



INTERNATIONAL NEGOTIATIONS HANDBOOK: SUCCESS THROUGH PREPARATION, STRATEGY AND PLANNING

*Prepared by the
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and
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The Project

All of us at one time or another must negotiate with others – adversaries, interested third parties, friends – to achieve our objectives. Each party to a negotiation has its own desires, goals, and prejudices. The key is for a party to understand these matters for itself and for all other parties to a negotiation. It takes advanced preparation, strategic-thinking, and a written, detailed plan for any party to successfully achieve its objectives. *The International Negotiations Handbook: Success Through Preparation, Strategy, and Planning* is designed to provide some tools and ideas to assist every party to a negotiation to be a more effective advocate for its interests and, as a result, to achieve successful negotiations overall.

This project comes as the result of a year-long joint effort between Baker & McKenzie LLP and the Public International Law & Policy Group (PILPG). Baker & McKenzie has provided sophisticated legal advice and services to many of the world's most dynamic and global organizations for more than 50 years. The Firm's more than 3500 lawyers are citizens of more than 60 countries and speak more than 65 languages, and one of its core values is to encourage all of its lawyers and staff to participate in service to others. Across its offices, Baker & McKenzie makes a significant commitment to helping others, through pro bono legal service, community service, fund-raising and charitable giving. The Firm's pro bono and community service activities take many forms, ranging from multi-country projects on behalf of global organizations, such as Save the Children Alliance and Habitat for Humanity, to local efforts to represent children, foster entrepreneurship, raise funds for medical research, support the arts and more.

PILPG is a 501(c)(3) non-profit organization that operates as a global pro bono law firm providing free legal assistance to states and governments involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over two dozen states and governments on the legal aspects of peace negotiations and post-conflict constitution drafting, and over two dozen states and War Crimes Tribunals in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes. In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."

The union of Baker & McKenzie and PILPG for this important effort is unique and synergistic in many ways. The global reach of Baker & McKenzie's practice for its clients results in a team of lawyers experienced in cross-border advocacy in many areas of law and nearly every region and culture of the world. PILPG's expertise and experience in post-conflict negotiations positions it among all global non-governmental organizations (NGOs) to provide pro bono representation to the political parties, governments and other entities

that seek peace after conflict in many corners of the world. The union of these two entities is a first of its kind and blends the experience of public and private practitioners to create a series of mechanisms used in negotiations to help clients achieve success. Baker & McKenzie and PILPG have a common interest in assuring that significant negotiations at critical junctures of the peace process do not fail because of a lack of skill, training, or legal representation. The two groups also share experience in international advocacy in many settings and a commitment to serving the public with the highest quality attorney representation. Finally, Baker & McKenzie and PILPG share a mutual respect and appreciation for each other and plan to use this exercise as an opportunity to provide joint-training sessions and to distribute the lessons embodied in The Handbook in post-conflict arenas around the world.

Introduction To The Handbook

There are perhaps three keys to understanding The Handbook and to obtaining its maximum effect.

“Success.” Everyone who uses The Handbook should recognize that being “successful” does not mean “winning.” It means identifying those goals or objectives that a party wishes to achieve and, through detailed advanced preparation and strategic, principled analysis, creating a plan that will maximize the chances of achieving them. Every negotiation and every party will have different definitions of success. But, when the negotiations end and agreements are signed, the only question will be whether each party achieved what it set out for itself as its goals. Whether a party “wins” or “loses” is a subjective question that cannot be measured. Whether a party is “successful” is measurable by what it sought to achieve by the negotiations and whether it did so. The Handbook therefore provides tools in the craft of negotiations to achieve success. It leaves to others the art of how to win or lose.

“Training.” The Handbook is not to be merely read. It is designed to be part of an overall training program. No one learns how to play cricket by reading a book. Everyone learns by picking up a bat and a ball. So too with the tools provided here. The Handbook has been prepared as tools that can be sharpened and honed through mock exercises and active lectures and discussions. This is about the “craft” of successful international negotiations. No craft is taught other than through active participation and practice.

“Negotiations, Parties, and Mediators.” The Handbook has been written in the context of multi-party negotiations. “Parties” refers to each side’s delegation, as well as the mediation party. Some negotiations may involve a purely “facilitative” mediation party or an “evaluative” mediation party. A “facilitative” mediation party is one who does not pass judgment on the respective interests or positions of the delegations, but merely works with them in an attempt to reach an agreement. An “evaluative” mediation party will attempt to guide the process by providing the delegations with assessments of the relative strengths and weaknesses of their various positions. Delegations should expect pressure from an evaluative mediation party to bring the negotiations to a resolution. Whichever type of mediation party is involved in a negotiation, all of the ideas, strategies, and techniques reflected in The Handbook are intended to provide each side’s delegation the best opportunity to achieve its objectives.

Dozens of lawyers from throughout the Baker & McKenzie global network participated in creating The Handbook that follows. The lawyers came from the disciplines of tax, litigation, corporate, international, finance, and others. The only experience that all of the participants shared was that each was learned in the art of persuasion – whether in the negotiation room, in the board room, or in the court room. With PILPG providing its extraordinary experiences and insights that have been drawn from advising clients in any

number of international negotiations from Bosnia to Sri Lanka, The Handbook provides specific insight into the techniques of successful negotiations. It reflects countless hours of experiences in all types of adversarial settings and reflects the techniques and strategies that private parties and formerly warring states have found indispensable to achieving their objectives through peaceful negotiations. Baker & McKenzie and PILPG are thus extremely pleased to present *The International Negotiations Handbook: Success Through Preparation, Strategy and Planning*.

Chapter 1: Goal Setting

It is important that at the very beginning of the negotiation process the delegation engages in an internal evaluation of the delegation's goals and the goals of the delegation's constituency. These goals may be both immediate and long-term. They may be specific and minor, and they may be broad and fundamental. This exercise is the first and perhaps most important step in developing the delegation's strategy. It is to be done with as much detached analysis as possible, attempting to remove emotion (anger, hatred, fear) from the process. The use of technical experts, such as legal counsel and others, at this stage can be invaluable.

The delegation must do this analysis at the outset so that the delegation has an accurate appraisal of the delegation's strengths and weaknesses in light of the delegation's goals and the goals of the other parties. This initial goal setting will allow the delegation to focus the negotiation on issues that are truly important to the delegation and to avoid wasting time on irrelevant issues. Careful attention to goal setting will also avoid unnecessary focus on emotional issues that are not central to the delegation's true goals.

Determining the delegation's goals must be done before the delegation can define an effective negotiation strategy, and defining a strategy is the first step to a successful negotiation.

This goal setting process is best accomplished by having a group meeting where everyone in the group puts forth ideas for discussion. All ideas are encouraged. Only once the group has exhausted its creativity should the group begin evaluating each of the ideas. As a practical matter, this is usually done by writing each of the ideas down on a large board, where they can be seen by all (maintaining appropriate levels of confidentiality). As ideas are determined to be least effective, those are removed from the board. Ultimately, the groups' most effective ideas and strategies remain.

This entire process, here and throughout the entire chapter, demands significant preparation, both in advance and in person. Your delegation should plan to meet well in advance of the first negotiation. This preparation may require several meetings of the group, and will certainly require a substantial amount of time. Each new negotiation session requires a new "in person" advance preparation session.

Your delegation should assume that the other parties are holding these preparation sessions.

Defining “Success”

In a dispute, it is important to decide in the beginning what the delegation is trying to achieve. From that, everything else follows. Every step and strategic choice in the negotiation process must be made after asking the fundamental question: how does this help your delegation “achieve success?”

- The delegation must ask: what is your delegation trying to achieve?¹
 - Sometimes, this might be what is your delegation trying to avoid?
- What does your delegation need?
 - Decide if it is complete victory, partial victory, or any progress at all.
- What are the needs and goals of your delegation’s constituency? Your delegation will need to account for these factors in order to achieve success.
- Evaluate the likelihood of achieving what your delegation wants, which requires evaluating the strengths of the other parties’ positions.
- Decide whether your delegation is seeking a solution for now or a solution for all time (ceasefire, return of refugees, redrawing borders, sovereignty).
- Break out the elements of your delegation’s ultimate goals – what “successes” are necessary to reach your delegation’s ultimate goals?

Based on the points above – should your delegation redefine success? Once your delegation asks itself these questions, your delegation’s next obligation will be to decide whether what your delegation thought initially would be considered “success” remains the same. Oftentimes the discipline of going through the above exercise of examining and writing down your delegation’s answers to these questions reveals the strengths and weaknesses of your delegation’s initial definition of success. As with all internal communications, confidentiality must be maintained. Measures should be taken to ensure that the documents are not disclosed to the other parties, the media or your constituents by mistake.

The chosen definition of success will drive your delegation’s strategy throughout the process. One of the challenges of a negotiation is deciding how strictly to adhere to the strategy and goals established in pre-negotiation preparation and how much flexibility would

¹ It is often helpful to write down the delegation’s responses to these questions and to refer to them throughout the negotiation.

best serve your delegation. The delegation must strike a balance between strictly adhering to the conclusions that resulted from the delegation's careful preparation and remaining flexible throughout the negotiation process so that the delegation is able to adapt to positions taken by, and information learned from, the other parties. "Success" does not mean necessarily "winning." It means, quite simply, achieving your delegation's objectives.

Understanding Short-Term And Long-Term Considerations Of All Parties

Knowing how to weigh the delegation's objectives is essential to achieving them. Once the delegation has identified its short-term and long-term needs, the delegation has to be able to balance them. This is particularly important when a specific event with immediate consequences is what brought the parties to the negotiation. Such an event can make short-term needs appear more significant than they may be in the long-term. Even if the delegation cannot solve the long-term problem, this does not mean there is no value in negotiating to achieve the short-term goals.

- What are the delegation's short-term needs? What are the delegation's long-term needs?
 - Political, economic, health, welfare, safety, other.
 - Recognizing that all of these issues are emotional, it is important throughout the negotiations to use principled analysis, rather than emotion to answer these questions.
- How does the delegation prioritize them?
- Balancing needs: What is the delegation willing to concede in the short-term to achieve long-term goals? What goals is the delegation willing to sacrifice in the long-term to achieve the short-term objectives?
- How does the delegation's needs match up against the prioritized needs of the other parties?
- What are the delegation's resources and capabilities that will allow the delegation to achieve its short- or long-term objectives?

Before entering any negotiation, the delegation must understand these considerations for all parties in the process, your delegation, the other delegation(s) and the mediator. To be effective, this evaluation process must be repeated for all other parties to the negotiation.

Knowing What Needs Or Goals Are Realistically Non-Negotiable (What Are The Delegation's "Breaking Points")

In defining what it is the delegation wants to achieve, the delegation always must keep in mind that there are certain individual short-term needs or even collective long-term goals that may be considered "non-negotiable." Non-negotiable does not just mean "important." An issue like the price of an object can be important and yet still be negotiable. The team must identify these "breaking point(s)" at the outset. Identifying too many breaking points will inevitably reduce the delegation's negotiating options, and potentially prohibit the delegation from reaching a negotiated settlement. Identifying too few breaking points may cause the delegation to agree to something that the delegation cannot enforce or comply with. Thus, it is important to accurately identify the delegation's breaking points, and not simply draw up a list of important items.

- Evaluate the delegation's short- and long-term needs and, being realistic, determine which in fact are non-negotiable.
 - There may be a range of needs that can be grouped into different categories among those that are non-negotiable to those that your delegation would prefer not to negotiate, but will under the right circumstances.
 - The delegation may have a number of needs or goals, none of which can be categorized as breaking points. However, failure to achieve enough of these goals or needs may itself constitute a breaking point.
 - This may be an effective method of redirecting a mediator who only wants to focus on the "non-negotiable" items. Using this approach, the delegation can discuss each of its items, stressing that failure to achieve a sufficient number of these items will itself be a breaking point.
- Then, ask why they are "non-negotiable"?
- Has the delegation considered all other possible alternatives?
 - Be open to new or creative alternatives or solutions.
- Continually evaluate and re-evaluate the "non-negotiability" of any need in light of new information and circumstances throughout the negotiation process.

Identifying and being realistic about these non-negotiable needs or goals is critical to the development of the delegation's overall goal setting and strategy.

Assessing And Anticipating Goals Of Other Parties

Any analysis of your delegation's own successes and needs must consider, as realistically as possible, the strengths and goals of the other parties. Charting a course toward the delegation's goals requires the delegation to know what barriers to expect as a result of the goals and actions of the other parties. This requires the delegation to bring the same critical analysis to the other parties' position that the delegation brings to its own. This exercise should be done in writing so that the delegation can refer back to it later

- Follow the steps of defining success as if the delegation was each of the other parties.
- Follow the steps of understanding short- and long-term goals as if the delegation was each of the other parties.
- Consider the cultural context of the other parties and how that cultural context will define how other parties view the delegation's goals.
- Evaluate the other parties' strengths and weaknesses as well as their perception of their strengths and weaknesses.
- It is important to recognize that the other parties' goal setting and decision making may not be governed entirely by logic. Factors such as politics, emotion or personal issues, such as an inordinate sensitivity to being perceived as weak, may influence the process.

RED TEAMING

The most effective method for engaging in this process is for a small group of your delegation to be assigned the above task for one of the other parties. This role is critical to your delegation's preparation and ultimate success. The "red team" has an on-going role throughout the negotiations as a way to continually test your delegation's strategies against the other parties' positions and tactics.

Identify The Delegation's Best Alternative To A Successful Negotiation

In setting the delegation's goals, keep in mind what will happen if the delegation is unable to reach a negotiated solution. The delegation's best alternative to a successful negotiation sets a standard against which proposed settlements should be measured; it is more flexible than the ultimate "bottom line." The delegation's best alternative to a successful negotiation should remind the negotiator that there are other objectives that may be achieved even without a negotiated resolution.

- Define the alternatives to participating and achieving a negotiated solution.
 - It may be that it is not necessarily in your delegation's best interest to negotiate at all, or even to reach agreement with the other parties.
 - It is key that your delegation recognize that a negotiation is part of a longer peace-building process.
- Prioritize the alternatives.
- Determine the best alternatives to a successful negotiation of all other parties to determine each of the other parties' relative positions in the negotiation. (This is an example of a task for the "red team.")

Determining and evaluating the delegation's best alternative to a successful negotiation must be accomplished while the delegation is in the goal-setting stage to help the delegation choose the most successful strategy in the negotiation. It will help the delegation determine which short and long-term goals should be prioritized.

Managing Expectations

A negotiation is an imperfect process. The delegation's efforts may not result in the process or even the outcome the delegation planned and hoped for. When the delegation does reach the delegation's goals, it may be later in the process than the delegation expected. The delegation will consider and plan for as many variables as possible in planning for the delegation's negotiation. When setbacks take place, it is essential to have managed the expectations of the delegation that the delegation does not lose its focus or the delegation's commitment to its goals and strategies from simple, temporary, and inevitable setbacks.

- Identify whose expectations the delegation needs to manage (the delegation's own, the delegation's "constituency," the delegation's "citizens").
- Keep the delegation and the delegation's constituency well-informed about the goals and the delegation's progress throughout.
- Maintain proper communication within the delegation and to your constituency in order to avoid surprise.
 - Consider identifying spokesperson(s) within the delegation to manage the information.
 - The spokesperson might be an outside technical expert.
 - The delegation might have several spokespersons, each of whom is responsible to particular constituencies or issues.
 - Every communication should be purposeful. In some cases, it may be premature to disclose certain information. In other cases it may be important to disclose as much information as possible.
 - Consider that the other parties may disclose certain information before your delegation is prepared for its disclosure.
 - Outside commentators, such as international news agencies, might be disclosing information and commenting on the process. Your delegation must take this into account as well, and, where appropriate, use it to its advantage.
- Know and manage the delegation's own emotional and intellectual expectations.

No matter what the delegation plans for, there will be unexpected events during the process. Working with the delegation ahead of time and preparing for the likelihood of unexpected events will keep the delegation positive and focused when difficulties arise. There can never be too much preparation for the unexpected. This preparation must take place in advance.

One-Time v. Ongoing Negotiations

If someone else has defined the negotiation as being either a one-time or an ongoing session, then that will define the number or type of needs or goals that the delegation can achieve. This should also lead the delegation to prioritize the delegation's own needs or goals at the outset. It will not be possible to achieve dozens of goals in one week, but perhaps the delegation can achieve one or two of the goals that are most important to it.

- Know the delegation's time limits and how strict they are.
- Know who is controlling the time limitations: is your delegation, another delegation, the mediator?
- Prioritize and consider the delegation's short-term and long-term goals in light of the time limits.

As discussed below, time limits can be strategic choices as well as limitations that can lead to more effective ways to achieve the delegation's goals. In other words, keep in mind that setting time limits could be one of the delegation's goals in itself.

Chapter 2: Preparation

One of the most important aspects of a successful negotiation is preparation. A negotiation can be won or lost in the preparation phase. If the delegation has already engaged in an internal evaluation of the delegation's goals, the delegation has completed the first step in preparing for the negotiation.

Inadequate preparation can cause irreparable damage to relationships and the possibility of future negotiations with the parties involved. Adequate preparation allows the delegation the opportunity to clarify the delegation's goals, to familiarize the delegation's members with the key issues and parties involved, and to identify weaknesses in the delegation's strategy before the negotiation takes place. By adequately preparing for the negotiation, the delegation is one step closer to achieving success as the delegation has defined it.

Effective preparation can be accomplished only through in-person meetings among the delegation's members. The preparation should be done in a location where the delegation members can be free from distractions and confidentiality maintained. Do not underestimate the amount of time that must be dedicated to preparation. As a general rule, the delegation should spend at least one day in preparation for every anticipated day of negotiation.

As discussed in prior sections, proper preparation requires idea sessions with the group writing each idea down on a board, consultation with outside technical experts (lawyers for example), and "red teaming."

Designing A Negotiation Plan

A well-designed negotiation plan and an overall strategy are at the heart of adequate preparation. Designing a plan requires the delegation to consider the issues, interests and parties involved in light of the delegation's goals, and give the delegation the opportunity to develop the delegation's strategy based on achieving those goals.

- Design a plan that addresses any aspect of the negotiation that could affect the delegation's ability to achieve the delegation's goals.
- An integral aspect of designing an effective plan is the knowledge and understanding of the issues, parties and interests involved (from the delegation's perspective as well as the perspective of the other parties).
- The delegation's negotiation plan should include:
 - A clear understanding of the delegation's goals.
 - The delegation's strategy to achieve those goals, *i.e.*, a clearly written and defined path for the delegation to achieve its desired outcome. (As always, this written strategy must be kept confidential, and not made inadvertently available to the other parties or the media.)
 - The structure of the negotiation(s) including: setting, timing and sequence.
 - Built-in flexibility in the form of alternative plans (in the event there is a change of goals, interests, parties, circumstances, etc.).

The delegation's negotiation plan should not be too rigid and can (and should) be subject to change up until, and even during, the negotiation itself. The plan should, however, continue to be a point of reference throughout the preparation phase, allowing the delegation to stay focused on not just the delegation's ultimate goal, but the steps and means necessary for the delegation to get there. As circumstances change and evolve, the delegation must be prepared to alter its strategy and negotiation plan accordingly.

Knowing The Other Parties

The importance of knowing the other parties to the negotiation cannot be overstated. Be careful not to make assumptions in this phase. While your delegation may be very familiar with the other parties, making assumptions about the other parties' interests and goals can hide the issues, impede the delegation's ability to successfully negotiate with the parties and prevent the delegation from achieving success. Remember knowing the mediator is often as important as knowing the other delegation(s).

- Learn as much as the delegation can about the other parties before the negotiations commence, based on the timing and circumstances.
- Knowing the other parties includes researching the individuals, organizations and countries involved.
 - Look at each party's history and the behaviors of the specific delegation representing the other party so that the delegation may try to anticipate their style and how they may approach the negotiation.
- Identify the objectives, interests, priorities and goals of the other parties.
 - Financial interests, political interests, reputational interests, liberty interests, other.

Researching Other Parties

In order to learn as much as possible about the other parties, the delegation should utilize its personal and professional relationships for information, in addition to using standard research techniques such as the internet and other media. These relationships include local and international agencies, special interest groups, non-governmental organizations, outside technical experts, and the media.

As part of this research, it is important to develop an understanding of how the other parties are perceived by and among these various persons.

In order to have any real value, this must be accomplished in advance of your preparation sessions.

- Understand the mediator's role.
 - Prior to the commencement of any negotiation process, it is important that the mediator's role be understood. Your delegation should have a full and complete understanding of the mediator's interests and expectations.

- Remember that the mediator has its own interests, biases and agenda.
 - One of the benefits of hiring a lawyer experienced in negotiations is that he or she will typically be familiar with the mediation party.
- There are several degrees of mediator's roles, ranging from merely providing a neutral site for the purposes of conducting the negotiation (a host) to one imposing a resolution on the delegations (a United Nations sanctioned arbitrator).
- Avoid making assumptions.
 - Ask the other side to identify their objectives, interests, priorities and goals. Listen.
 - Do not assume that the other side will speak the delegation's language.
 - Sometimes it may be useful for the delegation to have its own interpreter even though the other parties believe that none is required – *i.e.*, they believe their language skills are sufficient. Though it is important to be sensitive to the other parties' wishes, ensure an interpreter is present if the delegation believes that the communication process will be hampered by the lack of a competent interpreter, the delegation should ensure that one is present.
 - If possible, your delegation's interpreter should be experienced in international negotiations. At a minimum, the interpreter should be an experienced translator.
 - The interpreter is a technical expert that should be hired to be a part of your delegation. The interpreter must recognize that they are acting on behalf of, and at the direction of, your delegation.
- Assess the legal rights and positions of all parties involved.
- Evaluate the respective power, as well as the constraints of all parties.
 - Political, cultural, economic, social, intellectual.
- Understand the cultures, customs and formalities of the other parties, and the relative importance of adhering to such formalities.
 - Formalities can include when, and in what form, the delegation set out the delegation's "demands."
 - Formalities may include the custom of communication in negotiation.
- Know and respect the other delegation's sensitivity points and "breaking points."

- The delegation may be able to get a sense of the other party's deal breakers by forwarding an agenda in advance of the meeting for their comments. If the other delegation simply refuses to speak about certain agenda items, that is a good indication that those items are breaking points.
- The other delegation may have legitimate breaking points. It is worthwhile to put some effort into finding a way to accommodate their breaking points, if reasonable.

Although thoroughly researching the parties involved is essential, the importance of communicating with the other parties and looking at the negotiation from their perspective cannot be overstated. Sometimes, important information can be gleaned from informal conversations. If timing allows, consider having preliminary conversations before the actual negotiation to become familiar with all aspects described above.

Setting The Setting: Where To Conduct The Negotiation

In preparing for a negotiation, the setting can make a difference. Using physicality and logistics strategically and understanding how the setting can affect the parties involved and the negotiation itself is an integral part of preparation. By making decisions based on those understandings, the delegation should be able to choose a setting strategically that will help the delegation meet the delegation's goals.

- What setting would help achieve the delegation's interests?
 - Determine which aspects of the setting the delegation is willing to compromise, and which the delegation is not.
- Evaluate various aspects of the setting and ask how each aspect can help the delegation to achieve a successful negotiation.
 - Geographic setting.
 - Home location vs. other parties' location vs. neutral location – weigh the importance of having all parties feel comfortable against the advantage of gaining or losing a subtle psychological advantage (and potentially leaving the other party at a slight psychological disadvantage).
 - Ask whether the location allows for the safety, security and confidentiality of all parties involved.
 - Accessibility.
 - Remote location vs. easily accessible.
 - Ask whether the delegation wants the negotiation to be free from distractions and whether the delegation wants the media to have access.
 - Does the setting allow each party the ability to confer privately in comfortable surroundings?
 - Does the delegation want access to the media, or to avoid media scrutiny?
 - Would the delegation benefit from access to external assistance, such as embassies, consulates, etc.?

- Consider whether the proposed location allows equal access to necessary resources, such as communications, as well as equal rights to travel (such as visa requirements).
 - Means of communication.
 - Identify secure means of communication, including www.hushmail.com, cell phones and “private” meeting areas.
 - If translators are required, attempt to ensure that the facility has equipment for simultaneous translation.
- While keeping in mind what aspects of the setting will help the delegation to achieve the delegation’s goals, consider the setting from each party’s perspective to ensure that the setting chosen will not ultimately impede the negotiation.
 - The delegation never wants easily-identifiable and easily-avoidable practical issues to hinder the delegation’s “success.”
- Determine the most appropriate party to choose the setting.

After considering the setting from each party’s perspective, would another setting be more conducive to the delegation’s overall negotiation strategy? Once the setting has been chosen make sure the necessary logistics discussed above are arranged.

Choosing Who Is In The Room

Determining who the delegation places “in the room” during the negotiation and at what phase of the negotiation the delegation has them there can affect the success and ultimate outcome of the negotiation. As part of the delegation’s negotiation plan, consider not only who will be in the room during the actual negotiation, but also who should participate in other aspects of the negotiation, including preparation, communications (internal or external) advising the team, etc. Learning about the other parties in the room is crucial in assembling the delegation’s negotiation team.

- What individuals will help our team attain its goals and ultimately achieve success, at every phase of the negotiation?
- Evaluate the status of who should be in the room.
 - The people in the room, from both parties, should be of equal status.
 - The delegation does not want the delegation’s “decision makers” in the room if the other party’s decision makers will not be there.
- Evaluate at what stage the delegation is in the negotiations.
 - Preliminary stages or the “deal-making” stages.
- When selecting individuals for the negotiation team, consider choosing people: (i) experienced in negotiations; (ii) who are (or can become) knowledgeable about the issues, parties and interests involved; and (iii) who have the desire and means to be involved.
- Are there other individuals the delegation should have on the team based on other considerations?
 - Internal politics, to get “buy-in” from the delegation’s side/from their side.
 - Are there particular factions of the delegation’s constituency that the delegation wants to have represented on the delegation’s negotiating team in order to ease the process for obtaining approval for any agreements that are reached?
 - Flexibility and ability to adapt their own beliefs and interests to the needs of the negotiating team.
- Consider whom the other side may bring to the room.

- Be aware of internal constraints on the other side – i.e., political, cultural.
- Determine who on their side has the authority to make deals and/or is the ultimate decision maker.
- Recognize any potential or actual personality conflicts among parties.
- Establishing personal trust and rapport can have a substantially beneficial impact on the outcome of the negotiations.
- Be sensitive to cultural considerations or other issues related to whom the delegation chooses to be in the room.
- Never be afraid to re-evaluate the delegation's representing decisions. Different styles of negotiations may call for different talent, experience and expertise.

After considering the above issues, including the stage of negotiation, comparable authority, and the personality and cultures of the parties involved, determine if the delegation wants to reconsider whom the delegation has chosen to be in the room.

Defining Roles

It is imperative during the preparation stage that the delegation establishes its roles and responsibilities, which may be influenced by the delegation's goals. There are several different approaches to the way in which delegations can be structured, from a purely egalitarian structure to a hierarchical structure. States have found that the most effective delegations are those structured in the hierarchical manner. Once the structure is decided upon, determining what roles each member will play within that structure, adequately defining those roles, and explaining to the delegation how the roles fit together will allow the delegation to work together effectively and towards a common goal.

It is important that each member of the delegation, including its technical experts, know their role on the delegation and understand their individual responsibilities in the process. The following persons are recommended:

- Decision maker
 - The member of the delegation who will be responsible for ensuring that the strategy is implemented and each of the other delegation members fulfill their responsibilities as planned.
- Spokesperson.
 - Generally, there should be one person delegated to speak on behalf of the delegation so as to ensure that a consistent message is being delivered and that the pre-determined negotiation strategy is preserved.
 - If the other parties or media speak with multiple delegation members, the message and strategy must remain consistent.
 - The choice of spokesperson may also influence the delegate with whom the mediator communicates on the other side.
- Technical person who fully understands the key issues.
- Person of influence.
- Antagonist (*i.e.* military or religious figure) if necessary.
- Designated member responsible for anticipating the other delegation's strengths and strategies ("red team" member).
- Interpreter / language facilitator.

- Scribe to document everything being said and to note down any physical responses being exhibited by the various representatives of the opposing party.

In each case, the size and composition of the delegation should be carefully considered as the delegation may wish to have these people at the negotiation table or the delegation may need to keep them away to meet the delegation's objectives. Each of these roles should be taken by a member of the delegation, though one member may have several roles. Most states have found that the scribe and interpreter should not hold any additional roles. The delegation should know in advance who the other delegation is bringing to the negotiation so that the appropriate people from each delegation are present and that the delegations are properly balanced.

It is important to plan in advance for the possibility that there could be a breakdown in roles, where someone fails to "obey their role." To avoid this, develop a means of communication among the delegation. For example, in the event of a breakdown during a negotiation session, the decision maker may use this as an opportunity to take a break from the negotiation and discuss the matter with the delegation. This way, the delegation may be able to return to its original strategic plan with minimal negative effects.

Choosing A Style

Choosing a negotiation style will help set the tone as well as influence the ultimate outcome of the delegation's negotiation. Choose a style that the delegation believes is the most effective means to achieving the delegation's goals. At the same time, only adopt a style that is both natural and credible.

- Based on the type of negotiation, the timing and the parties involved, evaluate what style would be most effective in achieving the delegation's goals.
- Think about how and whether the delegation should adjust the delegation's style to account for differences of culture, gender, personality, etc.
- Learn the mediator's culture, including rituals, styles and customs and consider choosing a style that can accommodate or exploit such customs.
- Appreciate the other delegation's culture, including rituals, styles and customs and consider choosing a style that can accommodate or exploit such customs.
 - Some styles that can be effective include those that are conciliatory in tone, those that are more aggressive and harsh in tone, and those that are more neutral. It is sometimes effective to have certain delegation members purposefully assume different styles.
- Balance being flexible with the importance of keeping a consistent style in order to gain credibility and trust.
- Recognize the needs and constraints within the delegation's own organization, as well as those of the other side.

Be The Fact And Issue “Expert” In The Room

Regardless of how much time and effort the delegation spends while getting ready for the negotiation, unless the delegation’s members have thoroughly researched and familiarized themselves with all of the key facts and issues involved, the delegation is not prepared. Understanding all of the facts and issues involved in the negotiation is the most critical aspect of being prepared. Do not rely on others to know the key facts and issues involved.

- If the delegation’s team has sub-groups, make sure that at least the team leader understands all of the key facts and issues, as well as short- and long-term goals.
- Understand what is at stake. Make a checklist of the key issues and facts involved so that in the middle of negotiations, the delegation does not lose sight of important issues on the way to achieving the delegation’s end goal.
- Consider *internal factors* such as: the relationships of the parties and organizational and social structure.
- Consider *external factors* such as: political and economic policies, the international marketplace, geographic locations, resources.
- Evaluate other considerations, including: legal factors and moral or ethical concerns.
- Remember that third-party experts, and mediators, have their own views, interests and biases.

Chapter 3: In The Room: Establishing Trust And Getting Started

In a negotiation setting, trust must be established by developing trust in the negotiating process and each party must be seen as a good faith negotiator. This trust can be developed through where the negotiations are held, how the negotiations begin, and how the parties communicate through the sessions.

Establishing Trust

Trust is the underpinning of the negotiation: without it the negotiation will fail. Therefore all parties must be mindful of trust and its importance throughout the negotiations.

With respect to establishing trust in the process, it is important to demonstrate that your delegation trusts that the negotiation process can be successful to resolve the conflict. Your delegation must communicate a belief that the negotiation process can lead to a good resolution of the dispute for all parties involved. Your delegation must demonstrate its willingness to negotiate a resolution of the dispute and that the negotiated resolution will be implemented and adopted by your delegation and your delegation's constituents.

Establishing trust in your delegation as the negotiator is equally important. Your delegation must demonstrate to the other parties involved that your delegation is worthy of their trust. It is important that the other side believes what your delegation says and believes that your delegation can deliver on any promise or concession your delegation makes in the negotiation. Establishing personal trust between the parties may be very difficult but every effort should be made to "humanize" the delegation's members by demonstrating that each individual in the negotiation process shares a common desire to try to resolve the dispute.

Your delegation must keep in mind that it must maintain the trust that your delegation's constituents have in it. In the end, any resolution obtained in the negotiations must have the constituents' support before it will be successfully implemented – remember your delegation's constituents will not have the benefit of the personal relationship with the other negotiators.

Some methods to develop this trust include:

- Be attentive to the physical comfort of all the parties in the negotiation.
- Be polite, courteous and receptive to the statements, ideas and positions taken by the other parties from the outset.
- Engage in some casual discussion prior to starting the day's negotiations and during the breaks, if appropriate, to establish a rapport with the other parties.
- Observe the culture and customs of the other parties where appropriate.
- Demonstrate the delegation's trustworthiness by substantiating what the delegation says with substance (*i.e.*, documents, video, or statements from a neutral third party who is trusted by the other parties).

- Do not mislead or otherwise exaggerate claims when the facts and claims are well known to the other parties – lying will not establish trust and continued exaggeration will only harm the delegation’s credibility.

Whatever methods your delegation uses, they must always be part of a thoughtful and purposeful choice selected to achieve the delegation’s overall goals.

Before The Negotiation

The negotiation process begins long before the delegation and the other parties arrive at the negotiation location on the scheduled date. Early decisions, seemingly routine and simple (including selecting a date and location, determining who should and will participate (on the delegation's side and theirs), and structuring the agenda), can be as important as the negotiation itself. These decisions will set the stage for and define the scope of the negotiation, establish power and control and, ultimately, position the delegation for success.

Embrace every opportunity to define the negotiation parameters.

- Any delegation, regardless of relative strength or positions of power, can (and should) be prepared to take the initiative.
- By some manner of preliminary communication (phone call, letter or otherwise), take the initiative to begin the negotiation process *on your delegation's terms*.
 - Establish basic rules.
 - Create the agenda (*i.e.* define what the delegation wants to accomplish and set expectations).
 - Suggest who should attend on each side. Insist that someone with authority attend. Insist that the participants be evenly matched in stature and power.
 - Define the location and duration of the negotiation.
- This is the delegation's first opportunity to take control and convey the important tenets of the delegation's position. Set the appropriate tone.
- Consider whether the delegation might benefit from an "information-gathering" meeting before the negotiation. The delegation will be able to learn about the other party, but might not be able to accomplish the delegation's goals during such meeting. Negotiation can be a process—not just a one-time meeting.

Setting The Scene

The location of the negotiation, the physical setting and the manner in which the delegation's team fills the space, will affect the delegation's ability to accomplish the delegation's negotiation goals. Maximize the delegation's opportunities to set the stage in a way that makes the delegation feel most comfortable and in control.

- Physical Space/Location
 - If the delegation is in a position to select the location, invite the other party to the delegation's home location. The delegation will have a certain "home-field" advantage and will be able to control many aspects of the negotiation from the beginning.
 - A neutral location is an acceptable second choice, and preferable to negotiating in the other party's chosen location.
 - If the delegation's negotiation must be held in a neutral or adverse location, make sure the delegation is the first one to arrive.
 - Always be mindful of security when selecting (or agreeing to) a physical location for the negotiation. Will the delegation be safe? Will the delegation have a secure space for private and confidential caucusing if needed (*i.e.* is there room to sequester the delegation in a location free from surveillance)?
- Setting up the space
 - Be there early. Aim to be the first to arrive. This will allow the delegation to claim ownership of the space.
 - Things to consider in any space:
 - Are there windows in the room? If so, the delegation's members may wish to sit with their backs to the window (this will require the other party to look into the light, often silhouetting the delegation and making the delegation's expressions harder to read). In this position, the delegation will also be able to resist any outside distractions and remain focused on the discussions).
 - Inspect the chairs to make sure the delegation selects ones that are of appropriate height. The delegation's members do not want to be sitting at a lower height than the other party.

- Seat the delegation's members on one side of a rectangular/square/oval/circular table so that the delegation can face the other party.
- Position the delegation's spokesperson near the neutral mediator.
- Things to consider if your delegation is host:
 - How comfortable does the delegation want the other party to be (think about whether the delegation wants to serve food or drinks and what the temperature should be).
 - Does the delegation want to create opportunities to interrupt the other parties?

Creating Opportunities To Interrupt

The benefit as the host is that your delegation can take advantage of the fact that it is your delegation's space by, for example, timing when breaks are scheduled, when food or beverages are brought into the room, when people join the meeting. This enables your delegation to continually stay in control of the pace and even the overall mood of the negotiation.

When your delegation is not the host party it may still take advantage of these opportunities or reduce the host's advantage by, for example, proposing an agenda that establishes when breaks are to be had, beverages brought into the room, or people join the meeting.

- The delegation's presence in the space
 - Think about the number of people in the delegation's group and the message the quantity conveys.
 - If the delegation is not worried about having too many participants, consider having enough to take on the following roles: spokesperson, note-taker, decision-maker, substantive/technical expert, observer, interpreter.
 - If it is preferable to have fewer participants on the delegation's team, make sure the delegation has identified one clear spokesperson who will lead and be in charge.

- Make sure all members of the delegation's group understand the delegation's goals and are embodying the image that will best help the delegation achieve the delegation's goals. Discuss and plan a collective team image (one of control and ease). Remember – whichever group appears more anxious to settle will likely lose.

Establishing Parity

In any negotiation, it is imperative that the delegation choose the best people to participate. The delegation's ability to communicate effectively can be hampered if people with appropriate power and decision-making authority are not there.

- Establish the identities and titles of each person the delegation wants to participate.
- It is important that participants on all sides of the negotiation are of comparable stature and that there is equality for all members of all teams.
- Choose appropriate technical experts to advise the delegation in the negotiation room. Ideally this would be people respected by all parties as experts in their respective fields.
- Ensure that the other parties are bringing appropriate members to the negotiations as well (perhaps by confirmation during the delegation's preliminary communication).

Greetings/ Initial Impressions Of The Parties

The delegation that is first in the room is in a position to greet people as they arrive. This is the first opportunity to set the tone for the entire negotiation and establish the delegation's control and authority. The delegation's greeting may be casual, formal, respectful, friendly, accommodating. In all cases the delegation should set the appropriate tone by: (a) choice of words; (b) volume; (c) manner of speaking; (d) cadence of words; (e) expression; and (f) body movement. The greeting should be consistent with the delegation's personality while expressing the best tone to achieve the delegation's objectives.

- Carefully consider the delegation's choice of greeting.
 - Decide manner of greeting while being aware of cultural expectations.
 - Does your delegation want to greet in the other parties' cultural manner or its own?
 - Greeting in the custom of the other parties can generate good will and create an opportunity to foster a positive personal relationship.
 - Greeting in the custom of your delegation may communicate a more formal and less conciliatory tone.
 - Careful consideration should be given to all approaches, consistent with the delegation's strategy and goals.
 - To convey confidence and serious purpose, the delegation may choose a more formal style.
 - During greetings, observe and study the other parties. Its reaction and response will provide indicia of its mood, receptiveness and expectation.
- Part of a greeting may include reminding parties of the agenda and ground rules. Your delegation is now leading the negotiation.
- Use the greeting as an opportunity to define the delegation's issues. Alternatively, use the greeting to encourage each party to express their own goals and issues to begin the negotiations.

Do not make judgments about the other parties based solely on their outward appearances. Physical appearance, such as gender, height, weight, personal style, communicates an incomplete message. Decide what image the delegation wants/needs to project. If your delegation makes assumptions based on physical appearance it might underestimate the other parties as a result, which puts your delegation at a significant disadvantage. The same may be true of the judgments the other parties make about your delegation, which can provide your delegation with an advantage.

Interpreters

Interpreters are often necessary in negotiations between people from different cultures. If at all possible, it is useful to have sufficient interpreters and equipment to perform simultaneous translation if translation into more than one language is required. For example, if the speaker is speaking English, and the two listeners speak Arabic and Hungarian, then there should be two separate translators that can translate from English to Arabic and English to Hungarian as the English speaker is speaking. Performing translations seriatim is time consuming and can generate even greater confusion.

- Position the delegation's interpreter so that s/he can see and hear the speaker(s). The interpreter should not be a member of your delegation, but should recognize that its primary obligation is to serve your delegation.
- If the other party is using an interpreter, make sure the delegation is positioned to watch the other party's speaker, not the interpreter.
 - Be aware that by using an interpreter your delegation may be sending a cultural or strategic message.
 - Would the other delegation prefer to see your delegation trying to speak that delegation's language?
 - Is it more respectful to have someone on your delegation who speaks the other delegation's language, despite the advantage to your delegation?
 - Do not overestimate your interpreter's proficiency. Make sure the delegation has carefully selected an interpreter that understands the other party's specific language, dialect, culture and slang.
 - Recognize that many concepts or words do not translate well. Instruct the delegation's interpreter to alert the delegation when the other party uses a word or concept for which there is no equivalent in the delegation's language.
 - Do not assume that the other parties cannot understand your delegation because they speak a different language.
 - Make sure that everything that your delegation says is able to be clearly heard and understood by the other parties.
 - Do not attempt to have private discussions among your delegation in the presence of the other parties. Even if the other parties cannot understand your delegation's

words, they will be able to observe the manner by which your delegation is communicating through gestures, tone, tempo and volume.

- Have your delegation's private discussions in a private secure room away from the other parties.

Becoming Acquainted

As the negotiation begins, it is often useful to make the participants comfortable and to find initial areas where the parties agree. A way to achieve this is by knowing, understanding and respecting the other parties and their cultures. Each party will have its own preferences with regard to formalities, rituals and social customs. Know the other parties' preferences, and incorporate all of these into your delegation's negotiation plan. At this beginning stage of the negotiation it is imperative that your delegation implement its strategies based on principled strategies and not on emotion.

- The following should be considered if your delegation is invited to an informal social gathering preceding the negotiation:
 - Always use good judgment and care.
 - The consumption of alcohol is often used as part of a social gathering, but it can also be used to a parties' advantage.
 - Prepare for social obligations by eating and hydrating before.
 - Make sure any social interaction is even-handed so that the delegation is not overly indebted to the other parties.
- Once the delegation is at the negotiation:
 - Use the delegation's greeting (and the tone of the delegation's greeting) to become acquainted.
 - Observe and adapt to the personalities, tempo and goals of the other parties. Be sure to pursue the delegation's overall strategy or tone, established in the pre-negotiation planning sessions with your technical experts, counsel.
 - Once the negotiation has started, be prepared to adjust if new information is presented. However, any alteration of the prepared strategy should be done with a similar amount of planning and consideration.
 - The delegation's spokesperson should lead the negotiation by reminding the participants of the rules and goals. By taking charge of the discussion, your delegation will maintain its control.
 - Make some strategy decisions before delving into substantive issues:

- Does the delegation want to invite the other party to talk substantively first (so that your delegation can learn before having to present its positions)?
- Does the delegation want to start with easy substantive issues or areas of agreement (so that the delegation will have success early on and create good momentum)?
- Does the delegation want to present its most important issues first?
- If the other parties are in control of the discussion, your delegation can try to regain, or establish, control without educating the other parties about your delegation's strategies:
 - Say very little and let the other parties express themselves to help your delegation learn about the other parties.
 - Answer questions and use the opportunity to direct the conversation towards issues that your delegation deems more important (or areas where your delegation has more confidence). Know your delegation's strengths and weakness and move the conversation away from its weaknesses.

Considering Confidentiality

In any negotiation, all parties will have confidential information that will both help and hurt their causes. Consider in advance what information needs to remain confidential and what can be used to bargain with later. Also think about what confidential information your delegation believes is in the other party's possession, and how the delegation might get it.

- If the delegation does not trust the other parties or is concerned that confidential information disclosed at the negotiation may be divulged, test the other parties before the negotiation by passing along non-confidential (or benign) information and see if it is shared with others (“leaked”).
- Assume that anything your delegation says to the other parties will not remain confidential – no matter what assurances are given.
- Never conduct your delegation's private discussions in the other parties' presence. The only absolute way to make sure that your delegation's confidential conversations remain confidential is to have them in a private secure room away from the other parties.
- Once your delegation decides to disclose some confidential information:
 - Do not disclose it all at once. Sharing information should be used in a strategic way and can be very effective. Reserve some information to release throughout the day at strategic times (*i.e.* when it can help reach agreement on an issue).
 - Consider releasing information when the other parties disclose information to your delegation (reciprocity).

Chapter 4: Outside The Negotiation Room

In addition to what is occurring inside the negotiation room, consider who and what are available outside the negotiation room. These outside “tools” may be useful for succeeding in a negotiation. Such tools might include the media, general public, inside advocates (staff or affiliates of the opposing side that are non-negotiators), other parties in the negotiation (in the case of multi-party negotiations), and outside advocates (governments, regional groups, local or non-local organizations, influential individuals).

Even before the delegation’s negotiations begin, give consideration to whether, when and how to use any of these outside tools or sources. Additionally, it is important to consider the actions the other party to the delegation’s negotiation has taken outside the negotiation room. Even if the delegation’s original strategy did not encompass the use of outside tools, the delegation may have no alternative but to adapt the delegation’s plans when the opposing side has done so (*e.g.*, by taking the dispute “public”). Further, be prepared to modify the delegation’s strategy for using outside sources in reaction to how the other is using outside sources, as this may require different methods than those the delegation have considered. Finally, the delegation may also be able to use the strategies in this chapter to bring other parties to the negotiation table who would not otherwise participate.

Deciding Whether To “Advocate” Outside The Room

Depending upon the nature, stage and tenor of the delegation’s negotiations, it may be appropriate to engage persons or organizations outside the dispute. This may include, for example, a desire to involve the media in the negotiations. Or perhaps an influential outside organization or individual could prove helpful to the delegation’s cause. Before enlisting the assistance of any of these “tools,” however, consider the benefits and risks involved.

The following considerations may apply to some or all of the tools the delegation has at the delegation’s disposal:

- Will this approach make enemies? Engender negative reactions or retaliation?
- Is this necessary to educate the public or provide background information?
- Particularly if using the media, how likely is the outside source to “get it wrong”?
 - Will the outside source be biased for/against you?
 - Will language differences affect the message to the public?
 - Will the content of the delegation’s message be misinterpreted?
 - Could the delegation be accused of telling a story that fits only the delegation’s view of the facts (“spinning the story”)? Paying for public support?
 - How will this look on the “front page” of the local newspaper?
 - How might the delegation’s constituency/clients be affected by negative media?
 - Consider how negative media will effect different constituencies (i.e. will it hurt other parties more than the delegation’s?).
- Is this necessary to counteract intentional misinformation being provided by the opposing party?
- Is this necessary to assure the public that progress is being made?
- Will managing the outside source occupy too much of the delegation’s time and resources?

- How important is it to preserve the confidentiality of what is happening in the negotiating room?
- Is this step appropriate at this stage in the negotiations?

Using The Media

The media can be a powerful tool when it comes to publicizing, explaining, or even influencing a dispute. Particularly with the advent of the internet, in many instances the general public can receive information regarding the status, tenor and progress of the delegation's negotiations in an instant. Additionally, the media may serve as a source of information even for the other party across from your delegation at the negotiating table. For these reasons, it is important to consider carefully the message your delegation conveys to media sources, if any.

After the delegation has carefully balanced the positive and negative effects of going outside the negotiation room, consider these and other strategies in using the media:

- How important is it that the delegation's side speak with a single message (with "one voice")? Should the delegation have a designated spokesperson?
- Be prepared to meet the media's interests.
 - It is often helpful to provide the media with background information, or to provide detail on circumstances inside the negotiations.
- Who will vet communications with the media and how?
- How high is the risk of inaccurate statements and how can this risk be avoided?
- Who is friendly? Unfriendly? Influential?
 - Do a broad search of media regarding the parties and the issues as part of the delegation's preparation.
- What does the delegation want its public image to be?
- Be sure to talk to the international media as well as the local media.
- Have a member of the delegation placed outside of the negotiations with the media, or in contact with the media to ensure quick access.
 - Consider designating a member of the delegation to be responsible for also monitoring media statements arising from each negotiation session.
- Should the delegation use a professional media consultant service?

- Does the delegation have time to carefully craft a message and stay in control of its interpretation through the process?
 - The key is to communicate in a clear, simple and compelling way the delegation's goals and themes ("slogans").
 - Prepare a written statement that contains these clear, simple and compelling goals and themes.
 - Where appropriate, at the conclusion of the meeting with the media, leave the written statement with the media.
- Generally, avoid disclosing confidential information to anyone - including the media.
 - However, in certain circumstances, it may be beneficial to disclose documents or information to sympathetic members of the media.
- The indiscriminate disclosure of confidential information can result in permanent damage to the level of trust between the parties, and under some circumstances, expose the delegation to civil and even criminal liability.
- Depending on the nature of the confidential information, in some jurisdictions, there is also the possibility of a defamation action resulting from the disclosure of confidential information, which would present a considerable distraction.

Using All Forms Of Traditional Media

The key to choosing any communication strategy is to understand who the delegation's audience is. Is it the general public, a particular segment of the population, or even the opposing party itself? With whom the delegation chooses to speak and how the delegation chooses to communicate a message should be a function both of the delegation's audience and the delegation's message. For example, the literacy rate of the delegation's intended audience may help determine whether broadcast or print media is the delegation's best choice.

In today's modern world, there are countless varieties of media communication methods, including but not limited to:

- Columnists
- Staff writers
- On air personalities
- Opinion leaders
- Commentators
- Editorial boards
- Internet bloggers

When choosing a communication method, consider:

- The delegation's location's effect on the method of communication.
 - What forms of media are available?
 - Are there impediments that will prevent the delegation's message from reaching its intended audience? Can/Should the delegation reach remote locations?
- What is the literacy rate of the delegation's audience? Their preferences?
- What should be the language of communication?

Using The Public

Assuming the delegation has carefully balanced the effects of using an outside tool to achieve success in the delegation's negotiation, public opinion is one such tool worthy of consideration. Public opinion can be effectively influenced by a variety of sources: the academic community, professional associations, political parties, international community, legal experts, and religious or social organizations. Other means of influencing public opinion might include grass roots organizing, and polling. Depending upon the nature of the dispute and the strength of the influence of public opinion, the delegation may be able to successfully use these populations to bring pressure to bear on the opposing party.

Considerations include:

- How influential will public opinion be, and on whom?
- Will the delegation be able to manage public opinion and how?
- What will it cost in terms of resources, time and perception?
- What contacts does the delegation have and how hard will it be to get them on board?
- Who can be the most helpful? The most dangerous?
- What organizations will the other side use or want to use? Does this affect the delegation's choices?
- What are the legal constraints? (e.g., lobbying disclosure regulations, etc.)\
- What practical tools are most effective (e.g., "grass roots" organizing (obtaining support from motivated local citizenry), emails, leafleting, postcards)?
- Keep in mind the fact that international public opinion may differ from domestic and therefore must be taken into account when crafting your message to the media.
- Prepare a written statement that contains a clear, simple and compelling summary of the delegation's goals and themes.
 - Where appropriate, at the conclusion of a meeting with the media, leave the written statement with the media.

Assuming the delegation has chosen this tool, some simple strategies can help the delegation maintain a constant public presence:

- Hiring media/public relations professionals.
- Developing and using a slogan/mantra or representative graphic image.
- Developing a so-called “elevator pitch” (one which the delegation can deliver during a short ride in an elevator).
- Planning regular opportunities to deliver the message (do not assume that the right message will be heard).

Consider preparing a “stakeholder map.”

- A stakeholder map identifies key allies, opponents and interested third parties, along with their individual perspectives, objectives, and contact information.
- The stakeholder map allows the delegation to disseminate helpful information in a more effective and targeted manner.

Using Back Channel Communications And “Inside” Advocates

Consider the benefit of establishing contact and relations with the people who are not the parties directly involved in the negotiations but who could serve as indirect links to the delegations for one of the other parties. An appropriate “back-channel” liaison may be a member of the other delegation or may be an outside third party with access to the delegation, but whose role is to provide and receive information outside of the direct negotiation sessions. By contrast, the “inside advocate” will be a member of the other party’s delegation who is sympathetic to your delegation’s position and will advance your delegation’s position within the inside advocate’s own delegation. Both the back channel liaison and the inside advocate should be well-informed, trustworthy, and recognized as having some authority and influence over the lead negotiators. This person may not be apparent immediately but may, instead, emerge over time. Be cautious, of course, when selecting such a liaison because this person will have “the power of information,” which they could use against you.

Assuming the delegation has identified an appropriate, trustworthy “inside advocate,” potential benefits of this relationship include:

- The ability to make proposals hypothetically or conditionally, in order to test their likelihood of success.
- The ability to communicate without formally committing the delegation’s side to a firm position.
- The ability to reinforce positions the delegation’s side has taken, which the other side may doubt are firm.
- The ability to communicate “off the record,” which can be particularly useful if media coverage is involved.
- The delegation’s “inside advocate” can advocate the delegation’s position in an informal, and safer, setting.

Using “Outside” Advocates

There are many people and organizations outside the negotiating room who may be available to act as an “outside advocate,” effectively campaigning for the delegation’s positions in a direct way by raising issues with the other parties on the delegation’s behalf. The delegation may, therefore, be able to exert direct pressure on the other side through these channels. Desirable qualities for such an ally include being trustworthy, credible, and sufficiently influential on the other parties.

The goal is to enlist the aid of an organization, entity or individual that will have leverage over the other party the delegation is trying to influence. An example might include government leaders able to offer some incentive to the other side in exchange for concessions, cooperation or even for simply participating meaningfully in negotiations. Other examples of these outside advocates might include regional organizations, local groups, international organizations such as non-governmental organizations, human rights, environmental and other private interest groups, Red Cross, Red Crescent, influential individuals (religious leaders, respected politicians) or other nations.

Considerations for whether to employ an outside advocate include:

- Will the delegation be able to manage the relationship? How?
 - The delegation may want to consider a communications or media relations firm to assist in this regard.
 - The delegation may also want to create its own outside advocate groups to promote its message, or portions thereof.
- What will it cost (resources, time, perception)?
- What contacts does the delegation have and how hard will it be to get them to join the effort?
- Who can be most helpful? Most dangerous?
- What will the advocate be seeking from the delegation in return, and is that acceptable?
- What organizations might the other side want to use and how does this affect your delegation’s choices?
- What are the legal constraints? (*e.g.*, lobbying disclosure regulations, etc.)

Building Alliances Strategically: Using Other Parties In A Multi-Party Negotiation

Negotiations do not occur simply between two opposing sides; they include each delegation, as well as the mediator, and their respective members. Consider the advantages and disadvantages of cultivating strategic alliances by and among the parties as issues arise.

Of course, any communications with one party and not others should be handled very carefully. The delegation does not want to undermine the overall negotiations in exchange for a short-term alliance. At the same time, the delegation does not want to let essential alliances wither when embracing them could help make the negotiation a success. Asking another party to advocate on the delegation's behalf or to adopt the delegation's position may be even more risky than just establishing alliances with another party. Still, this strategy, where appropriate, may be the only method of moving an immobile adversary.

In considering whether to even approach another party to advocate on the delegation's behalf, the analysis should include the following:

- What will they want in return?
- Are they trustworthy?
- Do they have influence or leverage over the other party?
- If alliances are later changed, will the delegation be at a disadvantage because the delegation attempted this advocacy move?
- Do the potential negative effects outweigh the potential advantages?
- Do they have an accurate assessment of their own image and power?

Unprofessional Tactics: Should The Delegation Respond To The Opponent Who Has Unfairly Sought To Gain An Advantage At The Delegation's Expense?

The delegation may encounter a situation in which the opposing party uses the strategies outlined in this chapter with less concern about honesty and ethics and more concern for gaining an advantage in the public arena. For example, the other delegation may be willing to use misinformation in the short term to achieve an advantage in the negotiation. Or they may attempt to exploit developments inside or outside the negotiation room (*e.g.* inciting violence in the streets, imposing new restrictions on your delegation's member's ability to travel) for their own advantage. Your delegation must evaluate, using principled analysis and a minimum of emotions, how important such an attack is for its overall strategy, including whether and how to respond. Consider:

- Will a response hinder your delegation achieving its carefully identified goals for the negotiation?
- Can your delegation use the negative actions of the other delegation to its advantage?
- Is it in your delegation's interest not to respond because it could give the act of the other delegation more credibility or draw more attention?
- If your delegation fails to respond, will it weaken its position because it is inconsistent with your delegation's strategy or culture, or weaken your delegation's other positions?
- How important is public opinion to achieving your delegation's goals?

This question of whether and how to address the other delegation's use of inappropriate strategies should be evaluated the same way that your delegation evaluates the other delegation's actions – with strict consideration of your delegation's overall goals and without responses based on emotion and personal reaction.

Chapter 5: Persuasion Techniques

Once the delegation has determined the delegation's goals (both long-term and short-term), a critical part of the delegation's preparation is to determine how to persuade the other party in order to achieve these goals. "Persuasion" refers to the manner by which the delegation approaches a specific point in the overall negotiation process. Determining the delegation's persuasion technique is a critical part of preparing for a negotiation. There are many techniques that can be used to persuade the other side. There is no single technique that is appropriate in all situations. Therefore, it may be appropriate to utilize more than one technique at any given time. If one technique is not working, it is best to be flexible and adopt another technique.

In assessing and developing these persuasion techniques, it is important to recognize what persuasion techniques the other parties (particularly the mediator) are intentionally or unintentionally utilizing as well.

Communicating Persuasively

The use of language is the principal means of persuasion. Persuasion, however, includes not only the spoken word, but also body language, facial expression, tone, and even silence. All are tools to be used in the negotiation process. Due to the volatility that can result from the spoken word, when possible, the delegation's statements should be well thought out, clear, and precise.

- Even the manner in which a person sits can communicate the way the person is feeling.
 - Leaning forward in the seat as someone else is speaking can convey intense interest, or an aggressive attitude.
 - Leaning back in the seat as someone else is speaking can convey a calm and receptive listener, or that the listener is not paying attention to the speaker.
- Raising or lowering your voice, as well as emphasizing or deemphasizing different words, can give be interpreted in entirely different ways.
 - “You can sit over here.” Depending on how the tone and emphasis, this sentence can be taken as a command, and invitation, or a direction.

No matter how your delegation chooses to communicate, the key is to do so purposefully in all respects. Each of these techniques may be effective in one case, and not effective in another. It is important to learn to recognize when the use of one of these techniques would assist your delegation in the communication of a particular message.

In addition, the delegation should ensure that its members observe the other delegations' actions (body language, facial expressions, particularly) for insight into their unspoken support or opposition to what your delegation is communicating.

Self-Expression: Aligning Intent And Impact

Self-expression, the combination of language and demeanor, is another persuasion technique that can be effective in persuading the other party. This can be relevant, whether the delegation intends to express outrage, disappointment, frustration, or cooperation, or if the delegation intends to diffuse a hostile environment. The way the delegation expresses itself during the negotiations should be carefully designed to ensure that it has the intended effect. Examples of strategic use of self-expression include:

- The delegation may choose to use calm or reasoned language and demeanor to diffuse a hostile situation.
- Using expressive body language and more aggressive tones can express outrage; but simply saying the delegation is “outraged” is not an effective tool.
- Eye contact and facial expressions can convey significant messages.

Storytelling And Painting Pictures

Another technique for persuasion is the use of storytelling. This includes not only the spoken word, but also the use of visuals. One of the most effective ways to accomplish this is to place the other parties in your delegation's circumstances.

- Use vivid language to convey your delegation's message. Present your delegation's message in the context of a story that explains your delegation's perceived problem and demonstrates how your delegation's proposed action will solve the problem.
 - For example, tell the story from the standpoint of an individual, family or community that has been or will be affected by the conflict at issue. Factual details are critical in the delegation's descriptions in order to achieve maximum effect.
- Consider presenting the delegation's problem visually by using words to paint a dramatic picture that incorporates the other parties' own experiences, this may help them begin to empathize with your delegation's position.
 - For example, if unification is your delegation's goal, describe a peaceful and unified country.
- These techniques can be particularly effective when using the media to communicate your message.

Organizing For Persuasion

In addition to the substance of an argument, the organization of an argument can have a significant persuasive effect. Therefore, your delegation will benefit from giving extensive consideration to organizing your delegation's points effectively. Typically, it is most effective to present your delegation's stronger argument first, and reserve arguments to use throughout the negotiations. For each argument, the following general rules apply:

- Build your delegation's argument up from a strong factual foundation.
- Draw the overall conclusion of your delegation's argument from the facts.
- It may be important to begin with broad statements to define the scope of your delegation's arguments before proceeding with the specific items of your delegation's argument. Present specific subparts of the overall conclusions based on examples.
- It is often the case that the first and last arguments made are those that are best remembered by the other parties.

Using Questions To Gain An Advantage

There are several ways to use questions to gain an advantage in a negotiation. Ask open-ended questions to find out more about the other parties' positions.

- Open-ended questions can engage the other parties and make them feel more comfortable.
 - Asking questions that begin with “Who, What, When, Where, How, Why, Explain and Describe” rather than immediately challenging the other party’s position. This can allow the delegation to discover what is motivating the other party during the negotiation.
 - More probing questions can gain the delegation more important information such as, “What are the delegation’s main concerns” and/or “Why are those concerns important to you.”
- Consider asking a series of non-confrontational questions to establish certain facts and to better define where the disagreement really is. This is effective in establishing an environment of cooperation.
- The delegation can use questions to challenge assumptions, such as “has the delegation thought about”

Deciding On The Emotion To Convey: Sharing Concerns v. Making Accusations

There is always more than one way to respond to the other parties' position or actions. Emotion, just like the spoken word, body language, facial expression and tone should be used thoughtfully and in accordance with your delegation's overall strategic goal. The decision to use emotion and how should be one that is carefully considered and should be reached by relying on principled analysis. The delegation should never show an emotion unintentionally.

- Your delegation can act aggressively by accusing the other delegation of wrongful conduct or your delegation can tell the other delegation why their actions concern your delegation. Either may be the appropriate way to begin the negotiation, depending on the factual circumstances.
 - Be aware that accusing the other delegation of wrongful conduct may put the other delegation on the defensive and make it more difficult to persuade the other delegation.
- Your delegation can react emotionally as the victim of the other delegation's actions, and share why they concern your delegation.
- By responding unemotionally in particularly difficult times of a negotiation your delegation can convey that only the "success" of the negotiation matters to your delegation.

Courtesy

The decision to either extend or not extend courtesy may be an effective persuasion technique.

- Generally, maintaining the proper courtesies will be the most effective way to open communications.
- The extension of appropriate courtesies not only encourages cooperative negotiations, but also typically results in a more sustainable long-term relationship between the parties.
- Extending courtesies does not mean that your delegation has to accede to the other parties demands.
- Regardless of whether your delegation intends to be courteous, it is necessary to understand the cultural expectations of the other parties to ensure that your delegation's actions will bring about their intended results.

Using Themes In Communications

It is often helpful in a negotiation to present your delegation's position with a common theme throughout. It is more difficult for the other parties to disagree with a theme that has universal appeal. For example, one theme might be: "We need to do this for the next generation of citizens."

- A theme or slogan will make it easy for the other parties to remember your delegation's priorities and convey them to their constituencies.
- A theme may demonstrate a strong commitment and passion for your delegation's cause and to an outcome that serves the delegation's interests.
- A theme may show that your delegation has thoroughly considered and prepared for the negotiation session.

Establishing “Common Ground”

Establishing agreements on certain points, even minor points, can serve as an effective starting point in persuading the other parties. Even small areas of common ground build trust between and among disagreeable parties.

- Be careful not to narrow the arguments to such a degree that it will be hard to have the necessary exchanges and compromises that are imperative for a successful negotiation.
- That said, recognize that identifying agreed points can help your delegation be more efficient at the negotiating table by focusing on points of true and significant contention.

Changing A Conflict Into A Mutual Problem-Solving Process

Nearly every conflict can be characterized as a common problem that needs to be solved by two or more parties who differ on the solution. Reframing a conflict in these terms can set a positive tone for negotiation - a tool that may allow agreement to be discovered where it might not otherwise be found.

- Sometimes during the course of negotiations, merely “reframing” the disagreement as a mutual problem can make the other parties feel that they are part of a team that shares the common goal of solving the problem.
- If presented as a conflict, other parties may be more likely to become defensive.
 - For example, phrase the issue as, “We both have a problem that needs to be resolved,” rather than “The delegation caused the problem.” This may be more persuasive and result in shaping the conflict in a manner that is less adversarial.

Recognize And Reward Compromises By The Other Party

Recognizing or choosing not to recognize a compromise by the other party depends on the circumstances and can be an effective technique in persuading the other party.

- In any negotiation it is critical to recognize when the other party has made a concession or compromise.
- When a party makes a compromise, it rightly may expect something in return. Whether the delegation chooses to reward the compromise is dependent, in part, on the value the delegation places upon the concession.
- The delegation may choose to recognize the compromise openly or recognize it only within the delegation's team.
- It is typically a mistake to over-emphasize the other side's concession as it may cause them to demand additional or more significant demands.

Chapter 6: Negotiation Techniques

No technique or negotiation “trick” can replace the value of proper preparation and planning for the delegation’s negotiation. The delegation must be prepared to effectively negotiate a successful outcome and the best way to do so is to go through the steps set forth in the previous chapters. If the delegation has prepared carefully for the delegation’s negotiation, the techniques set forth in this chapter should assist the delegation in obtaining a successful outcome in the delegation’s negotiation in a variety of negotiation settings. Some techniques are reserved for unusual situations the delegation may not encounter and therefore the delegation should avoid using them. Some techniques will seem obvious to the delegation and others may seem counter-intuitive, but all have proven to be effective in different settings. Formal negotiations may seem daunting to you, but the delegation should be comforted by the fact that the delegation already possess many of the skills that are required for a successful negotiation – these skills are the communication skills that the delegation uses every day. Accordingly, the following sections will help the delegation develop and hone these skills in a manner that will assist the delegation in being an effective negotiator.

Gathering Information

Knowing as much as the delegation can about the other parties to the negotiation and their interests is essential to achieving a favorable outcome. The delegation must fully understand the delegation's goals and interests and develop an understanding of what the other parties *think* the delegation's goals and interests are. During the course of the negotiation the delegation should strive to update the delegation's information about the other parties, their interests and goals, and what they perceive as the delegation's interests. This can be accomplished by:

1. Encouraging Dialogue

- Ask open-ended questions – this encourages the other side to provide unsolicited information to you.
- Let the other parties speak openly, especially if they are emotionally or emphatically stating a position – such behavior provides the delegation with valuable information about where their interests truly lie.
- Refrain from making speeches, even on an emotionally charged topic – remember that letting the other parties express *their* positions and keeping an open dialogue is far more important than the delegation “lecturing” the other parties.
- Generally avoid making non-negotiable statements that may force the other parties to avoid addressing important topics.
- If the delegation has prepared for the negotiation, the delegation can use the pre-gathered information to ask pointed questions both to demonstrate the delegation's understanding of the other parties' positions and to focus the negotiations.

2. Active Listening

- Focus on the speaker and what is being said.
- Respond to the speaker's views; do not rely exclusively on prepared remarks.
- Use body language to encourage the speaker and signal interest. Examples include leaning into the speaker, nodding and occasionally orally expressing understanding.
- Do not interrupt, let the speaker finish.
- Ask non-threatening questions to confirm the delegation's understanding.

- Repeat, in the delegation's own words ("summarize"), what the speaker said to demonstrate the delegation understood.
- Include in the delegation's summary a recognition of the emotion demonstrated by the speaker. Empathy will show the delegation understood and acknowledged the concerns of the speaker.
- Permit the speaker to clarify or confirm the delegation's understanding.

3. Eye Contact

- Maintain eye contact with the other parties as it shows the delegation is paying attention and listening to them. Caution - be aware of cultural differences in which eye contact may be inappropriate or may even send the wrong message.

4. Using Silence

- The delegation does not speak just to fill an uncomfortable silence. Silence is not a bad thing – if used properly it can encourage other parties to talk in an unguarded manner.

Communicating With Your Delegation: Signals And Other Strategies

If the delegation chooses carefully who is in the room and have designed the delegation's negotiation plan, the need for signaling the delegation's team members during the negotiations should be minimal.

- Refrain from using overt signals for intra-team communications as doing so will undercut the trust that the delegation should work hard to maintain.
- Remember that all communications made during the negotiations, even those from the delegation to the delegation's team, will have an effect on the negotiations, and could affect, positively or negatively, the delegation's position or the delegation's credibility.
- The delegation's team leader should appear to be in control of the delegation's team's negotiations at all times and should strive to maintain the credibility and value of all team members.

Using Documents

Documents play an important role in negotiations. Negotiations are typically managed through the use of various documents, including agendas, position papers and settlement agreements. Documents are also useful to both persuade and illustrate your delegation's position, which may include photographs. Documents will also be helpful in establishing and maintaining your delegation's credibility by supporting a position your delegation is taking. Documents can also provide a clear illustration for a complex position or argument your delegation is making. When and how one uses a document and for what purpose is an important part of your delegation's strategy.

- Recognize that the initial draft of any operative document, such as an agenda or settlement agreement, will often remain largely unchanged, with only the most significant points being negotiated. There is a distinct advantage to submitting your delegation's draft first, because your delegation's draft may then define the words and issues to be used throughout the negotiation.
 - The initial draft of any operative document should be over-inclusive. It is more difficult to seek to add terms than it is to remove them.
- When using documents as a persuasive tool, try to use documents created by the other party or by a neutral party to minimize questions about the authenticity of such documents.
- When using documents to illustrate a complex point, try to keep them simple.
- Always fully explain the illustration when the delegation presents it.

Conducting Negotiations Through The Mediator

There are many ways to use the mediator to your delegation's strategic advantage in the negotiation process. Most frequently, parties use a mediator as an information conduit to express their views or position on the matters in issue to the other party. There are other ways to effectively use the presence of a mediator in international negotiations; for instance, the mediator may facilitate the provision of responses to questions that have thus far been refused or ignored in the negotiation process or to better define the interests and goals of each side to the other.

- “Opening” statements can be an effective tool to persuade the mediator and the decision maker from the other party of the delegation's understanding and position on the matters in issue. In the process, the delegation may take the opportunity to persuade the mediator of the moral or legal righteousness of the delegation's position. This will often influence the manner in which the mediation process is conducted.
- It may be necessary to adjust the manner in which the process is being conducted as it is underway. The mediator may have all parties in one room until it is no longer productive. At that time, the mediator will typically break the parties apart into separate rooms for further “shuttle” negotiations.
- It is important to use caution when providing confidential information to the mediator.

Using Experts

Experts can be useful in negotiations involving complex or technical issues. There are two distinct ways to effectively use experts in negotiations:

- Use an expert that is not perceived to be affiliated with any party to provide persuasive arguments and solutions for complex issues. For such an expert to be effective all parties must have confidence in the expert's neutrality and in the usefulness of such expert's opinions.
 - Such an expert will be more effective if perceived by the other parties to be neutral
 - Your delegation should recognize that no expert is truly neutral. Each expert brings his or her own biases, individual and cultural, to the negotiation.
- Use an expert as a member of your delegation's negotiation team. Such an expert can advise the delegation on complex issues and offer creative solutions that would be unavailable absent their expertise. Such an expert can quickly and effectively address technical concerns raised by the other parties if required.
 - Interpreters, scientists, economists and lawyers are an example of the type of technical experts that delegations typically utilize.
 - Your delegation can expect that the other delegations and the mediator will have a lawyer as part of their negotiation team.

Using Time Effectively

To negotiate effectively, the delegation must appreciate fully the effect time has on the negotiation process. The delegation must be able to recognize whether some issues may be resolved in the time constraints of the scheduled negotiations.

- Know your delegation's priorities and be able to focus on those within the time constraints of the negotiations. Be realistic about the time needed to accomplish your delegation's goals.
- Your delegation must also know if any party is under any time constraints that will affect their negotiation strategy or position.
 - If a quick resolution is important to another party, your delegation may be able to gain concessions by acknowledging this pressure and quickly making concessions in non-essential areas.
- It is important to evaluate who is under the greatest time constraints at the outset, as this can have a fundamental impact on strategic issues.
- Very few negotiations are open-ended, but if there are no external time constraints, your delegation may want to set a time limit on the negotiations to keep the parties focused and the negotiations efficient and effective.

Redirecting The Topic

During a negotiation your delegation must always be aware of the direction that the discussion is headed and, if applicable, redirect the discussion back to the topic at hand.

- Be vigilant to ensure that your delegation does not lose sight of your delegation's (or the other parties' perceived) goals while discussing the details of a particular topic.
- It may be necessary to redirect the discussion to a different topic, either a new one or an old one, to either cool down the discussion and take some of the emotion out of the room or to simply refocus the parties to negotiating a resolution.
- Redirecting the topic can also be used to effectively focus the discussion away from a problem area to one that can more easily be resolved in the negotiation.
 - Doing so will permit the delegation and the other parties to focus on and resolve the easier topics before taking on the more difficult ones.
 - This technique builds the momentum, trust and confidence necessary to resolve the difficult issues.
- Redirecting the topic can also shift the discussion away from a problem area to one of strength.
 - Remember that it is always easier to negotiate from a position of strength than weakness.

Holding A Topic For Future Discussion

One of the keys to a successful negotiation is to maintain an active dialogue. Occasionally an issue may arise that falls outside the scope of the negotiations, is too big to resolve, or is simply unanticipated by one or all of the parties.

- Record and acknowledge each party's positions on such issues, including what concessions were made, and agree with the other parties that this issue will be set aside for future negotiations.
 - It is important to set a date for a future negotiation on all such issues that have been set aside.
- Once the impasse is removed or eliminated, try to refocus the group and continue toward resolving other issues.

Using Breaks

Intermittent breaks during the negotiation session can be used to effectively alter the tenor of the negotiations. A break can be used to ease tension in the room, by permitting parties to step away from an emotional charged discussion. Breaks can also be used to re-focus your delegation and review and incorporate any new information your delegation has learned during the negotiations into your delegation's overall strategy.

- Caution should be used when suggesting or taking breaks as they can interfere with the dialogue that is taking place between the parties.
- Parties may use breaks to refocus their strategy (as suggested above) and concessions which could have obtained prior to the break will no longer be possible.
 - To avoid this problem, try to conclude the discussion on a particular topic and summarize where the parties are on the issues before taking a break.
- When restarting after a break, a useful technique is to summarize where the negotiations were before the break.
- Consider using the breaks as an opportunity to continue the discussions.
 - A break may present an opportunity for the parties' inside advocates to discuss matters.
 - It is sometimes beneficial to use the breaks as an opportunity for the mediation party to meet separately with each delegation with the purpose of making progress towards resolution of particularly difficult issues.
 - It may be useful create smaller negotiating teams to meet during these times.

Changing The Players

It may be beneficial or even necessary for the parties to change the members of their negotiating teams during the negotiations.

- This step may be required to overcome a stalemate caused either by an irreconcilable conflict of personalities or when a team member loses credibility and is no longer an effective representative for a party.
- Keeping the dialogue moving is vital to successfully concluding the negotiations. So, if a change in negotiations appears necessary, do not hesitate suggesting or implementing it.

Your delegation may also want to change the roles of your delegation's members in the negotiation. Doing so can permit your delegation to bring a new perspective and voice to the table which could alter the dynamic in your delegation's favor.

- Having a new team member take the lead on a particular topic can be a planned strategy that can be effective in either emphasizing or deemphasizing the importance of a particular topic in the negotiations.
- A decision to change roles can also be made when the negotiations stall on a topic. The change can reinvigorate the discussion or change the focus enough to permit the parties to reach a resolution.
- Making a change that was not planned in your delegation's initial strategy is a drastic step and should be well thought out and discussed with all members of the delegation's team. But, if the negotiations have stalled, then such a change may be necessary to keep the dialogue moving to resolution.

Using Ultimatums

As stated throughout this chapter, it is important to be fully aware and understand the culture and customs of all parties at the negotiation table including the use of ultimatums (“take it or leave it” declarations). In some cultures, ultimatums are considered a regular part of negotiations. However, ultimatums generally are quite risky and are a drastic measure in any negotiation. If the other party rejects your delegation’s ultimatum, then your delegation may be faced with a difficult decision to either end the negotiation or withdraw the ultimatum and risk losing credibility. However, should the negotiations reach a point where no progress is being made and only a few issues remain, issuing an ultimatum may encourage the other parties to make a better offer.

- In responding to an ultimatum, it is best to do so, if possible, in a manner that does not end the dialogue.
- Be creative and offer a counter to the ultimatum with an idea or solution that has not been discussed.
- This may be an appropriate time to re-direct the discussion to a topic where a negotiated solution may be reached.
- It also may be appropriate to counter an ultimatum with an ultimatum of the delegation’s own – this is particularly appropriate when dealing with non-essential issues.
- In most cases, your delegation can only use one ultimatum per negotiating session and still maintain the delegation’s credibility.

Leaving Negotiations And How To Return

Leaving a negotiation is an extreme step that should only be taken after your delegation has exhausted all reasonable avenues of resolving the dispute. As with every aspect of the negotiation, understanding the culture and customs of the other parties is essential.

- In some cultures, leaving the negotiation table may be a routine occurrence; but, in other cultures, it is a drastic step that usually signals that negotiations are over.
- Remember that, if your delegation does leave, your delegation will have to answer to its constituents and explain why the negotiations failed.
- If your delegation publicly criticizes the other parties' behavior as the cause for the breakdown in negotiations, future negotiations are likely to be more difficult.
- If your delegation leaves the negotiation and attempts to return, credibility and trust may be lost, and the delegation may reenter the negotiations in a weaker position than that from which it began.

Should your delegation decide to leave the negotiation and wish to return, it is important that it reassure the other parties that your delegation is interested in resolving the dispute at the negotiation table.

- Be cognizant that your delegation will have likely lost some credibility with the other parties and offer them reassurance that it is and will continue to negotiate reasonably.
- If the reason your delegation left the negotiations was because it was faced with an issue that could not be resolved during the previous session, acknowledge that an impasse was reached on that issue and suggest that other issues be resolved and that one be reserved for a separate negotiation if possible.
- If the impasse was resolved while your delegation was away from the negotiation, share that with the other parties and resolve that issue before moving onto other issues.

If your delegation remains committed to continuing the negotiations after the other party leaves, consideration should be given as to the best means of getting the other party to return. This could include attempts at persuasion, granting concessions, going to the media, and the use of outside and inside advocates. Remember that all of these options will have an effect on the parties relationships should the negotiations continue.

- In the event that the other party returns, then your delegation should do everything possible to ensure that the returning party does not feel embarrassed.

- Remind the returning party that all parties are present to work toward a mutual resolution of the dispute and that resolution can only be reached through continued dialogue.
- Do not be overly critical of the returning party.

Chapter 7: Responses To Other Parties

No one approach to responses from other parties can be used for all situations. In general, responses should come after the other party completes its presentation. In other words, force the other party to give your delegation an overall view of their complete position before your delegation responds. This will give your delegation better insight into the other party's positions and will allow your delegation to respond by maintaining its theme and reiterating your delegation's arguments to the other party. Once your delegation has heard the other party's points, do not start to negotiate until your delegation understands all of the points, making sure to clarify any points that your delegation does not understand with its overall goals in mind.

Negotiating With An Inexperienced Party

- Your delegation cannot assume that the inexperienced negotiator is a beginner or that they are going to be somehow “easier” to work with. Often times inexperienced negotiators are more difficult. Recognizing their experience level should help your delegation gauge the delegation’s responses and choose the delegation’s strategies.
- Provide a simple guide to the other side of your delegation’s response so that they may understand what your delegation’s point of view is – *i.e.* an outline, or a verbal roadmap.
- Exploit their first time experience – understand the other party’s background and the context they are familiar with/relate to, including, for example, their constituency. Internet searches are very useful for this.
- Be prepared for the other party’s emotional responses. First time negotiators do not have as much experience with taking their emotions out of their presentation/response.
- Consider providing a written agenda to guide the discussion.
- Establish the process early. Set a singular tone, *e.g.* “no,” then make concessions to allow the other party to feel as if they are getting small gains.
- Demand explanations from the other parties as they respond.
- Gain their trust. Empathize and perhaps tend toward more collegiality by explaining the benefit of the negotiations to the other parties.
- In advance of the negotiation prepare a file containing background information on each member of the other parties.

Making Progress With An Unprepared Party

- Educate the other party so as to reach a mutual understanding in order to not lose ground with the negotiation.
- Know the other party's authority.
 - Determine the limits of the other party's ability to make concessions.
 - Determine the ability of the other party to commit its constituency to an agreement.
 - Determine what authority, if any, the mediator has to impose terms on the delegations.
- An unprepared party may require your delegation to be even more patient and understanding than the delegation would typically be. Still, the strength of your delegation's preparation in a negotiation with an unprepared party can be converted to an advantage.
- Be prepared to postpone the negotiations to a later time if the other party is so unprepared as to not be in a position to negotiate at all. Make sure to set a definite date for these later negotiations.
- Take advantage of their lack of preparation by providing the other delegation and the mediator with your delegation's facts and your delegation's perspective so that you can move them toward your delegation's position in the negotiation.
- Impress the other side with your delegation's knowledge of the facts and the law, as applicable, to gain credibility.
 - Your delegation's understanding of the facts and the law will provide a superior negotiating position.
 - This knowledge is wholly within your delegation's control and developing this knowledge is paramount when preparing for the negotiations.
 - There should be no circumstance where your delegation has not mastered all of the facts and law within its control.

When New Parties (or New Representatives of Existing Parties) Join the Negotiation

- New delegation members at the negotiations may slow down or speed up the negotiation progress. Either can be used to your delegation's advantage if it takes on this new turn of events strategically.
- Educate the new parties in a way that will be advantageous to your delegation.
- Decide whether to use credibility/reasonability – knowing your delegation's material, expressly stating that the delegation is coming in good faith, possibly bringing in a third person/neutral person that has credibility.
- Use same techniques as your delegation would with an inexperienced party, as applicable.
- Understand their interests and priorities/issues.
- Understand the extent of their authority.
- Ascertain the interaction/relationship between the prior delegation members and new delegation members.
- Consider whether to position the newer delegation members against the remaining delegation members.

Facing An Intractable Party

- Sometimes a party is so fixated on its own position, it is difficult to know why it is negotiating at all. Your delegation's first step in this situation is to determine why the party is intractable; analyze what issues it is intractable about and then reassess the delegation's strategy in that light.
- If the an issue becomes intractable, move onto the next issue and return to the intractable issue later.
- If the other party is not accepting your delegation's position, consider proposing alternative solutions.
- Seek to convince the intractable party that its position will lead to failure.
- In the short-term, deal with an intractable party by taking a break or leaving the room.
- In an extreme situation, and as a final step – state your delegation will be leaving, and then if the behavior does not change, simply walk out, ending the negotiation or that session.

If all else fails and no solution will be reached, it is usually a good idea to create a written record of the negotiation to demonstrate that various solutions were proposed – and rejected – and that the other party has proven intractable. Then proceed to decision-makers with more authority than the negotiators or consider using the media to publish this information.

Answering Outrage

When the anger and emotion of a party halts progress, the delegation may have to re-examine the delegation's responses. Confirm the safety of the environment of the negotiation. Once your delegation knows all is safe, several techniques may come in handy for addressing an inconsolable negotiator:

- Use personal skills to reset the tone of the negotiation.
- Call for a break (a "time out").
- Ignore the outrage and calmly move on to the next point.
- Respond with reason.
- Use an ultimatum: explain that it is unproductive to proceed with the negotiation until the outrage is removed.
- Suggest the replacement of the negotiator in order to continue productive discussion. This is best done outside the negotiating room.

Responding To Personal Attacks

A personal comment about a delegation member can make the target embarrassed, angry, resentful, hurt, and lose control. The best response is to put emotion aside, analyze the situation critically, and return the delegation member's focus to the negotiating task at hand.

- Do not respond in kind.
- Tell the other party that the delegation intends to ignore the personal attack and move on.
- Do not let it be personal; be removed from the threats. Use principled analysis.
- Comment that it is not acceptable.
- Show that it does not affect you.
- The delegation may want to return personal attacks by counter attacking on substance.
- Recognize that the personal attack may present an opportunity.
 - Often when a party resorts to a personal attack, it is either upset, or trying to upset your delegation.
- The personal attacks may be part of the other party's strategy.
- Do not lose focus on achieving success as the delegation defined it at the outset.

Countering Intimidation

The other party's attempt at "intimidation" may be displayed through size, power, physical threats, your delegation not being on "home court," police presence, requiring the delegation to wait for a long time, setting up the room in an uncomfortable manner (lower chairs, e.g.), asking questions that your delegation cannot answer, interruptions. There are a variety of ways to address these tactics:

- Play to your delegation's strengths. Once aware of the attempt to intimidate your delegation, focus on the strengths of your delegation's position to neutralize the attempts.
- Ignore the effort and proceed with the negotiations.
- Use the intimidation to your delegation's advantage by giving the other party a false sense of superiority.
- Understand that they are trying to intimidate you.
- Consider ending the negotiation.
- Establish rules that neutralize the effects (*e.g.* bring more people to the negotiating table).
- Be prepared to be intimidated before arriving so that your delegation is less affected.
- In extreme cases, and only after consideration of strategic impact, consider tacit threats in response.

Responding To The Other Party's Leaving The Negotiation

- When another party actually leaves the negotiation table, consider the delegation's options (evaluate whether this is a negotiation ploy or a true termination of the negotiations).
- Implement contingency plan to reorganize/schedule another negotiation.
- Directly or indirectly contact members of the other delegation (this is where inside advocates may be most useful).
- If a negotiating party has a sponsoring intermediary, then attempt negotiations with them on scheduling a future date.
- Consider going public with the walk out – discuss with media advisors before going to media outlets.
- Consider involving a third party with authority (e.g. other government or international body) to assist with restarting the negotiations.

Chapter 8: Concluding Sessions And The Negotiation: Ways To Effect A Successful Resolution

During any negotiation there may be several times when the parties will reach the end of their sessions. If the negotiations are not concluded a process needs to be agreed upon to maintain the momentum and to preserve the progress that the parties will hopefully have made. Reducing agreements to writing, agreeing on future sessions and tasks, as well as how and whether to communicate their progress to the outside world are among the principle ways in which parties can continue to move towards successful resolution. If this work is overlooked, then the gains made and agreements reached during the main negotiation may be undermined or even undone.

The end of a negotiation process often marks the beginning of a new relationship between parties or a new phase of a long-standing relationship. Either way live meetings, communications, public statements and implementation will require continued diligence by all parties.

Confirm Mutual Understanding Of Established Successes

At the end of each negotiation session, it is imperative that the parties confirm each and every significant agreement reached. In this regard the parties should:

- Seek verbal confirmation on every significant agreement.
- Stay calm during this confirmation period and be reassuring to the other party.
- Honor the commitments your delegation's made during the negotiation session and expect the other parties to do the same.
- Avoid trying to take one last advantage in this concurrence step and reject attempts by the other parties to do so. (Sometimes using a little humor such as saying "nice try" helps make the point.)

Summarizing The Agreements

Following verbal confirmation of your agreements, it is imperative to prepare a written summary of these oral agreements at the end of each negotiation session. (Often time this is referred to as “heads of agreement.”) The ultimate goal is always to leave the room with a binding commitment, although this is often not possible with complex agreements.

- Be as clear and concise as the delegation can and try to avoid using ambiguous or vague words easily capable of different interpretations.
 - Have your technical language expert review all drafts to ensure that the written document accurately reflects the parties’ agreements.
- In preparing the summary, seek clarification or corrections where necessary on the different agreements, but ensure that your delegation’s comments are not seen to be changes.
- Whenever possible have your delegation take responsibility for preparing the initial draft of the written summary of the parties’ agreements.
- Be alert, careful, and precise throughout this step.
 - Review the draft carefully with your technical experts, such as the delegation’s lawyers.
- Consider what could go wrong in the implementation of the agreement and address these matters in a written summary.
- Be specific in enumerating and describing each party’s performance obligations. Consider including provisions that impose penalties for noncompliance to maintain the integrity of your agreement.

Identifying A Safe Break Point

The parties should not leave the venue until a written summary has been agreed to and signed by the parties.

- Do not hesitate to take a short break if a more difficult issue arises in the drafting process so as to keep all parties calm and focused.
- It probably will be necessary to take a number of breaks, particularly where there has been a long and contentious negotiation.

Planning the Next Session

Knowing the subject matter and issues to be addressed at future meetings helps to limit the scope of the future meetings. This way, the parties can focus on resolving discrete issues, before moving onto other issues at subsequent meetings. Often, the issues to be addressed will be predicated on what was negotiated or not negotiated in the previous session.

- Identify the individuals whose attendance is essential at follow-up sessions. Individuals bearing post-agreement signature responsibilities on each side should be identified and present at any future meetings.
- Determine when the future meetings should take place. The time frame for follow-up meetings should be realistic. Many factors may affect the timing of the future meetings:
 - The parties may need to confer with their constituencies before future meetings may occur.
 - The parties may need to verify compliance with the agreement; elections may have to occur.
 - Future meetings may be contingent on other factors as well, such as payment of negotiation costs by a third party. At the same time, do not let too much time pass between negotiations so that the dialogue is lost.
- Future meetings should be used to monitor the implementation of and compliance with the agreement. The parties should have in place a method by which compliance can be verified. However, regular meetings should not be the only method by which problems with compliance can be addressed. The parties should construct a procedure to address breaches even when no meeting is forthcoming. An example would be a regular open line of communication, such as a direct telephone hotline between the leaders of the parties.

Agreeing On A Mutual Public Message

Upon the conclusion of each negotiation session, the parties must agree on how they will communicate their progress or agreements to their constituencies and to the public at large. Care should be given to the considerably different views and points of interest of those who will be receiving the message.

- The public message should identify the parties and provide a short, accurate summary of the agreement(s) reached.
- The message should include the goals to be realized by the parties.
- It is important that each party be complimentary of the other in reaching the accord.
- The message should convey a clear belief that the parties see a positive future as a result of the agreement(s) reached.
- Each party may want to send the message a little differently and the delegation should allow for the different needs of the parties in crafting and publishing a message.
- Make sure to account for any regulatory or oversight obligations on your delegation or the other parties that may require a more thorough public examination of the negotiation.

Committing The Final Negotiated Settlement To Writing

At the conclusion of the final negotiation session, it is critical to commit the overall negotiated settlement to writing. This will create a record for all involved, as well as for future parties, so as to avoid any inaccuracies as to the parties' understanding of the agreement. Furthermore, the process of writing will often focus the parties as to whether there is, in fact, an agreement. The agreement may also not be legally enforceable until committed to writing. If the agreement needs to be translated into another language, the act of committing the agreement to writing will also serve to verify the accuracy of the translation.

If possible, the writing should be drafted concurrently with the negotiation, with a final, written agreement produced when an agreement as to all issues has been reached. This way, the writing can memorialize agreements reached as to any issues, serve as tangible evidence of progress in the negotiations, and provide a basis for continuing and future negotiations.

The following is a list of important items that should be included in the writing, although whether to include every item listed below is dependent upon the circumstances.

- The writing should set forth the terms of the agreement.
 - It should be clear, well-organized and concise and should cover all points of the negotiation.
 - It should express the agreement simply. Many agreements fail because they are too complicated, which can lead the parties to argue over false issues.
- The writing should be objective. It should express the agreement in a non-partisan way.
- The writing should memorialize all major issues that were agreed upon during the negotiation, and nothing agreed upon should be excluded from the writing.
 - It is usually advantageous for your delegation to assume responsibility for preparing the initial draft.
 - Often, when the parties leave the negotiation they may feel pressure to recharacterize the negotiation to their constituencies or may (deliberately or inadvertently) change their minds as to what was agreed to.
- The agreement should also include aspirational language. For example, the agreement could contain language expressing the goals of the parties, the purpose of the agreement, in what spirit the agreements are made, and a description of what brought the parties to

the negotiating table. Such language provides context to the agreement itself, and may take the form of a preamble.

- To the extent that there are issues that the parties have specifically agreed are not covered by the agreement, they should be identified in the written agreement.
- The writing should contain clear performance milestones, specify who is responsible for compliance, and to the extent possible, include clear methods of monitoring and enforcing such performance.
- The parties may consider including a statement of what each side is expecting of its constituents in the written negotiated settlement.
- The agreement should be in the language of each of the parties to the negotiations. If the parties speak different languages, or a translation is required for global dissemination of the agreement, then the parties should agree on the language of the translation(s), and select which translation is the controlling translation, if any. Supporting documents, including the executive summary of the agreement, should be in all constituent languages, as well.
 - It is imperative that your delegation have its translator review all documents to ensure that the final documents accurately reflect the parties' agreement(s).

Communications

Once an agreement has been reached the parties should agree upon and issue a joint public statement. The statement should include the relevant terms of the agreement or a summary of the agreement and the parties' commitment to abide by the agreement.

- In general, any public comments regarding the agreement should be made after thorough analysis of how such comments will be perceived by the other parties. It is important not to misstate the actual agreement. A party may feel pressure to publicly recharacterize the agreement to its own constituency; however, in highly charged negotiations, even slight recharacterization may be perceived by the other parties as dishonest.
- The parties should have in place some informal consultative process – for example a “hotline” – a process by which the parties can communicate directly whenever the need arises.
- The parties need a method to disseminate their joint statements and their individual messages. One way to do this is to have a public information campaign, both to let their home constituencies know about the agreement and to convince them of its benefits.
- Sometimes communications to non-participants in the negotiations must be made after the negotiations process has concluded. For example, the negotiating parties may need to talk to their constituencies, local community leaders or local governments and militia to apprise them that a settlement has been reached. The parties need to anticipate the reception of the terms of negotiation by the various constituencies on their own side as well as the other parties to the negotiation.

Complimenting Other Parties

When the written confirmation of the negotiated agreement is concluded, it is important to take the time to compliment the other parties to the negotiation. The parties may be in face-to-face meetings in the future; all will want to enjoy the success of the agreement, and civility will assist with any difficulties in the implementation of the agreement. Creating goodwill during the concluding steps is of great value, which will help the delegation resolve post-transaction issues.

Implementation And Compliance

Understand the ramifications of making promises and failing to keep them. After extended negotiations sessions, the delegations will not want their final negotiated settlement to fail simply because of a lack of attention to the implementation. Focus in advance on the likelihood and source of non-compliance with the agreement. This way, the parties can be prepared for most acts of non-compliance.

- If a party fails to keep a promise, the agreement will likely fail.
- Be mindful of the political, economic, religious, and social realities of the other party as well as the delegation's own.
- The parties should consider drafting a post-negotiation checklist of "action" items and responsibilities. The checklist is an internal writing that includes any open issues and responsibilities between the opposing parties and may also be drafted within a party regarding its internal responsibilities.
- The parties should keep a list of participants and their responsibilities, both during the negotiations and afterward. The parties may choose to draft a schedule delineating responsibilities and deadlines for completing those responsibilities, as well as what happens in cases of non-compliance.
- The parties should consider establishing a regular schedule of post negotiation meetings or summits to enforce the negotiated regime. Such schedule should be determined at the negotiating table before the parties go back to their constituencies.
- The parties need to formulate a mechanism in case a party publicly misrepresents or makes statements inconsistent with the agreement. Otherwise, when one party misrepresents the agreement, the other party may do the same.
- The parties must be prepared to allocate time, money and personnel to the implementation of the settlement agreement, as well as permit the monitoring of compliance with the agreement and enforcement of the agreement. Sometimes this means planning for the political, economic, and human-life toll of enforcing the agreement with the party's constituency. If the parties are not willing to do so or do not have the resources, then they should try to find a third party (e.g., an international peacekeeper) who is able to bear these costs.



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