

The human mind is kind of like . . .
a pinata. When it breaks open,
There's lots of surprises inside.
Once you get the pinata perspective,
you see that losing your mind can be
a peak experience.

Trudy, The Bag Lady
Lily Tomlin
The Search for Intelligent Life in the Universe

Some Thoughts For Your Consideration

Security is mostly a superstition.
It does not exist in nature
nor do children as a whole experience it.
Avoiding danger is no safer in the long run
than outright exposure.
Life is either a daring adventure, or nothing.
To keep our faces toward change and
behave like free spirits in the presence of fate is
strength undefeatable.

Helen Keller – Let Us Have Faith (1940)

A Definition of Insanity (paraphrased)

Doing the same thing over and over again and expecting a different result.

R.D. Laing, Noted Psychiatrist/Philosopher

Leaders should lead as far as they can and then vanish.
Their ashes should not choke the fire they have lit.

H.G. Wells, Writer/Philosopher

Knots, Tantrums and Games

At some level, we would all like the world
to be the way we would like it to be.

We tie ourselves, our minds and our relationships
in knots;

We create destructive interpersonal games; and

We throw really creative tantrums,

Just because the world does not always
present itself to us the way we would like.

We can be very strict.

The stricter we are, the angrier we get when the world doesn't live up to our expectations.

Compassion, coalition and conflict resolution are much easier when we expect only

- to feel whatever we feel
- to do what needs to be done
- to experience the world as it presents itself
- to respond as responsibly and honestly as we can.

R.D. Laing, Noted Psychiatrist/Philosopher

“Every error under the sun seems to arise from thinking that you are right yourself because you are yourself, and other people are wrong because they are not you.”

Thomas Hardy, Thinker

Every person, wherever he goes, is encompassed by a cloud of comforting convictions, which move with her like flies on a summer day.

Bertrand Russell

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.

Winston Churchill

ABOUT “CONVERSATION”

“Conversation” is derived from the Latin *con* or *com*, meaning together, among, with; plus *versi*, meaning to turn. “Conversation” literally means the act of turning about together with and among others.

In order to engage in a *real* conversation, there is a need to engage with the intention to be *turned about with another*, such that we come at least to see and understand another’s perspective and, ideally, be influenced by that perspective or even allow ourselves to be turned about by that world view. It is having an *integrative conversation* that leads to an increased awareness and a shared understanding (very similar to various descriptions of dialogue). A good conversation is one in which we either overtly or tacitly agree to be influenced by one another and one another’s point of view.

“. . . talking does not necessarily change one’s own or other people’s feelings or ideas . . . The 21st century needs . . . to develop not talk but conversation, which does change people. Real conversation catches fire. It involves more than sending and receiving information . . . The kind of conversation I am interested in is one which you start with a willingness to emerge a slightly different person. It is always an experiment, whose results are never guaranteed. It involves risk. It’s an adventure in which we agree to cook the world together and make it taste less bitter.

Theodore Zeldin, Oxford scholar and thinker, 2000

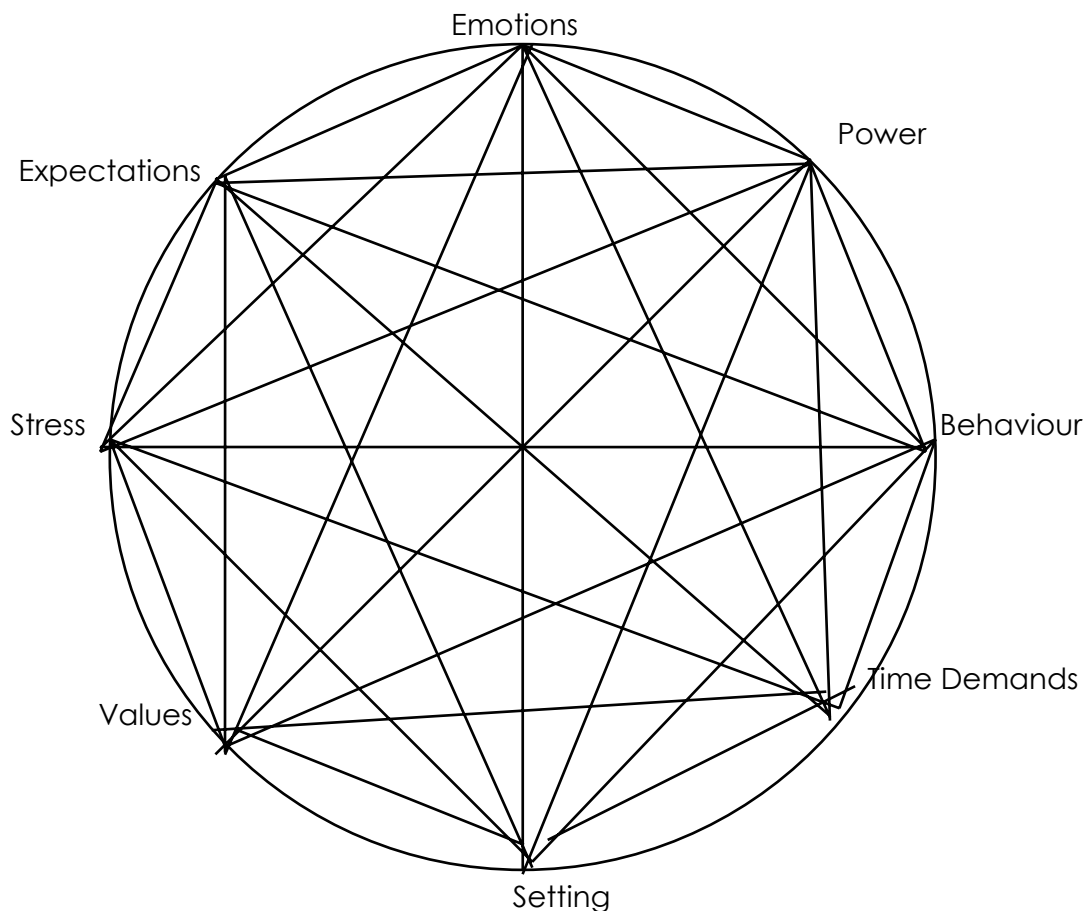
Zeldin points the way home: “conversation is a meeting of minds with different memories and habits. When minds meet, they do not just exchange facts, they transform them, reshape them . . . Conversation doesn’t just reshuffle the cards, it creates new cards.” (Zeldin, 2000, p.14)

Zeldin, T. *Conversation: How Talk Can Change Our Lives*. Majwha, N.J.:
Hiddenspring, 2000

The Dynamics Of Conflict

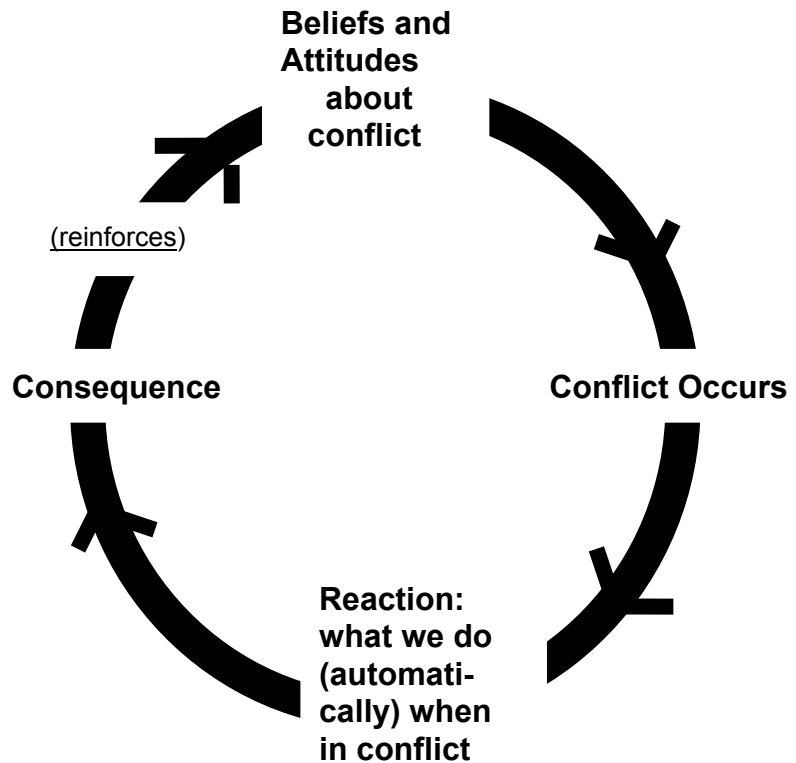
There are many dynamics or elements that influence people in a conflict situation. The escalation or de-escalation of each element has a compounding effect on the others. For instance, an escalation in time pressure may intensify stress and emotions, lower expectations, reduce power and alter values and behaviour. The setting or environment, in which the conflict takes place, presents behavioural constraints or freedoms that directly affect other factors.

Conflict situations create "systems" in which each element of that system has an effect or impact on other elements. It is the task of those involved in a conflict to consciously minimize the negative impact of those factors "at play" and maximize the potential for a positive effect. If time pressure is exacerbating the conflict, test the timelines set to determine if some of the time pressure can be mitigated. If emotions are running very high and getting in the way of productive communication, you may decide to "take a break" in order to provide a cooling off period.



The Conflict Cycle

Stress
Relief
Escalation
De-escalation
Resolution
Better or poorer
relationship
Hurt feelings



Pretend nothing is wrong
Just give in
Hit someone or get visibly angry
Go to an authority
Use the silent treatment

Yell
Complain to someone else
Smile no matter what
Make jokes, kid around
Agree to talk about it (no yelling)

What we believe about conflict comes from the messages we have received from our parents (very early), teachers, the media and our own experiences. These beliefs affect how we act (and react) when a conflict occurs.

Our *reaction* is what we do when a conflict occurs. This reaction is most often based on what we have come to believe about conflict and what we do, almost automatically, when conflict occurs. A response is more purposeful and usually involves some kind choice-making based on the situation. Effective conflict resolution requires parties to modify behaviours with the intention of making the interaction “work better”. It requires a conscious intention to work *with* each other rather than against each other.

What do you do in a conflict? What can you add to the list of behaviours above?

The Conflict Cycle

What we do in a conflict (our response/reaction) will lead to a particular consequence. Consequences may be negative or positive. If we yell or pretend that nothing is wrong, the consequence may be hurt feelings or the problem may get worse. These are negative consequences. If we agree to talk about the problem without yelling or using put-downs, this may lead to good feelings about ourselves and the other person and to a solution of the problem. These are positive consequences.

The consequences that result from our reaction to a conflict will reinforce our original beliefs about the conflict making those beliefs even stronger (a reinforcing effect). This means that our cycle of conflict will probably remain intact. When we start to become more aware of the cycle and start to *respond* to conflict more purposefully with awareness, we can potentially break the cycle.

Win-Lose and Win-Win Conflict Resolution

Win-Lose (positional)

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

Decision by:

- Compromise
- Pressure
- Coercion
- Manipulation
- Agreements less likely
- Less likelihood of future working relationships

Win-Win (interest-based)

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

Decision based upon:

- Exploration
- Fairness and objective criteria
- Mutual interests and needs
- Agreements that are less likely to be undermined and more likely to be supported
- Likelihood of an improved and effective working relationship

Positional vs. Interest-Based Conflict Resolution (CR)

Positional

Positional CR is a series of positions taken and then gradually given up—usually through making concessions; each party engages in a continuing process of “giving something up”.

This type of CR is based on two important aspects:

1. **The Bottom Line:** The point below which it would be better to use a different means of resolving the conflict. One could go below the bottom line on one issue if offset by gains on another.
2. **The Opening Position:** The opening position is usually a demand for maximum gain. Generally, the demand from the other party is for more than he/she is prepared to give, but it should not be excessively so. It should be within reason and also offer room for making concessions.

Interest-Based

Interest-based CR seeks outcomes based on the underlying interests and needs that are the basis for the positions taken. Concessions are rarely necessary.

This type of CR is based on these assumptions:

1. Each party has multiple interests: substantive, procedural, and psychological.
2. Interests may be combined in a variety of creative ways.
3. Satisfying the interests of all parties can maximize gains for all sides.
4. Resources are not totally limited; combining resources can meet a variety of needs and goals.
5. It moves toward an understanding of each of the parties' interests in order to move away from the limited nature of position-taking.

Positional CR is often used when:

- The resources are limited;
- One party wants to maximize his/her gain at any cost to the other;
- The parties are not interdependent;
- The future relationship has less value than the immediate gains (for me).

Some characteristics of positional CR include:

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

Costs:

- Relationship
- Inhibits creativity
- Decreases the likelihood of a solution or one that satisfies all
- Obscures the true interests
- May not obtain a commitment to the agreement

Benefits:

- Does not require trust
- Minimizes the need for the disclosure of information or real interests
- Divides fixed-sum resources
- May be faster although not always; posturing and "tactics can consume a lot of time needlessly

Interest-based CR is often used when:

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

Some characteristics of interest-based CR include:

- Avoid use of high and low-balling
- Emphasize trust and trust-building
- Engage in less tactic and more principle
- Encourage joint work on the problem vs. adversarial warfare

Costs:

- Requires some trust or the potential for trust-building where none exists
- Requires the disclosure of information and interests upon which negotiated outcomes will be based
- Requires giving up old ways of "winning"

Benefits:

- Produces solutions that meet specific needs/interests
- Promotes trust and trust-building
- Models behaviours that may be valuable for the future relationship
- Often produces agreements with a commitment from all parties that has the potential for lasting longer

Three Types of Conflict Resolvers/Negotiators

Soft (their way)	Hard (my way)	Interest-Based (our way)
Soft on the people and the problem	Hard on the problem and the people	Soft on the people, hard on the problem
Trust others	Distrust others	Trust with reason
Negotiators are viewed as friends	Negotiators are viewed as adversaries	Negotiators become joint problem-solvers (partners)
The goal is agreement	The goal is victory	The goal is agreement that works for everyone
Make concessions to cultivate the relationship	Demand concessions as a condition of the relationship	Focus on mutual interests and mutual gain – not concessions
Change position easily	Dig in on position	Focus on interests, not limiting positions
Insist on getting an agreement	Insist on maintaining your position	Insist on using criteria (objective/subjective)
Disclose bottom line	Mislead as to bottom line	Avoid bottom lines
Make offers and/or concessions	Make threats; use coercion	Focus on objective criteria
Try to avoid a contest of wills	Try to win a contest of wills	Reach a result based on standards/bases independent of wills
Yield to pressure	Apply pressure	Encourage movement based on reason
Accept one-sided losses to reach agreement	Demand one-sided gains as the price of agreement	Create options for mutual gains agreement
Search for the single answer; one they will accept	Search for the single answer: one you will accept	Generate many options: increase the potential for joint answers

What Is Interest-Based Negotiation and Conflict Resolution?

Getting a negotiated agreement that works for all of the parties is the objective of *interest-based* negotiation/problem-solving. In order to meet this objective, the parties are encouraged to pursue a process of mutual disclosure of information focusing on the *interests* and *criteria* upon which their original *positions* (assessed value) were based.

Positions are defined as the self-oriented (often self-serving) solutions the parties want to see implemented. Interests and criteria are the factors upon which the positions are based.

Examples:

“Those heritage buildings in the middle of the park have to remain just as they are (position) **because*** each represents a cherished past of this community. They represent a simpler time when neighbours got together and enjoyed each other’s company and kids could play together without fear. If we keep them, we might even be able to re-create those more civil times when neighbours knew neighbours and children could enjoy simpler pleasures. We believe that each could be used to re-vitalize a community spirit in this neighbourhood that’s been long gone (interests, needs, concerns).

“We’ve got to remove those old buildings (position) **because*** they continue to attract troublemakers and criminals to the neighbourhood. They hang out making noise during all hours of the day and night. We know they’re using drugs because we’ve found paraphernalia and other stuff that could be dangerous to children and adults. Both are in disrepair and represent a danger if kids played on or in either one. We would all be better off if both went, and we created something in that park that all of us could use more productively (interests, needs, concerns).

“It’s obvious that we should engage a simple majority decision-making model (position) **because*** it’s time efficient, straightforward, requires less ongoing discussion and is fair (interests).”

The interests of Negotiator A are usually unknown to Negotiator B and often have been so obscured by the perceived need to maintain a strong position that they often become consciously lost to the Negotiator A, as well. The willingness to engage in a mutual exploration of these underlying interests can pave the way for more creative options for agreements when the time comes for *joint problem-solving*.

* When statements of position are expressed, listen for the additional expression of “because”, “in order that”, “so that” (and similar phrases). Interests almost inevitably follow these phrases.

An effective interest-based outcome/solution involves shifting the parties from a “you versus me” attitude to a perspective of “you and I versus *the problem*”. It involves the underlying philosophy that if the parties *integrate* their resources (those evidently available and those they can create working together) rather than *distribute* the resources that are available (the more one gets the less the other gets), they can *synergistically* “expand the pie”. By doing so, the disputants can increase the potential that each (or all) can get what each wants.

To continue the theme, to some this principle sounds very “pie in the sky”. Given the traditional adversarial approach to negotiating, this theoretical viewpoint does sound rather far-fetched, and it is if at least one of the parties (you) are not willing to make a shift from position-taking (mine) to perspective-taking (each other's).

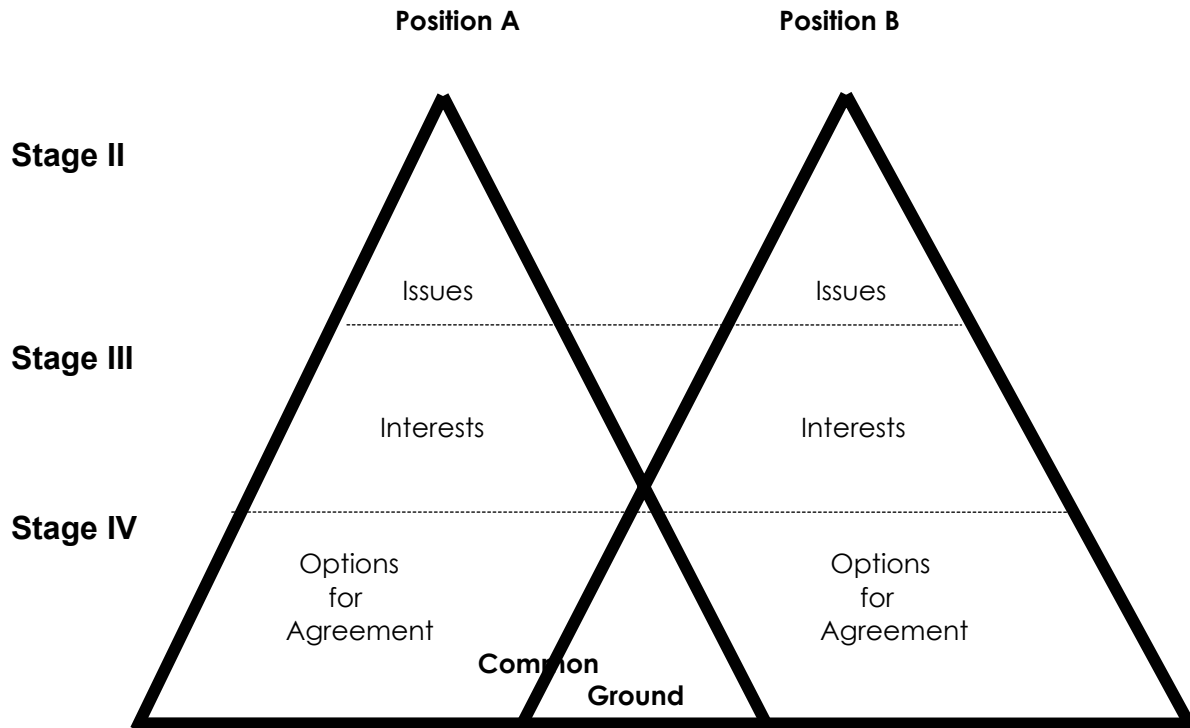
This perspective-taking shift requires that at least one party at the table works toward creating a negotiation/problem-solving environment wherein all parties potentially become willing to be open enough to listen and endeavour to understand the other's perspective on the matter at hand. This will work most successfully if each negotiator experiences a process that ensures that her/his perspective has an equal place “at the table”.

An interest-based process requires, at a minimum, that the negotiations be based on the parties' interests and/or criteria (objective) and ensures that each negotiator's interests are explored as fully as time and patience allows. If relevant and/or significant interests (subjective criteria) are not disclosed, it is highly unlikely that they will be reflected in the agreement reached.

In order to shift negotiations from positional to interest-based, at least one of the parties at the table needs to become an Interest-Based Negotiator (IBN) and/or joint problem-solver.

MOVING: from Positions to Interests to Agreements

Stage I



Position: One party's solution to the problem/situation. This solution is generally self-serving and "black and white" in nature. It is usually an end result and an action to be taken.

Issues: (neutrally framed) The elements or subject matter of the problem; those elements at issue between the parties and that need to be negotiated/resolved in order to reach agreement. They can also be viewed as topics or subjects of the negotiation.

Interests: The factors that motivate and/or drive the parties to reach and take positions. Interests underlie positions. The parties' positions are intended to meet and/or address their interests (needs, concerns, fears, wants, hopes, and desires). They are also goals and objectives.

Explanation and Summary of Terms

Positions:

action-oriented,
result/outcome-oriented,
solutions (often self-serving,
limiting, restrictive,
“dug-in”, invested in, conflict
emotional,
black/white, inflexible,
are defended/justified,
framed as opposing (opposition).
are given up in small increments that often feel like giving up parts of our anatomy – we
become so attached to them;
create barriers to expanded thinking, listening and understanding – the other;
the best that we can hope for, as a result of position-taking is compromise – most often
perceived as “lose-lose”
provide limited “building material” for outcomes.

Examples: go to Thailand (on vacation); buy a truck; sell the house; adopt XYZ
electoral system for B.C.

These are “positions” unless and until they evolve from a joint understanding of what
“interests” you want addressed by that solution. Interests become those factors that
you want your solution address.

Interests:

the factors/elements/considerations that are important to us;
those things that drive and/or motivate us to take our positions;
needs, concerns, fears, wants, hopes, desires;
the multi-faceted, diverse “building blocks/building material” for
outcomes/plans/decisions; do not conflict (or rarely);
provide more material for producing more **creative** outcomes or plans.

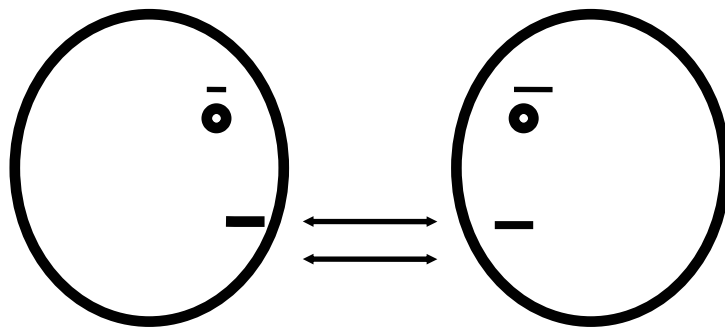
Interests answer the question: What do we want our decision/plan/electoral system to
take into consideration or address?

Examples: exposure to a different culture; a vehicle that can accommodate different
needs; more room; adopt an electoral system that provides *local representation*,
proportionality by adding voices to government; *more voter choice*

Content and Process

The “What” and the “How” of Negotiation

CONTENT The “What”



PROCESS The “How”

Are they listening?
Do I have any power?
What are we talking about?
Whose agenda is this?

Am I accepted?
Am I getting respect?
What's the hurry?

The STATEMENT / REACT Chain Reaction

When you and another person are “discussing” a subject about which you have different points of view, that discussion often escalates into a debate or an argument when one begins to defensively react to the other. If this happens while resolving a conflict, the goal of resolution “takes a back seat” to the personal struggle that occurs when the chain reaction is allowed to escalate and take over.

This chain reaction looks like this: S / R / S / R / S / R, (or statement - react - statement - react - statement – react, etc.)

It sounds like this:

- A: “You’ve been talking about getting that information to me for several weeks now. I need it now.”
- B: “You obviously don’t have a clue about everything else we’re dealing with.”
- A: “Listen, you’re under no more pressure than the rest of us.”
- B: “I don’t know; you seem to have a lot of time on your hands!”
- A: “It looks like you’re paying more attention to me than getting your job done!”

You can almost feel the adrenaline pumping as both parties fuel each other’s fire and each person’s level of anger and frustration escalates (see also the Anger Arousal Cycle).

This “chain reaction” must be broken in order for both parties to begin defusing in order to engage in constructive and productive communication. The **Statement / React** chain can be disconnected by one party shifting into non-defensive communication and changing “the dance”.

Effective non-defensive communication first **requires** an internal shift from needing to defend to wanting to understand. You have to put “on hold” the conditioned reaction to defend your ground and win in order to change the familiar “dance” that most of us are so used to. When you change the steps of the dance, you begin participating in and supporting the shift to mutual listening and understanding. This is not an easy move to make; it requires resolve.

The STATEMENT / REACT Chain Reaction

cont’d.

The most effective tools for making this shift are **clarifying responses** such as paraphrases and open-ended questions. The use of these responses provides you with alternatives to defensive behaviour and assists in minimizing your tendency toward knee-jerk defensive reactions which “feed the fire” thereby contributing to potential escalation. These responses also often defuse the other party. When the other party experiences your intention to *listen to understand* rather than to rebut, he/she will feel less need to be defensive and less need to emotionally “ratchet up” the interaction. When you are genuinely interested in understanding rather than rebutting, you will also have less need to defend. As you demonstrate your desire to understand, the other party’s tendency to listen to your perspective increases dramatically. Each experiences more balanced participation in the interaction and more “fair play”.

A: “You’ve been talking about getting that information to me for several weeks now. I need it now.”

B: “You obviously have no clue about everything else we’ve been dealing with.”

A: “Listen, you’re under no more pressure than the rest of us.”

B: **Pauses, breathes, self-defuses** and then says, “I understand we’re all under a lot of pressure, and I also understand you need that information ASAP.” (*paraphrase*)

A: “You’ve got that right, without that information, I’m at a *standstill*.”

B: “What information do you need right away in order for you *to move forward with your calculations?*” (*open-ended question*)

A: “I’ve got to have the figures on A, B, and C right away and the rest within a maximum of 2 weeks.”

B: “That works okay for me; I’ve got most of the figures you need right away and can meet the 2 week deadline on the rest. Once you’ve got all of the figures, It would be important for me to know ASAP if there is anything missing so that I can focus on that rather than continue providing general information. I would like to target the information we’re providing each other.” (yours and my interests).

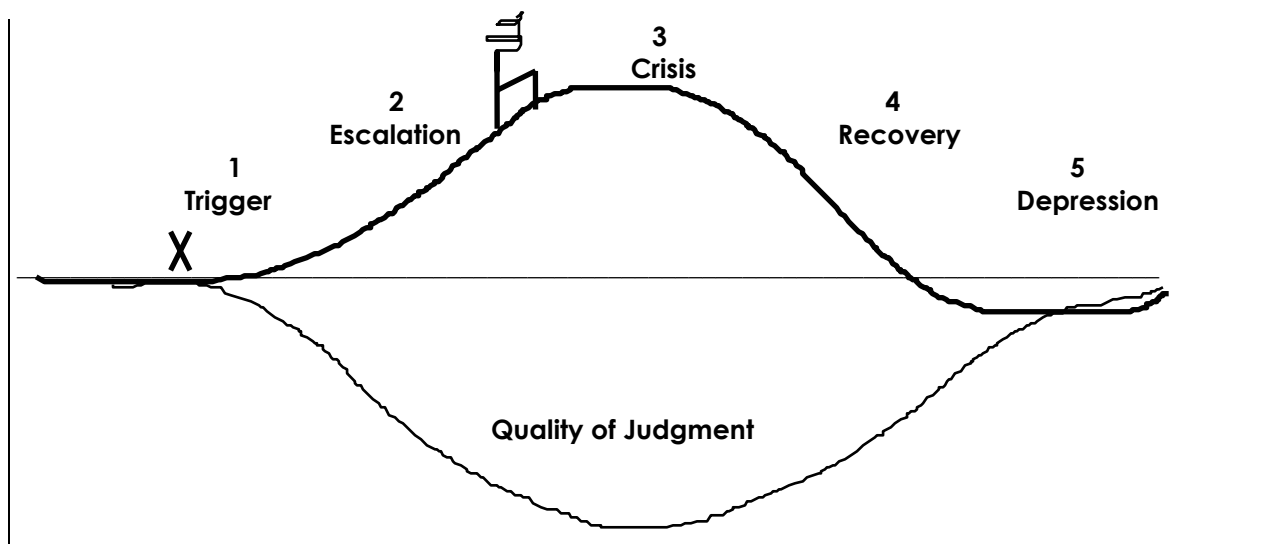
The Anger Arousal Cycle (Anger Mountain)

Anger Management Model (Smith 1979)

Anger and the Body: Stress

We experience anger in our bodies as well as our minds. As we begin to experience angry thoughts and feelings our bodies prepare for action. The following graph illustrates our body response over time.

Anger Mountain



1. The Trigger Phase

An event usually triggers the escalation of the arousal cycle. This could be an argument, a physical attack, or some information that shocks you. You feel threatened (emotionally, psychologically, or physically) and your physiological systems begin preparing to meet the challenge. For example, someone walks up to the counter and starts banging on the counter and yelling that someone better start talking to them or else! In this example, the trigger was external but triggers can also be created internally through memory, perception, or your stress level.

The Escalation Phase

During the Escalation Phase, the body's arousal systems prepare for a crisis. The body prepares to attack or defend itself by pumping adrenaline into the blood stream. This results in:

- an increase in respiration, i.e. rapid breathing
- an increase in heart rate and raising of the blood pressure
- the muscles tense for action (e.g. jaw, neck, shoulders and hands)
- the voice pitch alters and the volume gets louder
- the eyes change shape, pupils enlarge, brow falls

2. The Crisis Phase

This phase begins with the "fight or flight" crisis. The body has maximized its preparation and a physiological command is used. "Take action!" Unfortunately, our quality of judgment has been significantly reduced at this point and decisions are not made with our best reasoning ability. People in the crisis phase are highly volatile and need to be addressed in simple, direct and non-provoking statements (if at all).

3. The Recovery Phase

Once some action has been taken to resolve the crisis, the body begins to recover from the extreme stress and expenditure of energy. Unfortunately the adrenaline does not leave the blood stream all at once, so the level of arousal tapers off gradually until normal limits are reached. Quality of judgment returns as reasoning begins to replace the survival response.

4. The Post-Crisis Depression Phase

After the normal physiological limits have been reached, the body enters a short period in which the heart rate slips below normal levels to regain its balance. During this phase, awareness and energy return to the forebrain, which allows the person to assess what just occurred. This assessment often leads to feelings of guilt, regret and depression.

The purpose of the questioning process is to encourage a comprehensive exploration of the issue being discussed or negotiated and the productive use of that information in arriving at an understanding, agreement or settlement. Frequently, the negotiator questioned goes through a process of self-exploration by being encouraged to examine the underlying interests, needs, and basis for the position taken. Open-ended questioning facilitates this process. The **Open Ended** question is the **most important question form** in negotiation and conflict resolution.

Open-ended questions are the journalistic questions which usually begin with the words: Who, What, Why, When, Where and How.

Caution: “Why” questions are often received as requiring one to defend and/or justify what he or she did or said; they are often interpreted by the receiver as judgmental or evaluative. This cautionary note is not meant to discourage the use of why questions entirely. It is meant to make you aware of the possible interpretation of such questions and impress you with the importance of the tone you use with why questions and to encourage you to consider other ways of asking for the same information - particularly when the other party is already defensive or hostile.

Example: “Why does that report have to be in your hands by 6:00?” or
“What’s important about having that report in your hands by 6:00?”

There are various degrees of open-endedness. A question can direct the party to the general area of discussion, e.g., What is it about the location of the storage facility that is so important to you? To a more narrow focus, e.g., How does the location impact your daily routine? To an even narrower focus, e.g., If equipment were to be in stored in that general vicinity, how would that affect your production efficiency (if at all or if any)?

The resistance to using open-ended questions is the concern that the material generated will be negative or that it will be difficult to manage or control. As well, the other negotiator may begin to feel interrogated. These are valid concerns. As an interest-based negotiator, your goal is to get as much information out “on the table” as possible—yours and the other negotiator’s. Contained within that information is the material for building the best agreement, outcome/action plan between the two of you.

Closed questions are those questions that can be answered by **yes** or **no**. They tend to limit the amount of information generated and often cause the other negotiator to become defensive or resistant. These responses are due to the perception that the questioner's intention, in asking the question, is to make a point, send a message or manipulate the person being questioned rather than to encourage the flow of information.

If a negotiator asks, "Do you believe that the community will see that as a good faith compromise?", it is likely that the person being questioned will read that as a statement of the questioner's point of view (that the community will or won't see it as a good faith compromise) as opposed to a question seeking his/her point of view. That person will often, in turn, answer "yes" or "no" based on what the "right answer" is perceived to be, given the assumptions that person is making and the relationship between the negotiator asking the question and the negotiator being asked the question. This kind of interaction can become quite convoluted.

Caution: Closed questions often become the subject of interpretation of the person being asked the question, and that interpretation and the assumptions that follow will often affect what the answer will be.

Suggestion: When you are about to ask a closed question, consider whether a statement might be more appropriate and less ambiguous or choose to change the closed question to an open-ended question.

Example: "Is that arrangement fair to the other parties who aren't represented here today?" *Statement:* I do not believe that arrangement is fair to those not here. What are your thoughts? *Open-ended question:* What are your thoughts about how fair this arrangement is to those not represented here today? Or How fair do you believe that this agreement is to those not represented here today (be aware of your tone of voice and your intended message)?

Through the skilled and strategic use of open-ended questions, the interest-based negotiator be able to determine how a position was reached and why that position seems important to maintain and will get the underlying interests, buried by position-taking, up onto the "table" where they may be used build more creative outcomes.

There are often layers to this process of questioning for interests; be cautious not to mistake a new sub-position for a true interest (yours or the other negotiator's). And be sure to ask yourself the same open-ended questions (particularly in your pre-negotiation preparation) in order for you to get to your own interests.

Exploring for interests is an integral part of the negotiation process; expressing your own interests is crucial to maintaining a balanced process. The expression of your own interests minimizes the potential for interrogation and ensures that your interests will be reflected in the joint outcome.

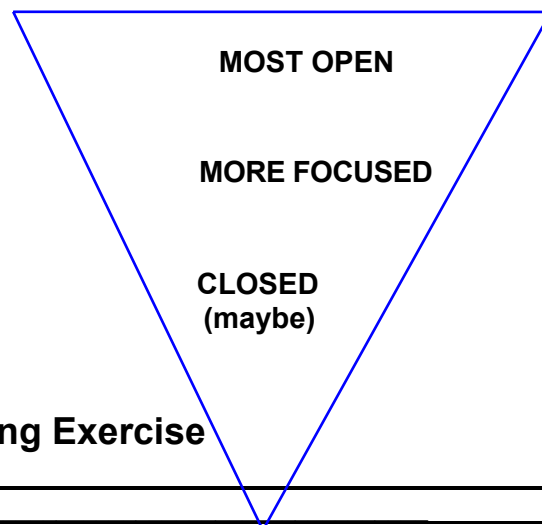
Consider the inverted triangle below as one way of looking at the questioning process during a negotiation. At the earlier stages of the negotiation, your questions are intended to explore the issue as fully as possible. As the negotiation progresses you will begin to target the questions more and more with more focus on parts of the information disclosed in the earlier exploration. You are moving from a more open-ended exploration to a more focused "digging deeper" but still open-ended exploration.

When you believe that, either all of the relevant information is "on the table" or all that you have time to explore has been disclosed by all of the parties, closed questions **may** facilitate closure by making certain that what needs to be said has been: "Does anyone else have more to say about the importance of maintaining a reasonable timeline?".

Note: It is also possible that the other party may see this question as an attempt to close down further conversation or an attempt to get more on the table and either of those interpretations can affect the answers received.

You can still use open-ended questions to accomplish this same goal:

Example: "What more, if anything, would you like to say about X?".



Effective Questioning Exercise

Read through the questions below.

If you believe that the question would be effective and productive to ask in a negotiating session, place a + (plus) beside it. If you believe it would be ineffective or non-productive, place a – (minus) beside it.

1. How much time will it take for you to get the other's input?
2. Is that the best you can do under the circumstances?
3. Given the circumstances we're not facing, what is the best you think we can do?
4. Are you inviting the entire committee to your presentation?
5. Do you need additional time to get everything lined up?
6. What kind of additional information will your people want prior to the meeting?
7. Would those looking for "real change" consider those kinds of changes meaningful?
8. Who are you inviting to that first presentation?
9. Do you believe that the committee is ready to take that all on at once?
10. Do you believe that they are prepared to "walk the talk"?

Opening Up Closed Questions

Change the following closed questions to open-ended questions. Consider the way each question might influence the response depending upon whether the question is open or closed. If you are working in small groups, create as many options as you can while maintaining as much of the original question's content or intent as possible.

1. Is the majority satisfied with the information provided?
2. Do you think that we have enough information on the table to start making recommendations?
3. Can you get those figures to everyone by the end of the week?
4. Do you want the details of the plans to be included in that presentation?
5. Are you willing to make some concessions here?
6. Can your committee take the time necessary to consider all of those different scenarios?
7. Will they be asking for more time to consider these new options?

Paraphrasing in Interest-Based Communication

As previously discussed in the section on the Statement-React Chain Reaction, one of the interest-based negotiator's (IBN) primary functions is to ensure that the parties are effectively listening to one another. One way to do that is to minimize the S-R-S-R chain reaction. An important function of paraphrasing, reflecting or empathic responding (the combination) is to break that chain.

For purposes of this work and for the sake of simplicity (less jargon) we will use paraphrasing as the generic term for the skills involved in letting the speaker know the message or “**essence**” of what the IBN believes the speaker **intended** to say.

Paraphrases address:

- a) the content (technically, a paraphrase);
- b) the underlying feeling (a reflection); or a
- c) combination of both (an empathic response).

Paraphrasing is an important and essential means to mitigate or avoid defensive dynamics by conveying non-defensiveness to the speaker. In order to maintain and support effective communication, at least one of the parties involved in the discussion must remain non-defensive and convey a willingness and intention to listen.

Examples:

Speaker: “You know I can’t believe we’re not going to make the deadline we all agreed to; what’s the point of setting timelines if we’re not going to keep them?”

IBN: “You’re angry (reflection of the underlying feeling) that no sooner did we agree to a timeline, then we turned right around and blew it (paraphrased content).” Together these form an empathic response. If used separately, it would sound like, “You’re obviously really angry right now.” (*reflection*),” and “So you don’t see the point in setting deadlines, if we’re just going to turn around and blow them.” (content).”

- 1. Clarification** When an IBN paraphrases, he or she seeks to clarify that what is being *heard* is what the speaker *intended* to say.

Speaker: “Here we go with more changes; it’s not as if we don’t have enough new planning policies to deal with already.”

IBN: “You believe that there are already enough policy changes to deal with without adding more changes to the mix.” (*paraphrase - content only*) or “Sounds like you’ve had it with the number of policy changes and other changes happening all at once.” (*empathic response - combining the content with the underlying feeling*). Then pause for a response.

Speaker: “Right, each change by itself is enough, let alone trying to deal with several all at once.” or “No, that’s not it really; I just want to make sure that everybody understands the impact of these changes before we all assume that we can go full speed ahead.”

- 2. Defusing** The IBN may also be seeking to defuse the situation by letting the speaker know that he/she is being heard/understood. The IBN could choose to combine the underlying feeling and the content (below example) or do one or the other, depending upon the circumstances.

IBN: “It sounds like you’re angry (*feeling*) that the decisions the committee is making without community involvement will delay things even longer than we all anticipated.” (*content*).” Then pause.

Speaker: “You’ve got that right. If we’re really looking to do the best for everyone here, then we have to really involve everyone – especially when changes are being considered that will directly affect me and a lot of others who have invested a lot of time and energy in this process.”

- 3. Listening to Understand** While accomplishing either of the above two goals, the IBN will almost inevitably be creating empathy between the speaker and the IBN by simply sending the message that he or she is listening to understand rather than to rebut. This genuine *intention to understand* builds bridges between the parties that can promote a more productive conversation.

- 4. Reality Testing** The use of paraphrasing can also serve as a reality tester. The speaker hears the message the negotiator received from the statement made and is confronted with the possibility that what was said was unreasonable, unfair, or illogical.

Paraphrasing is not a test for accuracy!

Paraphrasing is a good faith attempt at accomplishing any or all of the goals described above. Do not hesitate to use paraphrasing or empathic responses because you might not get it right. By letting the speaker know what you believe you heard, you provide the speaker the opportunity to either verify that the message received is, in fact, what he or she intended to send or to clarify what he or she intended to say.

“She heard me! Here’s more”

Often the use of these clarifying tools will serve as encouragers for the speaker to continue building on her original statement. “He’s heard me! Here’s more”. This encouragement supports the speaker to continue going deeper into their own experience of the situation wherein she gains more insight and you gain more understanding of her perspective.

Once the other negotiator feels heard, there is an increased likelihood that he/she will be more open to really listening to your perspective (in the interest of fair play).

Assertive Communication

It is essential in any process for interest-based conflict resolution/negotiation that there be a balance of what is important to each or all of the negotiators involved. If you are involved in a negotiation in which the other negotiator is engaging in "tactics" or strategies that are making it difficult to maintain an effective negotiating environment, the following assertiveness process can support your remaining non-defensive, maintain your integrity and potentially keep the negotiations on track.

- D** *DESCRIBE* THE ACTION
- E** *EXPRESS* THE EFFECT
- S** *SPECIFY* WHAT YOU NEED OR WANT (PREFERRED SCENARIO) *and/or*
- Q** *QUESTION* (with curiosity) FOR UNDERLYING REASONS OR UNDERLYING INTENT

Example:

You are in the middle of discussing the importance (to the other person) of getting a particular project completed within the next two weeks. For the third time, he/she interrupts you while you are explaining your concerns about the success of the job if this kind of time pressure continues. He/she repeats that "I don't want to hear excuses; it's just has to be done that way and within that time frame!"

You respond by saying:

Option A

When you continue to say that I'm making excuses and demand that this project be done that way, I feel (get) frustrated and pressured and would like for us to find a way to discuss this so that each of us is certain we're being understood. Pause (wait for response); What causes you to hear what I'm saying as excuses? **or** What is your intent when you say that this project has to be done that way? **or** When you continue to press the point of it having to be done that way, what is your intent? **or** What's going on?

Option B

I start to feel frustrated and pressured when you say that I'm making excuses and continue demanding . . . and need (or would like/prefer) for us to find . . .

Option C

It would work better for me if . . . **or** I need for us to find a way to discuss this project so that each of us is certain that we are being understood. Because right now I am feeling (getting) frustrated and pressured when you say I'm making excuses . . .

Note that it is not important which element of the assertive statement comes first, second, third or fourth. It is important that **D, E and S** all be communicated in the statement.

Several objectives are accomplished by using assertiveness:

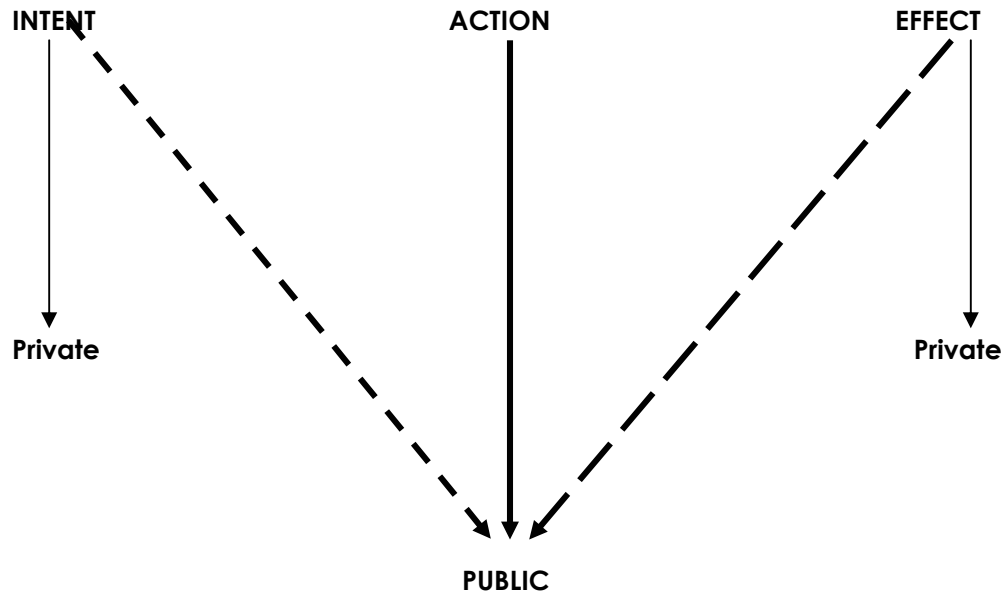
- * You can avoid becoming aggressive when you feel the inclination to become defensive and still maintain your integrity.
- * You "self-defuse" by expressing how you are being effected but in a non-blaming, non-accusatory manner.
- * You reframe the situation for yourself by specifying your "preferred scenario".
- * You change the "dance" by not becoming defensiveness (or aggressive) as the other negotiator, consciously or unconsciously, expects.

A key underlying principle for assertive communication is that the other party is **not** responsible for the effect his/her behaviour is having on you. There is **not** a cause and effect relationship between what he/she does and the effect on you. It is important that you take responsibility for the effect on you and make certain that when you express that effect it is not expressed in a blaming way. Note that in the example above, the effect is expressed in terms of I feel frustrated and pressured and not you make me frustrated and feel pressured. No one makes you feel anything. A person does or says something and you are effected by it. You must take responsibility for that effect.

The obvious *exception* to the above principle is when someone becomes assaultive and causes you physical pain. There are those who would also argue that there is also an exception when someone is verbally assaultive.

Intent, Action and Effect

Three Cornerstones of Effective Communication



The diagram above demonstrates that, in most interactions between and among people, the action taken (words spoken, non-verbal behaviour or actions) is **public** insofar as the parties involved in the interaction can see or hear the *action*. The **intent** of the person taking the action is **private** and the **effect** on the receiver of the action is also **private** or often ambiguous or confusing. By drawing lines from Intent to Public and from Effect to Public, you are diagramming an interaction in which all of the parties clarify what the intent of the action and the effect of the action thereby significantly mitigating the damage that can be done by **assumptions**.

Intent, Action and Effect at Work

Two co-workers, John and Lynn, are discussing the way a particular project, in which each of their departments is involved, should be handled. Lynn, knowing that John has had to deal with a lot of unexpected work and wanting to help him out (intent), says to him: “We’re getting close to the deadline. Why don’t I take the cost-benefit analysis stuff you’re working on and go through it over the weekend (action).” Lynn does not mention knowing about John’s workload.

John responds by saying (with attitude), “I think I can handle it just fine on my own thanks” (action). Lynn does not get what just happened, and they part with Lynn saying (with attitude) “Fine, I’ve got lots of things I can do with my weekend besides your work.”

- What role did **I-A-E** play?
- What are some of the possible assumptions that either A or B might make given the interaction between them?
- What could either one or both of them have done to have significantly minimized the potential for the occurrence of these assumptions?

Lynn’s *intention* was to give John a hand. She thought he was overloaded. John thought she was covertly communicating that he was incapable of doing his part of the project or was not holding up his end of their “deal” (effect). Lynn wound up thinking that John was a “jerk” who did not know how to be a team player (effect) because she did not know what he was thinking. Each person’s assumptions about the other becomes each one’s reality. Assumptions build on assumptions creating quite a convoluted and difficult situation.

The ideal situation would be for Lynn and John to clarify what each one’s intention is and how each is being affected. When all three elements are public (known to each of the parties involved) there is much less potential for misguided assumptions. John would know that Lynn’s intention was to give him a hand just as she would expect him to do if she was in a bind and Lynn would know that John’s response was intended to communicate a need to hold up his end of the project and not to “snub” her or not be a “team-player”. Lynn could also understand that John believed that she was intimating that he was incompetent and that Lynn felt that John threw her offer of help right in her face.

Making Intent-Action-Effect known (public) to parties who are interacting with one another (working on a joint project) is not an easy communication adjustment. We are not accustomed to being so explicit about what we say to each other. I assume that you will receive the “message” that I intended. And you assume that I intended the “message” you received.

The Assertive Response

This kind of explicit communication requires expressing ourselves **assertively**. If you as the initiator of the action, did not express your intent and got a response that was inconsistent with your intent; you can assertively express your confusion, clarify your intent and seek understanding from the other party.

“I’m not sure what happened just now, but when I said that I could take home that work over the weekend (action); I intended to support you as I would want your support if I was in a bind (intent). How did you take it (clarifying effect)?”

With this statement Lynn is focusing on the interaction between the two of them--the action, clarifying her intent and inquiring about the effect. When all three are understood and made public, assumptions disappear or are reduced.

The receiver of the statement, John, can also assertively express himself and make all three elements explicit by saying:

“I’m not certain what you intended, but the message I got when you said you would take that work home (action) was that you believed I was not holding up my end and you needed to ‘pick up my slack’ (effect). What did you intend (clarifying intention)?”

Maslow's Hierarchy of Needs

Maslow developed his Hierarchy of Needs to facilitate a better understanding of human motivation and what gets in the way of or promotes our development. Maslow describes *5 levels of needs*, each of which is interdependent and overlapping with each higher need level which will begin to emerge before the lower needs have been completely satisfied. The Hierarchy has been used extensively in the area of organizational management and group development.

The first of the human needs described are **physiological**. These are the basic needs of any man or woman associated with our need for food, sleep, air, shelter and sex. Once this level of needs is reasonably satisfied, **safety** needs begin to emerge and begin to dominate our behaviour. These are the needs for protection against danger, threat and deprivation. Management behaviour which arouses uncertainty with respect to continued employment or unpredictable administration of policy can be powerful instigators of concern or fear related to safety needs in the workplace at every level of the organization. This kind of behaviour becomes a significant in any situation wherein there is a perceived or real imbalance of power.

When physiological and safety needs are satisfied, and people are no longer afraid for their physical welfare, their **social** needs become important motivators of behaviour. At this level we are concerned about belonging, our associations with others, acceptance and giving and receiving friendship and love. When our social needs are not met, we react dysfunctionally, interpersonally as well as organizationally. Our ability to engage with others is stunted as well as our ability to support organizational or group objectives because we feel like "outsiders".

When the first 3 levels are relatively satisfied, our **ego** needs become more predominant. These are the many needs related to our self-esteem and reputation. These needs are more difficult to satisfy than those the 3 preceding levels of needs and usually do not manifest themselves significantly until the lower 3 are fulfilled. To meet the needs of this 4th level, we need self-respect, self-confidence and recognition. Consider how seldom the opportunity to satisfy these needs is available to those still struggling in the 3 levels below.

Finally, there are the needs for **self-fulfilment**. These are needs related to realizing our full potential, the pursuit of self-development and self-actualizing and creativity. When we are "stuck" still striving to fulfil the needs of the other 4 levels, it is an almost impossible task to motivate ourselves to spend time at this level. Consider the likelihood of anyone of us who is still struggling for food and shelter to be inclined to expend time and energy on dealing with environmental issues.

Maslow's Hierarchy of Needs

cont'd.

We recognize readily enough that a person suffering from a severe dietary deficiency is sick. The deprivation of physiological needs has tangible, concrete behavioural consequences. The same is true of, although less apparent, the deprivation of higher-level needs. The person whose needs for safety, association, independence or status are thwarted is sick, just as if he/she has rickets. This kind of sickness will also have behavioural consequences. It would be a mistake to attribute this individual's passivity or hostility or his/her refusal to accept responsibility as his inherent "human nature". The behaviours are symptoms of an illness arising out of the deprivation of social and egoistic needs.

We, whose lower level needs are not being satisfied, are not going to be motivated to satisfy the needs on higher levels. For practical purposes, the higher levels no longer exist. When we find ourselves asking why others are not willing to put forth the effort to make changes, do what is best for society, work harder, be better or a myriad other roles that require active participation, it is unnecessary to look far for reasons.

When we consider the rewards typically provided in the workplace, most of these rewards can be used for satisfying the worker's needs only when he/she leaves the job for the day. Wages cannot be spent at work. The only contribution they can make to his satisfaction on the job is in terms of status differences resulting from the pay scale differences. Most fringe benefits such as overtime pay, vacations, health and medical benefits, annuities and stock purchase or profit sharing plans yield need satisfaction when the employee leaves the job. Yet these benefits, along with wages, are the primary means for rewarding effort. Given this situation, it is not surprising that many wage earners perceive work as a form of punishment and the price they pay for various kinds of satisfactions away from their job.

When people are deprived of opportunities to satisfy needs which are important to them, they will respond quite predictably with indolence, passivity, unwillingness to accept responsibility, resistance to change and continuing demands for increased economic benefit.

Management cannot provide an employee with self-respect, or with the respect of his/her co-workers, or with achieving self-fulfilment, but management can support and encourage conditions that can enable the employee to realize these for herself.

Conflict Resolution, Negotiation and Maslow's Hierarchy

When a negotiator is resistant or perceived to be blocking, that state of conflict is usually connected with unmet, unfulfilled needs. A baby cries out for what it needs in relation to physical needs. Adults will express their anger in various ways to communicate their unmet needs.

When you are confronted by someone's anger, the first factors you should consider are the **physical**. Should you both sit down or should the other person be given the opportunity to catch his or her breath? Would a break be beneficial? What effect is our negotiating environment having? Whose turf is it?

Now consider the **safety** needs. What can you do to provide a sense of safety for this person and for yourself. If there are other people around, should you move the "discussion" to a more private setting? Is there an equal number of negotiators? Is there a power imbalance? Are voices raised? Is it time for a break? Be sensitive to the physical space you give one another. What is your body language communicating (openness or unavailability)?

As the lower level needs are being satisfied, we can progress up the hierarchy. Next, you deal with the **social** needs. What can you do to show understanding and acceptance? Be empathic and demonstrate a willingness to listen. At this level the issue is association. Therefore it is important that you also convey your need to be listened to as well, a dynamic of giving and receiving

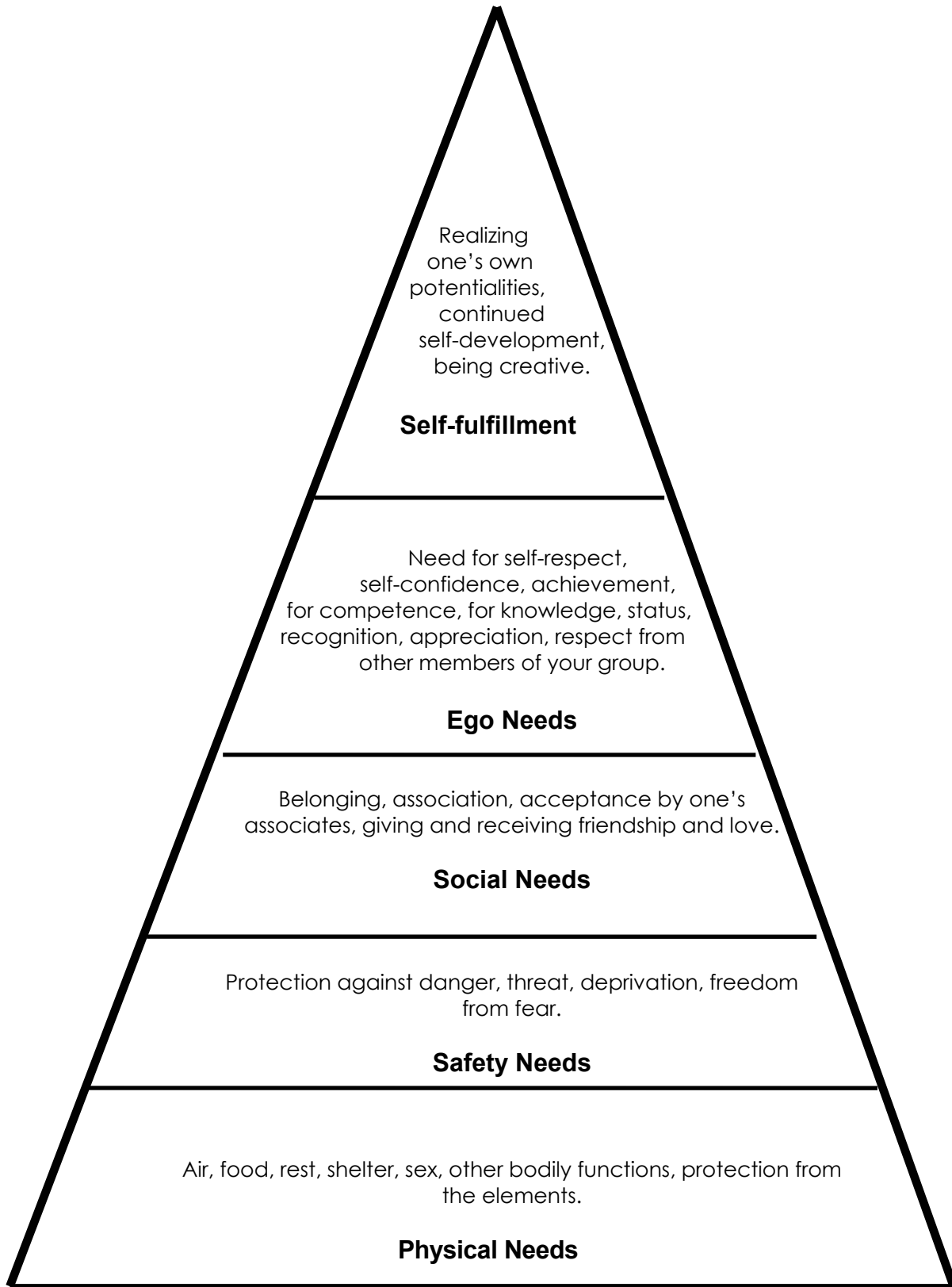
The above three levels focus more on process issues. The next two are more content oriented.

At the level of **ego** needs, it is important to validate and acknowledge those aspects of the conflict that make sense to you or that you agree with. This is also a time for you to disclose and share information that will balance the power. The goal at this level is to create an environment of mutual respect and one that supports the belief that "we can achieve something here together".

When you reach the level of **self-fulfilment**, you both are ready to problem-solve. You have reached the point for looking at the potential for solutions and being creative in the pursuit of these solutions.

Consider the Four-Stage negotiation process and see how the hierarchy of needs fits the movement through the process.

Maslow's Hierarchy Of Needs



Examples of Needs in the Work Environment

Physical Needs: Work layout, equipment, parking facilities, lunch facilities, rest rooms, temperature, ventilation, lighting, noise, grounds.

Safety Needs: Fairness, reassurance, rights, grievance procedures, pension plans, social security, paid leave, automatic increases, wages and salaries, employment insurance, keeping status quo.

Social Needs: Work Groups, coffee groups, social groups, luncheon groups, office parties, ride pools, outings, sports, professional groups, interest groups.

Ego Needs: Involvement, goal setting, performance appraisal, responsibility, recognition, status (job classification, organization level, title, furnishings, privileges), utilized aptitudes, inventions, publications, work itself, high risk taker.

Self-fulfillment Needs: Delegation, freedom to act, atmosphere of approval, growth, achievement, self-development (education, skills), creativity, realistic risks.

A SHARED BASE OF INFORMATION

Disputants (and their representatives) spend a significant amount of time, money and energy developing a “base of information” that supports their position in a lawsuit or dispute. This accumulation of facts, figures, statistics and data is usually gathered by what each side perceives as the other’s “hired guns”, and is usually summarily dismissed as biased.

If each side dismisses each other’s supporting data, then those facts and figures will not very effectively influence the parties as they attempt settlement, with or without assistance. Usually the only real power each party’s base of information has is at trial (or arbitration) where each hopes that the judge (or arbitrator) will be persuaded by that litigant’s expert and his/her opinions.

What would happen, if as early as possible in the dispute or litigation (or later if necessary), each side agreed on one (or more) source of information upon which to base their settlement discussions? Consider the impact on settlement potential if even before each side spends a considerable amount of money on consultants, accountants, engineers or other experts to support their position, the parties were able to identify an expert or experts that would provide the necessary information upon which they could base their (without prejudice) settlement negotiations. These experts become the “table’s” experts.

Few would argue with the wisdom of this strategy, and most would posit that, as long as litigants see each other as adversaries, it will remain difficult for them to move into the kind of joint problem-solving mode that this shared base of information strategy requires. A third party settlement facilitator (a judge at a pre-trial settlement conference or a private mediator) can help to create this kind negotiating environment.

Regardless of where, in the dispute, talks begin, the parties can be encouraged to engage in the creation of a mutually satisfactory shared base of information. Even after a considerable investment (time, energy, ego) in their own information base, the parties, for purposes of resolution, can work together to consider the criteria for the information and its source(s). The kind of criteria often generated by the parties are: objective/neutral, respected, believable or authoritative source, easily accessed and user friendly for purposes of resolution, obtainable within a reasonable period of time and cost effective. The parties will then determine what kind of substantive information they need to support their negotiations (e.g. industry fair wage, present and future financial data, most productive use of particular equipment etc.)

Once the parties have agreed on a set of criteria for the shared base, they can then begin a process of agreeing on a source that “fits the bill”. This source(s) then becomes the parties’ consultant/expert, who will provide the parties at the table with the information they require to support problem-solving dialogue.

This kind of settlement strategy has played a significant role in the settlement of many relatively complex to very complex commercial lawsuits that I have mediated in my capacity as a private mediator or co-facilitated with judges in pre-trial settlement conferences.

NEGOTIATING A SHARED BASE OF INFORMATION (SBI)

There are several ways of bringing forward the concept of Shared Base of Information. Two of the ones I use most often are: incorporating it into the agenda and/or separating it as a separate stage of the process. Either way the final outcome is the same using a process of interest and criteria-based exploration.

When you incorporate it as an issue in the agenda (information), you will simply suggest that they consider that item first as a foundational piece to the rest of their negotiations. Once that issue is on the table, begin exploring it as you would any other issue. What kind of information is important to negotiating a successful settlement in this situation? What attributes must/should/would you like that information to have? What qualifications would you like to place on how and under what circumstances that information will be gathered? What qualifications/factors would you like to place on or be considered when determining the source of that information?

If you are able to meet separately with the parties or, at least, speak with them by telephone, start them thinking about the subject of information and the kind of information the “table” might need for productive negotiations. When you meet with the parties for the first joint session, after the preliminary process matters are addressed, you can bring forward the concept of Shared Base of Information as a separate part of the process and then pursue the same kind of exploration described above.

Once the parties have generated the interests and criteria related the information base they need, you can proceed with a joint problem-solving session focused on producing that information base. For example, they can generate a list of sources for that information, shortlist based on time, expense and other criteria and then jointly interview these individuals working toward a consensual agreement with respect to the source or sources of their information base.

From Positioning To Negotiating

The one question that inevitably arises from those who are in the process of becoming interest-based negotiators is: What if the other negotiator will not play by the same rules?

The following are some possible courses of action you can take to encourage the other negotiator to work with the process and not against it.

1. First and foremost choose not to play by the positional negotiator's rules. As strongly as the other negotiator emphasizes positions, you focus on the interests - yours and hers. Demonstrate that a negotiated agreement will reflect her interests as well as your own.
2. Respond to verbal attacks non-defensively with the use of effective assertive communication. Emphasizing the components of the effect on you, description of behaviour, and your preferred scenario focusing on content or process needs and an invitation to work toward change.
3. Initiate "negotiation aikido" manoeuvres to manage positional attacks. Attacks often take the form of forceful positioning, attacking your ideas or point of view or attacking you personally. These offensive behaviours usually originate from a belief/fear that the other negotiator cannot get what he/she wants without an adversarial win-lose outcome. You in turn:
 - continue to probe for underlying interests instead of attacking her position. Remain exploratory in your endeavour to determine reasoning and/or the criteria for the other negotiator's position.
 - convert the personal attack to an attack on the problem/issue on the table. Instead of reacting defensively demonstrate that you are listening (paraphrasing, reflecting, summarizing) and understanding what he is saying and either probe for the reasons or assertively set limits or specify changes.
 - invite the other negotiator to provide you with information about his/her attack on your ideas or point of view. Seek a basis for her negativity and encourage her to "step into your shoes" for a moment and make recommendations from that perspective. Once you have the basis for the attack, then respond with your own supporting information.

From Positioning To Negotiating

cont'd.

- be inquisitive. Instead of going on the counter-attack, ask questions (open-ended) and wait for the answers. Questions that are intended to be information gathering are usually received non-defensively because they are perceived to be non-defensive in nature.
 - choose to ignore the attack (if it has not become repetitive) and continue pursuing a course of interest-based behaviour
 - move from the content of the negotiation to a discussion of process. Negotiate ways of avoiding dynamics (attacks) that get in the way of effective negotiating.
3. Maintain a positive attitude and continue engaging in conduct that supports ongoing communication. If the other negotiator sends the message that he does not want to be interest-based, you can still send positive messages with respect to the process and stay focused on your interests. “It seems to me that we are making progress on the issue of late delivery. What’s important to me is a reasonable penalty based on a percentage of the total delivery. What basis do you think makes sense?”
 4. Silence can be golden. When the other negotiator is using positional tactics, remain silent and see what her next move may be. The next move may be more productive or may require a more active response from you.

The interest-based approach is one that can serve all parties to the negotiation. In spite of what game the other negotiator wants to play, the more ways you find to support and encourage engaging in the process from an interest-based orientation the more potential there will be for a mutually satisfying outcome. Keep any inclination to a “knee-jerk reaction” on hold, de-personalize his or her behaviour, and stay the course (as long as it proves productive).

The Interest-Based Negotiator As Facilitator

As an interest-based participant in the resolution of heritage planning disputes, your goal is to actively participate in and facilitate the creation of a negotiation process that works. Not only are you a party to the negotiations with a vested interest in the outcome, you also have a vested interest in creating a process that is effective and efficient and ideally results in a *mutual gains* agreement/outcome.

The most crucial foundational piece of your work as an interest-based negotiator is maintaining your own commitment to suspending (at least temporarily) your own position in order to encourage the overall movement from positions to interests. This requires a high level of self-awareness and the capacity for self-observation and reflection.

The following are some of the more salient tasks you will perform (while remaining non-defensive and non-reactive):

1. Support and help maintain a rational, comfortable climate for settlement negotiations. This includes ensuring that your own engagement with others reflects your intention to work *with* them to make this process work.
2. Listen for and identify (objectively, non-judgementally) misunderstandings, assumptions and discrepancies – yours and theirs.
3. Seek clarification of misunderstandings, assumptions and discrepancies.
4. Co-manage the process with the other parties in order to keep the pace of the negotiations comfortable for everyone and consistent with the time allotted.
5. Explore and probe for the interests and criteria beneath the positions in order to expand the opportunity for creative solutions while, at the same time, disclose your own. Maintain a mutual “interest-orientation” to the negotiations.
6. Look for and help identify common ground (mutuality).
7. Encourage the parties to be creative in generating options for solutions.
8. Maintain a focus on the underlying criteria each of you is using as the *basis* for your respective positions.

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9. Avoid impasses and discourage "bottom-lining". Emphasize movement and flexibility.
 10. Encourage an open and frank discussion and full disclosure of relevant information.
 11. Promote understanding between the parties; encourage a process of listening to understand vs. listening to rebut.
 12. Help organize the agenda in order to ensure that you are all discussing only one issue at a time - keep on track assertively and respectfully.
 13. Discourage "posturing". Set a tone for collaborative joint problem-solving as opposed to an adversarial climate in which parties need to impress each other with their strength of conviction.
 14. Ensure that you maintain an awareness of your own movement back to position-taking. As long as you continue to suspend your own positions, there is a much greater likelihood of the other negotiators willingness to focus on interests vs. positions.

SUMMARY OF THE PRINCIPLES OF GETTING TO YES

1. *Separate the people from the problem.*

- a. Separate the relationship with the other person from the substance of the problem. Try to de-personalize the situation in order to focus on the problem.
- b. Don't blame them for the problem; frame the problem as shared for joint resolution and problem-solving.
- c. Allow the other party to save face where at all possible, and do not place yourself in a face-saving situation.
 - i. Face-saving frequently reflects a person's need to reconcile the stand s/he takes in a negotiation with her/his principles and past words and deeds.
 - ii. Often people will hold out because they want to avoid the appearance of backing down or moving from their expressed "bottom line".
- d. Allow the other side to let off steam (without it becoming a "dumping" session). Listen actively without reacting (defensively) to their attacks and occasionally demonstrate a genuine desire to hear more by giving the other party every encouragement to speak.
- e. Communication is essential, especially two-way, mutual communication
 - i. You may be so busy thinking about what you are going to say next, that you forget to listen to what the other side is saying *now*.
 - ii. Ensure you understand by paraphrasing or summarizing for clarity: "You seem concerned that....?" A good negotiator pays attention to and gives legitimacy to the other side's case. This builds empathy while enhancing the likelihood that the other negotiator will listen to you (winning yourself a hearing).
 - iii. As you repeat, in your own words, what you understand the other negotiator to have said (their intended message), frame it positively from their point of view, making the strength of their case clear. Remember that to demonstrate an understanding of their perspective is not an indication of agreement with it.
 - iv. Speak about yourself not them. Assert don't attack, accuse or blame. "I'm disappointed that . . . not "you broke your word." "We want to ensure

that deadlines are maintained.” not “You’re not keeping your commitment to deadlines.” “We feel discriminated against”. not “You’re a racist.”

2. Focus on interests not positions.

Consider the story of two people quarreling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open; a crack, halfway, three quarters of the way. No solution satisfies them both.

Enter the librarian. She asks one why he wants the window open (seeking underlying interests): “To get some fresh air”. She asks the other why he wants it closed: “To avoid the draft”. After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft.

- a. Ask “Why?” Your intention is not to ask for a justification of their position, which could cause defensiveness, but, instead, you are seeking to understand their interests, needs, hopes, fears or desires (the drivers and motivators) that the position (their solution) addresses. “Why” seeks bases, reasons. What is important to you about “X” or What concerns you about “X” are also good exploratory questions that will get to the underlying interests.
- b. Ask yourself, “What decision the negotiator on the other side now sees you asking him/her to make”.
- c. Analyze the consequences, as the other side would probably see them, of agreeing or refusing to move in the direction in which you desire them to move.
- d. Focus on the future interests/concerns not past grievances or events.
- e. If you want the other side to take your interests into account, explain to them what those interests are. Concrete details not only make your description credible, they add impact. For example: “We have got ensure safety on our streets for our children while this paving continues. Three times in the last week, a child was almost run over by one of your company’s trucks. About eight-thirty Tuesday morning one of a huge red gravel truck, going north at almost forty miles an hour, had to swerve and barely missed hitting seven year-old Loretta Johnson.”

If you do tell your “story” for impact, do your best not to leave the impression of blame for the past and move as quickly as you can to the future oriented interests/needs that are important to you or precede your story

with the future interests that are important. (What are the future interests that these scenarios present?)

- f. Acknowledge their interests. “As I understand it, your interests, as a construction company, are basically to get the job done quickly, at a minimum cost, and to preserve your reputation for safety and responsibility in the city. (Pause for a response of clarification or acknowledgment or additional information). “What other important aspects of getting the job done need to be addressed?”
- g. Be hard on the problem, soft on the people. You can be just as hard in talking about your interests as any negotiator can be in talking about her/his position. In fact, it is usually advisable to be “hard”, meaning clear and concrete. Do not let your desire to be conciliatory stop you from doing justice to the problem, as it affects you, and the related interests that are important to you.
- h. Give positive support to the human beings on the other side, equal in strength to the vigor with which you emphasize the problem.

3. Invent options for mutual gain.

- a. Brainstorm possible options that address the interests raised in the negotiations so far.
 - i. identify problems and suggest causes.
 - ii. Consider what ought, perhaps, to be done.
 - iii. Come up with some specific feasible suggestions for action.
- b. Multiply the number of possible agreements on the table by thinking of “weaker” versions you might want to have on hand in case a sought-for-agreement proves beyond reach.
- c. Identify shared interests for shared options and differences in interests and beliefs which can make trade-offs possible for items that are of benefit to you or the other negotiator, yet are of low cost to the other side or to you.
- d. Options that generally appeal more are those that optimally address the interests disclosed; the fewer interests addressed, the less likelihood of reaching agreement or reaching an agreement that will last.
- e. Take pencil and paper in hand and try drafting a few possible agreements based on some of the ideas that are being generated. It is never too early in

- a negotiation (as in your pre-negotiation preparation) to start drafting, as an aid to clear thinking (as long as the drafting is reflective of the interests that have been expressed, and the drafting does not get in the way of continuing to explore for interests).
- f. Few things facilitate a decision as much as tried and true precedent. Search for it as a source for reasonable criteria.
 - g. We often try to influence others by threats and warnings of what will happen if they do not decide as we would like. Offers are usually more effective. Concentrate both on making them aware of the consequences they can expect if they do decide to move toward a particular outcome (without selling) and on improving those consequences from their point of view.
4. Focus on objective criteria.
- a. Negotiate on some basis independent of the will of either side. The more you bring standards of fairness, efficiency, or scientific merit to bear on your particular problem, the more likely you are to produce a final package that is wise, fair and that will stand the test of time.
 - b. Be open to reason, but closed to threats.
 - i. Pressure can take many forms; a bribe, a threat, a manipulative appeal to trust, or a simple refusal to budge. In all these cases, the principled response is the same: invite them to state their reasoning, suggest objective criteria you think apply, and refuse to budge except on this basis. Don't yield to pressure, only to principle.
 - ii. If the other side still refuses to budge then you must take it or leave it, depending upon your thorough assessment of your BATNA and WATNA.
 - c. Before even considering possible terms, you may want to agree on the standards or criteria to apply.
5. Develop your best alternative to a negotiated agreement (BATNA) while considering what your worst alternative to a negotiated agreement (WATNA) might be as well.
- a. Do not ask what you ought to get, ask instead what you will do if, by a certain time, you have not negotiated an agreement. What is your best back-up alternative to negotiating an agreement with this negotiator that does not require the cooperation or involvement of this negotiator? What is the worst realistic outcome if you fail to negotiate an agreement? Your determination of these "goalposts" assist you in determining your level of commitment to this negotiation.

- b. Formulate a trip wire identifying one far from perfect agreement that is better than your BATNA.
- c. Develop your BATNA (during preparation or during the course of the negotiation) by:
 - i. Inventing a list of options you might take if no agreement is reached.
 - ii. Improve the more promising ideas and convert them into practical options, and
 - iii. Select the option that seems best.
- d. Consider what the other side's BATNA and WATNA might be in order for you have at least some understanding of what their negotiating parameters might be and their level of commitment.

6. What if they won't play.

- a. When they assert their positions, do not reject them. Inquire about them from an interest-oriented perspective.
- b. Don't attack their position, look behind it. Treat it as one possible option.
- c. Don't defend your ideas, invite critical analysis, feedback and advice.
- d. Use more questions than statements. Statements can generate resistance, whereas questions generate answers. Questions offer them no target to strike at, no position to attack. Questions do not criticize, they can educate both sides with respect to the barriers.
- e. Don't yield to pressure or apply pressure, work on the basis of principles.
- f. Employ your BATNA and/or address your (both) potential WATNA's.
- g. Consider what process elements might be getting in the way of their participating effectively and work toward appropriate changes that work for both of you.

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In this article the debilitating effects of negative commitments, especially threats made at an early stage of negotiation, are explored. Mistaken views of the sources of negotiating power are analysed and six sources of negotiating power are presented. Negotiators are offered a checklist of things they can do in advance of any particular negotiation to enhance their negotiating power.

Negotiating Power

Getting and Using Influence

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Getting to Yes (Fisher and Ury, 1981) has been justly criticized as devoting insufficient attention to the issue of power. It is all very well, it is said, to tell people how they might jointly produce wise outcomes efficiently and amicably, but in the real world people don't behave that way; results are determined by power--by who is holding the cards, by who has more clout.

At the international level, negotiating power is typically equated with military power. The United States is urged to develop and deploy more nuclear missiles so that it can negotiate from a position of strength. Threats and warnings also play an important role in the popular concept of power, as do resolve and commitment. In the game of chicken, victory goes to the side that more successfully demonstrates that it will not yield.

There is obviously some merit in the notion that physical force, and an apparent willingness to use it, can affect the outcome of a negotiation. How does that square with the suggestion that negotiators ought to focus on the interests of the parties, on the generating of alternatives, and on objective standards to which both sides might defer?

This article is a brief report on the present status of some thinking about negotiating power. It represents work in progress. After briefly suggesting a definition of negotiating power, and the kind of theory for which we should be looking, I set up two straw men--that are perhaps not made wholly of straw: (1) the basic way to acquire real power in a negotiation is to acquire the capacity to impose unpleasant physical results on the other side; and (2) an effective way to exercise negotiating power is to start off by letting the other side know of your capacity to hurt them and of your willingness to do so. Both propositions seem wrong. In the central body of the paper, I discuss six elements of negotiating power that can be acquired before and during negotiation, only one of which is the capacity to make a credible threat. Finally, I consider the sequence in which those different elements of power are best used to maximize their cumulative impact, and explore the debilitating effect of making threats at an early stage.

HOW SHOULD WE DEFINE NEGOTIATING POWER?

It seems best to define "negotiation" as including all cases in which two or more parties are communicating, each for the purpose of influencing the other's decision. Nothing seems to be gained by limiting the concept to formal negotiations taking place at a table, and much to be gained by defining the subject broadly. Many actions taken away from a table--ranging from making political speeches to building nuclear missiles--are taken for the purpose of "sending a message" to affect decisions of the other side.

The concept of "negotiating power" is more difficult. If I have negotiating power, I have the ability to affect favorably someone else's decision. This being so, one can argue that my power depends upon someone else's perception of my strength, so it is what they *think* that matters, not what I actually have. The other side may be as much influenced by a row of cardboard tanks as by a battalion of real tanks. One can then say that negotiating power is all a matter of perception.

A general who commands a real tank battalion, however, is in a far stronger position than one in charge of a row of cardboard tanks. A false

impression of power is extremely vulnerable, capable of being destroyed by a word. In order to avoid focusing our attention on how to deceive other people, it seems best at the outset to identify what constitutes "real" negotiating power--an ability to influence the decisions of others assuming they know the truth. We can then go on to recognize that, in addition, it will be possible at times to influence others through deception, through creating an illusion of power. Even for that purpose, we will need to know what illusion we wish to create. If we are bluffing, what are we bluffing about?

WHAT KIND OF THEORY ARE WE LOOKING FOR?

An infinite number of truths exist about the negotiating process, just as an infinite number of maps can be drawn of a city. It is easy to conclude that negotiators who are more powerful fare better in negotiations. By and large, negotiators who have more wealth, more friends and connections, good jobs, and more time will fare better in negotiations than will those who are penniless, friendless, unemployed, and in a hurry. Such statements, like the statement that women live longer than men, are true--but they are of little help to someone who wants to negotiate, or to someone who wants to live longer. Similarly, the statement that power plays an important role in negotiation is true--but irrelevant.

As negotiators we want to understand power in some way that helps us. We want diagnostic truths that point toward prescriptive action. The statement that women live longer than men points toward no remedial action. I am unable to live longer by choosing to become a woman. On the other hand, the statement that people who don't smoke live longer than people who do smoke is no truer, but it is far more helpful since I can decide not to smoke.

Thus a lively interplay exists between descriptive and prescriptive theory. The pure scientist may not care whether his truths have any relevance to the world of action; he leaves that to others. But those of us who are primarily concerned with change (one hopes, for the better) are searching for descriptive categories that have prescriptive significance. We are looking for ideas that will help us make better choices. We are not simply trying to describe accurately

what happens in a negotiation, we are trying to produce advice of use to negotiators, advice that will help them negotiate better. We need to say something other than that powerful princes tend to dominate less powerful princes, as true as that may be. We are looking for the kind of theory that will help a prince. He, presumably, has two key questions with respect to negotiating power; how to enhance negotiating power and how to use such power as he may have.

MISTAKEN VIEWS OF NEGOTIATING POWER

(1) "Physical Force = Negotiating Power"

It is widely believed that in order to enhance our negotiating power we should acquire those assets like a strike-fund, a band of terrorists, or 100 MX missiles, which convey an implicit or explicit threat to harm the other side physically if it fails to agree with us. This belief is based on the assumption that, since threats of physical force undoubtedly exert influence, the ability to make such threats is the essence of negotiating power. Force is seen as the necessary and sufficient element of negotiating power.

Negotiating power is the ability to influence others. The pain that we threaten to inflict if the other side does not decide as we like is simply one factor among many. And as I have written elsewhere, making threats is a particularly expensive and dangerous way of trying to exert influence. (See Note 1)

(2) "Start tough, you can always get soft later."

There is widespread belief that the best way to start a negotiation is with a hard line. "Let them know early who's in charge." The thought is that since, in the last analysis, physical power may be the decisive factor, the entire negotiation should take place governed by its shadow. Conventional wisdom insists that it is easier to soften one's position than to harden it. A negotiator is encouraged to start off flexing his muscles.

Alan Berger, reviewing Seymour Hersh's *Kissinger in the White House*, emphasizes this feature of Nixon's foreign policy. "Nixon's first impulse was to attempt to intimidate his adversaries." He was anxious to "get tough," to "seem

tough," to "be tough." The nuclear option was not an ultimate recourse to be considered only *in extremis*, it was, as Hersh persuasively demonstrates, the point of departure....." (Boston Globe 1983).

President Reagan appears to be operating on a similar assumption with respect to negotiating power. We begin with a threat. We seek to influence the Soviet Union with respect to intermediate-range nuclear missiles in Europe by starting off with a public commitment that U.S. Pershing II missiles will be deployed in Europe before the end of 1983 unless by that time the Soviet Union has agreed to withdraw all its missiles from Europe, on terms acceptable to us.

The notion that it is best to start off a negotiation with a warning or threat of the consequences of nonagreement may result from a false analogy. Other things being equal, it is true that in purely positional bargaining the more extreme one's initial position (the higher a price one demands or the lower a price one offers), the more favorable an agreed result is likely to be. But opening with a very low substantive offer is quite different from opening with a threat of painful consequences if that offer is not accepted. The more firmly one is committed at an early state to carrying out a threat, the more damaging that threat is to one's negotiating power.

If these two propositions are wrong, how should someone enhance and exercise negotiating power?

CATEGORIES OF POWER

My ability to exert influence depends upon the combined total of a number of different factors. As a first approximation, the following six kinds of power appear to provide useful categories for generating prescriptive advice:

- (1) The power of skill and knowledge
- (2) The power of a good relationship
- (3) The power of a good alternative to negotiating
- (4) The power of an elegant solution
- (5) The power of legitimacy
- (6) The power of commitment

Here is a checklist for would-be negotiators of what they can do in advance of any particular negotiation to enhance their negotiating power. The sequence in which these elements of power are listed is also important.

1. THE POWER OF SKILL AND KNOWLEDGE

All things being equal, a skilled negotiator is better able to influence the decision of others than is an unskilled negotiator. Strong evidence suggests that negotiating skills can be both learned and taught. One way to become a more powerful negotiator is to become a more skillful one. Some of these skills are those of dealing with people; the ability to listen, to become aware of the emotions and psychological concerns of others, to empathize, to be sensitive to their feelings and one's own, to speak different languages, to communicate clearly and effectively, to become integrated so that one's words and nonverbal behaviour are congruent and reinforce each other, and so forth.

Other skills are those of analysis, logic, quantitative assessment and the organization of ideas. The more skill one acquires, the more power one will have as a negotiator. These skills can be acquired at any time, often far in advance of any particular negotiation.

Knowledge also is power. Some knowledge is general and of use in many negotiations, such as familiarity with a wide range of procedural options and awareness of national negotiating styles and cultural differences. A repertoire of examples, precedents, and illustrations can also add to one's persuasive abilities.

Knowledge relevant to a particular negotiation in which one is about to engage is even more powerful. The more information one can gather about the parties and issues in an upcoming negotiation, the stronger one's entering posture. The following categories of knowledge, for example, are likely to strengthen one's ability to exert influence:

Knowledge about the people involved. What are the other negotiators' personal concerns, backgrounds, interests, prejudices, values, habits, career hopes, and so forth? How would we answer the same questions with respect to those on our side?

Knowledge about the interests involved. In addition to the personal concerns of the negotiators, what additional interest are involved on the other side? What are their hopes, their fears, their needs? And what are the interests on our side?

Knowledge about the facts. It is impossible to appreciate the importance of unknown facts. Time permitting, it is usually worthwhile to gather a great deal of unnecessary information about the subject under negotiation in order to gather a few highly relevant facts. The more one knows about the history, geography, economics, and scientific background of a problem, as well as its legal, social, and political implications, the more likely it is that one can invent creative solutions.

It takes time and resources to acquire skill and knowledge; it also takes initiative and hard work. Lawyers who would never think of walking into a trial without weeks of preparation will walk into a negotiation with almost none: "Let's see what they have to say." Yet the lawyer would help his client more in persuading the other side next week than in persuading a judge next year. The first way to enhance one's negotiating power is to acquire in advance all the skill and knowledge that one reasonably can.

2. THE POWER OF A GOOD RELATIONSHIP

The better a working relationship I establish in advance with those with whom I will be negotiating, the more powerful I am. A good working relationship does not necessarily imply approval of each other's conduct, though mutual respect and even mutual affection--when it exists--may help. The two most critical elements of a working relationship are, first, trust, and second, the ability to communicate easily and effectively.

Trust. Although I am likely to focus my attention in a given negotiation on the question of whether or not I can trust those on the other side, my power depends upon whether they can trust me. If over time I have been able to establish a well-deserved reputation for candour, honesty, integrity, and

commitment to any promise I make, my capacity to exert influence is significantly enhanced.

Communication. The negotiation process is one of communication. If I am trying to persuade some people to change their minds, I want to know where their minds are; otherwise, I am shooting in the dark. If my messages are going to have their intended impact, they need to be understood as I would have them understood. At best, interpersonal communication is difficult and often generates misunderstanding. When the parties see each other as adversaries, the risk of miscommunication and misunderstanding is greatly increased. The longer two people have known each other, and the more broadly and deeply each understands the point of view and context from which the other is operating, the more likely they can communicate with each other easily and with a minimum of misunderstanding.

Each side benefits from this ability to communicate. We may have interests that conflict, but our ability to deal with those conflicting interests at minimum risk and minimum cost is enhanced by a good working relationship. Two men in a lifeboat at sea quarrelling over limited rations have sharply conflicting interests. But the longer they have known each other, the more dealings they have had, and the more they speak the same language, the more likely they are to be able to divide the rations without tipping over the boat. The ability of each to affect favourably the other's decision is enhanced by an ability to communicate. More power for one is consistent with more power for the other.

A good working relationship is so helpful to the negotiation of satisfactory outcomes that it is often more important than any particular outcome itself. A banker, for example, is often like a person courting. The prospect of a satisfactory relationship is far more important than the terms of a particular loan or a particular date. A relationship, which provides a means for happily resolving one transaction after another, becomes an end in itself. Particular substantive negotiations become opportunities for cooperative activity that builds the relationship.

The same is true internationally. A better working relationship between the Soviet Union and the United States would facilitate the negotiation of particular arms control agreements. Even more important, having a better working relationship would enhance the security of each country more than would the outcome of any particular treaty. The better the working relationship we develop with the Soviet Union, the more likely they are to heed what we have to say.

3. THE POWER OF A GOOD ALTERNATIVE TO NEGOTIATION

To a significant extent, my power in a negotiation depends upon how well I can do for myself if I walk away. In *Getting to YES*, we urge a negotiator to develop and improve his "BATNA"--his Best Alternative To a Negotiated Agreement. One kind of preparation for negotiation that enhances one's negotiating power is to consider the alternatives to reaching agreement with this particular negotiating partner, to select the most promising, and to improve it to the extent possible. This alternative sets a floor. If I follow this practice, every negotiation will lead to a successful outcome in the sense that any result I accept is bound to be better than anything else I could do.

In the case of buying or selling, my best alternative is likely to result from dealing with a competitor. Obtaining a firm offer from such a competitor in advance of a proposed negotiation strengthens my hand in that negotiation. The better the competing offer, the more my hand is strengthened.

In other cases, my best alternative may be self-help. What is the best I can do on my own? If the two boys offering to shovel the snow off the front walk are asking an exorbitant price, my best alternative may be to shovel the walk myself. To think about that option, and to have a snow shovel in the basement, strengthens my hand in trying to negotiate a fair price with the boys.

The less attractive the other side's BATNA is to them, the stronger my negotiating position. In negotiating with my son to cut the lawn, I may discover that he lacks interest in earning a little pocket money: "Dad, he says, "you leave your wallet on your bureau and if I need a little money I always borrow some."

My son's best alternative to a negotiated agreement to cut the lawn is to get the same amount or even more for doing nothing. To enhance my negotiating power, I will want to make his BATNA less attractive by removing that alternative. With my wallet elsewhere, he may be induced to earn some money by cutting the lawn.

Conventional military weapons typically enhance a country's negotiating power by making a nonnegotiated solution less attractive to a hostile neighbor. With adequate defense forces, Country A can say to Country B: "Let's settle our boundary dispute by negotiation: if you try to settle it by military force, you will fail." With sufficient military force, Country A may be able to improve its alternative to negotiation enough that it will be in an extremely strong negotiating position: "We hope you will agree through negotiation to withdraw your forces to the boundary which has been recommended by impartial experts; if you do not agree to withdraw your forces voluntarily, we may force them to withdraw."

The better an alternative one can develop outside the negotiation, the greater one's power to affect favorably a negotiated outcome.

4. THE POWER OF AN ELEGANT SOLUTION

In any negotiation, there is a melange of shared and conflicting interests. The parties face a problem. One way to influence the other side in a negotiation is to invent a good solution to that problem. The more complex the problem, the more influential an elegant answer. Too often, negotiators battle like litigators in court. Each side advances arguments for a result that would take care of its interest but would do nothing for the other side. The power of a mediator often comes from working out an ingenious solution that reconciles reasonably well the legitimate interests of both sides. Either negotiator has similar power to effect an agreement that takes care of his or her interests by generating an option that also takes care of some or most of the interests on the other side.

A wise negotiator includes in his or her preparatory work the generation of many options designed to meet as well as possible the legitimate interests of both sides. Brainstorming enhances my negotiation power by enhancing the

chance that I will be able to devise a solution that amply satisfies my interests and also meets enough of your interest to be acceptable to you.

In complicated negotiations, and even in some fairly simple ones, there is usually a shortage of options on the table. The United States and the Soviet Union would presumably welcome a plan that left them at the same level of insecurity at substantially less cost, but no one has yet been able to devise one. In any negotiation, generating a range of options in advance, some of which may later be put on the table, is another way to increase the chance that I will effect the outcome favorably.

5. THE POWER OF LEGITIMACY

Each of us is subject to being persuaded by becoming convinced that a particular result *ought* to be accepted because it is fair; because the law requires it; because it is consistent with precedent, industry practice, or sound policy considerations; or because it is legitimate as measured by some other objective standard. I can substantially enhance my negotiating power by searching for and developing various objective criteria and potential standards of legitimacy, and by shaping proposed solutions so that they are legitimate in the eyes of the other side.

Every negotiator is both a partisan and one of those who must be persuaded if any agreement is to be reached. To be persuasive, a good negotiator should speak like an advocate who is seeking to convince an able and honest arbitrator, and should listen like such an arbitrator, always open to being persuaded by reason. Being open to persuasion is itself persuasive.

Like a lawyer preparing a case, a negotiator will discover quite a few different principles of fairness for which plausible arguments can be advanced, and often quite a few different ways of interpreting or applying each principle. A tension exists between advancing a highly favorable principle that appears less legitimate to the other side and a less favorable principle that appears more legitimate. Typically, there is a range within which reasonable people could differ. To retain his power, a wise negotiator avoids advancing a proposition that

is so extreme that it damages his credibility. He also avoids so locking himself into the first principle he advances that he will lose face in disentangling himself from that principle and moving on to one that has a greater chance of persuading the other side. In advance of this process, a negotiator will want to have researched precedents, expert opinion, and other objective criteria, and to have worked on various theories of what out to be done, so as to harness the power of legitimacy--a power to which each of us is vulnerable.

6. THE POWER OF COMMITMENT

The five kinds of power previously mentioned can each be enhanced by work undertaken in advance of formal negotiations. The planning of commitments and making arrangements for them can also be undertaken in advance, but making commitments takes place only during what everyone thinks of as negotiation itself.

There are two quite different kinds of commitments--affirmative and negative:

(a) Affirmative commitments

- (1) An offer of what I am willing to agree to.
- (2) An offer of what, failing agreement, I am willing to do under certain conditions.

(b) Negative commitments

- (1) A commitment that I am unwilling to make certain agreements (even though they would be better for me than no agreement).
- (2) A commitment or threat that, failing agreement, I will engage in certain negative conduct (even though to do so

would be worse for me than a simple absence of agreement).

Every commitment involves a decision. Let's first look at affirmative commitments. An affirmative commitment is a decision about what one is willing to do. It is an offer. Every offer ties the negotiator's hands to some extent. It says, "This, I am willing to do." The offer may expire or later be withdrawn, but while open it carries some persuasive power. It is no longer just an idea or a possibility that the parties are discussing. Like a proposal of marriage or a job offer, it is operational. It says, "I am willing to do this. If you agree, we have a deal."

We have all felt the power of a positive commitment--the power of an invitation. (We are not here concerned with the degree of commitment, or with various techniques for making a constraint more binding, but only with the content of the commitment itself. Advance planning can enhance my power by enabling me to demonstrate convincingly that a commitment is unbreakable. This subject, like all of those concerned with the difference between appearance and reality, is left for another day.) The one who makes the offer takes a risk. If he had waited, he might have gotten better terms. But in exchange for taking that risk, he has increased his chance of affecting the outcome.

A wise negotiator will formulate an offer in ways that maximize the cumulative impact of the different categories of negotiating power. The terms of an affirmative commitment will benefit from all the skill and knowledge that has been developed; the commitment benefits from the relationship and is consistent with it; it takes into account the walk-away alternatives each side has; the offer will constitute a reasonably elegant solution to the problem of reconciling conflicting interests; and the offer will be legitimate--it will take into account considerations of legitimacy.

With all this power in its favor, there is a chance the offer will be accepted. No other form of negotiating power may be needed. But as a last resort the negotiator has one other form of power, that of a negative commitment, or threat.

A negative commitment is the most controversial and troublesome element of negotiating power. No doubt, by tying my own hands I may be able to influence you to accept something more favorable to me than you otherwise would. The theory is simple. For almost every potential agreement, there is a range within which each of us is better off having an agreement than walking away. Suppose that you would be willing to pay \$75,000 for my house if you had to; but for a price above that figure you would rather buy a different house. The best offer I have received from someone else is \$62,000, and I will accept that offer unless you give me a better one. At any price between \$62,000 and \$75,000 we are both better off than if no agreement is reached. If you offer me \$62,100, and so tie your hands by a negative commitment that you cannot raise your offer, presumably, I will accept it since it is better than \$62,000. On the other hand, if I can commit myself not to drop the price below \$75,000, you presumably will buy the house at that price. This logic may lead us to engage in a battle of negative commitments. Logic suggests that "victory" goes to the one who first and most convincingly ties his own hands at an appropriate figure. Other things being equal, an early and rigid negative commitment at the right point should prove persuasive.

Other things, however, are not likely to be equal.

The earlier I make a negative commitment--the earlier I announce a take-it-or-leave-it position--the less likely I am to have maximized the cumulative total of the various elements of my negotiating power.

The power of knowledge. I probably acted before knowing as much as I could have learned. The longer I postpone making a negative commitment, the more likely I am to know the best proposition to which to commit myself.

The power of a good relationship. Being quick to advance a take-it-or-leave-it position is likely to prejudice a good working relationship and to damage the trust you might otherwise place in what I say. The more quickly I confront you with a rigid position on my part, the more likely I am to make you so angry that you will refuse an agreement you might otherwise accept.

The power of a good alternative. There is a subtle but significant difference between communicating a warning of the course of action that I believe it will be in my interest to take should we fail to reach agreement (my BATNA), and locking myself in to precise terms that you must accept in order to avoid my taking that course of action. Extending a warning is not the same as making a negative commitment. If the United States honestly believes that deploying one hundred MX missiles is a vital part of its national security, then letting the Soviet Union know that in the absence of a negotiated agreement we intend to deploy them would appear to be a sound way to exerting influence. In these circumstances, the United States remains open to considering any negotiated agreement that would be better for us than the MX deployment. We are not trying to influence the Soviet Union by committing ourselves to refuse to accepting an agreement that would in fact be in our interest (in hopes of getting one even more favorable to us). We are simply trying to influence them with the objective reality that deployment seems to be our best option in the absence of agreement.

Two kinds of negative commitments are illustrated by the MX case. One is the example of Mr. Adelman's letter, which apparently described the only possible agreement that the United States was willing to accept. His letter appeared to commit the United States to refusing to agree to any treaty that did not commit the Soviet Union "to forego their heavy and medium ICBM's" (New York Times, 1983). This was an apparent attempt to influence the Soviet Union by making a public commitment about what the United States would do--we would not take anything less than a Soviet agreement to dismantle all its heavy and medium missiles in exchange for a United States promise not to add one hundred MX missiles to our arsenal.

The second kind of negative commitment is illustrated by the MX case if one assumes, as many of us believe, that deploying one hundred MX missiles does not really enhance U.S. security but rather damages it. The proposed deployment is bad for us; perhaps worse for the Soviet Union. On this assumption, the threat to deploy the MX missiles is like my trying to influence a

fellow passenger by threatening to tip over a boat whether or not I am the better swimmer. Tipping over the boat will be bad for both of us, perhaps worse for him. I am committing myself to do something negative to both of us in the hope of exerting influence. If I made such a commitment, it is because I hope that by precluding myself from acting in some ways that would be in my interest, I will be able to achieve a result that is even more favorable.

To make either kind of negative commitment at an early stage of the negotiation is likely to reduce the negotiating power of a good BATNA. It shifts the other side's attention from the objective reality of my most attractive alternative to a subjective statement that I won't do things that (except for my having made the commitment) would be in my interest to do. Such negative commitments invite the other side to engage in a contest of will by making commitments that are even more negative, and even more difficult to get out of. Whatever negotiating impact my BATNA may have, it is likely to be lessened by clouding it with negative commitments. This is demonstrated by Deputy Secretary of State Kenneth Dam's insistence (following Mr. Adelman's ill-fated letter) that the MX "is not a bargaining chip in the sense that we are just deploying it for purposes of negotiation. It is a vital part of our national security." That statement implicitly recognizes that a statement made for negotiating reasons is likely to exert less influence at the negotiating table than would a good alternative away from the table. Mr. Dam's statement also reflects recognition on the part of the United States that a premature negative commitment weakens rather than strengthens our negotiating power.

The power of an elegant solution. The early use of a negative commitment reduces the likelihood that the choice being considered by the other side is one that best meets its interests consistent with any given degree of meeting our interests. If we announce early in the negotiation process that we will accept no agreement other than Plan X, Plan X probably takes care of most of our interests. But it is likely that Plan X could be improved. With further study and time, it may be possible to modify Plan X so that it serves our interests even better at little or no cost to the interests of the other side.

Second, it may be possible to modify Plan X in ways that make it more attractive to the other side without in any way making it less attractive to us. To do so would not serve merely the other side but would serve us also by making it more likely that the other side will accept a plan that so well serves our interests.

Third, it may be possible to modify Plan X in ways that make it much more attractive to the other side at a cost of making it only slightly less attractive to us. The increase in total benefits and the increased likelihood of quickly reaching agreement may outweigh the modest cost involved.

Premature closure on an option is almost certain to reduce our ability to exert the influence that comes from having an option well crafted to reconcile, to the extent possible, the conflicting interests of the two sides. In multilateral negotiations it is even less likely that an early option will be designed to take into account the plurality of divergent interests involved.

The power of legitimacy. The most serious damage to negotiating power that results from an early negative commitment is likely to result from its damage to the influence that comes from legitimacy. Legitimacy depends upon both process and substance. As with an arbitrator, the legitimacy of a negotiator's decision depends upon having accorded the other side "due process." The persuasive power of my decision depends in part on my having fully heard your views, your suggestions, and your notions of what is fair before committing myself. And my decision will have increased persuasiveness for you to the extent that I am able to justify it by reference to objective standards of fairness that you have indicated you consider appropriate. That factor, again, urges me to withhold making any negative commitment until I fully understand your views on fairness.

The power of an affirmative commitment. Negative commitments are often made when no affirmative commitment is on the table. The Iranian holders of the hostages in Tehran said for months that they would not release the hostages until the United States had adequately atoned for its sins and had met an ambiguous set of additional demands. No clear offer was given by Iran, and the United States, accordingly, was under no great pressure to do any particular

thing. During the Vietnam War, the United States similarly failed to offer those on the other side any clear proposition. We would not leave, we said, until North Vietnam agreed "to leave its neighbors alone"--but no terms were on the table; no offer, no affirmative commitment was given.

Once an affirmative commitment is on the table, the negotiator must make sure that the varied elements of the communication are consistent with each other. No matter what the magnitude of a threat, it will have little effect unless it is constructed so that the sum total of the consequences of acceptance are more beneficial to the other side than is the sum total of the consequences of rejection. While negotiators frequently try to increase power by increasing the magnitude of a threat, they often overlook the fact that increasing the favorable consequences of acceptance can be equally important.

But no matter how favorable the consequence of acceptance are to the other side, and how distasteful the consequences of rejection, the proposition will carry little impact if the various implications of timing have not been thought through as well. Just as my son will look at me askance if I tell him that unless he behaves next week he will not be permitted to watch television tonight, so the North Vietnamese were unable to comply when the United States said, in effect, "If over the next few weeks you haven't reduced support for opponents of South Vietnam, we will bomb you tomorrow." The grammar must parse. (See *International Conflict for Beginners*.)

To make a negative commitment either as to what we will not do or to impose harsh consequences unless the other side reaches agreement with us, without having previously made a firm and clear offer, substantially lessens our ability to exert influence. An offer may not be enough, but a threat is almost certainly not enough unless there is a "yesable" proposition on the table--a clear statement of the action desired and a commitment as to the favorable consequences which would follow.

This analysis of negotiating power suggests that in most cases it is a mistake to attempt to influence the other side by making a negative commitment of any kind (See Note 2) at the outset of the negotiations, and that it is a mistake

to do so until one has first made the most of every other element of negotiating power.

This analysis also suggests that when as a last resort threats or other negative commitments are used, they should be so formulated as to complement and reinforce other elements of negotiating power, not undercut them. In particular, any statement to the effect that we have finally reached a take-it-or-leave-it position should be made in a way that is consistent with maintaining a good working relationship, and consistent with the concepts of legitimacy with which we are trying to persuade the other side. For example, I might say:

"Bill, I appreciate your patience. We have been a long time discussing the sale of my house, and I believe that we each fully understand the other's concerns. We have devised a draft contract which elegantly reconciles my interest in a firm deal, adequate security, and reasonable restrictions to protect the neighbors, with your interest in being able to move in early, to stretch out the payments, and to have your professional office in the house. The only open issue is price. On that, we have discussed various criteria, such as market value based on recent sales, providing me a fair return on my investment, and value based on professional estimates of replacement cost depreciated for wear and tear. These criteria produce figures ranging from \$73,000 down to \$68,000. I have offered to sell you the house for \$70,000.

"Your response, as I understand it, is to say that you will pay no more than \$100 above the best written offer I have from another potential buyer, now \$62,000. Knowing that you would pay \$75,000 if you had to, I am unable to understand why you should get all but \$100 of the advantage of our shared interest in my selling and your buying the house. Nor, as we have discussed, do I think it a wise practice for me to defer to what looks to me like an arbitrary commitment.

"The transaction costs of further discussion would appear to outweigh any potential advantage. Unless you have something further you would like to say now, or unless you would like to try to convince me that this procedure is unfair, I hereby make a final offer of \$68,000, the lowest figure I believe justified by objective criteria. Let me confirm that offer now in writing and commit myself to leaving that offer open for three days. Unless something wholly unexpected comes up, I will not sell the house to you for less. Please think it over.

"In any event, let's plan to play golf on Saturday afternoon if you are free."

A great deal of work remains to be done toward formulating the best general advice that can be given to help a negotiator increase his or her ability to influence others. Some of that work relates to what can be done to acquire power in advance of a negotiation; much relates to how best to use such power as one has. No attempt has been made to advance propositions that will be true in every case, only to advance rules of thumb that should be helpful in many cases. So far, I have been unable to come up with any better rules of thumb covering the same ground.

As indicated at the outset, this article does not cover the kind of negotiating power that comes from creating in the mind of others an impression that is false--from bluffing, deceit, misrepresentation, or other such act or omission. For the moment, I remain unconvinced that the best advice for a negotiator would include suggestions of how to create a false impression in the mind of the other side, any more than I would advise young lawyers on how best to create a false impression in the mind of a judge or arbitrator. But that is a subject for another day.

NOTES

1. See "Making Threats Is Not Enough" Chapter Three in *International Conflict for Beginners* (Fisher, 1969)

2. On reading this article, Douglas Stone of the Harvard Law School Suggested that there may be one kind of negative commitment that could be made at the outset of negotiations without damage to the relationship, to legitimacy, or to other elements of one's total power. I might, for example, make a negative commitment that I would not respond to negative commitments but only to facts, objective criteria, offers, and reasoned argument. Like an advance commitment not to pay blackmail, such a negative commitment is consistent with legitimacy. In fact, one might propose that both sides make mutual commitments not to respond to threats. An early commitment not to respond to threats might, if convincingly made, preemptively foreclose threats from the other side.

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FROM: CAN YOU AFFORD TO TRUST YOUR INSTINCTS?

American Bar Association (edited)

Analysis of Cooperative and Aggressive Negotiating Patterns

THE AGGRESSIVE STYLE IN ACTION

The underlying thrust of the aggressive style is to move psychologically against the opposing party. The words used by aggressives are chosen to emphasize and even exaggerate the differences between the aggressive negotiator and his or her opponent. They routinely use intimidation, accusation, threat, sarcasm, and ridicule to put pressure on the other side. The aggressive is always right, the opponent always wrong; the aggressive is superior, the opponent inferior. This approach is the very embodiment of the popular phrase "winning by intimidation". Aggressive negotiators believe all negotiators operate this way, and that such gamesmanship is therefore both the best offense and a necessary defense. If they do not succeed in intimidating and controlling the opponent, the opponent will get the upper hand and win.

The aggressive assumption that all negotiators are combative is not empirically valid. Our statistics on the legal profession suggest that only about 40% of attorneys are of the aggressive pattern, while the remaining 60% tend toward the cooperative pattern.

Aggressives themselves recognize that not everyone is combative, but they rationalize that failure to be aggressive is a weakness. As a consequence, they view cooperative types as weak, naive, and deserving of exploitation.

The aggressive negotiator's use of threats and intimidation serves two purposes. It puts pressure on the opponent to make concessions, thus undervaluing his or her case. And it serves as a smokescreen to divert the opponent's attention from the aggressive's own refusals to make reciprocal concessions. The concession making pattern of effective aggressive negotiators may be broken down into a six part formula. In negotiating, aggressive attorneys:

- a. Have high expectations;
- b. Make high opening demands;
- c. Make very few concessions;
- d. Make very small concessions;
- e. Create one or more "false issues", which means to make a dramatic commitment to an issue which they actually do not consider important, then to give it up in exchange for a major concession by the opponent; and
- f. Use intimidation to camouflage this strategy.

Are aggressive negotiators in fact unwilling to compromise? The answer is a comforting and resounding NO. Aggressives will compromise - they are no less rational than everyone else. Their strategy is to APPEAR inflexible and irrational in order to convince you, the opponent, that you will have to accept an agreement on their terms. If you, as the opponent, skilfully refuse and continue to press for better terms, the aggressive will accommodate you. Not only that, but you will also win his or her grudging admiration for being a tough negotiator.

STRENGTHS OF THE AGGRESSIVE STRATEGY

The advantages of the aggressive strategy include the fact that in some cases, particularly complex ones, the aggressive strategy may result in more of a favorable outcome for the negotiator than would a cooperative strategy. In addition, aggressive negotiators rarely fall into the trap of being too "soft" and giving away too much. Finally, against certain types of negotiators, most especially ineffective/cooperatives, skillful use of the aggressive strategy will often yield higher outcomes than would a cooperative strategy.

WEAKNESSES OF THE AGGRESSIVE STRATEGY

The aggressive strategy is not without its limitations. In fact, as we observed earlier, it is more difficult to be an effective/aggressive than to be a effective/cooperative. The reasons for this are important to note, because it is possible to enhance the effectiveness of the aggressive strategy by avoiding its inherent risks.

The disadvantages of the aggressive strategy all revolve around one central theme: it generates tension and mistrust between the opposing negotiators. The tensions and mistrust in turn create several complicating dynamics, resulting in:

- a. Significant increases in misunderstanding between the parties making the parties believe they are much further apart than they really are;
- b. Deadlock over one issue, which may then block resolution of other issues, and the resulting antagonisms escalate trivial issues into insoluble questions of principle;
- c. Significant increases in the number of negotiations which end in deadlock, forcing trial of the case;
- d. "Righteous indignation" in the frustrated opponent, who comes back to pursue the case with a vengeance, increasing the costs of the dispute and increasing the likelihood of impasse;
- e. A reputation for aggressiveness, which influences future opponents, who will be mistrustful and will take precautions with the aggressive opponent which they would not otherwise take.

Another weakness in the aggressive strategy is a trap for aggressive and cooperative negotiator alike. In repeated experiments, it happens that when negotiators are not adequately prepared, they have a natural tendency to become more aggressive to compensate for the lack of preparation. In these circumstances, research indicates, aggressiveness is not an effective strategy. Rather, it results in a lower outcome than would be achieved by better preparation and less aggressiveness.

In summary, the aggressive style can be a highly effective strategy, but an uncommon degree of skill is necessary to make it effective. It cannot be used as a substitute for preparation. Its success depends upon the negotiator creating enough tension and pressure against the Opponent to obtain the results he or she wants, but without creating so much tension that the opponent balks, declares a deadlock, or responds with reprisals.

THE COOPERATIVE STYLE IN ACTION

In general, the cooperative style differs from the aggressive approach in that the basic strategy is to move psychologically TOWARD the other party. The cooperative negotiator seeks to establish common ground, and to demonstrate shared interests, attitudes and values.

Cooperative negotiators regard aggressives as manipulative, exploitive, and overbearing. To them a strategy of moving AGAINST another person in order to satisfy one's selfish interests is reprehensible and an affront to human dignity.

The conflict in values between aggressive and cooperative negotiators does raise a perplexing question: IS IT ANY LESS MANIPULATIVE TO MOVE PSYCHOLOGICALLY TOWARD SOMEONE FOR YOUR OWN PURPOSES THAN TO MOVE AGAINST THEM?

In general, cooperative take one of two positions on this issue. They argue that, by definition, it is not manipulative to move psychologically TOWARD another person. Manipulation can only occur when you move AGAINST another. In the alternative, coop-

erative types agree that it is manipulative to move psychologically toward another person for your own purposes, but they argue it is a morally superior form of manipulation.

Why morally superior? From the cooperative point of view, aggressives are seeking to “win” by getting the maximum for themselves and imposing as much harm as possible on the other side in the process. By contrast, cooperatives generally feel a moral obligation to seek a “fair” outcome, in the sense of an outcome that is fair to both sides. As might be expected, aggressives have difficulty believing anyone could be so naive as to seek “fairness”. The major point of this discussion is that, to understand cooperatives, aggressive types must take it on faith that cooperatives do feel a genuine interest and obligation toward the welfare of the opposing client as well as their own. This sense of “fairness” can successfully be appealed to in the course of the negotiation. Cooperatives see it as a moral obligation.

For cooperative negotiators, then, the objective is to establish an open, trusting atmosphere in which to negotiate. They avoid threats; they use rational, logical means of persuasion; they explicitly seek only the fair solution based on objective, nonpartisan analysis of the facts and law, and they show their good faith and trust by making unilateral concessions to the other side. They admit the weaknesses and problems in their case.

What do cooperative negotiators hope to achieve with this strategy? Their strategy is designed to induce the other to reciprocate; to forego aggressive tactics; to participate in an open and objective discussion of the facts on both sides; to make reciprocal concessions; and to seek an outcome that is fair to both sides.

STRENGTHS OF THE COOPERATIVE STYLE

The cooperative style, when used effectively, has several advantages.

- a. It promotes mutual understanding;
- b. It generally produces agreement in less time than the aggressive approach;
- c. It regularly produces agreement in a larger percentage of cases, thereby reducing the number of cases that must be taken to trial;
- d. It often produces a higher outcome than the aggressive strategy; and
- e. It regularly produces a higher joint outcome than does the aggressive strategy.

There is dramatic new evidence in support of the proposition that cooperation is individually and collectively more profitable than aggression or toughness.

WEAKNESSES OF THE COOPERATIVE STYLE

The limitations or disadvantages of the cooperative style begin with the fact that in an adversary system, the idea of “cooperation” has an uncomfortable ambiguity about it. In such a system, one must be concerned whether cooperation and compromise are not signs of weakness.

This ambiguity has a foundation in the fact that cooperative types, whether effective or ineffective, are vulnerable to exploitation by skillful aggressive negotiators. Two of the demonstration videotapes (the Business Transaction and the Personal Injury Case) demonstrate that when effective/cooperative negotiators confront effective/aggressive negotiators without expecting such extreme toughness, the cooperative types will tolerate a surprising degree of exploitation before recognizing what is happening to them. This is perhaps the single most important lesson cooperatives can learn from these materials: they are vulnerable to exploitation, and they are slow to recognize it when they are being exploited by a skillful opponent.

A second weakness is that cooperatives, like aggressives, have a tendency to overdo. Whereas the risk for overzealous aggressives is coming on too strong and creating anger and deadlock, the risk for cooperatives is that they will make concession upon concession in a vain attempt to impose a moral obligation on the opponent to reciprocate. When they fall into this trap, the wise opponent will sit tight, make no concessions (or only token concessions as needed), and let the cooperative give away his or her entire case.

A third weakness in the cooperative approach is that cooperatives, when under pressure from an aggressive opponent, tend particularly to misread what is happening and to assume much more disagreement than in fact exists. They overreact to the emotion of the situation, and lose their own objectivity.

Thus, to be an effective negotiator of the cooperative style requires skill, perceptiveness, and self-control.