

A Practical Approach to Negotiations

Kishan Rana

Those involved in international negotiations need practical advice on how theory and empirical study of this discipline may help them in their work. They need this in distilled, usable form. Obviously, this does not minimize the importance of negotiation simulations, which are one of the most direct ways in which novices may gain initial insights, and even practitioners with some experience may improve their technique.

Some of the advice is country-specific, taking into account the typical needs of a particular system and its environment. Other material is of a generic nature. In pursuing this subject, we also need to consider our own negotiation methods and the institutional environment that conditions our style, to see how we might better harmonize our processes, and improve our efficacy.

Some of the advice that the early authors of diplomacy have proffered is timeless. Examples:

- François de Callières observed in his 1716 classic *The Art of Negotiating with Sovereign Princes* that good negotiations produce lasting agreements when both sides are winners. This is as relevant today as in the past.
- Francis Bacon observed in the 17th century that verbal negotiation gave better opportunity to convey signals, and was more suited to the early stages of negotiation.¹ We know from experience that negotiations via written communications are feasible only when issues are simple and do not require substantive compromise. It is the element of ‘deniability’ in the gentle probing that takes place in informal talks — including those via ‘backchannel’ contacts that utilize non-official representatives — that sets the stage for possible compromise. This is very typical of delicate political issues, but the formula may also be used in difficult economic negotiations.

- The 16th century Italian diplomat-historian Guicciardini advanced the notion of the ‘ripe moment’ for negotiation, not only that acting at an inappropriate time would waste resources, and further that it would actually be counter-productive. The converse also applies, when a compromise that might have been acceptable at one stage, becomes irrelevant if a threshold is crossed, when the dispute moves to a more divisive stage.

The Indian Context

Indian negotiators confront a paradoxical reputation as negotiators. As individuals, they are viewed as among the most astute, and able to handle a wide range of situations. Mastery over English as the international diplomatic language produces a considerable advantage.ⁱⁱ

In my examination of Indian diplomacy in a book published in mid-2007, I offer the following observations on India’s negotiation style:

An Asian ambassador observed that Indians need ‘visible gains from negotiations, to show own success’; he added: ‘they love paper, and have an MOU culture’.ⁱⁱⁱ Stephen Cohen, a longtime India scholar offers a harsher assessment, titling his chapter on Indian diplomacy ‘India Which Says No’.^{iv} Cohen notes: Indians are intent on establishing the moral and political equality of their side and are especially touchy over ‘status’; they negotiate for information; they have a good institutional memory, better than the Americans; they reflect ‘a defensive arrogance and acute sensitivity to real and perceived slights’.

Another scholar of the cultural dimension of negotiation, Raymond Cohen writes: ‘Time and again Indian officials have taken umbrage over real or imagined insults to their national dignity...A perceived imputation on their intellectual ability, any sign of arrogance or superiority, would produce an explosion.’^v Others note that insecurity and contestation within the bureaucracy produces a strong urge by each negotiation team to claim success, which distorts its actions. Partly, the above description relates to the pre-1991 defensive period of Indian diplomacy. A more self-confident India

does not say ‘no’ in knee-jerk fashion; foreign partners have noted this. Other behavioral traits are unchanged.

The positive assets of Indian negotiators are persistence and shrewdness, and a mastery over language that guarantees inclusion in drafting groups and ‘green rooms’ in the multilateral fora. Earlier, at WTO and other economic negotiations they were perceived as inflexible, but that came from unrealistic negotiation briefs provided to the teams; at WTO talks at Doha in 2003 and at Cancun in 2004 Indian performance was sharp and productive.

1991, which marked the start of India’s Economic Reforms, also represents a paradigm shift in the country’s diplomacy, even if it took a few years for observers to fully catch up with the changes in the manner in which India now delivers its foreign policy. The current profile is as follows:

- In most of our agencies, the negotiation brief is not always worked out in detail, though the situation is a great deal better now than in the past. This tends to leave negotiators with limited elbowroom. This applies to both economic and political issues. An envoy in an important neighboring countries disclosed during a confidential interview that on visits to Delhi to receive instructions, the advice given to him by different high officials was often at variance and even contradictory, and none of it was in writing.
- We seldom use the full matrix of preparation activities (see Annex I); many of the listed methods are unknown in our agencies. Of the 4 stages listed there, the ones that are crucial are ‘**Pre-negotiation**’ and ‘**Preparation**’. The investment of time and effort in the preparations is one of the keys to the entire process, and one reason this receives inadequate attention in our ministries is a shortage of personnel, and the fact that senior officials are over-worked. In other systems it is the middle and junior levels that undertake much of this work, of course under the direction of the heads of divisions and departments.

- We often overlook the importance of listening in the opening phase of negotiations, when set or pre-cooked statements are read out. True, the other side will seldom directly reveal its strategy in this opening phase. At the same time, in order to be consistent, and to ensure for its own reasons that the subsequent concessions or demands are in line with its negotiating position, that opening statement *may* contain hints or indirect indicators of what is to follow. Sometimes this may be like the observation by Sherlock Holmes about the ‘dog that did not bark’, something that is left out by design, again signaling change.

- The Japanese are famous for their ‘ringi’ system of pre-negotiation rounds of internal consultations where every stakeholder comes on board; this leads to delay at the preparation stage — making it almost impossible for them to react to any new across-the-table initiative, until further consultations are carried out. The typical Indian problem is that we start the work of crafting an internal consensus *after* the negotiations end, producing huge problems in implementation.

- The need for flexibility, and even deniability, during the phase when compromise is being worked out is also the reason that delicate negotiations cannot take place in public view; confidentiality is essential during the ‘hard’ bargaining phase. This is especially difficult in our country because of the competitive environment within our print and electronic media, and a tendency for information to leak if it is shared widely within the official system. Other countries too confront similar problems.

- Our teamwork is poor, to the point where some delegation members might occasionally violate internal discipline in informal communication with the other side, especially in complex bilateral situations. Even when this does not happen, teamwork is uneven, and inter-agency discord is often visible.

- Mastery over the English language is an important Indian asset, but it sometimes transgresses into arrogance and an attitude of showing off. Our Asian partners especially resent this.
- Statue consciousness is another uncomfortable fact. This leaves us vulnerable to both minor slights and to small gestures of consideration, both of which may be intended to put the Indian delegation leader off balance.
- Inadequate intercultural understanding is another difficulty, again in relation to partners from other developing countries. For instance, one characteristic of the ‘ASEAN way’ is respect for the comfort zone of others, to fine tune one’s own stand in a way that respects the sensitivity of the other side; Indian negotiators are not known for respecting such notions. Some Asians remark: just because we speak softly, the Indian side sometimes thinks that we do not hold strong views. It is paradoxical that such problems arise, because living in a domestic multi-cultural and plural environment, Indians have a huge advantage in being able to accommodate diversity. It comes down to the issue of better inter-cultural management training.

Often, our greatest weakness is an urge to succeed at all cost, and a reluctance to accept balanced or win-win result. This is particularly visible in our political negotiations, since there is insufficient scholarly analysis as yet of our economic negotiations. Take the example of the Kosi and Gandak hydro project agreements with Nepal dating to the 1950s. The accords were so grossly unbalanced in the sharing of benefits, that it has soured Nepal in relation to all future water resource projects; as a consequence, this Himalayan kingdom that possesses a potential power generation capacity of 80,000 MW has not added even one KW of power in its cooperation with India, despite endless rounds of negotiations.^{vi} In sharp contrast, the first 370 MW hydro-power Chukha Project Agreement with Bhutan in 1974 involved fair and balanced sharing of costs and benefits, thanks to the remarkable vision of DP

Dhar; the two countries have now built three hydro projects that generate nearly 2000 MW of power and more projects are in the pipeline.

Of course, we have other fine instances of balanced negotiations, with outcomes that have proved to be viable over time. We need to study these and draw from them the appropriate lessons.

Another way of looking at India's handling of negotiations is to apply the classification worked out by Raymond Saner, which distinguishes between 'distributive' and 'integrative' bargaining. In the latter, several issues are negotiated as a package, with trade-offs enlarging the size of the pie, creating new values; 'the optimum solution can be chosen from a great variety of alternatives'.^{vii} It produces a no loser outcome. We have tended not to consider such approaches, which may involve trade-offs in the same negotiations, or even involve disparate issues, such as setting off what we may seek on trade with some other deal on a civil aviation or a tax treaty issue. That is also known as the doctrine of leverage or cross-linkage.

Diplomatic machinery

All countries face problems in inter-agency coordination, and this is especially true of the manner in which the foreign ministry and the network of overseas embassies is utilized in negotiations with foreign partners by the full range of ministries and the agencies that work under them. The extent to which this set of institutional issues is resolved becomes a measure of the efficacy of the country's external engagement.

The problem exists on both sides, for the foreign ministry and for its functional domestic counterpart partners. The foreign ministry and the embassies are seen by other agencies as aloof, and not sufficiently cognizant that they must act on the basis of a 'whole of government' work-style. Within embassies, the personnel from other ministries often feel alienated, and not used to their full measure, as integral parts of the embassy team. Of course, there are notable exceptions, but the above description is a fair summary of one part of the problem.

The functional ministries usually do not use the diplomatic machinery to its full potential, and consequently they do not access the range of information and assistance that this system is capable of providing, in support of negotiations and the general challenge of dealing with foreign partners. There exist institutional mechanisms and processes that others have devised to overcome the problems, and we can only benefit if we study these and devise our own adaptation of some of these, to suit our own requirements. A determined effort to face this problem and to work across ministries to improve our work methods would not only yield result, but would show that improvements can produce cumulative results, as the diplomatic system integrates better with the domestic agencies.

ANNEX I

Negotiation Stages

In practice countries do not follow the kind of negotiation stages set out below, and that is perhaps one reason that the results fall short of expectations.

- a) **Pre-negotiation:** In *Diplomacy: Theory and Practice* Prof. GR Berridge points out that pre-negotiation is a necessary prelude to the actual negotiation process. This is the stage where it becomes clear if both sides truly want to negotiate, or if one or both, are simply going through the motions. The utility of treating pre-negotiation as a distinct prelude is that it places focus on intention and credibility. If this stage is traversed successfully, it leads to consideration of an **agenda**, the **format** of the negotiation process, the **venue**, the **delegations** that are to represent each side and the **timing**. Initial dialogue may be via secret emissaries.

This is also called the stage of ‘negotiation about negotiations’. At the Vietnam peace talks held in Warsaw in the 1970s initially much time was spent on the shape of the negotiation table. Behind the table geometry semantics was the real issues of the status of different partners; settling this facilitated the actual dialogue. There were similar long skirmishes at the Korea Armistice talks in 1951. To minimize the value of this stage risks the process itself. Sometimes the principals may try to leap over this phase (as in the India–Pakistan talks at Agra in July 2001), hoping that personal chemistry, and momentum of direct dialogue may break a logjam; but it may lead to a misunderstanding of the ground rules, and breakdown.^{viii} Other elements:

- Exploratory dialogue clarifies conflicting interests, and may determine whether a solution satisfactory to both is attainable.
- Establishment of an agenda, usually through diplomatic channels an essential pre-condition. There are instances where this is handled at the negotiation itself — but may result in delay and blockage.
- Preliminaries, including the identification of the venue, frequency of meetings, and other logistics.

- Issues of confidentiality and disclosure to the media — particularly important for political discussions. In the absence of agreement one should be prepared to use the media, using public opinion as indirect participants to influence the negotiations.

Sometimes intermediaries, or ‘track two’ or ‘track three’^{ix} contact, helps in the pre-negotiation stage, if either side is reluctant to start the process, or if there are complexities blocking even the start of formal discussion. We may treat these as pre-negotiation confidence building measures. The subsequent stages are: preparation, negotiation, and finally, follow-up.^x

b) **Preparation.** This is a crucial stage, often underrated. The establishment of an internal consensus is one key to smooth implementation. Example: the traditional Japanese ‘ringi’ system of internal consensus building is slow and rigid, involving officials at various levels representing diverse agencies. But the merit is that once an agreement is reached it can be implemented instantly, as all parties are already on board. In a top-down process, or in one where the decision is not consensus-based, an agreement or decision can be blocked or undermined from within the system. Other elements:

- An objective analysis of one’s own strength, direct and indirect.
- What are the aims and limits of the other side? What are its likely style, tactics and arguments? Is there a hidden agenda? The collection of all external information relevant to the negotiation, including other exemplars, information on the individuals involved and anything else relevant from the perspective of giving information on the other side.
- Analyze how the other side perceives one’s own style, and the cross-cultural factors involved.
- Mobilization of all internal information relevant to the task, alternatives, options, and fallback positions.
- Internal consultations with the stakeholders, generation of a consensus and setting out of a shared goal. Identification of ‘BATNA’ — the ‘best alternative to a negotiated solution’. This would provide the irreducible minimum threshold that would not be crossed, since in that case the negotiated solution would be worse than the one that could be applied without negotiations.^{xi}

- The BATNA of the other side, its' irreducible goal, hard to gauge, is vital. A solution satisfactory to both is possible only if there is a settlement range between the resistance points of the two sides.
 - If one side appears more eager for the agreement, it may lead the other to extract some form of payment for entering into negotiation.
 - Formation of the full negotiation team, identification of the leader, internal dialogue within the delegation, and political clearance for all major issues.
- c) **Negotiation.** This can be a straightforward process, or may be drawn out over many sessions and even years. It includes the formal sessions of bilateral negotiation and the informal exchanges that may supplement it. All too often, breakthrough comes in the latter, via social functions and one-on-one meetings. The former provide opportunity for informal sounding of ideas and floating of trial balloons, in a manner that does not commit anyone and has 'deniability'. (Example: after the Geneva talks of the 1950s Chinese Premier Zhou Enlai said that the most constructive breakthroughs of the discussions occurred during the social functions.) The ideal format is flexible, taking into account the practical convenience of each side, e.g. the needs for internal consultations and approval. Where issues are complex, or even with technical issues, it is useful to have agreed minutes, or some kind of an interim document, even of a non-binding character, to serve as a dialogue benchmark, to avoid repetitive discussions. The main stages are:

- The 'initial' stage when the opening statements are made, calls for perceptive listening to hear the hidden message. The dialogue at this point may appear ritualistic, but it sets the process in operation.
- The 'exploration' stage when tentative sounding is carried out, often in varied settings. Hidden signals and non-verbal communication is important.
- The 'formula' stage where the broad approaches or themes are covered. It is essential to agree on these before moving forward.
- The 'details' stage where the fine print is elaborated and agreed. Sometimes this becomes the battleground for the major decisions. Or there may be no clear distinction between these two stages.

- The ‘packaging’ stage where the fine print and all the details are tied together. The closer the agreement appears, the greater the sensitivity and the need for caution. Where feasible, the implementation process should be built into the agreement.

In the real world, the point where many negotiations on major political issues fail is if either party does not, or cannot, recognize that the process has entered a ‘final’ or ‘endgame’ stage, where the very last set of concessions should be offered. Without such tacit agreement on final concessions, neither side has the will to put on the table its full set of concessions, for fear that the other side may simply pocket those and then demand more. This is a crucial responsibility of the political leadership that drives the process for each side.

Some believe that the December 1999 Camp David talks failed, because neither Israel nor the Palestinians could trust the other not to use the ‘final’ concessions as a basis for fresh demands. Others blame the US for trying to play ‘honest broker’ with both, while remaining the unquestioning supporter of Israel. Put another way, it is only through the creation of mutual trust that the process can move to a point where each side understands that the time is ripe for a final push and the last concession. A good example where this worked through painstaking effort, is the 1998 Anglo-Irish Good Friday Accord. That agreement also illustrates a vital point for the next section on innovative settlement formulas.

d) Follow-up. In the euphoria of successful negotiation follow-up might be overlooked. Agreements may be self-enforcing; or need an enforcement mechanism. An asymmetrical agreement — giving larger advantage to one side — leads to such problems, if the other side finds a way to back-out.

- A full assessment of the implications of the agreement, and its consequence on other relationships and issues. Careful identification of the necessary follow-up, immediate and over time.
- Communication of the results to the stakeholders and to the public at large, creating optimal conditions for implementation.
- Starting actual implementation, keeping in view all the parameters.
- Detailing the negotiation experience ‘learning’, incorporating this into the ‘institutional memory’. Often this is overlooked.

Not all problems are amenable to negotiation. It is the task of statesmen to determine the optimal time for starting the process. The commencement of negotiation depends on objective and subjective conditions, and it becomes the task of diplomacy to create the external conditions that would be conducive to the launch of the process, including outreach to public opinion in the foreign country. Success hinges on finding the 'ripe moment'.

The Harvard Method: 'Principled Negotiation'

After an extended study under the Harvard 'Project on Negotiation', Fisher and Ury^{xii} identified a novel approach to bilateral negotiation, applying to commercial enterprises and countries, which they have defined as 'principled negotiation'(PN). This is offered in contrast to what they have called 'positional bargaining' (PB) that frequently leads to blockage and impasse, because countries proceed from set positions and the negotiation becomes a battle of wills. Examples: In the early stages of the Kennedy–Khrushchev discussions on nuclear arms control, each side took adamant positions on numbers and scope of inspections, without looking for ways in which the concern of each could be addressed by looking at the inspection method and the real needs of verification. In the India–China border talks of 1960, each offered its own set position, making virtually no effort to identify commonalities or go beyond the formal stance. Until 2004, India-Pakistan talks have also involved positional bargaining.

Offered as a superior alternative, PN operates through 4 major elements.

A. People. 'Separate the people from the problem'. This means:

- Perceptions: put oneself in the shoes of the other side; discuss perceptions; act in a manner that challenges the perceptions of the other side; make proposals that are consistent with the values of the other side but not their perceptions.
- Emotions: recognize emotions and treat them as legitimate; don't react to emotional outbursts; use symbolic gestures.
- Conversation: listen attentively and ask questions; speak to be understood; speak about own self and not the behavior of the other side.

B. Interests. ‘Behind adversarial positions there lie interests that may be common. To satisfy interests usually several options are available.’ Example: at the 1978 Egypt–Israel Camp David talks, Egypt sought sovereignty over Sinai, Israel wanted security; the reconciliation came in de-militarizing much of Sinai.

- Identify interests: what are the basic concerns of the other side? What are the consequences, for the other side, of not doing what you seek? Realize that each has multiple interests.
- Talk about interests: the other may not know what you want; make own interests come alive; put the problem before the answer.

C. Options. ‘In trying to share the pie, one is operating only in a single dimension.’ There should be a creative search for options.

- Obstacles: premature judgment hinders imagination; assuming a fixed pie means looking for a single answer; solving the other side’s problem is part of one’s own problem; brainstorming can be used (this is very similar to the well-known de Bono thinking methods).
- Shared interests: they often lie latent; taking care of the interests of the other side makes it easier for them to do what one wants; opportunities have to be developed.

D. Criteria. ‘Looking to criteria may offer solutions.’

- Prepare in advance: standards that are fair and legitimate; also fair procedures.
- Method: frame each issue as a joint search for criteria; reason and be open to reason; yield to principle, not pressure.

PN is clearly superior to PB. The challenge is to creatively apply these methods in real life situations and to develop procedures, approaches and styles that are based on one’s needs.

The Anglo Irish Agreement of 1998, which ended the active conflict in Northern Ireland (though its implementation has been slower than anticipated). It has remained on track despite hiccups over the past several years, and a joint government composed of the erstwhile bitter enemies is now in power in Northern Ireland; it is a

living model of this kind of an approach, partly because it has involved innovative ideas. One of these concerns the eventual future of Northern Ireland, where it provides for a settlement to be worked out at a future, unspecified date, simply laying down basic principles that should govern this settlement. Both sides have been confident that this is an optimal way of tackling a gulf in positions that was too vast to be bridged for now, and that as an when mutual confidence is built up it may become easier to find a final settlement.

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- i Berridge, *Diplomacy Classics*, Pp.83-4.
- ii French lost its preeminent statue at the end of WWII; now, even within the EU, where French clung on the dominant language thanks to Brussels as the seat of the regional entity, expansion to EU-25 has brought in new states that owe little to France, producing ascendancy for English.
- iii Confidential interview, September 2004; MOU refers to ‘memoranda of understanding’.
- iv Stephen Cohen, *India: Emerging Power*, (Brookings, Washington DC, 2002) pp. xx.
- v Raymond Cohen, *Negotiating Across Cultures: International Communication in an Interdependent World*, (US Institute of Peace, Washington DC, 1991, 1997, revised edition), p. 47.
- vi See Jagat S. Mehta, *Negotiating for India: Resolving Problems Through Diplomacy*, (Manohar, New Delhi, 2006).
- vii Raymond Saner, *The Expert Negotiator*, p. 84.
- viii This particular summit meeting will provides rich material for the analyst, especially as major elements of the process were played out in public view, when Pakistan used the sizable presence of 24-hour Indian and foreign news channels to play out the Two Level Game, and the Indian side found itself unprepared. The inside story of what transpired has not been disclosed. The talks resumed in 2004 on a clean slate.
- ix Track two refers to non-official dialogue, which generally reports to the home officials and may even be part-funded by them, discreetly. ‘Track three’ refers to contacts that take place virtually in defiance of the home administration, and may resemble ‘citizen diplomacy’.
- x Some analysts distinguish between only three stages, telescoping the first two into a single stage of pre-negotiation. It is preferable to separate from pre-negotiation the stage of preparation, since this is primarily an internal process to be carried out by each side, and usually precedes event the pre-negotiation, though there are also situations where the two take place concurrently.
- xi Another way is to look at the bottom line of each side, which defines the ‘zone of possible agreement’ (ZOPA), assuming that this can be gauged (Saner *The Expert Negotiator*).
- xii Roger Fisher, and William Ury, *Getting to Yes: Negotiating Agreements Without Giving In*, (Hutchinson, London, 1981).