

Odd Gunnar Skagestad:

Negotiations – Theory and Practice: A General Introduction

FIGURE 1 - HEADING

Good Morning, - and welcome to my first presentation in this lecture series on negotiations. As you can see from this screen, the topic of this first session is **negotiations in general** – on the **theoretical** as well as on the **practical** level, whereas I later today will deal more specifically with fishery negotiations in particular.

I'll start out with addressing the theoretical aspects – but first of all, let us consider the rhetorical but basic questions: **What are negotiations, and why do we negotiate?**

My answer to this dual question is as follows: **Negotiations are the process whereby two or more parties discuss a subject of common or joint interest, with the aim of reaching a mutually acceptable solution.** When there are only two parties, we talk about **bilateral** negotiations, when there are more than two parties, we talk about **multilateral** negotiations.

So, from the theoretical perspective, the main point of departure would be the question: Should we enter into (initiate) negotiations?

The answer may not be obvious. Sometimes parties (i.e. states as well as individuals) prefer to use force rather than negotiations in order to achieve their objectives. Or, they may be so lazy, intimidated or uncommitted to their cause that they avoid considering the matter altogether.

But assuming that the question is to be considered, we need to have a conscious idea of what we are going into.

FIGURE 2 - POINT OF DEPARTURE

In that case – still from a theoretical perspective – the sensible questions to consider would be viz.:

1. What is our best alternative to a negotiated agreement (BATNA)?
2. What is the minimum with which we would be satisfied?
3. What are the (political) costs of accepting or proposing an agreement that fails to meet this requirement?

FIGURE 3 - BATNA

To repeat: The main aims of negotiations is to reach agreement on a mutually acceptable solution.

This means that we need to identify a **Settlement Range** = A set of mutually acceptable solutions.

FIGURE 4 - SETTLEMENT RANGE, DEFINITION

To give you a visual representation of the theoretical concept of Settlement Range, consider the next figure:

FIGURE 5 - SETTLEMENT RANGE – THE 4-FRAME MATRIX

Explanation:

A and **B** are the two parties.

The main vertical line indicates the utility of a negotiated settlement to party A, the main horizontal line the utility of a negotiated settlement to party B.

The crossroads (origo) indicates the two parties' best alternative to a negotiated settlement (BATNA).

This means that any settlement below the horizontal line or to the left of the vertical line (regions I, III & IV) would be unacceptable to one or both of the parties A and B.

Therefore, any solution must be found in region II.

The lines SL_a and SL_b are the "satisfaction levels" for the two parties.

Only solutions in region II* (with an asterisk) can confidently be considered acceptable to both parties. Solutions in what remains of region II may provide a basis for an agreement (depending on the totality of the negotiations).

NB! Beyond the so-called "*Pareto frontier*", any further increase in the benefits of one party will have to be obtained at the expense of the other party, who can be expected to block the move.

As far as theory goes, this 2-dimensional figure gives us an interesting illustration of some basic preconditions for reaching negotiated agreements.

But how does real life look from a practical perspective?

In negotiating complex subjects such as certain fisheries negotiations, we must look at the ultimate result – the final negotiated agreement – as a **package**. The package contains a number of different elements, which can each be viewed one-dimensionally, as in the three examples shown on the next figure:

FIGURE 6 - POSSIBILITIES FOR A NEGOTIATED SETTLEMENT

In all three examples, the two parties **A** and **B** are pulling in opposite directions along the same one-dimensional scale: **A** pulling leftwards and **B** rightwards.

A_{max} and **B_{max}** represent the maximum demands of each party on a particular component of the whole package.

Abl and **Bbl** represent their respective bottom lines, i.e. the very least they may be willing to accept.

In Example 1 there is no common ground, no room for any negotiated agreement.

In Example 2 their bottom lines touch; there is no settlement range but a "*settlement point*".

In Example 3 there is a settlement range as both parties would be willing to settle for a solution somewhere between **Bbl** and **Abl**.

(A digression: Example 2 illustrates neatly what actually happened with regard to one of the main components of the Norway-EU fishery agreement for 1992, namely the mackerel arrangement. Both parties went out with high hopes of increasing their shares as compared to the 1991 agreement, but at the end of the day it turned out that their respective bottom lines met at one point: Repeating the status quo from the previous year).

But to repeat: In complex negotiations – which fisheries negotiations often are – the resulting agreement must be viewed as a package consisting of several components. It is a package of “gives” and “takes”. The two parties may have different priorities with regard to the various components: Their positions may be more flexible with regard to some components, whereas they may have “non-negotiable” demands with regard to others.

For example: Let’s imagine that in a hypothetical negotiation situation on a fisheries agreement between Norway and the EU, the EU may very much want Norway to give them an increased catch quota of mackerel in Norwegian waters. But at the same time, to the EU fishermen and their politicians and to their negotiation team from the EU Commission, it is even more important that they get a higher share of the cod stock in the North Sea. In such a case, they may be willing to settle for a less than satisfactory result on the first point if that can help them achieve their demands on the second point.

In the final event, it is the whole agreement – the totality of the package – that must be considered (and not necessarily only its size or configuration).

Let’s for a second go back to the theoretical concept that we introduced a few minutes ago, - the so-called settlement range, and ask ourselves the following question: Do we really need to know whether a settlement range exists before we enter into negotiations?

In real life – the answer is no.

In real life, parties often go to the negotiation table without knowing this for sure. It is often the case that only after lengthy discussions are they able to discover or conclude that “Sorry, Mac”, - here’s really no common ground, no possibilities for reaching an agreement.

Also, it is not necessarily up to the negotiators themselves to decide whether a settlement range exists. As a negotiator, you take your instructions from your political authorities or superiors. They are the ones who approve your negotiation mandate, and who may tell you to go ahead and negotiate, without wasting time discussing purely academic issues such as the question of “settlement range”.

How should we approach a negotiation situation?

FIGURE 7 - GENERAL APPROACHES TO NEGOTIATIONS

We usually talk about two basically different approaches:

1. **Co-operative (or integrative)**
2. **Conflictual (or distributive)**

Basic assumptions and main strategic implications of these two models are shown on the next figures:

FIGURE 8 - THE CO-OPERATIVE APPROACH

Other side viewed as: (Potential) Partner; Reasonable; Trustworthy; Commanding respect

Topic viewed as: (Common) Problem; Compatible interests; Common values

Appropriate strategy: Persuasion

Typical "move": Questions; Information; Arguments; Genuine appeals; Support

FIGURE 9 - THE CONFLICTUAL APPROACH

Other side viewed as: Opponent; Unreliable; Hostile motives; Inclined to use unfair tactics

Topic viewed as: Issues; Conflictual interests; Little common ground in values

Appropriate strategy: Manipulation; Coercion; Persuasion

Typical "move": Rhetoric; Selective (dis-)information; Stick to one's positions (Stubbornness); Warnings/Threatening arguments; Perhaps even outbursts of verbal abuse

These two categories belong – first and foremost – in an academic laboratory. In real life it is rarely possible to operate with two such clear-cut categories – most negotiations include a mixture of both.

Even in fishery negotiations, where parties pursue competing goals, you will not find that the parties adopt a 100 % conflictual approach.

So, what kind of outcomes can one expect from taking a seat at the negotiation table?

In so-called "games theory" we distinguish between three main categories:

FIGURE 10 - NEGOTIATION OUTCOMES - MAIN CATEGORIES

1. **WIN-WIN** (Positive-Sum Outcomes)
2. **WIN-LOSE** (Zero-Sum Outcomes)
3. **LOSE-LOSE** (Negative-Sum Outcomes)

What do these categories mean?

FIGURE 11 - NEGOTIATION OUTCOMES, WHAT DO THEY MEAN?

WIN-WIN: Everyone wins (usually through cooperation or joint problem-solving)

WIN-LOSE: One side wins only if the other side loses

LOSE-LOSE: All the parties lose

These are useful analytical concepts, but bear in mind that international negotiations (including fishery negotiations) are seldom what we would call pure “zero-sum games” (where “winner takes all”, or “one party’s gain = the other party’s loss”).

For practical purposes in a negotiation process, it is, however, useful to have a conceptual awareness of what you are doing and why.

To adopt a **cooperative approach** will usually be a wise choice as long as the other side reciprocates, but it involves a certain risk to become vulnerable to "dirty tricks" from your opponent.

On the other hand, to adopt a **conflictual approach** may lead to losing opportunities of involving the other side in constructive search for solutions.

In general, the ideal approach to negotiation should meet **two requirements**:

First, you should reassure the other side that you are prepared to cooperate, and solicit their cooperation, without inadvertently inviting attempts at exploitation.

Second, you should deter any attempts at exploitation that the other side might consider, without resorting to tactics generating fear or provoking resentment on their part.

Only a strategy of **conditional cooperation** can meet both these requirements.

One such strategy is known as **TIT-for-TAT**. In essence it can be described as having two basic decision rules: **First**, demonstrate at the outset your sincere will to cooperate. **Second**, in each subsequent "move", respond in kind to whatever approach the other side adopts in its preceding "move". That is, if they adopt a cooperative approach, then you cooperate; if they go for conflictual bargaining, then you retaliate.

Co-operative problem-solving can be said to involve 3 basic tasks:

FIGURE 12 - COOPERATIVE APPROACH – 3 BASIC TASKS

- 1. Develop a common and accurate understanding of the problem(s) to be solved**
- 2. Look for possible solutions, i.e. discussing tentative ideas, not proposals**
- 3. Evaluation and choice**

In "conflictual" bargaining, to protect your own interests, you have to be able to resist your opponent's "offensive" moves and to overcome or outsmart his "defensive" tactics. This means that you will face certain basic questions about strategies and tactics. One such question is how much "bargaining leverage" to build into your opening position – whether to start "high" or "low".

What does this mean?

Let's go back to our **FIGURE 6** : In all these 3 examples we assume that the two parties A and B both start out with more or less maximalist demands, - what is termed starting "high" (or "*Blue Sky bargaining*").

The opposite extreme possibility is that one (or both) of the parties puts his bottom line on the table at the outset: - "This is my first and final proposal, take it or leave it!" (Also called the "*Final offer first*"-strategy).

Usually, however, parties will build into their opening positions a certain amount of "bargaining leverage", expecting to be able to "trade" concessions on a step-by-step tit-for-tat basis – what is called "incremental reciprocity".

FIGURE 13 - TYPES OF CONFLICTUAL BARGAINING

- 1. Starting "High" (Blue Sky Bargaining)**
- 2. "Final Offer First"-Strategy**
- 3. "Tit-for-Tat"-Strategy (Incremental Reciprocity)**

Whichever strategy you choose, there may be hazards, risks, pitfalls, and also – of course – the hope of some gains.

To start "high" **can** give you some advantage. You may succeed in creating a favourable position for a reciprocal trading of concessions, and when you and your opponent finally meet half-way between your respective opening positions, the end result may be closer to your own realistically preferred solution than to your opponent's ("*successful haggling*").

By starting "high" you give yourself more manoeuvring room, and you may be able to give concessions which don't really cost you very much, but convey the impression that you are "flexible" and "reasonable", that you are constructively seeking mutually acceptable solutions. Furthermore, by starting "high" you may succeed in intimidating your opponent and convey the impression (both to your opponent and to your own people) that you are ambitious and tough, and that you are prepared to put up a real fight.

Roughly speaking, this was the strategy employed by our then Minister of Fisheries Mr Jan Henry T. Olsen in the 1993-94 membership negotiations with the EU, when he went out with his initial statement that he did not have "**one single fish**" to give away. At the end of the day, he had to give **something**, but it can be argued that he achieved a considerably better deal than if he had **not** started out with such a bold position. (This of course we may never know, but we do know that because of this statement, he is still known as "**Mr No-fish-Olsen**"...).

A "starting-high" strategy may be successful especially if you are negotiating from a position of strength. But even if you are the weaker party, you **may** be able to profit from an impressive performance.

But such a strategy may also backfire miserably, especially if you inflate your demands to the point where they become ridiculously unrealistic. Your opponent may call your bluff, and you may have to make an embarrassing retreat. Then your credibility as a serious negotiator may be at stake. In addition to the humiliation of having to accept defeat, you may also have practical problems: By raising your expectations too high, it may be difficult to explain to your own people (your delegation members, superiors, constituency, "domestic clients" alike) that, yes, it is really necessary to back down and readjust your position drastically.

And also: Even if starting "high" **should** in fact enable you to strike a better deal, you may still find that your own people give you **less** credit for your bargaining performance – simply because it seems that you have given up "too much" in the process.

The opposite strategy – starting "low" – means that you adopt a position that, on the basis of the information you have about your opponent's concerns and interests, can be considered a realistic basis for agreement. Thus, your opening position will be well within the "settlement range", as you perceive it. The basic rationale for adopting such a "realistic" approach is the assumption that the parties know each other too well to be impressed by tactically inflated demands. If you choose his strategy, your message is that the negotiations must be conducted as serious business rather than some ritual trading of "tactical fat".

This so-called "realistic" approach may seem sensible and attractive. It does, however, fail to take into account the realities of behavioural norms and expectations. Your opponent would usually not expect you to play out your final card in the opening sequence. And when you tell him that that's exactly what you are doing and, hence, that you have no further manoeuvring room, he may not believe you. He may think that you would still be in a position to make some concessions. Surely, you must have *something* hidden up your sleeve...?!

By making the expected final result your opening position, you may easily become a prey for further squeezing and cause the whole negotiation exercise to be a matter of haggling over further concessions from **your** side. (As an example to illustrate this, I could mention the lengthy and drawn-out Barents Sea delimitation negotiations between Norway and Russia from 1970 to 2010...).

To sum up the pros and cons of the various strategies, or to put it in a nutshell so to speak, it all more or less boils down to the psychology of expectations. The most successful negotiator is the one who is most able to master the numerous psychological challenges that a negotiation process entails.

With regard to negotiation theory, I confess that I find theoretical discussions both interesting and stimulating. But for practical purposes of conducting negotiations, **theory cannot replace practical experience.**

If I may give you some **practical advice**, it would consist of the following **3 rules** or guidelines:

FIGURE 14 - PRACTICAL ADVICE

1. **Know the subject matter.** This doesn't mean that you have to be a full-fledged expert, but a good knowledge of the subject matter is important: Not only for mastering the substance of the negotiations, but it also gives you a psychological advantage: Makes you feel more at ease, helps you handle unexpected or awkward situations (such as momentary block-outs) without losing your composure etc.
2. **Know your own position.** You should have as thorough as possible knowledge with regard to:
 - the interests of your own party
 - your own instructions, incl. bottom-lines, flexibility, manoeuvring room etc.

- your own delegation, their requirements, strengths and weaknesses, measures of flexibilities etc.
 - demands and expectations from "domestic clients"
3. **Know your opponent** (similarly as with regard to yourself and your own position).

Final piece of advice: To have done one's homework never hurts!

Odd Gunnar Skagestad:

NEGOTIATIONS

Theory & Practice
A General Introduction

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SHOULD WE ENTER INTO (INITIATE) NEGOTIATIONS?

QUESTIONS TO CONSIDER:

- 1. WHAT IS OUR BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT (OUR BATNA)?**
- 2. WHAT IS THE MINIMUM WITH WHICH WE WOULD BE SATISFIED?**
- 3. WHAT ARE THE (POLITICAL) COSTS OF ACCEPTING OR PROPOSING AN AGREEMENT THAT FAILS TO MEET THIS REQUIREMENT?**

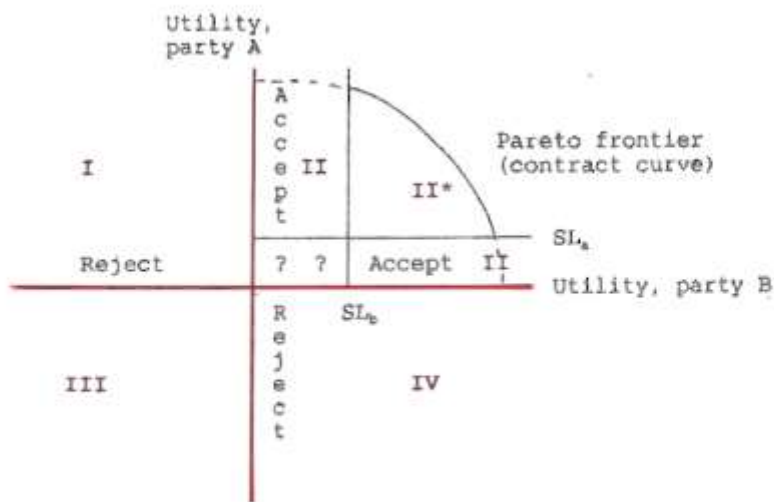
B A T N A

Best
Alternative
To a
Negotiated
Agreement

**- NEGOTIATIONS -
MAIN AIMS:**

**TO REACH AGREEMENT
ON A MUTUALLY
ACCEPTABLE SOLUTION**

**A SETTLEMENT RANGE
= A SET OF MUTUALLY
ACCEPTABLE
SOLUTIONS**



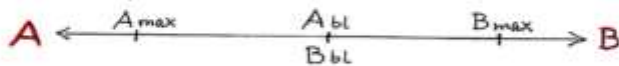
SL_A, SL_B - Satisfaction levels, for A and B respectively
 BATNAs are located in the origo

POSSIBILITIES FOR A NEGOTIATED SETTLEMENT

Example 1



Example 2



Example 3



- A_{max} = Maximum demand of party A
- A_{bl} = Bottom line of party A
- B_{max} = Maximum demand of party B
- B_{bl} = Bottom line of party B

GENERAL APPROACHES TO NEGOTIATIONS

**2 BASICALLY
DIFFERENT
APPROACHES:**

- 1) CO-OPERATIVE
(INTEGRATIVE)**
- 2) CONFLICTUAL
(DISTRIBUTIVE)**

CO-OPERATIVE APPROACH

Other side viewed as: (Potential) Partner
Reasonable; Trustworthy
Commanding respect

Topic viewed as: (Common) Problem
Interests: Compatible;
Values: Common

Appropriate strategy: Persuasion

Typical "move": Questions; Information; Arguments;
Genuine Appeals; Support

CONFLICTUAL APPROACH

Other side viewed as:	Opponent; Unreliable; Hostile Motives; Inclined to use unfair tactics
Topic viewed as:	Issue; Interests: In Conflict Values: Little Common Ground
Appropriate strategy:	Manipulation; Coercion; Persuasion
Typical "move":	Rhetoric; Selective (Dis-)Information; Stick to One's Positions; Warnings/ Threats Arguments; Perhaps Even Outbursts of Verbal Abuse

NEGOTIATION OUTCOMES MAIN CATEGORIES

WIN-WIN

(Positive-Sum Outcomes)

WIN-LOSE

(Zero-Sum Outcomes)

LOSE-LOSE

(Negative-Sum Outcomes)

NEGOTIATION OUTCOMES

WIN-WIN

Positive-Sum Outcomes:
Everyone wins (usually through cooperation or joint problem-solving)

WIN-LOSE

Zero-Sum Outcomes:
One side wins only if the other side loses

LOSE-LOSE

Negative-Sum Outcomes:
All the parties lose

CO-OPERATIVE APPROACH

3 BASIC TASKS:

- 1. DEVELOP A COMMON AND ACCURATE UNDERSTANDING OF THE PROBLEM(S) TO BE SOLVED**
- 2. LOOK FOR POSSIBLE SOLUTIONS; I.E. DISCUSSING TENTATIVE IDEAS, NOT PROPOSALS**
- 3. EVALUATION AND CHOICE**

CONFLICTUAL BARGAINING

- **STARTING «HIGH» (Blue Sky Bargaining)**
- **“FINAL OFFER FIRST”-Strategy**
- **“TIT-FOR-TAT”-Strategy (Incremental Reciprocity)**

PRACTICAL ADVICE

- 1. KNOW THE SUBJECT MATTER**
 - 2. KNOW YOUR OWN POSITION**
 - 3. KNOW YOUR OPPONENT**
-