

OGS/- 27.9.97.

SIMULATION EXERCISE IN BILATERAL NEGOTIATIONS

Åsgårdstrand Hotel, 29 September - 1 October 1997.

BILATERAL NEGOTIATIONS - A THEORETICAL PERSPECTIVE ON A PRACTICAL MATTER

INTRODUCTION

The purpose of this exercise is to familiarize the participants with the principles and dynamics of bilateral negotiations. In particular, by *simulating* real life, we aim at providing practical experience. I would like to underline the word practical.

This is not a course in negotiation theory.

I am telling you this because I am nevertheless going to say a few words about theoretical aspects of our exercise. Not because I pretend to be an expert on negotiation theory, and not because I feel the need to provide the course with a pseudo-academic superstructure. But I do think it is useful - and that you can derive more profit from the exercise - if you have *some* theoretical concepts as a frame of reference, to relate to when you try to come to grips with the practical tasks. This is not more satisfying intellectually, but it will hopefully also make the practical experience more rewarding.

It may be argued that negotiation is as much "*art*" as "*science*", and that in art- and craftlike activities in the widest sense - including such diverse activities as love-making or riding a bicycle, **practising** will be the most effective way to improve one's skill. No artist eager to develop his skills would rely only upon the study of abstract theory or "*how-to-succeed*"-manuals, - nor should a negotiator.

But of course, this does not mean that theory is useless or irrelevant for conducting negotiations. Theory can help by formulating basic questions precisely, and by providing sharper analytical tools for thinking systematically about the choices we face.

SHOULD WE ENTER INTO/INITIATE NEGOTIATIONS?

Theoreticians tend to start out with this basic question, which (although it is basic) smacks of the pseudo-realism of the academic's laboratory. In practice, this question has already been answered for us. The decision that we are to go ahead and negotiate has already been taken. It can be said to be a foregone conclusion, either by previous agreements, by political decree, or by the cumulative dynamics of routine actions and mutual expectations etc. etc.

Thus, the negotiator does not normally find himself in a situation where he must - or indeed is allowed to determine whether or not to negotiate.

But, assuming that such a decision must be taken, negotiation theory prescribes a text-book procedure which entails trying to answer the following three questions:

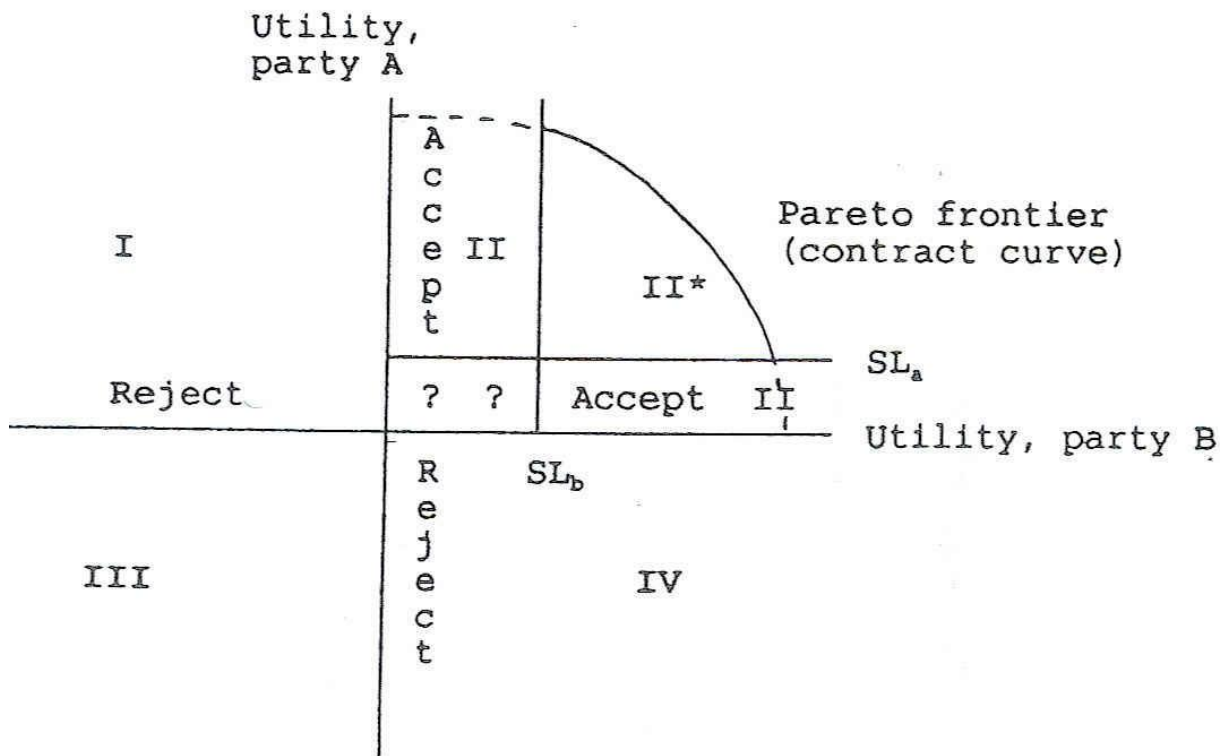
1. What is our best alternative to a negotiated agreement with a certain party (commonly referred to as our BATNA)?
2. What is the minimum with which our side would be satisfied?
3. What are the political costs of accepting or proposing an agreement that fails to meet this standard of evaluation?

Once we have decided what our own minimum is, we should ask the same questions regarding the other party. In order to determine whether or not some kind of agreement is feasible, we need some ideas of what the other party can accept.

Then comes the next critical question: Can we identify any solution(s) satisfying both sets of requirements? If the answer is positive, there exists a **settlement range**, i.e. a set of mutually acceptable solutions. As long as we are concerned only with the substantive merits of the outcome itself, the belief that a settlement range exists is a **necessary** (but not a sufficient) condition for reaching a negotiated solution.

To illustrate the settlement range, we shall turn to *Figure 1* (as shown on the Overhead Projector):

Figure 1: The Settlement Range



Legend: SL_a , SL_b = Satisfaction levels, for A and B respectively
 BATNAs are located in the origo

Figure 1 needs perhaps a few explanatory remarks: 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 indicates 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 to one party will have to be obtained at the expense of the other party, who can be expected to block the move.

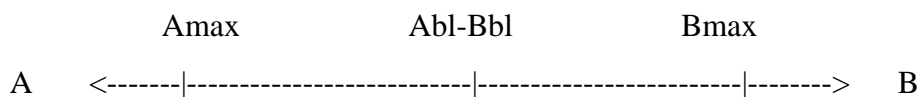
As far as theory goes, this 2-dimensional figure gives us an interesting illustration of some basic preconditions for reaching negotiated agreements. But, how does real life look from a practical perspective?

In negotiating agreements such as the one which is used in our simulation exercise, we must look at the ultimate result - the negotiated agreement - as a package. The package consists of several (or many) components, which can each be viewed one-dimensionally, as in the three examples shown below (**NB!** Also shown on Overhead Projector as Figure 2, see Annex):

Example 1:



Example 2:



Example 3:



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. A_{bl} and B_{bl} 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 B_{bl} and A_{bl} .

If we now turn to the case used in our simulation exercise, we'll find that example 2 illustrates very neatly what actually happened with regard to one of the main components of the Norway-EC 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 as I said, an agreement like this one must be viewed as a package consisting of several components. 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. In the final event, it is the totality of the package that must be considered (and not necessarily only its size or configuration, also the wrappings and the smell may be psychologically important...)

Note:

From the viewpoint of the academics, it may seem that establishing whether a settlement range exists is a prerequisite for entering into negotiations.

In real life, this is not so.

Negotiations are typically initiated without the parties knowing this for sure, and it is often the case that only after lengthy negotiations are they able to discover or conclude that "Sorry, Mac", - here's really no common ground.

It may even happen that parties meet at the negotiating table with positive advance knowledge that there is no settlement range (- if time allows I'll come back with an example...)

Also (as I touched upon a little while ago), 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, who may tell you to go ahead, without wasting time discussing academic issues such as the question of "settlement range".

For the sake of good order, I feel obliged to point out that in order to conduct negotiations, it is not enough that there is a settlement range. Negotiations also require that the parties agree on the **institutional framework** of the process; i.e. they must jointly decide **who** are to negotiate on **what, when, where and how** (by what set of procedural rules).

I may also add that the act of negotiating may be used for other purposes than that of reaching agreement.

WHICH GENERAL APPROACH TO ADOPT?

In negotiations, we usually talk about two basically different approaches:

- 1) **cooperative** or **integrative**, and
- 2) **conflictual** or **distributive**.

Basic assumptions and main strategic implications of the two models are summarized in **Figure 3** (Shown on Overhead projector, see Annex at the end)

These two categories are what I would be tempted to call academic laboratory phenomena. In real life it is rarely possible to operate with two such clear-cut categories; most negotiations include a mixture of both elements. Even in fishery negotiations, where parties pursue competing goals, you will not find that the parties adopt a 100 % conflictual approach. International negotiations are very seldom pure "*zero-sum games*" (where "winner takes all", or "one party's gain = the other party's loss").

For analytical and descriptive purposes, it may nevertheless be useful to keep these categories in mind.

Also for practical purposes in a negotiation process, it may be useful to have a conceptual awareness of what you are doing and why.

Thus, the following points should be noted:

Adopting a cooperative approach will usually be a wise choice as long as the other side reciprocates, but it involves a certain risk of becoming vulnerable to shrewd distributive bargaining.

Being the only party to reveal your true concerns and interests tends to make you vulnerable to "exploitation". On the other hand, adopting a conflictual approach implies a significant risk of foregoing opportunities that might exist for involving the other side in constructive search for innovative and integrative solutions.

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

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

Second, it 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.

THE COOPERATIVE APPROACH

Cooperative problem-solving can be said to involve 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 ideas, not proposals (tentatively, non-committally).
- 3) Evaluation and choice.

I shall not elaborate any further on these points. Let me just say that you will find that these tasks are also very much present in fishery negotiations, which otherwise may be said to be of a predominantly distributive nature.

CONFLICTUAL (DISTRIBUTIVE) BARGAINING

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 2 (show on Overhead Projector): In all these 3 examples we assume that the two parties A and B both start out with more or less maximalist demands, - what's termed starting "high" (or "*Blue Sky bargaining*"). That will often be the case, but not necessarily so.

The opposite extreme possibility is that one (or both) of the parties puts his bottom line on the table at the outset and says, "Hey, man, 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 ("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 advantages. 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 which 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. As we know, in the end 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 (that of course we may never know...)

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, "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 the 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 this 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 has a certain straightforward and honest-to-goodness attractiveness. 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 Barents Sea delimitation negotiations between Norway and Russia during the past 27 years...)

CLOSING REMARKS

Personally, I find theoretical discussions interesting and stimulating. For the practical purposes of conducting negotiations, however, theory cannot replace practical experience.

If I may be allowed to give some practical advice, it would consist of the following 3 rules or guidelines:

- 1) **Know the subject matter**. This doesn't mean that you need to be a full-fledged expert (and that is certainly not expected in our simulation exercise!).

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 and concerns of your own party,
 - your own instructions, incl. bottom-lines, flexibility, manoeuvring room etc.
 - your own delegation, their requirements, strengths and weaknesses, measures of flexibility 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!

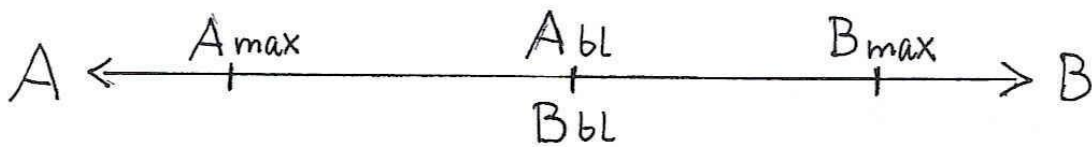
Figure 2

(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

Figure 3

Two basic approaches to negotiations.

	Cooperative (integrative)	Conflictual (distributive)
Other side viewed as	(potential) partner; reasonable, trustworthy, commanding respect	opponent; inclined to use any tactical ploy to maximize own gains
Topic viewed as	(common) problem; interests to a large extent compatible; values to a large extent common	issue; interests largely (though not completely) in conflict; little common ground in terms of values, or potential exhausted
Appropriate strategy of influence	persuasion	manipulation or coercion, but also persuasion
Typical "moves"	questions, information, arguments, genuine appeals, support	rhetoric, selective (dis)-information, commitment to own positions, warnings/threats, perhaps even outbursts of verbal abuse