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.