

READER NEGOTIATIONS

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1. INTRODUCTION

Negotiations are a means of getting your way, although more often than not, not all the way. The idea of negotiating is as old as mankind. It is a game of question and demand, give and take, presenting your own position in the best possible light and convincing others. Parents for instance negotiate with their children about pocket money, employers with employees and states between them.

Compromise often appears a standard element of negotiations – each party moderates its demands and the final result happens to be acceptable (just) to all parties – but that is not a necessary condition. Sometimes one party completely gives in and sometimes parties reach during the negotiations a complete new solution which they did not think of beforehand.

This reader focuses on negotiations between states, between states and international organisations and between international organisations. Furthermore, the EU will get some more attention than other frameworks. I will deal with some theory first, then focus on the process of negotiating, some specific aspects and conclude with the special elements of the European Union.

2. THEORY

The theory of negotiations has been divided into definitions and concepts, some history and specific forms of negotiations.

2.1 DEFINITION AND CONCEPT

Negotiations have been defined in many different ways. This is understandable if you keep in mind that people negotiate in many different situations and the concept exists for centuries. This long history also applies to negotiations between states as an instrument for the maintenance or promotion of mutual relations. However, do not forget that the modern state only started to originate from the Treaty of Westphalia in 1648 and the idea of the nation state only in the 19th century.

Forsyth provides a general definition of negotiations.

Negotiations take place if two or more people with different perceptions meet to try to agree on a specific topic.¹

Meerts is more specific.

The **process** whereby two or more **parties** attempt to **settle** what each shall **give or take**, or perform and receive, in a **transaction** between them²

Forsyth talks about *two or more people* and Meerts about *two or more parties*. The similarity lies in the *two or more*. *Parties* may be *people* but rather suggest the representation of organizations. In his trainings Meerts mentions people, organisations and states. Forsyth does not exclude this wider notion but does not include it in his definition.

Meerts focuses on the process (*process, transaction*) while Forsyth stresses the content (*perceptions, topic, agree*). Both stress the idea of agreement (*agree, settle*) but Meerts elaborates on it (*what each shall give or take or perform and receive*). In his trainings Meerts stress a number of additional elements:

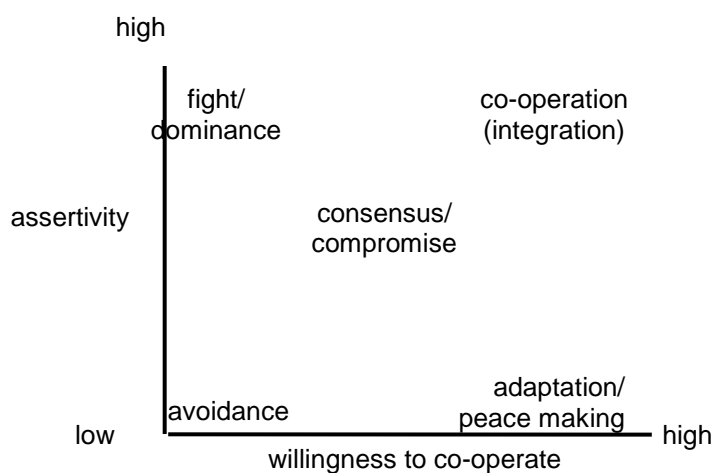
- ☛ Conflicting or even contradictory interests, blocking the start of negotiations.
- ☛ Voluntary relationship; if people do not want to negotiate, insistence of doing so is a waste of time;
- ☛ Division of means or exchange of activities: what parties swop between them may be either material or immaterial.
- ☛ Circumstances of incomplete information: a negotiator not only has incomplete knowledge and understanding of the considerations and interests of his opponent but all parties also deliberately try to keep their cards to their chest.
- ☛ Formalised process: each groups has its own rules.

In his MA thesis Maartens places negotiations within the communication discipline³. This approach clarifies the personality of the negotiator, the message and the medium (communication channels). Furthermore he stresses the interests of parties, the structure and the key rules of negotiations. These rules concern for instance the nature of the contact, the involvement of parties and the objectives negotiators want to reach.

I would like to stress the point of interests. People and ‘their’ organisations represent interests and want to defend them in the best possible way. Interests may be served with co-operation while in other circumstances problems with the best defence of interests need to be solved.

This emphasis on interests coincides with the ideas about bridging cultural differences. The basis for doing so lies in respect but takes shape through common interests. Just because parties from different cultural backgrounds recognise common interests, allows them to agree on a certain result. This idea of respect and interests applies for instance to military co-operation within NATO as well as the international women conference in Beijing.

2.2 HISTORICAL DEVELOPMENT



Mastenbroek researched the development of negotiations over the last few centuries. He starts with the distinction between negotiations, fight, flight and submission as ways of solving differences of opinion. These four are related to one another by assertivity (the degree in which a party defends his own interests) and the willingness to co-operate (see chart below). In our present civilization we consider negotiating as the reasonable alternative to fighting. This perception originates from a long de-

velopment over time. Mastenbroek summarises this development as follows.

- ④ In the beginning we had only limited self control (*low level of drive repression*), self limitation varies and moods and actions tend to the extreme.
- ④ Limitations then become more constant and equable with a larger variety in behaviour and decreasing contrasts. Intentions become less directly visible.
- ④ Finally the limitations become more flexible, allowing some emotions (*controlled decontrolling of affects*). Parties aim at the development of reliable relations in combination with the acquirement of what one wants.

Mastenbroek recognises two reasons for this development, interdependence of states and continuity of relations⁴. The mutual dependency of states on one another results ultimately in making fighting useless. As a state you may hardly isolate yourself from other states, if alone because you always need things from abroad. Autarchy is not an option. During the Cold War Albania tried to maintain autarchy but with huge negative consequences for the population.

The continuity of relations between states shows a similar inevitability. A state cannot but maintaining relations with neighbouring states over longer periods of time. Each state has its own place on the globe and cannot easily move. The only possible exception might be Poland, which Michener called a *country on roller skates over the map of Europe*. However, the constitutional set-up of a state may change (from communism to democracy), a country may split apart (Yugoslavia) or integrate into a larger whole (Germany). The area remains, the borders and organisation change.

Choosing for negotiations instead of fighting implies control of your emotions, the emotion management. During negotiations parties need to follow a businesslike approach to conclude the negotiations with success. Over the centuries a businesslike approach gained importance because experience showed that emotions do not promote the speed or success of negotiations. However, emotions do play up during negotiations, just because the interests may be large and misunderstandings lie just under the surface.

The businesslike approach to negotiations with ever more limited scope for personal emotions does not imply that you would never see an experienced negotiator getting angry. However, in such a circumstance you have to wonder whether the emotion is real or whether the negotiator acts up. In the same vein you will find lots of tricks of the trade. Negotiators for instance may sell a minor concession as a major gesture in order to build up goodwill for a later stage of the negotiations. The French are accused of the same tactic. They claim every position which comes internationally available, whether they have a suitable candidate or not. In a later stage they may withdraw their candidature but ask at the same time for compensation for this concession. Mastering languages may also help you to obtain a personal advantage. Newspaper reports mention that a former Netherlands Permanent Representative to the EU often used French in negotiations, forcing his colleagues to get the message through the simultaneous translation and then to try to catch up.

The characteristics of the persons involved and the subjects involved make each negotiation unique. This uniqueness does not prevent learning experiences for other negotiations, things you might approach another time in a different way, methods used, preparations etc. In the evaluation of negotiations you need to recognize the unique character of the negotiations and prevent it from spilling over in defining the lessons learned.

2.3 MAIN FORMS OF NEGOTIATIONS

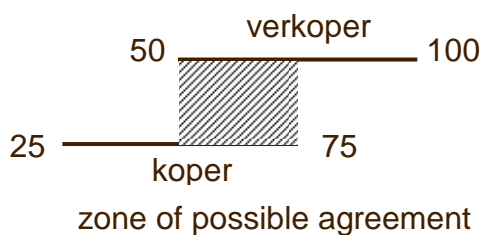
Scientific analyses differentiate negotiations according to participation, nature and result. Participation encompasses bilateral (negotiations between two states), multilateral (negotiations between more than two states or with or within an international organization) and plurilateral (nested negotiations or negotiations within negotiations, like EU enlargement).

According to nature negotiations have been divided into distributive and integrative. Distributive negotiations take place between two parties, not more. They are unique (taking place only once), focus on one topic and do not have any further consequences. Integrative negotiations take place between two or more parties, which will normally meet again, discuss several topics at the same time, could be repeated and may have consequences through the interdependency of the parties. I will discuss distributive and integrative negotiations further below.

Regarding result we notice synthesis, synergy and compromise. The idea of compromise is often linked to negotiations in our minds but it is not the only possible result of negotiations. A compromise implies that all parties give in something but are still able to defend the final result to their principals or supporters. A good example of a compromise is a coalition government. Another possible result if parties cannot reach a compromise is synthesis, a thick document with the positions of all parties and which in the end solves nothing. Lots of UN document may serve as examples. The third type of result is synergy, a completely novel idea of which parties did not think of beforehand (or hardly so) but offers nevertheless a solution to all parties. The original idea of a multi-speed Europe (before it became contaminated with compromise) is a clear example of compromise.

2.3.1 DISTRIBUTIVE NEGOTIATIONS

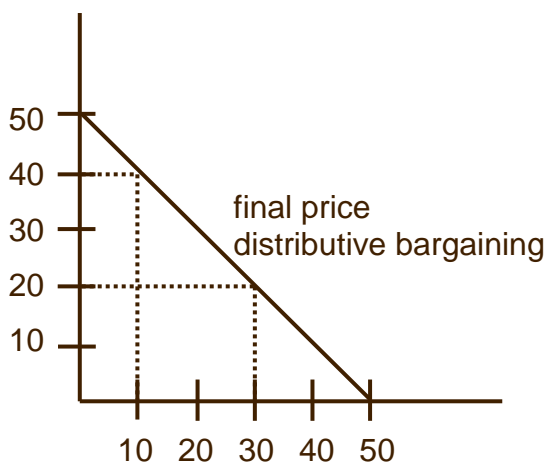
Distributive negotiations are a basic form of negotiations. An example might be buying a second hand product on the basis of small ad on the notice board of your local supermarket. You phone, go over to the seller and discuss the price. The seller has a minimum price in mind, the buyer a maximum (the reservation prices). Between the two you normally find some space in the sense that the minimum price of the seller lies below the maximum price of the buyer.



If that is not the case (minimum price of the seller is higher than the maximum the buyer wants to give) a deal is not possible. The earlier mentioned space between the two reservation prices is called the Zone Of Possible Agreement (ZOPA). The final prices seller and buyer agree upon lies in principle between this ZOPA. In day-to-day reality

people do not often think so explicitly about their minimum and maximum and they allow themselves to be convinced by for instance external appearances or remarkable performances.

Game theory describes distributive negotiations as win/lose. In such negotiations the fact is that the profit of the one represents the loss of the other. If the final price is higher, the seller gains more to the detriment of the buyer.



On the other hand benefits a lower price the buyer and to the disadvantage of the seller. From such a point of view the price moves back and forth across the ZOPA (whether determined beforehand or established during the negotiations itself), influenced by the value given to the product concerned but also by psychological and other factors. Who has the best story? Hence, both parties aim at a maximum profit to themselves and a maximum loss of their counterpart. This is called a fixed-sum game, a game in which parties do create new values.

Experience shows that the first offer on both sides should best fall outside the ZOPA in order to end up in the middle. If not (first offer inside ZOPA) the party concerned has already sacrificed part of his negotiating space. Another lesson from real life is that small countries are often too modest in negotia-

tions, giving in to larger countries. Furthermore, moving beyond pure distributive negotiations, negotiators could better have an aspiration level (a profit margin) than only a reservation price.

Distributive negotiations also clarify why the preparations of negotiations are so important. You may try of course to get to know the reservation price of the other party but certainty about it is hard to realise. However, you may obtain useful information about the nature of the product and a reasonable price level. With such information you protect yourself against convincing circumstances. A business-like attitude is easier to realise because you have more knowledge at your disposal (uncertainty reduction).

On the other hand evaluation of the negotiating process also offers some lessons on how to play the game better next time. You may learn how sensitive you are to bluff or whether you are capable to see through it. You may also notice the difference between what people say and what they intend. The real intentions of people often stay for a long time under the surface. However, this does not imply that you cannot do business. You do have common interests (the product or service, the one wants to sell and the other wants to buy) but also have different positions in the process.

Characteristics of pure distributive negotiations are that it concerns (1) single transaction about (2) one topic and with (3) one price between (4) two monolithic parties (parties with only a single interest within this process) without (5) a further relationship between buyer and seller (no mutual relationship, no repetition of the transaction). Agreement is (6) not required but if both parties do reach an agreement it is (7) binding. Normally speaking one party gains more than the other none of the parties threatens the other. However, seller and buyer may try to build up pressure on the other but such is nothing more than the usual psychological side of the game.

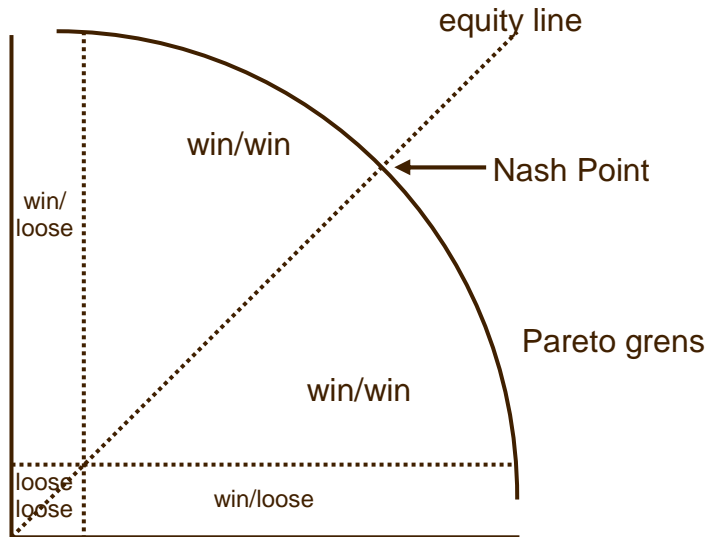
In real life you may sell something to someone you know already for a longer time but in such a case other factors play up. If you sell a bad care to a family member, you may hear about it for years. If parties know one another, you may get pressure for a special price, e.g. on the basis of friendship. Those are variations on purely distributive negotiations, contaminations of the model if you like.

Another deviation from the theory of distributive negotiations consists of a seller with two possible buyers, trying to play the one against the other (e.g. take you time to think things over but do know that someone else is also interested). Such a ploy may of course only succeed if both parties do not know of each other's existence. If that would be the case the two of them could try between them to put pressure on the seller. Both exceptions to the model (a relationship between both parties and more than one possible buyer) represent steps in the direction of the other main type of negotiations, integrative negotiations.

2.3.2 INTEGRATIVE NEGOTIATIONS

Integrative negotiations form in many regards the opposite of distributive negotiations. The two or more parties know one another already for some time and often deal with another. The negotiations focus on more than one topic and exchange between these topics (package deal). All parties concerned gain because during the negotiations values are created. A product or service, delivered by one party, may have a higher value for the recipient than for the supplier. The basis of integrative negotiations rather consists of co-operation than conflict.

A good example of integrative negotiations may be found in the weekly meetings of Coreper, the *Comité de Représentants Permanents* or the group of Permanent Representatives to the European Union of the EU's Member States. This Coreper meets weekly to decide, to prepare decisions of the Ministerial Councils and to co-ordinate between them. They depend on one another as in a prisoner's dilemma. If one plays tricks on another, it will certainly backfire (probably with additional force) in the future. Such a meeting is of course not a children's playground but the idea behind it is correct. It also has its positive effects. If one of the Permanent Representatives had to swallow his pride one week, he may expect a slightly more forthcoming attitude from his colleagues the next week.



The theory of integrative bargaining is represented by the drawing above. The two axes (the straight lines) represent two equal parties and the value they may create. The further you move from zero or the crossing of the two axes, the more value a party creates. The two dotted lines represent the value with which a party starts the negotiations. If the result of the negotiations falls in between an axis and the corresponding dotted line, one party loses and the other gains (win/loose). In such a case the negotiations have failed. This is even more the case if this happens to both parties in the drawing, represented by the small box in

the left bottom corner. In such a situation both parties have lost value in comparison to their starting position (loose/loose).

Integrative negotiations only succeed if both parties create value (the area above the horizontal dotted line and to the right of the vertical dotted line, limited by the circle segment). Both parties gain in view of their starting position (win/win), although normally one party gains more than the other. If the result of negotiations is positioned on the slanting dotted line (equity line) both parties realise an equal gain. The Pareto border (the circle segment) indicates the maximum profit for both parties. The Nash Point is the point at which the equity line crosses the Pareto border, representing the situation in which both parties gained both the maximum as well as equal values.

Although this graph represents many different elements, it is not complete. For instance the time dimension lack as well as the trust both parties have in one another. Furthermore it only represents two parties. An ideal world does not exist – and in such a situation you probably do not need to negotiate – and ideal negotiations neither. For this simple reason you will probably not even come close to the Pareto Border and you will not find yourself in the end on the equity line either. Such real life limitations may also be found in the above mentioned example of Coreper meetings. Sometimes one of them has to give in more than he intended to but this creates a willingness in the others to be more forthcoming the next time around. To realise such a balance one needs to trust one another and each party should be able to perceive the bigger picture.

3. THE PROCESS OF NEGOTIATIONS

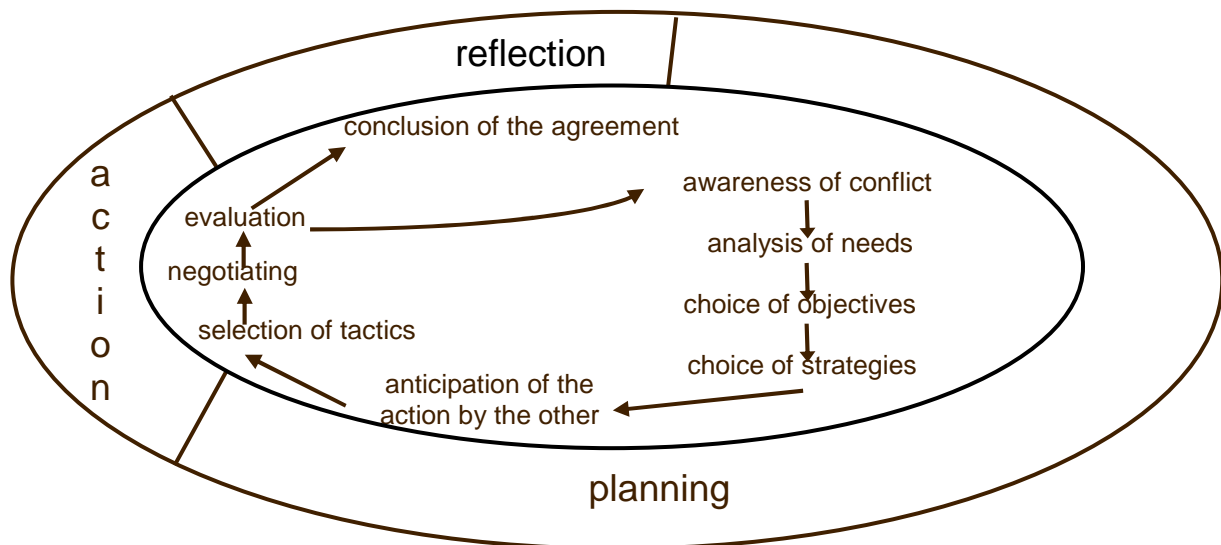
Much research focuses on the process of negotiations, what has to come first, what then, which phases may be discerned, what might happen in parallel, how do you conclude negotiations, etc. Kennedy distils from his research eight phases, later condensed to four. These eight are *prepare* (prior to negotiations, see below), *argue* (demonstrate, presenting and defending arguments, debating being the art to bring a subject on table and to discuss it without giving in on one's own position), *signal* (an indication of willingness to move if the other side comes up with a proposal), *propose* (tabling ideas and suggestions, mostly in the form of 'if ... then'), *package* (the way of presenting a proposal by including the maximum amount of interests and avoiding most limitations), *bargain* (further development of an 'if ... then' proposal), *close* (conclusion) en *agree* (written record of the result)⁵.

Forsyth sees the core of the process in identification, discussion, organization and the agreement on conditions. Identification deals with the listing of topics you would like or has to talk, but also the preparedness of the other parties to do so. It takes two to tango. Identification also encompasses all prepa-

rations on content, what you know about the perceptions of other parties, what are the different elements of your own position, which are your arguments, how can you deal with the arguments of other parties, which concessions do you possibly have and under which conditions can you bring them to the table, what defines your minimum result etc. Included in this list should also be your BATNA: the Best Alternative To a Negotiated Agreement, what would you do without any result from the negotiations? The related perception might drive your willingness to table concessions. These preparations in fact take most of the time of a negotiations cycle (below) or at least should do so according to theory. In reality you notice over and over again that preparations show to have been insufficient.

The other or non-content oriented part of preparations falls under the heading ‘organisation’. These preparations run from the availability of a meeting room to the procedures parties want or will follow to reach a result. Do not underestimate the importance of this part. People and their negotiations are influenced by lighting (light intensity, artificial or natural light or a combination, facing windows or the other way around), the temperature of the room, the amount of working space at the table, the distance from other people, catering specifics, toilet facilities, you name it. Some of these also have an intercultural connotation. Experienced negotiators do play with those factors.

The graph below (negotiations cycle) by Paul Meerts of the Netherlands Institute of International Relations Clingendael is simple as far as the different phases are concerned. It starts with preparation, continues with the negotiations proper and looking back on the negotiations. The last aspect does not receive sufficient attention in practice, in particular if one takes into consideration its size in the cycle as a whole. The reason is simple. Negotiations is often something in addition to the normal job to which you also return after the negotiations. Because the normal job is not suspended during negotiations and hence, a nice pile of work is awaiting you. While you deal with this work, you do not do anything with your notes, scribbled during the negotiations proper. In the end these notes are not being used for an evaluation and may end in a file or more often than not in the bin.



All these daily duties notwithstanding an evaluation has much to offer. You learn both at the level of your individual self and the level of the group. The former offers lessons on your own preparations or your behaviour during the negotiations. The latter offers insight into a better preparation of the position of your own party, to bring this position across and how to defend it. On both levels you also learn how you may react to the positions by other parties and how you may deal with them. These and other lessons help you in later negotiations to act in a more efficient and effective way, promoting smoother negotiations and resulting in better results.

The importance of good preparations may hardly be exaggerated. You have to know your own position in every detail and be able to defend it but you should also analyse the positions of other parties to

the maximum extent and in the most objective way. You have to determine your own strategy and tactics but also how you are going to deal with the expected strategy and tactics of other parties. We already mentioned your minimum and maximum position, as well as BATNA. Concessions are those parts of your own position which you may abandon under certain circumstances to create a positive image, to improve the atmosphere or to obtain a partial result (concessions by others). An important element is also to consider the consequences of a result. This result often has the form of a package deal, a combination of a number of points, often not or hardly related to one another, but as a whole acceptable to all parties. If you start to bring one element into discussion afterwards, the whole deal will come unravelled. Furthermore, as part of the development of your strategy, you have to think about coalitions, who is on your side and may support you during the negotiations. Last but not least your own individual attitude is quite some importance. How are you going to present yourself to the others?

Embassies play a major role during the preparations of negotiations between states. They often make a good assessment of the position of their host-country. They also have several possibilities for informal preparatory discussions. In this way bilateral Embassies may often play an important role during multilateral discussions (a sometimes overlooked function).

The British professor Michael Clarke once told that he the approaches of Western European countries places on a spectrum running from Great Britain to France. The Brits take their preparations in hand as if they are a game of chess. The beginning of the negotiations is like the beginning of a game of chess. You agree on who is allowed to make the first move (white). During the preparation you may imagine what possible first moves are feasible. You may then consider (if you do not play white yourself) how you may react to this first move in the best possible way. Others make their move, then is your turn again and so on. In this way the Brits have maximum control over the process but they sometimes tend to forget to what the process should lead, the objective of the negotiations.

According to Clarke the French turn this approach around. They know perfectly well which objectives they want to reach but do not always think through the best possible way of reaching this objective. Whether this perception of the French approach coincides with the French centralistic approach, is an open question. However, the two different approaches show quite different perceptions of negotiations with all the possible consequences for the preparations.

Separate from the content, negotiations may be considered as a specific form of communication. This we will deal with in paragraph 4. Closely related are the psychological aspects. You may try to come across with a more positive attitude than you feel yourself. We mentioned already the example of selling a concession with quite some fuss while it is in fact a minor issue for you. By acting as if it takes you quite some effort in offering the concession, you may ask more later (if you convinced the other parties ...). If you give up your claim on a political position and get something in return, you create value out of nothing. In the same vein you may try to make the concession by another party smaller (assuming a similar acting by the other).

An important point during the negotiations proper is the difference between declarations and intentions. If you would table immediately what you want to reach, what your ultimate intentions are, your scope for negotiations disappears in no time. Such a situation hardly ever takes place because most problems may be solved by more than one solution. Furthermore, more often than not you do not want others to know what your real intentions are, for instance because they may misuse them by confronting you with undesirable choices, by playing to the public of force concessions from you. At the beginning of the negotiations parties sound each other out to recognize the possibilities for a solution (the ZOPA). These possibilities get more and more specific over time.

Do not get the impression that you are facing one another across the table all the time during negotiations. The table is more often than not the formal location, the place for official statements and formal agreements. Most of the time many conversations take place in small groups, for instance to form a coalition or to discuss a difference of opinion between a limited number of parties involved. Even

more removed are the conversations in for instance hotels in which the negotiators stay, in bars or over breakfast. Such informal and often limited conversations form a major lubricant to the negotiations. If you do not participate in them, you miss a lot. Many Dutchman have learned this lesson during negotiations in Brussels. They take the train in the morning and in the evening and sleep at home. They limit their social contacts to working hours in daytime.

Even if states are equal to one another in international law, the reality of negotiations continuously shows power factors at work. During the Cold War the Americans were always ‘more equal than others’ (from *Animal Farm* by George Orwell) in NATO discussions. Power factors are for instance

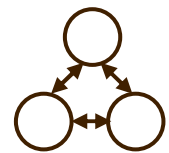
- 🌐 expectation of reward: one has something to offer what the other wants to have and hence the other has to listen;
- 🌐 threat with punishment: you indicate not to want to deliver what the other wants;
- 🌐 legitimacy: actual proof (e.g. determined in a treaty), preventing other to talk ‘nonsense’;
- 🌐 extras: sympathy on the basis of a well established personal relationship;
- 🌐 trust which you cannot betray.

4. NEGOTIATIONS AND COMMUNICATION

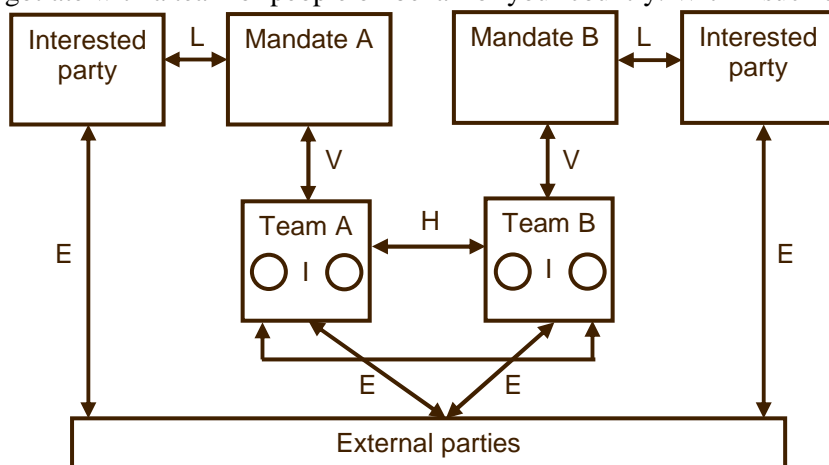
Negotiations in their simplest form may be considered as a specific type of communication between two parties, persuasive communication in particular (communication directed to convincing others). Distributive negotiations are a good example of such a dialogue. You will not find it in bilateral negotiations between countries. Even if you have only two negotiators, they cannot agree on something on their own because they a mandate. Just because you have people involved who determine the mandate of the negotiators, you have already more players in the game.



One step further you find the negotiations between three parties, the triad. This is in principle nothing else than three parties who want to reach one agreement. It may even be a special form of distributive negotiations as mentioned above: one seller threatening one possible buyer with another possible buyer. This example also shows the key difference between the triad and the dyad, addressing one party through another.



You may extend these pictures further and further. In negotiations between states each negotiator has a principle in the background, someone who determines the mandate or instructions of the negotiator. More often than not principal and negotiator are not one and the same person. In many cases you negotiate with a team of people on behalf of your country. Within such a team people have positions and interests and communication takes many shapes. Next the negotiators and their principals lots of other parties have somehow somewhere an interest in the results of the negotiations. A national airline for instance is a party to aviation negotiations. The press also would like to know where its national government negotiates about. In this way the picture becomes more and more complicated.



In the graph to the left two teams, A and B negotiate, each with their own mandate and principal. Within each team you find internal communication (I, the circles represent individual persons). In the strict sense communication between a negotiating team and its principal is also a form

Lewicki; Maartens; adapted

and principal. Within each team you find internal communication (I, the circles represent individual persons). In the strict sense communication between a negotiating team and its principal is also a form

of internal communication. However we consider this as vertical communication (V in the graph). The official negotiations take place between the team, horizontal communication, indicated with H. Members of team A may also have contacts with members of team B on an individual basis. This is represented by the horizontal double arrow under the two teams in the graph. This type of contact may be a part of the negotiations or serve personal interests. Interested parties exercise or try to exercise influence on the principals, for instance a political party and the Ministry of Foreign Affairs. This has been indicated with the L of lateral, although L might also stand for lobbying. Interested parties maintain their contacts with external parties (the E of external communication) while external parties also have contact with the negotiating teams (e.g. the press). Next to all this you may also recognize independent communication. Furthermore, you may differentiate communication on different levels, that of individual persons, the group and the organization.

Separate from parties you may also recognize verbal and non-verbal communication during negotiations. Verbal tricks of the trade include promises, threats, recommendations, warning, rewards, an appeal on norms, commitment, showing yourself, questions, commands and saying no. Examples of non-verbal aspects are periods of silences, talking at the same time, facial expressions, touching, tension, aggression, body language, way of sitting, gestures, breathing, blinking eyes and tone. Research indicates that only 7% of communication has to do with the content of words, 38% relates to tone of voice and 55% to body language. Even if we would come to lower figures for the last two, it still indicates their importance. However, those two types of communication are mostly unconscious and do have a cultural connotation.

Next to the verbal and non-verbal communication and the communication between parties involved, researchers have paid attention to the role of the chairperson. Without going into much detail John Mole draws a fine picture of the cultural aspects of a meeting⁶. The role of the chairperson is one of those aspects. A French chairperson for instance has quite a different perception of his tasks, authority and responsibilities than a Dutch chairperson. The former will stress his central role and directs the meetings and the latter facilitates and accommodates. Depending such cultural aspects a chairperson has a stronger or a weaker role in drafting the agenda and the time schedule. An agenda also has a clear cultural connotation. It may be a simple list of topics to be discussed or it might indicate topics of discussion in order of priority and hence of dealing with them. In the former case you may easily move topics of discussions up or down or discuss common aspects of several points on the agenda, in the latter you are committed to a specific order and procedure. In meeting with participants from different cultural backgrounds the role of the chairperson, the agenda and the time schedule are for this reason alone already a topic of separate negotiations. As an example might serve the discussion about the role of Valéry Giscard d'Estaing as chairperson of the Convention for the preparation of the Intergovernmental Conference on the constitutional treaty for the EU.

Discussions about the objectives of the meeting are an even harder nut to crack. In some cultures the chairperson has a deciding role to play while in other cultures s/he is not more than a instrument to reach objectives which have been determined by others. All this notwithstanding the chairperson has a clear role to play in the process of negotiations. This role deals at least with the acceptance of interventions, limiting and stopping them, summarizing them, questioning their importance, the proposition of solutions, the use of all possible means to promote the progress of the negotiations (breaks, discussions in smaller groups, consultation with the chairperson as in for instance the confession booth procedure, literally stopping the clock and so on) and drawing conclusions or sub-conclusions.

Chairpersons vary according to their national background and culture in the way they display emotions during the negotiations. However, in all cases they have to try to remain as neutral as possible. As chairpersons they serve the common interests of the participants, not the interests of their own country. Reality shows once again how difficult this is. European Commissioners for instance have to serve the European public interest, not the interest of their own state. They are deliberately not the representative of their country or its government in the European Commission. However, this rule has not prevented any Commissioner yet to take his or her national interests into consideration while defining his or her position.

Communication always takes place within a certain context and is always subject to noise. This statement implies that negotiators by mere disturbances in the communication have only incomplete information at their disposal. This incompleteness is reinforced by other factors, such as not knowing what your opponent has on his sleeve. Such is life in negotiations. If a negotiator possesses more communication skills, the process may run smoother. This applies to all parties. If only one party communicates well and the other does not, the process will come to a grinding halt. One more general communication rule focuses on maintaining good relations. Knowing one another better, promotes the flow of information.

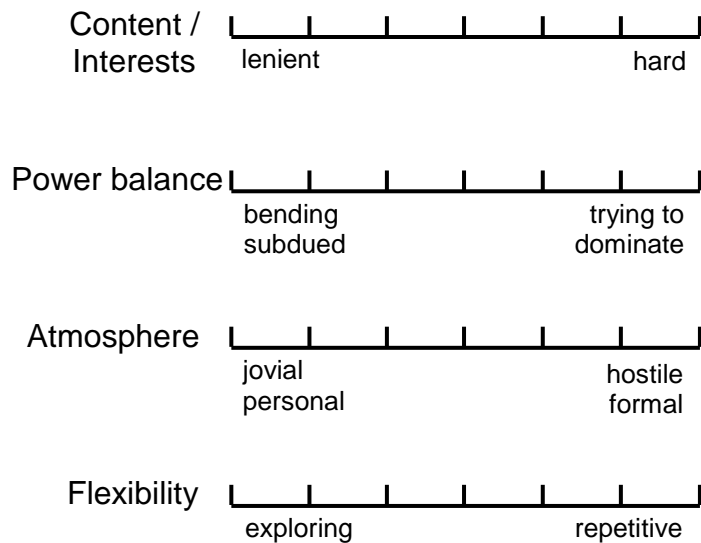
As with any other discussion you may summarise negotiations with the dialogue rules.

- 🕒 Discussing things is more than waiting for your turn.
- 👂 Listen to yourself and to others.
- 🗣️ Speak for yourself alone.
- 🗣️ Build on what has been said beforehand.
- 👂 Give space to one another.
- 👂 Dare to be silent.
- 🗣️ Let your certainties go.
- 🕒 Investigate!

5. HANDLES

All those and other studies, perceptions and experiences result in many lists of points you may or have to think of during the preparations for or the realization of negotiations. A well-known example is Mastenbroek's overview of possible attitudes of negotiators towards their fellow negotiators⁷. He discerns four dimensions of negotiations

(see graph). Inexperienced negotiators find themselves either on the left side of the four dimensions or completely on the right side. If on the left side they show a combination of a highly lenient attitude, accepting the power of others, promoting the atmosphere and all the time willing to find other solutions. The other type of inexperience negotiator is just the opposite: a strong focus on his own interests, trying to set the rule, a focus on formal procedures to which everybody should stick. From a theoretical point of view the ideal negotiator would show a pattern according to the dialogue from the top right to the bottom left hand corner.



According to Paul Meerts of the Clingendael Institute these ideal negotiators in reality do not show exactly this diagonal. The line would bend downwards from the dimension of atmosphere. The reason may be found in the simple fact that principals are not really happy with an attitude of their negotiators, which would allow the exploration of any possible option. These four dimensions of Mastenbroek coincide with his basic behavioural patterns to solve differences of opinion, fight, flight and submission. They are also linked to the already mentioned notion of emotion management.

Some key rules for negotiations and techniques may be found in the table below, as well as rules for effective negotiators and characteristics of negotiators..

Meerts and others	Mastenbroek
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- preparation and planning; earlier obtained negotiation skills
- start beyond the maximum, in particular in distributive negotiations
- know what the other party wants (his or her shopping list)
- keep the overview; look for commonalities
- stay flexible
- control your emotions; self control
- know your variables: absolutes (a minimum you cannot move below), desirabilities and 'small change'
- communication with your own organisation; status in organisation
- inclination to compromise; explore possibilities for exchange; build up pressure without provocation; decision making skills
- listen
- integrity
- competitiveness
- tolerance vis-à-vis uncertainty
- trusting people
- obtaining real results
- use of information
- choose your position
- concessions
- promote a constructive atmosphere
- separation of person and behaviour
- avoid unnecessary tension
- decrease tension
- influencing the power balance
- tactics for the reinforcement of one's own power position
- reinforcing the starting position
- obtaining flexibility
- negotiation phases
- tactics for exploration

Techniques

- tactics for the promotion of one's own position
 - manipulation
 - facts and expertise
 - exploration
 - reinforcing relations
 - power of persuasion
- negotiation phases
 - preparation
 - initial choice of position
 - search phase
 - impasse and conclusion
- tactics for exploration
 - informal prior consultations
 - always start with an exploratory phase
- ask questions
- show a good example

techniques according to Mastenbroek

- time (getting used to time pressure)
- impasses
- questions and answers
- breaks and interruptions
- ambition
- concessions
- agenda
- power of persuasion
- limit yourself in your arguments
- limit yourself in the debates
- control emotions
- knowing what to do when

techniques according to Forsyth (keeping control)

- creates silent periods
- summarise frequently

- try to find common criteria
- recognise common interests
- find as many alternatives as possible
- make a 'platform proposal'
- allows others to score
- progress by new proposals
- progress by a study group
- explore during impasses
- explorative abilities are emotional abilities
- make notes
- stimulate a good feeling
- read in between the lines
- stay impartial
- keep thinking
- do not waste powder and shot
- do not make deadlines force you
- limitations and variables are interchangeable

Effective Negotiators	Characteristics of the Negotiator
<ul style="list-style-type: none"> • have a negotiation plan • do research prior to the negotiations • identify common points • define their objectives • define their minimum position(s) • make a list of possible concessions • design their strategy 	<ul style="list-style-type: none"> • work with their own mandate • also consider other national interests • imagine the position of the other • build up good personal relations • separate issue and person • use of power sources and 'small change'

Throughout this all we presuppose that the principal has his house in order. When discussing national positions it implies amongst other things that the ministries concerned have agreed between them about the mandate. This may be extended to agreement between the national government and the decentralised governments⁸. If during the negotiations another party may point at a difference of opinion between two ministries of your own government and you happen not be informed about it, you may better propose a break. Such a situation may easier occur if one has to deal with for instance constitutional aspects like limiting powers of the one ministry over the other. Ministers in the Netherlands are autonomous and in a formal sense the prime minister cannot instruct them to do or refrain from something. A prime minister chairs the council of ministers, a premier may instruct his colleagues. In the same vein the provinces and municipalities in the Netherlands are formally autonomous, again resulting in some difficulties for EU negotiations.

Federal authorities also may face some problems within this domain, because the federal mandate for the negotiations is in itself the result of negotiations with the federal states. As a result the federal mandate does not offer much flexibility. If a change of positions is required for turning the negotiations into a success, the federal government concerned needs time to discuss possible positions with the federal states. In such a case the 'loss' of time is nothing but an investment in the hoped for results of the negotiations.

6. CULTURAL DIFFERENCES

Throughout this reader you may have noticed cultural aspects of negotiations. Indeed, negotiations between states do not go with cultural differences. I mentioned for instance the meanings people from different cultural backgrounds attach to meetings (such as role of the chairperson, the agenda, the minutes, the procedures). Different perceptions result from different cultures and hence, from different paradigms. Paradigms set limits and define success. The meeting paradigm sets the rules for a meeting

and defines its success. The problem is that your paradigm is not the same as that of someone from another cultural background.

Next to the meeting itself we also need to deal with its participants. To start with, they speak different languages. Even if you speak a second language very well indeed, it remains a second language. You will miss a detail or two in full understanding and you may not even bring across your own message with all detail desired. Simultaneous interpretations sound much nicer than it actually is. The full message does not come across, not because of the interpreters but because different languages express things differently. Furthermore, simultaneous translations are not really simultaneously because you will always experience some delay. Often an interpreter might add to the translation something like 'the speaker uses a play on words' or even 'this is intended as a joke, laughing will be appreciated'. EU meetings show over and over again how many limitations simultaneous translations have for proper understanding. Next to all this one should not forget the enormous costs for both these simultaneous translations as well as the translations of all official documents.

Language in the sense of words is only one of the cultural differences between participants to international negotiations. You should also be aware of the non-verbal communication and the tone of voice, their importance and the link to culture in both its expressions and the way it should be understood.

Other cultural differences extend to quite some areas. One (in)famous example deals with lunches and in particular the difference between a hot meal and rolls with ham and cheese (leave alone the sandwiches brought from home in a plastic bag). Lots of behavioural aspects do have different meaning and hence, importance you might or should attach to them. All cultural differences may have serious consequences by limiting the optimal flow of communication. With all this emphasis on cultural differences, we should not forget the differences in characters between the negotiators. Although the latter are separate from cultural aspect, the way one expresses one's character and the acceptance of character is influenced once again by culture.

7. NEGOTIATIONS IN THE EU

The shortest description of negotiating in the EU may be '25 countries, 25 tastes'. Each country has its own culture and hence, its own approaches and behaviour. More often than not, these differences do not fit well (leave alone seamless) together. The differences run from practical to principal points. Related to culture you should also think of different values patterns and the fundamental differences we recognise within the EU between modern and post-modern values patterns.

European negotiations have a number of specific characteristics and these negotiations need to meet specific conditions as well. These conditions fall in the domain of European law: decision making procedures, qualified majorities, types of rules and regulations, implementation procedures, political aspects versus content, working with working groups and commissions and comitology in particular, the extensive use of national experts in the preparation and implementation of decisions, the division of responsibilities between the European Commission and the (European) Council and so on. These conditions also imply that the negotiators have to be well informed of and experienced with the frameworks of their negotiations, including the limitations they set on the negotiations.

Next to cultural differences and legal conditions lots of national practices have their effects in the background, as well as the positions of countries within the EU as a whole. Paul Meerts (Clingendael Institute) mentions in his trainings a number of dilemmas which turn up over and over again in EU negotiations: bigger versus smaller countries, rich versus relatively poor states, North versus South (and in the future possibly Central European versus Western European), supranational versus intergovernmental approaches, free-trade versus protectionist preferences and a European or continental, Atlantic or neutral preference in security issues. These are dilemmas indeed. If you take for instance the difference between large and small states, you may stress their formal equality under international law. However, in the day-to-day practice of EU co-operation such equality cannot work. Larger countries pay, have a larger population and require a larger share of decision making for just those two points

alone, although democracy on the basis of the size of populations is rather an internal than an international argument. Smaller countries do not always want to pay their respect to the power of larger numbers and would like to ascertain their own interests. For these reasons the EU needs to have an approach in which at one point in time the one side of the dilemma receives some more attention and on another point in time the other side gets priority. Next to these 'classic' EU dilemmas I also would like to stress the incomplete transformation of Central European countries, which will have an effect for decades and requires support in many different fields, ranging from the reconstruction of societies to dealing with the heritage of the past on the mentality of populations. Some researchers even expect that the values required for a market oriented economy and pluriform democracy will only be absorbed in a couple of decades from now by the populations of Central Europe as a whole (in contrast to some elite groups in for instance capitals).

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- ¹ Patrick Forsyth: *Onderhandelen; tips, technieken, tools*, Houten, 1999; Van Holkema & Warendorf; pagina 6
 - ² Paul Meerts in zijn trainingen onderhandelen voor het Instituut Clingendael
 - ³ Niels Maartens: *A bundle of sensations: Experiencing and coping with negotiations*, afstudeerscriptie, 14 juli 1999, Faculteit Economie, Universiteit Maastricht
 - ⁴ Willem Mastebroek: *Negotiating as Emotion Management*, Heemstede, 2002, Holland Business Publications; met name hoofdstuk 2
 - ⁵ Gavin Kennedy: *Pocket Negotiator*, Londen, 2001, *The Economist* in samenwerking met Profile Books Ltd., pagina 11 t/m 14
 - ⁶ John Mole: *Zo doen we dat! over het omgaan en samenwerken met Europeanen*, Schoonhoven, 1997, Academic Service; hoofdstuk Multiculturele vergaderingen, p. 269 t/m 276 met de volgende paragrafen: de taal, verwachtingen, voorbereiding, aanwezigheid, punctualiteit, de agenda, de voorzitter van de vergadering, deelname, consensus, follow-up
 - ⁷ Mastebroek, aangehaald werk, hoofdstuk 4 en pagina 138
 - ⁸ Prof. Les Metcalfe heeft een negen stappen model ontwikkeld voor nationale beleidscoördinatie voor onderhandelingen in EU verband.