



Optimizing negotiation processes:

PHASE 3 – THE NEGOTIATION ITSELF

#3/4

Your Access to Efficient Negotiations

Introduction

When negotiating, we need to take care of two things at the same time: the *content* (*what* are we negotiating about – i.e.: the issues at stake) and the *process* (*how* are we negotiating with one another). Experience shows that we are often so absorbed in thinking about how to solve the substantive issues that we lose sight of the process. And when this happens, the quality of the negotiating tends to decrease – which ends up deteriorating the quality of the result.

This booklet will help you observe and actively manage the negotiation process. It contains in particular a series of hints of what you might do when the negotiation process takes a turn for the worse.

If you are not negotiating alone, but as a pair, the following role distribution often proves successful: one person takes care of the content, while the other one manages the process – with the help of this booklet. Managing the process means: negotiating the architecture of the negotiation (see page 4), cares for time management, write down on a flipchart the ideas expressed during brainstorming, summarizes what has been said, gives the floor to the different members of the delegation (when the team comprises more than two persons), etc.

This booklet is the third one in a series of four. The other three deal with the other phases of an optimal negotiation process:

- Phase 1 – setting a negotiation in motion
- Phase 2 – the preparation of the negotiation
- Phase 4 – the debriefing of the negotiation

Organization of the negotiation
Working relationship
Perceptions (points of view)
Motives (interests)
Creating value (options)
Claiming value (criteria)
Unilateral moves

Topics to be addressed:

- In order to work optimally:
 - How should we arrange the meeting room?
 - Which seating arrangement should we select?
- Which joint working objective(s) should we reach today ¹?
- Agenda:
 - Which topics and issues should we address – and in which order?
 - How should we allocate time?
- Should we adopt some rules which should be respected in order to increase the quality of our conversation and if so, which ones ² ?
- Are there third parties (individuals or entities) which might be affected by the result of our negotiation – and if yes which ones?



Even if the organization of the negotiation has already been discussed and agreed upon with the other party in advance (which is wise to do), one should check at the beginning of the meeting whether what has been decided is still valid!

¹ Examples of joint working objectives: resolve a conflict / determine the modalities of a planned collaboration / etc. (i.e.: objectives that are attractive and meaningful for both/all parties)

² Common rules: Only one person will speak at a time and no one will interrupt when another person is speaking; at the same time, each person will avoid grandstanding and digressions in order to move the deliberations forward / No personal attacks / If something is not clear for someone, he or she will simply ask for clarification / Expressing an idea does not mean making a commitment / If the dialogue is disturbed, the problem will be addressed immediately and solved jointly / etc.

Typical problems:

- *The seating arrangement disturbs you*
- *The meeting becomes totally chaotic*
- *People interrupt one another all the time, some are getting impolite, etc.*
- *The negotiation is getting nowhere*

Possible interventions:

- I'm afraid that if we sit like this, [it looks very confrontational] [the room looks like a court of justice] [we can't see the flip chart] [etc.]. Would you agree if we would sit like that?
- I'm getting lost. Would you agree if I would try to summarize what has emerged from our conversation up to now? And maybe we should then discuss how to proceed from here in a more structured way.
- I'm afraid that the quality of our conversation is deteriorating. Would you agree that we define a couple of rules which we should then stick to in order to make sure that we can have a productive meeting?
- I have the feeling that we have now come to a dead end. Would you agree that we take a few minutes to discuss why we got there and what we could do about it?

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Points to be checked:	✓
<input type="checkbox"/> Is the quality of our conversation good enough – e.g.: are we listening to one another, are we constantly interrupting one another, do we face misunderstandings, etc.?	
<input type="checkbox"/> How effective are we on both sides in dealing with personal, emotional and/or relational issues (if any)?	
<input type="checkbox"/> Do/can we trust them (the individuals and their organization as a whole)?	
<input type="checkbox"/> Do/can they trust us? (we as individuals and our organization as a whole)?	
	

Points to be remembered:

- Relationship issues should be addressed first!
- „True is what the other side understands, not what we say“ (P. Watzlawick)
- Reformulate, summarize, visualize as often as possible.
- If our emotions get in the way, we should describe those ("I-Messages"). If their emotions get in the way, we should show empathy; if we contributed to the problem, we should apologize.

Typical problems:

- *The relationship between the two parties is extremely bad*
- *You are angry with the other party*
- *The other party is angry with you*
- *The other party is not listening to you*
- *The parties do not trust one another*

Possible interventions:

- I know that we are in conflict and this, of course, disturbs me. Still, as we have agreed to negotiate with one another, I hope that we will be able today to have a meaningful dialogue together and to take good and well founded decisions.
- I must tell you that I became very angry. (*Use "I-messages" – i.e.: don't say "You made me angry"!*)
- I realize that you are angry with us and [I regret it] [I would appreciate if you could explain me why] [if I were you, I would probably feel the same] [I would like to apologize / *only if you contributed to their anger and regret what you did*].
- I have the feeling that we are not being understood.
- I realize that mutual trust is an issue. On the one hand, at the relationship level, I would like to discuss with you what we could do to rebuild trust on both sides. On the other hand, at the substantive level, I would propose to discuss the mechanisms which we could put in place in order to have enough confidence on both sides that the risks are under control.

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Points to be checked:	✓
<input type="checkbox"/> Do we really know and understand their situation, their point of view, their version of the story?	
<input type="checkbox"/> Do they really know and understand our situation, our point of view, our version of the story?	
<input type="checkbox"/> Are we on both sides capable of respecting our points of view (even if we do not share it)?	
<input type="checkbox"/> Are we sufficiently taking cultural differences into consideration (nationality, professional background, company culture)?	
<input type="checkbox"/> Are we able to accept the differences of our perceptions and then move on?	
	

Points to be remembered:

- What counts are not the facts themselves, but rather the way they are perceived!
- Understanding the point of view of the other side doesn't mean agreeing with it!
- Trying to dictate how they should think doesn't work!

Typical problems:

- *The other party tells you: "You're wrong" or "This is nonsense"*
- *A member of your own delegation tells the other party: "You're wrong" or "This is nonsense"*
- *The other party refuses to listen to your version of the story*
- *What the other party is telling you is full of venom – e.g.: "The level of support you are giving us is lousy and you are clearly violating the contract"*

Possible interventions:

- For me, the question is not whether we're right or wrong. We are just trying to describe our point of view, our perception. Now, at the same time, I would very much like to understand your point of view, your perception.
- It seems that we have totally different opinions. Could you please tell me more? I would like to really understand your point of view – even if our perception is totally different from yours.
- Excuse me: we are not trying to convince you that we are right. Our goal is only that you understand where we are coming from and what makes us think the way we think.
- If I understand you correctly, there are two issues: the quality of our technical assistance and the legal interpretation of the contract. Regarding technical assistance, may I ask you: what did you observe? And regarding the contract: which contractual clauses do you think are not being respected?

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Points to be checked :	✓
<input type="checkbox"/> Have we stated our underlying "interests" clearly enough and have we been able to motivate the other side to consider them seriously?	
<input type="checkbox"/> Have they told us clearly enough what their underlying "interests" are and are we taking them sufficiently into consideration?	
<input type="checkbox"/> Have we jointly identified our common interests clearly enough and are we putting them sufficiently in the foreground of our discussion?	
<input type="checkbox"/> Have we checked whether there is an "overriding goal" which both sides want to achieve and if so, are we exploiting it enough?	
<input type="checkbox"/> Have we listed the interests of relevant third parties and are we considering them sufficiently?	
	

Points to be remembered:

- Taking and defending a "position" doesn't work well – it is better to explain what the underlying needs and "interests" are, which the result of the negotiation should allow you to fulfill.
- People always have good underlying reasons ("interests") for wanting what they want!
- One should not sacrifice one's own your legitimate interests... and not expect the other side to sacrifice theirs!

Typical problems:

- *One of the members of your delegation takes a position*
- *The other side is taking a position*
- *The other side doesn't reveal their interests*
- *The other side doesn't take your interests into consideration – e.g.: "This is your problem!"*
- *It looks like the parties involved don't have any common interest*

Possible interventions:

- The reason why this is important for us is that [.....]. This is our underlying concern.
- I understand that this is [what you want] [what you refuse]. Could you please tell us why? Why is this important for you? If you would [get] [avoid] it, what would be the advantage for you?
- I have asked myself whether [.....] could be one of your key concerns. Is this correct?
- What are the strategic objectives of your company? What is of utmost importance for your key customers?
- What is of critical importance for us is [.....] and [.....]. What is of critical importance for you?
- Frankly speaking, I still do not know what is really important for you. Can you please help me understand your key concerns?
- I know that it is our problem. However, it concerns you too, because if we cannot find a way to resolve it, we won't be able to reach an agreement.
- Even if we do not reach an agreement, what should we never allow to happen? (*If you find something, this is a common interest!*)

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Points to be checked:	✓
<input type="checkbox"/> Are we effective in fostering joint creative thinking and in finding mutual gain options which would, for instance, make both parties more efficient, more competitive, more successful, etc.?	
<input type="checkbox"/> Are we asking enough "creative questions" ³ ?	
<input type="checkbox"/> Could our respective skills and resources be combined differently, or could the scope of the negotiation be enlarged, in order to generate additional mutual benefits and if so, how?	
	

Points to be remembered:

- Adopt the rule: "expressing an idea doesn't mean making a commitment".
- List ideas first, discuss them later (= brainstorming). Discussing ideas as soon as they have been expressed is a creativity killer!
- Give ideas a chance – i.e.: analyze their strengths and weaknesses instead of killing them immediately! Ideas can be optimized – i.e.: keeping their good points while weakening their weak points!

³ A "creative question" is an open question which addresses one important interest of each party and stimulates joint problem-solving thinking – e.g.: "What could we do together to reduce your costs while at the same time maintaining our profitability?"

Typical problems:

- *The other party tries to "sell" their own ideas to you*
- *As soon as you express an idea, the other party starts killing it*
- *A good proposal is on the table, but for some reasons, the other party still doesn't agree to accept it*
- *The other party makes a proposal which you don't like*
- *Lack of ideas*

Possible interventions:

- I would suggest writing down those ideas on the flipchart and then discussing how far each one of them would allow us to satisfy our respective interests.
- Would you agree if we would first list all the ideas we have on both sides, and only then start discussing their respective advantages and disadvantages?
- What are the good reasons which explain why you can't agree with this proposal?
- What are the conditions which would need to be met for you to be able to accept this proposal?
- Wie könnten wir diesen Vorschlag verbessern?
- What are the good reasons why you think that we should agree with your proposal?
- Would you agree that we analyze together the advantages and disadvantages which this proposal has for us?
- Let us start a brainstorming; what could we do together to satisfy at the same time your interests and ours?

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Points to be checked:	✓
<input type="radio"/> How effective are we in eliminating arbitrariness from the discussion of our conflicting interests and in resolving them with fairness in mind?	
<input type="radio"/> Will we be able to convincingly explain to our constituents (our boss, our shareholders, the members of our team or organization, etc.) that the solutions now under consideration are fair?	
<input type="radio"/> Will <i>they</i> be able to convincingly explain to their constituents that the solutions now under consideration are fair?	
	

Points to be remembered:

- Look for independent standards, accepted principles, legal rules, precedents, benchmarks that are acceptable for all!
- If one can't find independent standards, suggest an independent procedure (e.g.: neutral expertise, arbitration, auctions, joint preparation of a business plan, fifty-fifty split, contingent agreement ⁴ etc.)!
- At the end, the representatives of the other party will need to convince their constituents that the proposed agreement is a good one. We may need to help them do so!

⁴ "In the event A, we will implement the first solution; in the event B, we will implement the second solution."

Typical problems:

- *The other party tries to arbitrarily impose its own solution*
- *"Take it or leave it!"*
- *You are making a good proposal which is based on a legitimate criterion, but the other party nevertheless rejects it*
- *The discussion is degenerating into a positional battle over principles and criteria of legitimacy*

Possible interventions:

- Why do you think that your proposal is fair?
- Which are the arguments that you think we could use to convince our management that your proposal is fair?
- If we accept this proposal, what do you think the consequences will be for us?
- If we tell you "We leave it", how far would this meet your interests and ours?
- You must have some reasons to reject this proposal which in our view is based on a legitimate criterion. What are they?
- Is our proposal unacceptable as such, or do you have other reasons to reject it – and if so, which ones?
- If this proposal is not fair in your view, what would you consider to be fair?
- It seems to me that our discussion is degenerating into a positional battle over principles and criteria of legitimacy. What do you think that a judge or a mediator would suggest we do?

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Points to be checked:	✓
<input type="checkbox"/> Do we have a "yesable" proposal on the table which is more attractive than our walk-away alternative – which means that we could conclude an agreement – or do we at least see one emerging?	
<input type="checkbox"/> Does it still make sense to negotiate, or should we rather walk away (e.g.: because nothing indicates that we will ever reach an agreement which would be for us more attractive than what we already have)?	
<input type="checkbox"/> Is the other party aware of our walk-away alternative and do they assess its attractiveness correctly?	
<input type="checkbox"/> Have we identified their walk-away alternative and if yes, what does it mean for us?	
	

Points to be remembered:

- If you need to mention your walk-away alternative, present it as a dilemma, not as a threat.
- Do not walk away abruptly – increase the pressure gradually.
- If a breakdown seems likely, propose to jointly analyze the advantages and disadvantages of the respective walk-away-alternatives before taking any final decision.
- If you walk away, leave your last offer on the table!

Typical problems:

- *The negotiation is getting nowhere*
- *The other party underestimates your walk-away alternative*
- *The other party overestimates the attractiveness of its walk-away alternative*
- *The other party threatens you with its walk-away alternative*
- *It is becoming obvious that an agreement is out of reach*

Possible interventions:

- Let's face it: it seems that we are not able to reach an agreement. If we don't, what will happen? Would you agree to list the walk-away alternatives which we each have, and to jointly discuss their respective advantages and disadvantages?
- What do you think we will do, if we do not reach an agreement together?
- It is true that you may well do that if we do not reach an agreement. Let us try to consider jointly what would be for you the advantages and the disadvantages of this solution.
- I perceive what you just said as a threat. And as a matter of principle, we refuse to give in to a threat. How could we resolve differently the problem that we are discussing?
- It would be easy to give in to a threat. Let us however list together the advantages and the disadvantages which this would have on each side.
- Would you agree to disagree? And if yes, let us discuss how we could organize a peaceful coexistence or a limited cooperation in order to, at least, avoid a further deterioration of the situation – or leave a door open and maybe restart a negotiation at a later stage under different circumstances.



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Opportunities and risks in the negotiation process

