitor performance and keep efforts well focused:

Contract file and documentation

The contract file should be opened by the procurement officer, and the contract should be carefully analysed, taking note of the rights and obligations of each party. Any issues requiring clarification or change of the contract should be fully documented in this file. (The requisitioner will normally have a separate file, with copy of the contract, as part of the project management files.)

Although practice may vary among organizations, the following documents normally are part of the contract file:

- original of contract and all amendments
- all related communication with the supplier (electronic, internal and external correspondence)
- copy of the winning offer
- award documents
- minutes of meetings
- notes of phone conversations
- reports
- pictures, video films
- proof of receipt of goods
- proof of payment
- supplier assessment report
- acceptance report from requisitioner/client.

Other related documents preceding the contract finalization, such as Requisition, solicitation document, offers received, evaluation report, etc. are usually part of other related files.

It is important to carefully document contract performance for the following reasons:

- It constitutes proof of performance.
- It constitutes evidence in the event of disputes.
- Its content forms the institutional memory.
- It is used for audit purposes.

Contract analysis

As soon as possible, the responsible staff member (programme manager, requisitioner, or procurement officer) should analyse the terms and conditions of the prospective contract and develop a contract work breakdown structure that reflects both the technical and administrative aspects of contract performance. The requisitioner and the procurement officer should reach agreement on intermediate performance goals based on contract performance obligations. Intermediate goals will enable the organization to measure progress, detect significant performance variances, take corrective action, and follow up.

Pre-performance conference

Before performance begins on large or complex contracts, the procurement officer and the requisitioner should meet with the supplier's team to discuss their understanding and joint administration of the contract.

The following is considered good practice:

- the meeting should be formal
- an agenda should be distributed in advance, minutes should be taken and agreed by the parties.
- each party should appoint a person who will be the organization's official voice during contract performance.

The following topics should be covered by the parties:

- Review the contract terms and conditions and other key elements and explain who will do what.
- Update the project/programme plan with the involvement of both parties, to reflect the actual date of effectiveness as well as milestones/deliverables of the contract and any changes which may have occurred since it was planned.
- Review the performance assessment plan with the supplier, so that both parties know the basis upon which performance will be established. These should be understood as milestones for joint monitoring and not as contractual obligations.

- Discuss how and when to measure and report actual performance. The techniques, timing, and frequency of measurement and reporting should reflect the nature and criticality of the work. A reasonable balance must be struck between no measurement/reporting of any kind and excessive reporting.
- Clarify any remaining ambiguities and discuss procedures for managing change and resolving differences.
- Clarify the communication plan.

For simple goods or equipment purchase orders, a telephone or email contact is often sufficient to launch activities, supported by regular expediting and monitoring.

Effective communication

Successful contract management is based on an open flow of communication and willingness to take actions necessary for correction and improvement, and is facilitated by:

- Attitude of teamwork, seeking to get the best results from joint efforts, willingness to discuss problems without immediate recourse to recriminations and to make the immediate adjustments that may be necessary to correct problems detected through routine inspection.
- Well organized oral and written reporting system, which highlights progress and problems and measures them against expected performance and results.
- Contract performance and progress review meetings at appropriate intervals. For complex works and services contracts, such meetings could be as frequent as every two weeks or as infrequent as every two months. For goods procurement, it may be sufficient to have an email or telephone follow-up every few weeks.

For procurement of goods, contract monitoring and control is largely covered by expediting, pre-shipment inspection and final receipt and acceptance.

The policy of compliance with contract terms and conditions requires that organizations maintain effective communication about, and control over, contract performance. Each party to the contract should establish communication procedures to ensure that people within their organization know what they must do, and each party should establish controls to ensure that they do it.

It is equally important that the parties to the contract communicate with each other, as often as may be necessary. A contract is a “meeting of the minds” made at a prior point in time. Like all human relationships, contracts are dynamic; the original “meeting of the minds” may have been inaccurate or frustrated by events.

As performance proceeds and events unfold, the parties will find that they may have to modify their original expectations and plans to adjust to real events. As they do so, they will have to modify the terms and conditions of their contract so that it reflects the current status of their agreement. This is an inevitable part of contracting, because no one can predict the future with perfect accuracy. However, it is important that the parties do this consciously and openly, and with an attitude of teamwork, so that they remain in agreement about what they are doing. If they do not communicate, they could end up mitigating a dispute over what their obligations really are.

IV. Contract Performance Monitoring and Control

Once the contract has been awarded, the responsible procurement officer, or the requisitioner, monitors performance, collects information, and measures actual contract achievement. This is essential for effective control. The resources devoted to these tasks, and the techniques used to perform them, will depend on the nature of the contract work, the size and complexity of the contract, and the resources available.

For small, simple, non-critical contracts, an occasional telephone call may be all that is needed to satisfy the responsible staff member that everything is proceeding according to plan. However, for large, complex contracts, the responsible staff member may require extensive reports, regular progress meetings, formal testing, and technical reviews and audits.

In performance based contracts, performance indicators developed in the contract are used. In some cases, the proposed supplier's quality assurance plan may be used as a basis for monitoring the supplier's performance.

Observations are made in order to collect information related to those aspects of performance that, when measured, will describe the progress of the work. The reason for observing, collecting information, and measuring progress is to have a basis for comparing actual achievement with planned achievement in order to exert control. Each party must direct its attention internally to ensure that it is fulfilling its own obligations, and externally to ensure that the other party is fulfilling its obligations.

Control points

Observing and collecting information should be directed at four general control points. These include:

- cost control
- schedule control

- compliance with specifications, terms of reference, statement of work (quality assurance and control)
- compliance with terms and conditions, paperwork requirements, and administrative aspects of the performance.

Monitoring methods

There are two different monitoring methods: direct observation and indirect observation.

Direct observation

Direct observation means personal, physical observation. The responsible staff member, or a field representative, is physically present at the work site during its performance to see how it is progressing. This approach is most practical when the work is physical in nature and performed at a limited number of sites.

Construction projects are examples of work readily subject to direct observation. The inspector goes to the site and visually inspects the work, comparing observations to the construction specifications and drawings to the schedule to determine the progress of the job.

Direct observation by the responsible staff member or field representative is of limited use, however, when the work is largely intellectual in nature, or when it is too complex for physical inspection alone to provide enough information to measure progress. In these cases, direct observation should be supplemented or replaced by indirect observation.

Indirect observation

Indirect observation refers to testing, progress reports from many observers, technical reviews, performance indicators and audits. Indirect observation is appropriate whenever direct observation would provide insufficient or ambiguous information. For example, projects involving an intellectual effort like infrastructure analysis where personal observations at the offices where the work is performed are unlikely to reveal whether the work is ahead of schedule, on schedule, or behind schedule.

Receipt, inspection and acceptance procedures

Inspection involves examining or testing a product or service to ensure that it conforms to contract requirements. Where quantities of goods are involved, inspection also means verifying that the correct number of items has been delivered. Some organizations may have one-off contracts with inspection agents, while others may have in-house experts who undertake plant visits and inspections. Generally, there are the following types of inspection methods:

- sensory and dimensional checks
- physical performance checks
- destructive tests.

Sensory and dimensional checks

Sensory and dimensional checks are examinations by an inspector using his or her eyes, ears, and other senses. The inspector exercises a good amount of personal judgment. For a commercially available automatic pencil sharpener, for example, this method reveals surface defects, missing pieces, noisy operation, and parts out of alignment. For custodial services, for example, visual inspection detects surfaces that are not clean.

Some country organizations typically use sensory and dimensional checks to perform inspections. When using this method, staff at the receiving point (that is, the office or field mission using the item) should check the following:

- Make a visual examination to verify that the proper type and kind of product has been delivered, that is, that the product or service conforms to the specifications outlined in the order or contract.
- Conduct a physical count to ensure that the correct quantity of product has been delivered by comparing the quantity received with the quantity ordered. Variations in quantities authorized by the order or contract may be accepted. Quantities accepted must be documented; payment is based on quantities accepted.
- Check for signs of damage, such as dents and tears. Any damage should be documented.
- Perform an operability check to ensure that the product performs or operates properly, if applicable.
- Check the preservation of the product to ensure that it has not spoiled, rusted, or deteriorated, if applicable.
- If applicable, check packaging and labelling to ensure that they comply with the contract's requirements.
- Check packing to ensure that it is adequate, if applicable.
- Check marking to ensure that it properly identifies packages, if applicable.

Any items that do not conform to appropriate standards should not be accepted. A receipt and inspection report should be submitted, noting any non-conforming item.

Physical or performance tests

Physical or performance tests provide actual performance data that are compared with required performance or physical characteristics or a range of what is considered acceptable according to the contract. Requiring that a motor runs or an operating system performs at a certain level for a specific period of time is an example of a performance test. Testing materials for their chemical composition or density against parameters in the specification are examples of physical tests. On a bus service contract, waiting at a particular bus stop to see whether the bus arrives on time is a performance test to check compliance with the required schedule. Performance tests for labour-intensive services are often done as a random sample.

Destructive tests

Destructive tests require that end products meet certain reliability standards or withstand a specific level of stress. For example, heating a product until it burns tests the fireproof characteristics of an end product. Scratching through newly applied coats of paint shows the number of coats applied by a painting supplier.

Acceptance or rejection standards

Acceptance or rejection of products or services must be based on the standards identified in the contract or purchase order. Generally, the organizations rely on two types of standards:

- Strict compliance standards: Requirements based on specific organization's technical descriptions.
- Subjective standards: Requirements based on a broader, more judgmental, criterion as applied by the inspector. Examples of subjective standards might be "comfortable fit" or "easy operation."

It is not unusual to have both types of standards apply to different aspects of one purchase. In such cases, both strict compliance standards and subjective standards must be enforced. But if both standards apply to a single aspect of the purchase, they typically are inconsistent with each other and, therefore, unenforceable.

Both types of standards can be applied to different aspects of service requirements as well. For example, a contract for grass-cutting services may state that the grass will be cut once a week – which is a strict compliance standard – or that the grass must always be neat and trimmed – which is a subjective standard. The basis for acceptance or rejection must be in accordance with the contract's stated requirements as shown in the table below.

Types of reports

Receipt and inspection documentation

Inspections may be interim or final and receipt may be in full or partial.

Organizations usually use standard forms/reports to acknowledge that the inspection has been performed and to record whether products/services have been accepted or rejected. For instance UN Organizations now increasingly use the organization's ERP procurement software to record delivery and related aspects of contract completion electronically.

Progress meetings

Progress meetings can simply be oral progress reports. They provide some advantages and disadvantages over written reports. An advantage is that the listeners can ask questions about the information, analyses, and conclusions reported and can have discussions with the reporter. A disadvantage is that the listeners may not have time during the meeting to consider the information and make their own analyses before the meeting ends.

Requirement type	Refers to...
End-item versus level-of-effort requirement	Contract terms with may require delivery of end items, which may include finished services, or may require a stated level of effort over a specified period of time.
End-item requirement	A measurable product of work, such as a management analysis report to be delivered in camera-ready form or the manufacturing of a product as required by technical descriptions. This type of requirement states a specific time for delivery or completion. Rejection, or other remedies, may be appropriate if the end item is deficient or delivered late.
Level-of-effort requirement	An amount of work, a level of effort, applied toward a specific objective or performed during a specified period of time. The level of effort itself is the deliverable. A supplier's obligation to provide the level of effort ends when the contract expires, even if the objective is not met. The only basis of rejection or application of remedies is the manner in which the effort was applied during contract performance.

Inspection and acceptance or rejection of products and services, determine whether the organization should make payment to the supplier.

Written reports

Written reports rarely provide “real time” information. They do not tell the reader how things are now; they provide the reader only a picture of some point of time in the past. How old the information is depends on the nature and frequency of the report and on the reporter’s capabilities. For instance, a cost/schedule performance report that is submitted on 1 January, and that depends on accounting information, may actually describe cost/schedule status as of 30 November or earlier, depending on the capabilities of the seller’s accounting system.

Report conclusions about project status are valid only if the information on which they are based is accurate and the analyst is competent, realistic, and honest.

In deciding to rely wholly or in part on reports (including meetings), the responsible staff member also needs to decide what information each report must contain. Some of the issues that should be considered according to the contract reporting guidelines of the organization are:

- What aspect(s) of performance should the report address?
- What information should the report include: conclusions about performance, analyses, raw information, or some combination of these?
- How frequently must the report be submitted, and at what points in time?
- What is the cut-off point (“as of” date) for information to be included in the report?
- In what format should the report be submitted?
- To whom should the report be submitted, and to whom should copies be sent?

Variance analysis

It is not enough to observe and collect information about performance; that information should be analysed to determine whether or not performance is satisfactory. The analyst compares actual performance to performance goals to determine whether there are variances. The responsible staff member who discovers a variance between actual and expected performance should determine several things: Is it significant? What was its cause? Was it a one-time failure, or is it a continuing problem? What type of corrective action would be most effective?

Variance analysis should be timely, especially when the information is obtained through reports. That information is already old by the time it has been received. Delays in analysing its significance may allow poor performance to deteriorate further, perhaps beyond hope of effective corrective action. It is especially important to act promptly during the early phases of contract performance, when corrective action is likely to have the greatest effect. In case of negative

contract performance a review of information in the contract file frequently shows that there were warning signs – reports, meeting minutes, letters, memos – that were unnoticed or ignored. When the responsibility for monitoring performance is delegated, the responsible staff member must take steps to ensure that those persons promptly analyse the information, report their findings, and take corrective action.

Taking corrective action

When the requisitioner or the procurement officer discovers significant variance between actual and expected performance, they should take corrective action if possible. They should identify the cause of the problem and determine a solution that will not only eliminate it as a source of future difficulty, but correct the effect it has already had, if possible. If the effect cannot be corrected, then the parties may need to negotiate a change to the contract, with compensation to the injured party, if appropriate.

Follow up

Once corrective action has been taken or is under way, the procurement officer and the requisitioner should determine whether it has had or is having the desired effect. If not, then further action may be needed.

Throughout this process of corrective action and follow-up, all the parties must keep each other informed. Effective communication between the parties is essential to avoid misunderstandings and disputes when things are not proceeding according to plan. The party taking corrective action must make every effort to let the other party know that it is aware of the problem and is addressing it seriously. Sometimes this is more important than the corrective action itself.

V. Change management

Change management is the process of both avoiding unwanted changes and incorporating necessary changes into the contract.

Effectively controlling changes entails establishing formal procedures for changing the contract and limiting the number of people who are entitled to make changes.

It is natural for staff in one contract party to work directly with their counterparts in the other contract party's organization, people who speak their language and understand their policies and customs. These colleagues often bypass formal channels of communication, and such relationships can lead to informal, undocumented agreements that depart from contract terms and conditions. Such informal agreements often lead to situations of unauthorized commitment or forbearance

caused by apparent authority communicated involuntarily by the requisitioner. It is important that all parties keep in mind that the written contract is the agreement, until it has been formally modified – such modification is not simply a formality.

“Constructive change” used to describe a contract change, derives from the verb “to construe” and not from the verb “to construct.” So, a constructive change is a situation that can be construed as having the effect of a bona fide contract change. A constructive change occurs when the procurement officer, or other duly authorized official, changes the contract without applying proper legal and regulatory procedures. A constructive change can result from either a specific action or a failure to act. Constructive changes need not have a cost impact; unauthorized commitments always do.

The possibility of a constructive change places the organization in a poor negotiating position when renegotiating price or cost or other contract term or condition. Discussion with the supplier of constructive changes should be avoided as constructive changes destroy any possibility of pre-pricing and put the organization in a poor negotiating position. Unless changes are documented in a contract modification, a misunderstanding between organization’s staff and supplier personnel is likely to result.

Financial changes

Financial changes include in particular:

- Cost overruns, in which the cost of carrying out an agreed activity is greater than the agreed amount. The organization seeks to avoid this situation, and selects outputs and payment methods to make it less likely to occur.
- Cost growth, when activities not included in the original contract are added, they usually bring accompanying costs. Careful planning and choice of language should reduce the frequency of this situation, but it is still likely to occur in complex construction and services contracts.

Cost overruns versus cost growth

When accepting a contract, a supplier intends to make it profitable by ensuring it can control its costs. Failure to do so will undermine the contract’s profitability. The supplier will manage its business risk in a manner that will eliminate wherever possible potential for cost overruns. Organizations also seek to structure contracts and administration to avoid responsibility for cost overruns.

Cost overrun

Examples of sources of potential cost overruns are:

- currency rate fluctuation
- underestimation of level of effort
- underestimation of costs of material
- increase in cost of materials or labour
- undocumented cost growth.

Cost growth

Cost growth is defined as a change in the scope of work or new terms and conditions that have been requested by the buyer. The supplier may accept cost growth provided the contract change is documented and that the contract is amended accordingly.

Delays and variations

Handling claims of delays and variations involves dealing with circumstances where a supplier makes a claim for additional unforeseen work or costs, or where the Organization has varied their requirements from the supplier. Typical delays and variations which should be handled include:

- delays (excusable, non-excusable, shared/concurrent)
- minor variations to scope of work or execution conditions.

The three most significant types of contract delays can be grouped as follows:

- excusable delays
- non-excusable delays
- shared or concurrent delays.

Excusable delays

Excusable delays are delays beyond the control of the supplier and without any fault or negligence on the supplier's part. These include delays caused or authorized by the Organization and delays caused by acts of God or other events beyond the supplier's control, such as fire, flood, acts of war, and so on. This is the only type of delay for which extending the period of performance without obtaining consideration from the supplier is appropriate. Some excusable delays do entitle the supplier to monetary compensation in the form of an increase to a fixed-price/lump-sum contract. This could be an increase in the ceiling price of a time-and-materials contract. In addition, a time adjustment may be appropriate if the Organization caused or could have prevented the delay.

Non-excusable delays

Non-excusable delays are delays that are not authorized by the Organization and are, in some way, the supplier's fault. Even delays that may be excusable are deemed non-excusable if the supplier could have controlled the effects of the delay in some way and failed to do so.

Remedies

When the contract is not being performed properly, there are certain remedies that may be applied by the procurement officer. These include:

- invoking contract remedies
- processing/holding payments, as per contract
- contract termination (for default or convenience).

It is also possible that the situation requires dispute resolution (see below). Any of these actions must be approved by the appropriate authority representing each of the parties.

Good practice

Good practice for choosing the appropriate remedy is to:

- identify the non-conformance
- consider the cause (negligence from supplier or the Organization, force majeure, etc.)
- consider the contract/type of requirement (goods, services or works)
- consider the context (e.g. sole source, competition, emergency)
- consider the beneficiary/end-user requirements
- apply principle of proportionality.

When considering any contract remedy, seeking feedback from the supplier is prudent. As a practical business matter, the supplier should be given an opportunity to provide evidence against pursuing the remedy. That evidence might point to an excusable delay or impossibility of performance. Such evidence can lead to a remedy that is fair and just for both the Organization and the supplier.

When performance problems are the result of supplier deficiencies, the legal terms and conditions of the contract provide remedies. Such deficiencies may be related to late delivery or to other variances from contract requirements. In case of late / delayed delivery an example would be to accept the late / delayed delivery and to invoke a Liquidated Damages Clause.

A typical clause in service contracts would be, "payment upon completion of certain tasks". Progress payments would only be made once the task has been completed by the supplier and

accepted and approved by the Organization. In case of performance delays (time or quality) the Organization could withhold payment until the performance failure is cured.

Termination is the most serious remedy available to a Organization. It is the exercise of the Organization's right to completely or partially discontinue contract performance.

VI. Dispute management and resolution

The inherent shortcomings of language as a medium of communication, the organizational nature of the contracting process, and the dynamic nature of contract relationships all contribute to the potential for disagreements between the parties. In fact, disagreements, like changes, are virtually inevitable. They are to be expected by all involved and are considered a normal aspect of contract management. The larger and more complex the project, the greater is the potential for misunderstandings and disagreement.

Contract management planning should include agreement on the procedure to follow to resolve disagreement between parties regarding responsibilities and interpretation of the contract.

Differences of opinion will arise among qualified professionals in the course of execution. Claims/requests for changes are part of normal contract execution, and the procedure to review and escalate them when necessary should be established from the beginning. There should be an agreed procedure for escalating the concern to a higher level of authority. Nonetheless, the contract should indicate which party has responsibility for a given decision, and the other party should respect that responsibility.

The parties must not allow disagreements and disputes to prevent the execution of the contract. They must commit themselves to the amicable resolution of the inevitable disputes that will arise between them. Contract claims and disputes cannot be avoided entirely, but they can be resolved effectively, fairly, and without rancour and litigation. Experienced parties to a contract will anticipate claims and disputes and recognise that they are not necessarily indicative of incompetence or ill-will, but merely reflect the fact that human foresight, planning, and performance are not perfect. Since it is difficult to avoid the injection of personalities into disputes, disputes should be resolved promptly, before they fester and infect the entire contractual relationship.

Many contractual disagreements stem from ambiguities in the language of contracts. For this purpose, the procurement officer should follow commonly accepted rules developed by judges and arbitrators to resolve ambiguities in contract language. These include:

Basic rules

Some basic rules for resolving ambiguous contract language are:

- Respect established order of precedence of documents.
- Apply dictionary definitions to everyday words and a law dictionary for legal terms.
- Apply standard trade or technical definitions to technical words, unless the context or usage indicates a different meaning.
- Define words in accordance with the contract definition.
- Presume that the same word used in different places means the same thing.
- Do not interpret or define contract language in such a way as to render it meaningless or to render the rights and obligations of one party unrealistic.
- Interpret the contract as a whole and, wherever possible, consistently.
- Where the public interest is affected, apply an interpretation that favours the public.
- When conflict occurs between two sections of the contract and no directions to the contrary exist, assume that:
 - hand-written text takes precedence over typed text
 - typed text takes precedence over pre-printed text on a standard form
 - specific clauses take precedence over general clauses.

Additional rules

For purposes of resolving ambiguous language, the basic rules apply first. When the basic rules fail to provide an answer, the following additional rules apply:

- The intent of the parties. If the words themselves do not resolve the ambiguity, the procurement officer should find evidence as to the intent of both parties when they entered into the contract. For example, evidence might be found in the minutes of the pre-proposal conference. If resolution is not evident, consider circumstantial evidence.
- The circumstances. If evidence cannot be found of the intent of the parties, examine the surrounding circumstances. Arbitration proceedings may hold a contracting party to interpretations that it held, or at least did not challenge, prior to the dispute. Inconsistencies with past interpretations by either the Organization or the supplier are examined, e.g., an Organization's interpretation of language in the SOW (Statement of Work) at a kick off meeting with the supplier after award will prevail over a later, contradictory, Organization opinion. Similarly, when the Organization can show that the supplier originally calculated

certain work as required by the contract and is now trying to claim that the work is extra, the work will be considered as part of the basic contract and not additional work. If resolution is not evident, consider risk allocation principles.

- Ambiguous language in a contract is interpreted against the party who drafted it. For example, an ambiguity in the solicitation's SOW, incorporated into the contract, would be interpreted against the Organization. Likewise, an ambiguity in the supplier's proposed technical approach, incorporated into the contract, would be interpreted against the supplier.
- If the ambiguity is obvious, and the non-drafting party does not request clarification before contract award, then that party would be viewed as having the last opportunity to correct the ambiguity. In which case, the interpretation is against that non-drafting party.

Keys to effective dispute resolution

Before escalating a dispute, consider using the following keys to effective dispute resolution:

- recognising that contract documents are not perfect
- keeping larger objectives in mind
- focusing on the facts
- depersonalising the issues
- being willing to make reasonable compromises.

Mediation

Mediation involves the intervention of an impartial third party to solve a contract dispute. Although quicker and cheaper than formal arbitration, the Organization does not usually resort to a mediator to solve its contractual disputes.

Arbitration

Arbitration is the last recourse. Arbitration, like court litigation, is time-consuming and costly. In arbitration, parties agree to submit their dispute to a panel of persons who will apply the same laws that would have been applied by regular courts. However, the arbitrators can use simplified procedures, conduct the arbitration in the language of choice of the parties, and need not be judges or even lawyers.

No one can ever be entirely sure of its result. It rarely results in a truly satisfactory resolution of a dispute, and it sours commercial relationships. For these reasons, it is to be avoided, if possible.

One of the goals of the responsible Organization’s staff members should be to resolve disputes without arbitration whenever possible.

Escalation process

Contractual disagreements and disputes can be solved using the following escalation process.

Stage	Description
1	End user and/or requisitioner discuss an amicable solution and implemented it promptly. In this stage, the requisitioner and/or end-user are advised to carefully update the contract file stating exactly what was discussed and how the dispute was resolved.
2	Procurement officer reviews the situation and enforces the contractual terms.
3	Arbitration.

Note: At each stage in the escalation process, the procurement officer should contact the Organization’s legal advisor for guidance and approval.

The arbitration process is more formal than ordinary negotiations between the parties (who may be represented by attorneys), but it is less formal than court proceedings. The standard arbitration clause of Country’s contracts recognises that efforts will be made to settle disputes through negotiation, including mediation or conciliation, which sometimes can be considered as a less formal stage before formal arbitration

For instance, the United Nations Commission on International Trade Laws (UNCITRAL) has developed an internationally accepted arbitration process which is also favoured by the UN organizations. The process can be described as a set of generally accepted principles for international arbitration. Many national and international arbitration institutions have declared themselves willing to act as appointing authorities under the UNCITRAL arbitration rules. The cost of arbitration is shared evenly between each party to the dispute. The location of the arbitration panel is a country that can enforce the decision of the arbitration panel.

Each party to the dispute will appoint an arbitrator and the two chosen arbitrators will then select a third panel member. The parties in dispute will then prepare their case and present it to the arbitration panel. After careful review of all facts the arbitration panel makes a decision.

For a UN organization, the decision by the arbitration panel is binding.

VII. Financial management / payment

Among the rights of the supplier are the right to be paid in a timely matter for efforts completed, according to the terms of the contract. Among the obligations of the contract providing Organization are to make payment to the supplier on a timely basis and not cause undue cost to the supplier by unreasonable management of that financial obligation. While the responsibility for management of financial aspects of the contract varies among organizations, it includes:

- Process payments due according to the contract and upon certification of requisitioner if required in the contract.
- Review financial implications of contract changes, in terms of original costs/outputs and available budget.
- Liquidate financial securities – release of bid bonds, performance bonds, advance payment bonds once the reason for requesting them has become moot.

A payment made to a supplier may be one of the following five types:

- advance
- partial
- progress
- final
- holdback / retention (withholding payment).

Advance payment

An advance payment is a sum of money paid to the supplier upon signature of the contract, in anticipation of identified early expenses. Usually the Organizations do not undertake advance payments. However, sometimes advance payments may be necessary for such things as rent, tuition, insurance premiums, and expenses for work performed in particular countries. An advance payment needs to be justified and requires special approval before the procurement officer can include it in a contract and if it is agreed to, all reasons therefore need to be documented. Above certain thresholds, suppliers receiving advance payments must provide guarantees, e.g. bank guarantees.

Partial payment

A partial payment is based on the acceptance of a particular product or service. To process a partial payment, a document must be on file that confirms the Organization's acceptance. This

confirmation usually is in the form of an invoice or delivery ticket detailing the goods or services and signed by the Organization's staff member authorized to accept the product or service.

Progress payment

A progress payment, also referred to as an instalment payment, is a form of contract financing made before final work or deliverables are accepted. The Organization uses this form of payment for long-term service work that involves an end item, such as a report. If progress payments are authorized, they should normally be tied to a milestone in contract performance, such as the delivery and acceptance of a draft report for the Organization's approval or delivery of an outline of initial findings for review by the Organization. Service work for which the service itself is the deliverable (for example, courier service, cleaning services, and so on) would not need progress payments but would use partial payments for services rendered during the billing period.

Final payment

A final payment is a payment made in acknowledgement / approval of the completion of all contract performance. The payment office may make payment based on the supplier's invoice and its receipt of a receiving report or delivery docket from another office. For on-site services at their own office, requisitioners may play a more active role.

Holdback

Holdback payments are used in works and complex consulting assignments to ensure completion of the contract and in some construction contracts to ensure that the general supplier has paid its subcontractors. The holdback payments are retained by the Organization until the supplier has provided proof it has discharged itself of all its obligations under the contract. This contract provision allows the Organization to withhold a portion of payment, usually 10 to 15% of each invoice sent by the supplier.

VIII. Contract completion and close out

Contract close out activities are generally fairly straightforward, especially for small dollar value contracts and purchase orders. However, in complex and high dollar value contracts involving progress payments and/or securities, the procurement officer ensures that the contract file is properly closed out. Each of the required activities to complete and close out a contract are described below.

The close out process ensures that all contractual obligations have been met, and that residual obligations – such as warranties, guarantees and after-sales service and support – are clearly

defined in terms of responsibility, liability, procedures and timeframes. Contract close-out occurs once all contractual obligations have been fulfilled by the supplier. It includes the following key steps:

The Contract Providing Organization supplied equipment and material

Prior to closing a contract, assets provided to the supplier by the Organization during the contract must be returned to the Organization. A report confirming receipt of this material and equipment should be prepared and placed on the contract file.

Unused furnished material provided by the Organization must also be returned by the supplier. A report is prepared by the supplier detailing the amount of material consumed during contract execution and the quantity and quality of the material returned to the Organization. A copy of the report should be placed on the contract file.

Step	Action
1	Review and confirm appropriate action taken according to contract close-out checklists.
2	Prepare final contract performance report (jointly by requisitioner and procurement officer), including lessons learned. Depending on the organization, this report may be purely internal or may be shared with the supplier for their knowledge and comment.
3	Prepare supplier assessment form and forward for appropriate action.
4	Issue final acceptance on the basis of the requisitioner’s report.
5	Make final financial settlements.
6	Liquidate/return bonds and/or securities.
7	Record any residual obligations (warranties, etc.) and advise requisitioner of procedures.
8	Close out contract file.

Warranty performance

Warranties must be spelled out in the specific terms and conditions of the contract or in the Organization’s standard contract terms and conditions. Warranties offer buyers remedies when defects are discovered after products and services have been accepted. The administration of warranties is primarily the responsibility of the requisitioners or end-users. Because end-users

often are the first to identify defects in products that are covered under warranty, it is essential that they are familiar with any required procedures.

Commercial warranties provided by manufacturers and services contain strict notification procedures that the Organization must follow. If these procedures are not followed, the supplier is not obliged to honour the warranty terms. Consequently, the Organization should put in place general steps to follow when problems with accepted items arise. Normally, the advice of the organization's legal advisor may be required.

When problems with accepted items occur, and before the supplier is notified, the end-user or requisitioner should:

- identify the Organization's specific rights under the warranty
- verify that the defect is covered under the warranty and that it applies in the specific incident of failure, by answering these questions:
 - Has the Organization officially accepted the product or service?
 - When does the warranty expire, and what does it cover?
 - Does the Organization have any obligations under the warranty, and have those obligations been met?
 - Do the facts support invoking the warranty?

With the information gathered, the Organization can notify the supplier and do the following:

- obtain the supplier's position and its reasons for taking that position
- reach agreement on how and when the warranty will be applied
- document the notification.

Regardless of when the defect was discovered, there will be less room for argument if Organization's staff members notify the supplier before the warranty period expires.

Liquidation of securities

Performance bonds, holdback payments and guarantees must be returned to their owners once the supplier has fulfilled its contractual obligations. Securities must be liquidated at the time and in the manner described in the contract. In the case of works and capital equipment, the securities are typically held and kept safe by the finance department until they have expired.

Supplier performance report

In addition to the remedies, procurement officers document deficiencies on a supplier performance report. Such reports are to be prepared by the requisitioner or the contract manager and then sent

to the appropriate procurement officer. Supplier performance reports alert the Organization to patterns in performance problems and identify suppliers who might present high performance risks. The procurement officer may seek appropriate management review and action when the supplier performance report is particularly negative, according to the policies and procedures of the individual organization. Supplier performance reports are completed by the requisitioners/end-users. They are used to document satisfactory performance of suppliers and document the poor performance of the suppliers to eventually eliminate them from the organization's supplier roster. Once completed, a copy should be kept on the contract file and on the supplier's file.

Claims

A claim is a request from either party for entitlement under the contract that is not being fulfilled.

Claims might result from:

- unforeseen costs
- disputes over the interpretation of contract clauses
- disputes over what is included within the contract price
- breaches of contract.

Any claim (whether issued by the Organization or the supplier) should include:

- full explanation of the problem as well as the causes of the problem
- the contract clause under which the claim is being submitted.

Claims should only be considered from suppliers that are contracted directly by the Organization. Those submitted by a supplier's sub-contractor should be rejected since there is no contract between the sub-contractor and the contract providing Organization. The supplier may however wish to make a claim against the Organization on the basis of a claim made against it by its sub-contractor. Contracts can not be closed out until all claims are settled.

Lessons learned

The requisitioner and the procurement officer may be expected to complete a lessons learned report. This is good practice and allows the organization to gather and use information to improve chances of success of future procurement actions. It covers as a minimum the following questions and topics:

- Was the requirement adequately defined?
- Were the evaluation criteria appropriate?
- Was the evaluation method appropriate?

- What kinds of suggestions were brought up by suppliers?
- What problems were encountered?
- Recommendations to avoid similar situations.

Summary

Contract Management relates to the administration of contracts between public or private enterprises and their vendors, to derive the utmost benefits from them and reduce economic dangers. Successful Contract Management is crucial to the development of good relationships between both parties, hence this course part will provide you with necessary understanding of managing contracts, and contract procurement.

Self-test Question Items

I. Multiple Choice Items

1. Contract closeout is a process that involves:
 - A. Customer satisfaction analysis and final payment
 - B. Administrative closeout and archiving records
 - C. Final contractor payment and lessons learned
 - D. Product verification and administrative closeout
2. The process of monitoring contract performance, making payments, and awarding contract modifications occurs during:
 - A. Contract administration
 - B. The award phase
 - C. The closeout phase
 - D. Contract resolution
3. Ending a contract before the objectives have been met by either mutual agreement or breach is called:
 - A. Partial completion
 - B. Closeout
 - C. Cessation
 - D. Termination
4. Which term describes those costs in a contract that are associated with two or more project but are not traceable to each of them individually?
 - A. Variable
 - B. Direct
 - C. Indirect
 - D. Semi-variable
5. Which term describes the failure by either the buyer or seller to perform part or all of the duties of the contract?
 - A. Termination of the contract
 - B. Partial performance
 - C. Breach of contract
 - D. Contract waiver

6. Which of the following is an input to contract closeout?
 - A. The contract file
 - B. Contract documentation
 - C. The procurement audit
 - D. Formal acceptance
7. In some cases, contract termination refers to
 - A. Contract closure by mutual agreement
 - B. Contract closure by delivery of goods and services
 - C. Contract closure by successful performance
 - D. Certification of receipt of final payment
8. Which of the following terms is an expression by one party of its compliance to certain terms in the contract provided that the other party expresses its compliance to the identical terms?
 - A. Offer
 - B. Bargain
 - C. Proposal
 - D. Exchange
9. Requirements for formal acceptance and closure of the contract are usually defined in the:
 - A. Proposal
 - B. Statement of Work
 - C. Contract
 - D. Procurement Audit report
10. Which of the following activities is an important element of effective contract administration?
 - A. Holding a bidders conference
 - B. Establishing the appropriate contract type
 - C. Implementing a contract change control system
 - D. Developing a statement of work
11. Contract closeout and administrative closure are similar in that they both require:
 - A. That someone other than the project manager manage the activities involved
 - B. Verification that no errors occurred at any time while the work was being performed

- C. That a WBS was prepared
 - D. Verification that the work was completed satisfactorily
12. Requirements for inspection and acceptance are defined in the:
- A. Contract
 - B. Procurement management plan
 - C. Overall project plan
 - D. Specifications
13. During a team meeting, a team member asks about the measurements that will be used on the project to judge performance. The team member feels that some of the measures related to activities assigned him are not valid measurements. The project is BEST considered in what part of the project management process?
- A. Initiating
 - B. Executing
 - C. Monitoring & Controlling
 - D. Closing
14. During a meeting with some of the project stakeholders, the project manager is asked to add work to the project scope. The project manager had access to correspondence about the project before the project charter was signed and remembers that the project sponsor specifically denied funding for the scope mentioned by these stakeholders. The BEST thing for the project manager to do is to:
- A. Let the sponsor know of the stakeholders' request.
 - B. Evaluate the impact of adding the scope.
 - C. Tell the stakeholders the scope cannot be added.
 - D. Add the work if there is time available in the project schedule
15. Your Company has entered into a joint venture with Service Company to develop a software program. Which of the following should be cooperatively prepared by both the buyer and the seller during teaming agreement process?
- A. Contract
 - B. Contract, Procurement statement of work
 - C. Request for proposal
 - D. Human Resource Plan

16. Conflict resolution techniques that may be used on a project include confronting, smoothing, forcing, and:
- A. Withdrawing
 - B. Directing
 - C. Organizing
 - D. Controlling
17. During project planning phase, which of the following steps come latest compared to others?
- A. Hold kick-off meeting
 - B. Gain formal approval of the plan
 - C. Develop Budget
 - D. Develop Schedule
18. As a PMP candidate you must understand the provisions of project procurement even if your typical projects do not include procurements. Based on the information in this chapter, a contract cannot have provisions for which one of the following?
- A. A deadline for the completion of the work
 - B. Illegal activities
 - C. Subcontracting the work
 - D. Penalties and fines for disclosure of intellectual rights
19. Ambo University has outsourced a portion of the project to a vendor. The vendor has discovered some issues that will influence the cost and schedule of its portion of the project. How must the vendor and Yolanda update the agreement?
- A. As a new contract signed by Yolanda and the vendor
 - B. By submitting the change request to the contract change control system
 - C. As a memo and SOW signed by Yolanda and the vendor
 - D. By submitting the change request to the cost change control system
20. Sellers are always external to the company performing the project.
- A. True
 - B. False

II. Case Study: CASE STUDY: COMMERCIAL, CONTRACT, AND CLAIMS SERVICES

Overview

- The Project was a 6,000 tonne per day greenfield cement plant including a 45MW Power Plant.
- Project Value \$500,000,000.
- Appointed to provide construction claims services on a disputed final account.

Key Facts

- The Client and end-user is a major cement producer in XY Country.
- The Project duration was 34 months.

The Challenge

- The Main Contractor had submitted a Final Account Application that was a 33% increase on the Contract Sum
- The Main Contractor claims comprised uncertified works, an extension of time for completion, acceleration costs, disruption costs, prolongation costs, and instructed/variations to contract works.
- The Client was unable to validate the Main Contractor's Final Account Application, and this led to a long-standing dispute regarding the valuation of the Final Account.
- Significant legal costs were being incurred while this dispute continued.
What will be the solution? Elaborate.

Suggested Answers

I.

1. D	2. A	3. D	4. C	5. C	6. B	7. A	8. A	9. C	10. C
11. D	12. A	13. B	14. C	15. B	16. A	17. A	18.B	19.B	20. B

II. Solution

- They have to review the Main Contractor's Final Account Application and undertake validation of ambiguous quantities or items with significant variance from contract quantities.
- Develop a chronology of events for an understanding of key influencing issues that arose on the project and provide assistance to the Engineer for contractual correspondence.
- Prepare a detailed Employer's Claim with contractual entitlement, delay analysis, cost calculations, verified 3rd party assessments, and a validated Final Account sum.