

# Notes on Negotiating

By Steven Birmingham, version 2, February 2009

## Two Types of Negotiations

Negotiating is the art of communicating with the goal of reaching an agreement. There are two fundamentally-different methods of reaching an agreement: the distributive method, where one party attempts to get the best deal for them, with little regard for the other party, and integrative, where the goal is to work together to make all parties better off. Many experts feel the integrative approach yields better long-term results.

### *Negotiating Step-by-step*

<b>Distributive Strategy</b> (use rarely and with caution)		<b>Integrative Strategy</b> (preferred in most cases)
1. LEARN: Try to identify the other party's interests, estimate their reservation point, and imagine their strategies.		
2. PREPARE*: Determine your interests, identify your best alternative if you can't agree (batna), try to improve your alternatives, set your reservation point, identify the zone of agreement, document strategies and develop offers.  * <b>This is the most important step</b>		
3. NEGOTIATE: Try to make the other party move their reservation point, or consider moving yours to come to an agreement.		3. NEGOTIATE: Share information and brainstorm to maximize the outcome for all parties (expand the pie).
4. CONCLUDE: Maximize your gains by settling as close to the other party's reservation point as possible.		4. CONCLUDE: Divide the gains using fair and objective criteria. Ensure all parties benefit and feel good about the agreement to set the stage for future negotiations.

### **Step 1: Learn**

Try to gain as much information as possible about the parties you will face at the negotiating table. Include information about them personally as well as information about any organization they represent. What is their style? Why are they negotiating? What do they want? Try to imagine what the absolute best agreement for them would look like.

## Negotiating for Success

What will the other party expect as a minimum from the negotiation? Can you estimate the lowest price or set of agreements they will accept? In pursuit of these goals, what strategies might they employ?

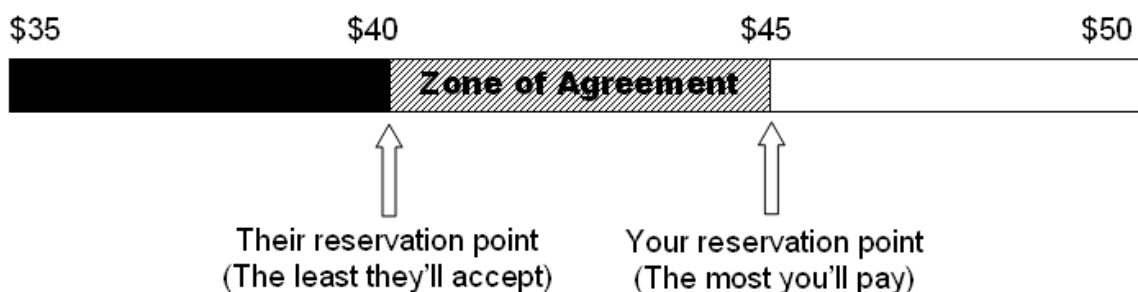
### Step 2: Prepare

Preparation is the key to concluding a successful negotiation. List your interests, what you're trying to accomplish (not your positions).

*The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is that alternative? What is your BATNA — your Best Alternative To a Negotiated Agreement? That is the standard against which any proposed agreement should be measured.*

— Fisher & Ury. Getting to Yes: Negotiating Agreement Without Giving In

Assuming you cannot reach an agreement, or you decide not to negotiate at all, what is your best alternative as Fisher and Ury describe above? After answering that question, and before negotiating, try to improve your alternative. The better your alternative, the less pressure you'll feel and the better negotiating position you'll be in. You'll also need fewer concessions. Starting from your batna, calculate the minimum price or minimum set of agreements you will accept (your reservation point). Make sure to factor in all costs you might incur, or all profits you might forgo. Identify the territory between the other party's reservation point and yours. This is the zone of agreement, where a deal should be possible.



Create a negotiation package with pages for information about the other party, specific goals, tactics, and strategies, and information about the value of various options to you (and possibly to the other party). If you can create an interactive computer spreadsheet to use during the negotiation, you will have a significant advantage at the negotiating table, because you will be able to evaluate offers quickly. Using this spreadsheet, or another method you're comfortable with, develop at least one offer you can use to open the negotiation (which you may or may not choose to do). Set a target above your reservation point and attempt to negotiate to that target. Consider developing other offers you might accept as well. Try to include as many issues in the bargaining mix as possible so you have much to offer the other party. Think creatively about how you can help each other.

## Negotiating for Success

### **Step 3: Negotiate**

If you haven't devoted a significant amount of time preparing, go back to step 2 and do your homework! Postponing a negotiation is preferable to negotiating without proper preparation.

#### **Distributive**

If you're using a distributive negotiation strategy, where you attempt to claim the largest value and leave the other party with the least value, you'll want to use tactics to push them to move their reservation point closer to yours. You may want to question the method they use to value different agreement elements, question their knowledge, flex your muscles, appeal to third parties, and impose time constraints to try to get them agree quickly. Aim high, be reluctant to make concessions, and be critical of the other party's offers. These tactics can result in a beneficial agreement for you, but future negotiations with this same party may be more difficult if they feel they did not get a good deal or weren't dealt with fairly. Often, an integrative negotiation strategy is better.

— or —

#### **Integrative**

If you're using an integrative negotiation strategy, where you attempt to make all parties better off, you'll want to make that clear at the outset. Work with the other party to identify shared interests. Brainstorm about ways each party can benefit the other, even if you must wander into areas not originally contemplated when setting up the negotiation. Be creative. Ask lots of questions. Take frequent breaks to regroup, get advice, and gather information.

### **4. Conclude**

If you have identified an agreement that is acceptable to both parties, or at least one party feels no agreement can be reached and further discussion is not productive, it is time to conclude the negotiation.

#### **Distributive**

In a distributive negotiation, you'll settle when neither party is willing to move their reservation point further. If there is a zone of agreement, the parties can strike a deal somewhere in that zone, dividing up the surplus based on the power and negotiation skills of the parties. If the reservation points allow no agreement, the negotiation will end and both parties will be forced to use their batna.

— or —

#### **Integrative**

In an integrative negotiation, you'll settle when neither party can identify beneficial ideas. If there is a zone of agreement, the parties can strike a deal somewhere in that zone, dividing up the surplus based on fairness and objective

## Negotiating for Success

criteria to benefit both parties. Try to reach an optimum agreement. If there is no way to improve the agreement to benefit both parties without hurting any party, it is known as a *weak Pareto optimum*, a very good agreement. If there is no way to improve the agreement to benefit even one party without hurting another, it is known as a *strong Pareto optimum*, the best possible agreement. An agreement reached quickly may leave money on the table, that is, one or both parties could be better off with a little more discussion and a modified agreement.

If the reservation points allow no agreement, the negotiation will end, and both parties will be forced to use their *batna*. Whether or not an agreement is reached, each party should attempt to set the stage for future negotiations by ensuring the other party was treated well and feels good about the conclusion.

### Interests versus Positions

People are motivated to negotiate by fear, desire, competitiveness, and a host of other factors. Good negotiators can articulate their motivation and list detailed reasons they hope to reach an agreement. These specific details are known as interests.

#### ***Sample interests:***

- I'm afraid of losing my house
- It would like to be top salesperson and win a free vacation
- It want to outdo my predecessor and negotiate a better contract
- I'm fearful the product will fail, shutting down our production line

Sometimes, good negotiators will selectively disclose some of their interests in hopes the other party will do the same, and there may be some overlap. In these cases, the negotiators build rapport and may reach a wise agreement, a noble goal! Untrained negotiators don't think about their interests, and don't disclose them, instead focusing on positions. Positions develop as a result of interests.

#### ***Sample positions:***

- I won't sell my product for less than \$X.
- We must conclude an agreement by Thursday
- I can't pay more than \$X
- The agreement must include maintenance

While stating positions can lead to some discussion and may help move towards a good conclusion, stating interests generally yields better discussion and better results. By linking interests and positions, or by avoiding positions entirely, negotiators may come up with interesting options that increase the chances a deal will be reached. Many times, an interest can be satisfied by a variety of different positions. To get to the underlying interest ask why someone holds a certain position.

## Negotiating for Success

### *Sample Interests and Possible Resulting Positions*

Interest	Position	Options
I'm afraid of losing my house	I won't sell my product for less than \$X.	The other party may have ideas for saving your house that don't relate to the price you sell for.
It would like to be top salesperson and win a free vacation	We must conclude an agreement by Thursday	The other party may accept worse terms on this time-sensitive sale to help you, in exchange for better terms on a future sale.
It want to outdo my predecessor and negotiate a better contract	I can't pay more than \$X	The other party may be able to modify terms other than price that make you look like the hero.
I'm fearful the product will fail, shutting down our production line	The agreement must include maintenance.	In lieu of a maintenance, the other party may be able to pay you in case of failure, offsetting your losses.

### **Some Useful Negotiation Phrases**

"One fair solution might be..."

"You said...is that correct?"

"Which of these items is most important to you?"

"I'd like to reach a fair agreement."

"Might I ask about the motivation behind that particular request?"

"I'm not sure I follow the reasoning. Can you explain it to me in a little more detail?"

## Negotiating for Success

### Negotiation Tips

Never enter a negotiation unprepared; postpone instead.

If you feel you are better-informed than the other party, make the first offer. It will serve to anchor the negotiation. Make your first offer aggressive but reasonable.

If another party makes the first offer, be careful of the anchoring effect.

In an integrative negotiation, do not offer or accept splitting the difference.

Favor listening over speaking.

Asking “who’s winning the negotiation” is a little like asking “who’s winning the marriage?” Neither is a good idea.

Introduce facts and objective measures into the negotiation.

If you receive an extreme offer, either ignore it, or make an extreme offer of your own to negate it.

Grant concessions in exchange for concessions from the other party.

Break frequently to do more research, gather your thoughts, and get advice.

Don’t pin down the other party; allow them to feel comfortable to change their mind.

Focus on interests, not positions.

Ask a lot of questions.

Consider making several offers at once and asking which is preferable.

Consider including protections in the agreement (“if seller costs fall, buyer’s price decreases.”)

Instead of arguing over one item, try to find a second one so each party can have one.

Don’t try to trick the other party, or use ploys or games.

Don’t take away from the other party to benefit yourself.

Disclosing your batna is usually a bad idea.

## Negotiating for Success

Separate the people from the topics being negotiated.

Pay close attention to what the other party says and how they react to what you say. Try to interpret their statements and reactions to understand their possible interests.

Change your mind if presented with reason or facts, but don't change simply for pressure.

Assume there are solutions that make both parties better off and search for them.

Regardless of the outcome, be humble about your results and compliment the other party.

Avoid agreeing to statements that might later be used against you (consistency trap)

Regardless of how much time you've spent on the negotiation, don't fall for the sunk cost fallacy and commit to a bad deal if you have a better alternative.

Be wary of the other party nibbling, asking for small concessions at the very end of a negotiation.

Exchange concessions rather than giving them away, unless you are trying to create goodwill.

Large concessions may confuse the other party as they struggle to understand what is important to you and if your offers are rational and credible.

Apply negotiation jujitsu to deal with unfair tactics or attacks. Ask for more details about bold statements. Accept criticism and invite more. Ignore personal attacks and refocus on issues.

If you have good information, make the first offer to take advantage of anchoring. If not, postpone the negotiation and get better information so you can make the first offer.

Stay focused on your interests but remain open to new ways to reach them.

Use "I" statements rather than speaking about the other party.

# Negotiating for Success

## Glossary

**Anchoring:** Presenting information that serves to set the tone of the rest of the negotiation.

**Bargaining mix:** The set of issues that can be considered as part of an agreement.

**B.A.T.N.A.:** Best alternative to a negotiated agreement. Used as a starting point to calculate the reservation point.

**Consistency trap:** Getting someone to agree to something and then using it against them.

**Concessions:** Items given up during negotiation, usually in exchange for other items.

**Distributive negotiation:** A strategy where the goal is to maximize your value with little regard for the other party, dividing any surplus in your favor.

**Interests:** Fears, desires, and other motivation that makes someone negotiate.

**Integrative negotiation:** A strategy where the goal is to work together to make all parties better off and set the stage for future successful negotiations.

**Leaving money on the table:** Concluding a negotiation too quickly, resulting in a situation where one or both parties could be better off with a modified agreement.

**Negotiation:** The art of communicating with the goal of reaching an agreement.

**Negotiation jujitsu:** A set of tactics to handle unfair negotiators and their attacks. Involves asking questions, accepting and inviting criticism, and ignoring or redirecting attacks.

**Nibbling:** Asking for small concessions at the very end of a negotiation.

**Pareto optimal solution:** See *Weak Pareto optimum* and *Strong Pareto optimum*

**Positions:** Statements made by a negotiator regarding what they will and will not do.

**Reservation point:** The worst agreement a party will accept.

**Split the difference:** Negotiating strategy where the parties agree to settle on a number in the middle of two proposed numbers. Not usually a good solution.

**Strong Pareto optimum:** An agreement where no party can be made better off without hurting another party. The best possible agreement in an integrative negotiation.



## Negotiating for Success

**Sunk cost fallacy:** The tendency to agree to a bad deal because we've spent so much time on it.

**Surplus:** The size of the zone of agreement. If a buyer will pay up to \$100 and the seller will accept as little as \$75, the surplus is \$25. In a distributive negotiation, each party tries to get as much of the surplus as possible.

**Weak Pareto optimum:** An agreement where there is no way to make all parties better off without hurting someone. The second-best type of agreement in an integrative negotiation.

**Zone of agreement:** The area between reservation points where a deal can be made. If a buyer will pay up to \$100 and the seller will accept as little as \$75, the zone of agreement stretches from \$75 to \$100. A deal can be made anywhere in that zone.

## Negotiating for Success

### For further reading

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