

Global dealmaking

THE NEGOTIATION

To negotiate the optimum terms and conditions for deals which ensure a truly ‘wise agreement’, one that is mutually beneficial, realistically implementable, profitable and can withstand the inevitable knocks and trials that present themselves at usually the most inconvenient of moments should be the goal of all long-term, strategic business negotiations. In reality this is rarely achieved due to poor planning, unrealistic expectations and more often than not, falling victim to short term ‘escapist’ thinking or, worst still, intimidating opponents playing ‘eyeball to eyeball’ hardball tactics.

This third and final instalment in the trilogy of ‘management toolbox’ articles aims to provide practical advice to ensure effective preparation for a professional negotiating encounter, after all ‘failing to plan is planning to fail’. In addition, although a collaborative approach seeking win-win agreements is always the preferred negotiation style, the theme of tactical deployments and countermeasures is also briefly addressed.

Strategy first, but then always to action

“Let’s worry about what we are going to do before we worry about how we are going to do it”. This was one of the many memorable lines spoken by the actor portraying JF Kennedy in the Hollywood production *Thirteen Days*¹ recounting the events of the Cuban Missile Crisis. It occurs during one of the less dramatic scenes of the film but crystallises in the mind, strategy first but then always to tactics or actions.

Having a sound strategy is mission critical and although it is a favourite topic and buzzword in boardrooms, it invariably ends up with endless discussions and no practical, SMART² actions. In the case of negotiations, an initial strategy is essential and helps you to construct a tactical ‘road-map’ which minimises risk and reduces mistakes, especially in the opening rounds of discussions when

assessment and evaluation of the players and their positions is at its most rampant.

In a strategic negotiation, one that takes a long-term perspective and involves complex issues, one can for example consider two key parameters: is the relationship outcome important and is the substantive, tangible outcome important? For simplicity, this breaks down into four quadrants illustrated in Figure 1, namely collaborative, subordinate, defer and competitive.

Upon first analysis it might be hoped that all negotiations would be collaborative ie the relationship and the outcome will always be important to both sides. However, as many of us know from sometimes bitter experience that is not always the case, and on many occasions it is easy to fall into the wrong strategic approach either due to habit, poor planning or being trapped by the ‘opponent’. Let us consider the four strategy quadrants in turn which attempt to consider the realistic expected environment between the parties (which of course may differ):

Collaborative (Relationship outcome important/ Substantive outcome important)

This strategic option exists where both parties approach the negotiation with a clear intention to work towards a mutually beneficial agreement.

By Dr Paul Charlton

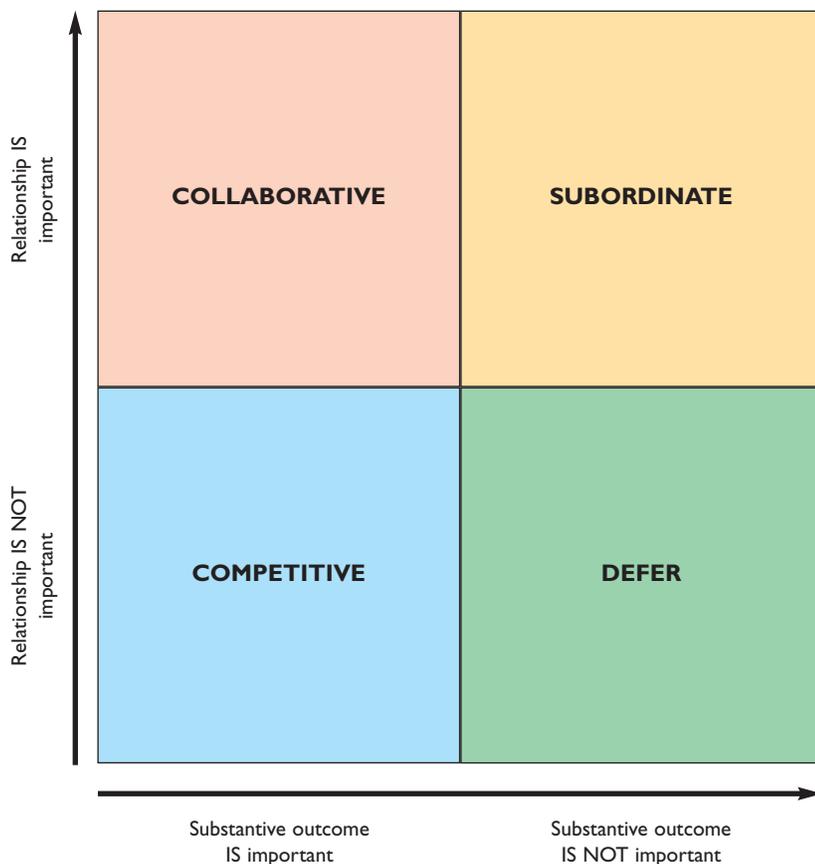


Figure 1 This is more common where a relationship already exists and perhaps an agreement is being renegotiated or expanded in depth or breadth of business activity. In the extreme case ‘trustingly’ collaborative is possibly an option where even the most sensitive of material is exchanged, although most negotiators prefer the ‘principled’ collaborative approach as championed by the ‘Harvard Negotiation Project’ and the work of Fisher and Ury³ which focuses more on the referral to mutually agreed standards of conduct. In addition to the actual negotiation itself, it could be argued that for true win-win approaches, negotiators should also attempt to either keep the discussions in this quadrant or drive it there from the other two ‘active’ quadrants – the subordinate or competitive.

Subordinate
(Relationship outcome important/
Substantive outcome not important)

In the extreme case of ‘openly’ subordinate, this approach is problematic and it involves compromising tangible outcomes for the sake of maintaining a relationship – a problem witnessed many times. Far more effective is the ‘focused’ subordi-

nate strategic approach that is essentially the ‘foot-in-the-door’. An example may be to agree to a reduced services fee for a set period of time on the strict understanding that when milestones are reached an increased fee will apply. This approach accepts a degree of short-term compromise for greater rewards on a medium to long-term basis.

Competitive
(Relationship outcome not important/
Substantive outcome important)

To be clear, being competitive is always in the mindset however in this context, the strategy suggests the deployment of tactical measures to help achieve your aims. This should be applied with care only when encountering hardball negotiators and when one must fight ‘fire with fire’ and only after genuine attempts to help guide the individual into the more collaborative mindset by demonstrating the possibility of by working together, a bigger cake can be baked.

Defer
(Relationship outcome not important/
Substantive outcome not important)

This is the non-active quadrant and quite simply demonstrates that if the outcome and the relationship are not important, why are you negotiating? In the real world this translates into either a polite deferral, delegation to junior staff or even ignoring a request to negotiate, although the old adage ‘never burn a bridge’ comes to mind. Above all, deferral is most definitely a strategic decision and not just a fallback decision and yet it is amazing how often expensive and time-conscious managers will engage rather than consider their strategic options.

The take-away from this model is that right at the outset the correct approach is being evaluated and risk is being managed, considering the fact that all negotiations are unique, highly contextual and dynamic. One can imagine walking into a room with an armoury of tactics which are hastily fired off when the other side’s genuine intention was to collaborate!

Of course you may not get it right, but at least by applying thought and considering the history, issues, needs and motivations of the other side, the chances of success will be improved – and improved even more so if you have considered the actual negotiable variables in detail.

The negotiation ‘road map’

So, armed with an initial strategy that is considered to be the most productive in context what are you actually going to talk about and in what sequence? As with the concept of strategy leading to tactics, two concepts

should assist you in the process of clarifying the tactical, tradable variables on the table (the ‘basket’) and the additional resource of intelligence and support material to strengthen your position (the ‘briefcase’).

The negotiation ‘basket’

Consider that for every negotiation you carry into the room an imaginary basket in which are all the variables potentially for negotiation. Actual deployment and discussion of these variables is guided by your initial strategy, ‘tipping it out’ on to the table in a more collaborative or subordinate approach, or occasionally removing a variable from the basket and waving it under the nose of the opponent in a more competitive environment. The question is... do you really know what is, or more correctly what should be, in your basket?

This provides a great opportunity to brainstorm the scenario prior to engagement in the negotiation and map out the findings in the following steps:

- Consider all possible variables that can be traded from you and your company’s perspective and list them out. The longer the list and more specific the better – taking care not to exclude anything at this stage, even if the variable would require higher approval for subsequent negotiation.
- Undergo the same process but from the other side’s perspective. It may be that many variables are common but additional variables frequently appear that, by definition, are of interest to other side but perhaps not yourselves, a possible variable that could be dovetailed into forming a negotiation foundation.
- Construct a table with the variables on the left hand side and construct four adjacent columns titled: ‘Importance to me’, ‘Financial cost to me’, ‘Importance to them’ and ‘Financial cost to them’.
- Work down the variable list and assign, as best as possible, a score (let’s say from one to five where one is lowest) for each column, for this particular negotiation, in context. Consider that for any one business scenario application it may be the variable list is predominantly constant but the relative importance and cost implications for each variable may change. It is at this stage critically important to distinguish between ‘importance’ and ‘financial cost’. IT Infrastructure managers for sure want a competitive price but the importance of a stable and secure solution is paramount.
- From the data produced, it is now possible to construct two simple charts to graphically represent the variables (Figure 2). In this fictitious example, the ovals represent the different variables positioned to demonstrate the hypothetical differences in perceived important and cost to both sides.

The purpose of this exercise above all is to provoke thought and to help ensure that both side’s interests and needs are considered, both in terms of importance and of course financial implications, two parameters which are not necessarily intertwined.

This is not intended as a definitive exercise; rather as an indicator that there are indeed many variables open for discussion and each has its own unique relative importance and cost from each perspective. As a result of this exercise, one should now:

- Have a very good idea what is in the basket from both side’s perspective.
- For each variable, a relative importance and cost associated with it, again from both perspectives.
- Each variable can now have a sequence marker with regards to when to tactically deploy and discuss it and what you may expect in return should you wish to trade it.

This third point brings us nicely back to our initial strategy, do we openly reveal all the contents of our basket with the associated importance and cost values hoping the other side reciprocates? Do we trickily deploy a ‘red herring’ issue right at the beginning, falsely representing a variable to sidetrack the other side? Prudent advice may be to consider the negotiation context and work from a pre-determined ‘road map’ sequence, engaging in a principled collaborative mode, understanding that at any time, a bump in the road can require immediate corrective action and perhaps a change in the game plan.

Another important take-away from this exercise is that we hope to see a diverse spread of the variables across the charts. This visualisation gives confidence that a subsequently well-planned negotiation could result in a truly wise and mutually beneficial win-win agreement. The diversity on the charts highlights the differences between the two sides and is exactly what is required for the dovetailing process of effective negotiations.

Potential impasses are identified by their positioning in the bottom right of the charts and thus these issues may be identified, discussed and agreed to be dealt with later whilst less controversial issues are negotiated from the other regions of the chart. The ‘sticky’ issues are still addressed but after the parties have entered into dialogue, built a rapport, enjoyed some initial successes and built a momentum which allows what was previous an impasse to be successfully managed.

The above tool is not a panacea but if applied correctly in harmony with a strategic approach, the negotiation path is certainly simplified. But there is still more that one can do in the preparation phase

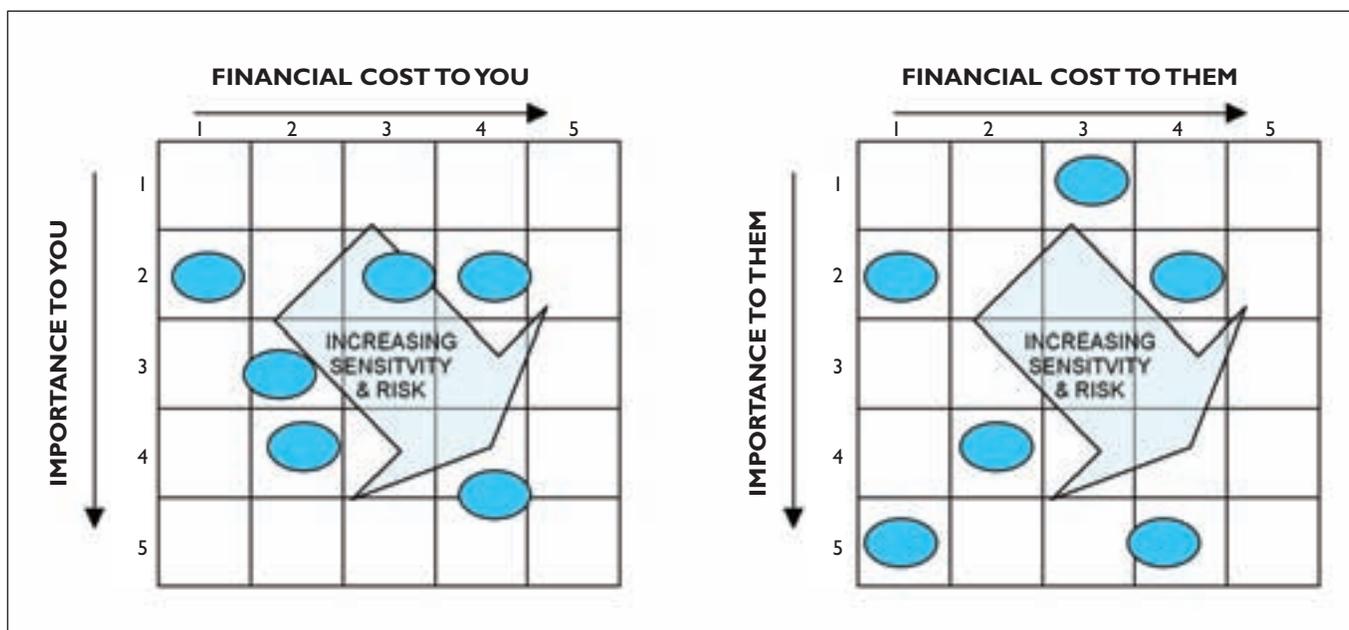


Figure 2 to tip the power balance once again to your favour – to prepare the negotiation ‘briefcase’.

The negotiation ‘briefcase’

Sorry for ‘loading you up’ metaphorically speaking but imagine that you are not just carrying a basket, for which you now have a detailed inventory, but also a briefcase. A briefcase! ...you already no doubt have one but is it really filled with assets, which can be tactically deployed to your advantage?

The idea very simply is to carry with you any support information either internal, or better still external, documentation, literature, facts, figures and references which will strengthen the impact of your discussion. To ensure this is the case, it is again recommended to brainstorm with colleagues and compile a definitive list, not so much of what you want to tell, but what the other side needs to hear – and that they believe it. Forgive me, I am sure this all sounds like commonsense, but like a lot of common sense issues, they are not commonly applied.

During the construction of the negotiation ‘road map’, sequencing the discussion with trading of the variables, it is a primary objective to supplement the discussion with timely and effective deployment of such ‘nuggets’ from the briefcase. In professional negotiations, good timing is an art form and is termed the ‘ripeness of timing’ – optimally timed deployment of negotiation assets is priceless!

In order to help cement these tools in the mind within the limits of this short article, let us consider a generic scenario to reinforce the key points – a

subject close to everyone’s heart, the compensation package negotiation.

Example – the compensation package negotiation⁴

At the outset I am careful not to call this the salary package negotiation, although that is primarily what happens – the discussion is based around actual salary figure rather than looking more creatively and collaboratively.

The strategic approach is as always context dependent. If you are seeking a new position with a new employer and have little experience, a focused subordinate approach may be appropriate. If you have been headhunted, a more competitive approach may be called for and if you were an existing valued employee a more collaborative approach would most probably be the preferred route. Interestingly the deferral strategy is a classic countermeasure from an elusive line-manager who would prefer not to get caught up in time consuming and possibly awkward salary discussions.

The fun really starts when you consider the ‘basket’ and the ‘briefcase’. Brainstorming from the employee often reveals a mass of variables from health cover, trips abroad, holiday days, project work, childcare, company car, mobile phone, hand held devices and pension scheme. In addition from the employer’s perspective, duration of contract and confidentiality agreements.

Of course many variables are covered in company protocols and standard terms and conditions (by the way, a standard tactic countermeasure is

resorting to external information to support one's argument – direct from the 'briefcase'), but the purpose of the exercise is not to judge the variables in the first instance, with this you run the risk of a self-fulfilling prophecy. Rather it encourages creative thinking which in the process may help you to craft negotiation strategy and tactics where both sides leave the table, not with a compromise, but a genuine win-win where the employee has reduced hassle and effectively has more per month in the pocket and the employer has enhanced reassurance in retaining a mission-critical employee and, due to tax concessions and tapping into broadly available corporate resources, has maintained a wise agreement well within budget.

And what about the briefcase? Well you can imagine the timely deployment of a summary of recent successes, results of recent appraisals, letters of recommendation and satisfaction from key clients or even, with the ripeness of timing and risk management clearly in mind, a job offer from a competitor.

This final point, deployment of a competitive job offer highlights probably the most important aspect of power management in negotiations, your walk away power, or as Fisher and Ury call it, the BATNA, the best alternative to a negotiated agreement.

Power management – the 'BATNA'

It may sound counter-intuitive but it is extremely important in any negotiation to have a clear idea what you will do if the negotiation fails to reach an acceptable agreement with which you are satisfied. Particularly in the case of 'sellers' there is a tendency to seek an agreement at any cost and that any agreement is better than no agreement. Wrong, most especially in the complex and high-level negotiations of the hi-tech industries.

This point was observed on numerous occasions by the author in the 'post-bubble' world of funding, where CEOs of struggling enterprises would approach venture capitalists with a, to put it directly, puppy-dog mindset, happy to take any funding they could get at the cost of staving off the inevitable and selling off patents and rights in the process. Better to have had a BATNA, perhaps to accept closure of a department not core to the business model, to downsize, to approach other VCs or even to declare bankruptcy and then live to fight another day rather than to effectively 'sell off the crown jewels' (sorry, although I have been truly globalised over recent years, I remain in my core an Englishman).

The BATNA is not necessarily a preferred choice, it may be difficult to do but it is designed to protect you and to give you a psychological advantage during the negotiation process. Without

a BATNA, the other side has an upper hand before you have even opened your mouth and your body language has probably communicated it the moment you walk in the door – do not give the other side that satisfaction, rise to the challenge.

By rising to the challenge why not utilise the same brainstorming session for the strategy, basket and briefcase and apply the same approach by asking the simple question: "What shall we do if we cannot reach a wise agreement?" List the options, rationalise, pick the best one and develop it. Then do the same exercise to try to predict the other side's BATNA and do your very best to find ways to diminish its power.

The BATNA then plays an essential part of your negotiation 'road map' because it will be the benchmark to which you can evaluate the proposals on the table at any given time. Further, your decision to deploy the BATNA and when is a tactical move. It may be better to retain the BATNA as confidential and gain the psychological reward to know that you have other options. Or, and to follow the compensation package analogy, you may find it appropriate in the latter stages of an unproductive negotiation to deploy a formal job offer from a competitor, understanding the risks associated with such a move.

And that brings us to the final point of the BATNA, you must be prepared to follow it through otherwise it is worthless both as a tactic and as psychological protection from a deal that may turn and bite you hard in the weeks and months to come.

So with your initial strategy defined, your briefcase and basket firmly in hand and your BATNA clearly in mind what happens when all crashes down and the other side just wants to play hardball and deploy all the dirty tricks in the book to achieve their one sided aims?

'Tricky' tactics – the countermeasures spectrum

There is a common misconception that negotiations bring to mind tough positional approaches with heavy use of tactics and ploys with outrageous initial demands, last minute nibbling of concessions, emotional outbursts, strained silences, red herrings and the like. Well, yes it happens but to a far less extent than some may believe, the strategic, long-term and inter-dependent nature of the hi-tech industry lends itself to a collaborative win-win approach and it is our duty as the players to ensure that this is reality – if only because it serves the common good of all – to help bake a bigger cake.

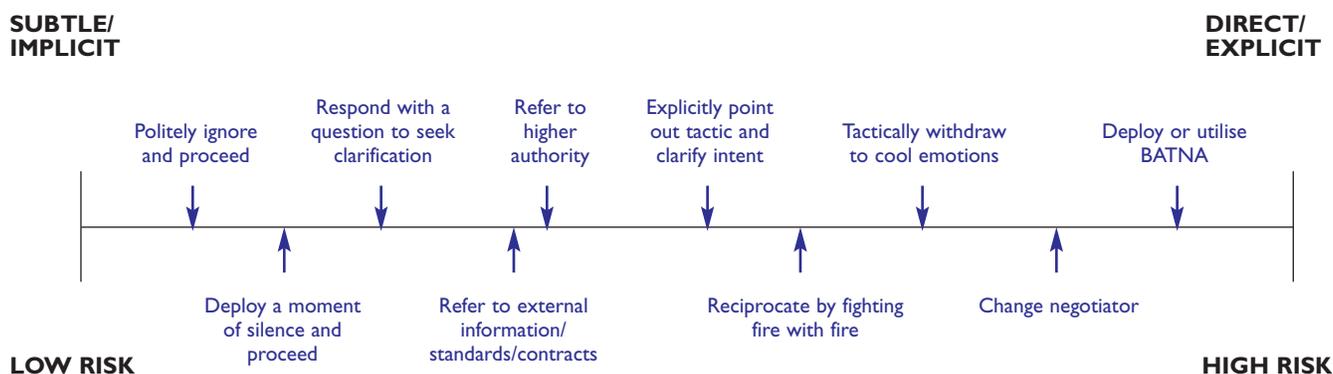


Figure 3 Detailed analysis of individual tactics and countermeasures is beyond the scope of this brief article but there are some key points which can be taken away and practised with great effect and are summarised in the ‘countermeasures spectrum’ detailed in Figure 3.

Essentially the message is that whatever the other side may wish to fire at you, you chose how you respond. Easier said than done for sure but there is great truth in it and it brings to mind the paraphrased words of Eleanor Roosevelt: “People only can hurt me if I let them”. In short, I can chose how to respond (not react) to the other side, and this can range from a silence, a subtle smile and proceeding regardless, to asking a question in return to seek clarification for a particular viewpoint, to explicitly pointing out the perceived tactic and requesting justification, to deploying the BATNA and walking out of the room – with of course professionalism at all times and ensuring the ‘bridge’ always remains in place.

There are always a multitude of options subject to context, interpretation and degree of risk, variables that at the end of the day only you will be able to judge but being confident in the knowledge that if all else fails, no response is better than a gut reaction which could lead into an emotional spiral and subsequent removal of objectivity. In short, you empower yourself and decide how you chose to respond in any given situation, even if that means a quick ‘bio-break’ to refocus the thinking, formulate an appropriate response and burn-up any surplus adrenaline.

If all else fails and your negotiating counterpart is huffing and puffing and trying to blow your house down, I would candidly paraphrase the words of Bobby Kennedy: “If I am up against a real hard negotiator, posturing and beating their chest, I simply imagine him wearing a set of women’s red underwear” – just try not to smirk in the process or

you may encounter a reaction you had not bargained for. Forgive the lack of political correctness but hopefully the point is made, the biggest challenge in negotiation is in the mindset, prepare well and stand your ground, bending like a reed in the wind if necessary, and by practising some of the points in this article, your chances of business success, and self-confidence, should increase and the negotiation process itself should become less of a chore and more of a quest for excellence.

Summary

Consider your initial strategy bearing in mind that the negotiation will be dynamic throughout its whole course.

The ultimate goal of the negotiation should be a principled collaborative approach and drive it there if you can but fight ‘fire with fire’ if necessary. Brainstorm with your team the basket, the briefcase and the BATNA and construct a negotiation ‘road map’. Take care deploying tactics especially when the relationship is important but roleplay the countermeasures remembering that the simplest and most effective response is sometimes no immediate response.

Apply emotional intelligence – stay calm and courteous at all times, never burn a bridge even under extreme provocation. **DDW**

Dr Charlton is a management coach specialising in sales, marketing and management development, serving high-technology clients around the world. He runs regular coaching events on a global basis and to maintain his commitment to academic study, he is visiting faculty at the Indian Institute of Management, Bangalore, teaching International Business Negotiation, Strategic Hi-Tech Sales and International Management Development. He can be contacted via the PCC website www.paul-charlton-consulting.com.

References

- 1 ‘Thirteen Days’. Beacon Pictures, 2000.
- 2 SMART – Specific, Measurable, Achievable, Realistic and Time-bound.
- 3 ‘Getting to Yes’. Roger Fisher and William Ury.
- 4 A worksheet for this tool is available from the author.