



Negotiating Techniques in Diplomacy and Business Contracts

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Introduction

The primary objectives of this work are twofold: to emphasise (a) how good negotiating techniques may lead contracts or agreements of all nature to the satisfaction of all parties concerned, and (b) what kind of expertise diplomats and commercial negotiators should possess in achieving satisfactory agreements. This work has also dealt with the issues of the knowledge, expertise and interactive capacity of diplomats and commercial negotiators in successfully negotiating diplomatic and business deals. It has also emphasised the role of women in effective negotiations of both diplomatic and commercial matters.

This work has been developed over eight chapters:

Chapter 2: Negotiating Techniques in Diplomacy

Chapter 3: Negotiating Techniques in Concluding Business Contracts

Chapter 4: Women's Role in Negotiating Diplomatic and Business Deals

Chapter 5: Negotiating Techniques in Import-Export Trade

Chapter 6: Negotiating Techniques in Ending Armed Conflicts

Chapter 7: Negotiating Techniques in Arranging Project Finance and Syndicated Loan Agreements

Chapter 8: The United Nations System and Diplomacy

Chapter 9: Conclusions

In regard to negotiating techniques in relation to economic diplomacy, it is re-iterated that economic diplomacy is wider in scope than

commercial diplomacy; however, whereas economic diplomacy is primarily concerned with policy-making for the home country vis-à-vis other countries, particularly with a view to formulating economic policies, commercial diplomacy is part of economic diplomacy. Foreign policy-making is very much based on two important issues: (a) how should the government of a country be engaged in creating future business prospects with other countries including investment and security issues; and (b) good inter-State relationship easily establishes rapport between them even in regard to defence-related issues. Hence it is maintained that economic diplomacy to a large extent forms the basis for foreign policy-making too.¹

Economic diplomacy's objectives and scope of activities may be clearly identified by remembering that it really is an important kind of diplomacy *sui generis* than commercial diplomacy although these two forms of diplomacy have been used by certain authors interchangeably,² which should not really be the case. On the other hand, the interplay between economic diplomacy and foreign policy-making has become intertwined.³ Whereas commercial diplomacy has a business tone, in addition to being a vehicle for foreign policy-making, economic diplomacy has a broader base; it is also a factor of foreign policy-making of a State.

The controversy surrounding the interchangeability of the terms, commercial diplomacy and economic diplomacy seems to be never-ending. According to Ruel, commercial diplomacy develops international relations for businesses;⁴ however, Narang believes that commercial diplomacy is a vital component of economic diplomacy.⁵

This author maintains that economic diplomacy is not exclusively concerned with profit-making when interacting with other States; it also aims at developing rules of behaviour of States particularly at a diplomatic level. In addition to developing commercial rapport, representatives of States also negotiate treaties one of the objectives of which is to strengthen the rapport between the States in mutual interests.

¹ See further C Chatterjee, *Economic Diplomacy and Foreign Policy-Making*, New York and Switzerland, Palgrave Macmillan (2020).

² G Pigman, *Contemporary Diplomacy*, Cambridge, Polity Press (2010).

³ K S Rana, *21st Century Diplomacy*, The Continuum International Publishing Group (2011); see also C Chatterjee, *op. cit.*, at p V.

⁴ H Ruel, *Commercial Diplomacy and International Business: A Conceptual and Empirical Exploration*, Emerald Group (2012).

⁵ O Narang, *Commercial Diplomacy: A Conceptual Overview: A Paper presented to the 7th World Conference of TPOS*, The Hague (2008).

Controversies aside, in order to satisfy all concerned, one should consider the following in the main:

- The real forms of economic diplomacy and foreign policy-making;
- The tenets of economic diplomacy;
- Economic diplomacy and commercial diplomacy;
- Emerging markets and changing patterns of economic diplomacy;
- Negotiating techniques in economic diplomacy;
- Economic diplomacy at international fora;
- Economic diplomacy and negotiation of economic treaties including private foreign investment treaties;
- Developing countries and economic diplomacy; and
- The role of non-governmental institutions in economic diplomacy.

The importance of effective negotiations in both economic and commercial diplomatic matters may not be denied. It is for this reason that the qualities of a good negotiator have also been identified in this work. The traditional view that higher bargaining power of a party will win its case in any of the afore-mentioned fields is over. Developing countries, in general, are also changing their traditional views on private foreign investments, import-export trade, manufacturing and agricultural activities.

Furthermore, they have been gradually developing their own ideas about exploitation of their own very large human resources in addition to their natural resources. They should also quickly learn how to negotiate with the other parties on an equal footing.

Finally, with the fast-changing world particularly with the aid of technology, time has now arrived for developing and middle-grade countries to change their strategies in regard to cross-border business projects and in the diplomatic world too. It is with this hope and belief that this book has been developed.

In writing this book, primary sources of information have been relied upon, where possible. Secondary sources of information have been referred to, where necessary.

This work has been addressed to practising diplomats, commercial negotiators and post-graduate students.



Negotiating Techniques in Diplomacy

2.1 INTRODUCTION

Negotiating techniques in diplomacy and those in the commercial world would be different, as the subject matters of negotiations are different. However, the qualities of a diplomat and those of a commercial negotiator would be similar. All diplomats, irrespective of their grades, are required to possess knowledge and expertise in negotiating techniques. In diplomatic studies, training in negotiating techniques is not usually accorded much importance simply because in the diplomatic world there exists a strong belief that diplomats need not require special training in negotiating techniques, which may not necessarily be true. Negotiation is an inevitable phenomenon at almost all stages of a diplomat's work. Hence it is important for diplomats to formally go through a learning process to become competent negotiators.

In this chapter an attempt has been made to explain what negotiating techniques really stands for and how mastery over them may be attained by diplomats. In negotiating any deal with a counterpart, a diplomat must remember that he/she must achieve what his/her Foreign Office wants him/her to achieve through negotiations.

2.2 WHAT IS MEANT BY NEGOTIATION AND THE QUALITIES THAT A NEGOTIATOR SHOULD POSSESS

2.2.1 *What Is Negotiation?*

It may be defined as a process to reach a compromised decision which would serve the purposes of both the parties for which they decided to negotiate. In a negotiating process both the parties hold equal position. It is misleading to think that a higher bargaining power would have more influence; this kind of view of negotiation should not be taken seriously. The Concise Oxford English Dictionary defines “bargaining power” as the “power to negotiate.”¹ The reader is politely reminded that the old-fashioned idea that negotiators from the Western part of the world, by virtue of their being industrialised and wealthier than the countries in the poor world, will have more bargaining power than the negotiators belonging to the poor world, is no longer true. Diplomats from developing countries should prepare themselves very thoroughly with their strategies and policies. More of this has received attention in the next section of this chapter.

2.2.2 *The Formalities of Negotiating Techniques in Diplomacy*

The discipline of “diplomacy” is multi-dimensional; thus diplomats must learn negotiating techniques in various aspects of diplomacy: general diplomacy, economic diplomacy, commercial diplomacy, trade diplomacy and investment diplomacy, war diplomacy, environmental diplomacy and so on. When a diplomat may be engaged in any type of the abovementioned diplomacy, he/she must do and remember two things—(a) his/her own strategy and demands and (b) other side’s strategies and demands—and thereafter find the grounds for compromise through negotiations.

What should a diplomat do at a negotiation session? First, he/she must be smartly dressed; the national dress will also do. If any party to a negotiation session requires any translator, it is for the party at whose location the negotiation would take place to provide it, although the use of the same language by both the parties would be better and less time-consuming.

¹ *Concise Oxford English Dictionary*, Oxford, Clarendon Press (1990) at 132.

Second, each member of the negotiating teams must introduce himself/herself briefly and clearly. Incidentally, it is always useful to include female members in a negotiating team. The oral expressions made during a negotiation process must be simple; members of the teams must not use any ambiguous terms during a negotiation process. They must exchange their business cards with their counterparts. There should be an agreed agenda for each session if, of course, the negotiation requires more than one session. Body language should be avoided, as such language may be misinterpreted by certain members of the teams or it may offend the members of the other side.

Third, each party to a negotiation session must appoint a leader who should be very familiar with the subject matter for which negotiations are being held, and whose function would also be to ensure an orderly negotiation process. In the event of any stalemate occurring during a negotiation process, it is for the leaders to give a break to the negotiation session, and to discuss the points of discontent; thereafter the proposed solution should be put to the members of the negotiating teams to ascertain their collective views.

Fourth, in the event of the collective views of the two teams being significantly different, a further cooling-off period should be allowed for a further reflection process, and then meet again perhaps on the following day. It is important to ensure that no negotiation process fails as otherwise its consequences would be disastrous.

Fifth, socialisation should be within permissible limits bearing in mind that in many countries over-socialisation, particularly with the female members of the teams or with the females of the local community, is often a taboo, and it can bring a negotiation process to a sudden halt.

Sixth, no party to a negotiation process must make any adverse comments on each other's country; on the contrary, each party's members should provide some of the good features and qualities of the other party's country.

Seventh, throughout the entire negotiation process, diplomats from both sides must remain courteous, polite and must not display their dissatisfaction in any way. It is important to bear in mind that once negotiation process is disturbed for whatever reason, it will result in nothing. It is also important to bear in mind that negotiation is the best way of resolving disputes on any issue between the two parties.

Eighth, the members of the teams on each side must be chosen in a way that it includes diplomats each of whom will have special expertise in

certain issues which have arisen out of the dispute. A dispute is often multi-dimensional.

Ninth, in a no-alcohol-drinking society, after the day's session is over, the members of the team wishing to drink alcohol should first seek the permission from the leader of the home country team, otherwise the home country's team may feel offended, and this will have an adverse impact on the negotiation process as from the next day.

Tenth, the members of the participating teams should exchange their *curriculum vitae* a few days before the actual negotiation session takes place.

Eleventh, all members of the negotiating teams should be familiar with the basic information of the other team's country profile, which may be obtained from the World Bank's (International Bank for Reconstruction and Development—IBRD) website.

Twelfth, finally, after the negotiation process is over, the parties should exchange gifts (souvenirs) between themselves as a gesture of friendship. This duty should be performed by the leader of each team.

In writing these items, no particular order has been maintained as it was not found necessary to do so.

2.3 PREPARATIONS FOR NEGOTIATIONS

This is the most difficult stage to complete in order to ensure that the final negotiation process becomes successful. Without a knowledge in the country profile, and more importantly, the nature of the dispute or difference between the parties, no negotiation process may lead to any success. Incidentally, what most people call a "dispute" in reality is a "difference" of views on the same issue(s) between the parties concerned. A "dispute" is a legal term, which is concerned with the legal rights and remedies of a party or of both the parties concerned. Therefore, it is of utmost importance for the parties to determine what they are about to "negotiate" is a "dispute" or "difference" of views on the same issue(s) held by each party.

Once the abovementioned issue has been determined, each member of the team must familiarise himself/herself with the nature of the issue(s) and the causes thereof. Unless the causes of the differences between the parties have been identified, no effective negotiation may take place. Again, if the causes of differences or of a dispute between the parties have been identified, then each member should go into the historical reasons for the causes arising for the differences/disputes between the parties. The

leader of each team must be thoroughly involved in this exercise, and where necessary, documentary evidence in support of any argument that a member of a team may put forward would be very useful.

Mock sessions as a preliminary to an actual negotiation session are often found useful; these sessions also provide opportunities to learn the weaknesses in an argument, and on the basis of that experience, members of a team should correct their arguments or certain issues. Here, the leader of a team has to take a real lead on this matter. After the mock sessions have taken place, each member of a team should prepare his/her dossier on the issue(s) in which an actual negotiating session would be involved.

During the preparation stage, each party should carefully determine its strategies and develop its arguments accordingly. Members of a team should be prepared to accept the other side's valid arguments on certain issue(s); by the same token, where necessary, they should also demonstrate their opposition to certain arguments which may be put forward by the other side, politely and not in an offensive fashion.

In selecting members of a negotiating team, the leader of the team should ensure that each member of it is highly qualified in the issues which would be the subject matter for an actual negotiation process. He/she must also ensure that no member of his/her team is short-tempered as such a member might spoil the actual negotiation process.

Each member of a team should demonstrate his/her willingness to settle the difference/dispute between the parties on the issue(s) with which a negotiating process would be concerned.

Where it would be appropriate to refer to the established principles of international law, including the customary rules of international law, each party should draw the attention of the other party to it.

2.4 COSTS OF NEGOTIATION

It is for the receiving State to arrange accommodation for the stay of the guests in the country, although the accommodation costs are usually borne by the guest party; however, the costs of lunches, dinners, teas and/or coffees are to be paid for by the receiving State. Usually, the receiving State also arranges transport both ways from the guests' accommodation to the venue of negotiation sessions. Of course, other incidental expenses such as photocopying of documents are usually covered by the receiving State. On a future occasion, the sending State would be obliged to pay

similar expenses when the receiving state's delegates would be visiting the sending State on similar occasions.

2.5 THE TIME LAG BETWEEN PREPARATIONS AND THE FINAL SESSION OF A NEGOTIATING PROCESS

The time lag between the preparatory sessions and the final session of negotiation(s) should be described as the time for reflection to determine the prospects of winning at the actual session(s). By that time, both the parties must have accepted their proposals for negotiation. During the "time lag" both parties should once again examine the strategies and plans for negotiating the differences between them. In conducting negotiation sessions each party should study the strategies and tactics on which the other party might rely. After perusing the proposal for negotiation received from the other side and after holding the preparatory sessions, the parties may have to change their strategies; thus, the areas of disagreement should be minimised in order to ensure that the final negotiation sessions would bring the differences between the parties to a successful end. Incidentally, there does not exist any objections to changing the strategies of the parties, as strategies are never disclosed to any third party. It is to be emphasised that it is the quality of the arguments and friendliness on the part of the members of a negotiating team that matter most.

The "reflection time" is also important for the leaders of teams. They should be able to brief their members of the respective teams in a more effective way. Therefore, this interregnum should be utilised in a profitable manner. It is for the leader to provide new ideas, if any, to the members of the team, and give his/her opinions on them.

Members of each team can also do their own research on the contentious issues during the "reflection time" and raise some valuable questions which should alert the members of both the teams during the actual negotiating sessions. In a negotiating process certain issues raised by the members of one side might annoy the members of the other party which should be avoided, and everybody at the negotiating sessions must remain calm and patient.

2.6 THE NEGOTIATION PROCESS

There are certain formalities that each member of the negotiating teams must observe and the leaders too. It is for the leader of the home (receiving State) team to welcome the foreign team, and introduce himself/herself first, and the leader of the guest party will do the same.

After that each of the members of the home team should introduce themselves, and thereafter, the foreign party's members should also do the same. Each member of the teams should display his/her name on cards in front of them. Members of each of the teams must pronounce each member's name correctly. Unless so permitted by each member, members of the teams should not address any member by his/her first name. This is a matter of courtesy which a party expects of the other party. Throughout a negotiation process, each member must remain courteous and display good manners. After both parties have completed what may be described as the "introduction" session, the real work usually starts. Incidentally, all members of the teams, male and female, must be addressed correctly and politely.

The real business, the negotiation process will start then. By this time, the members of both the teams should be familiar with their mandates; in the case of any difficulties they should ask their leaders for assistance. However, at the initial stage, it is for the leader of each team to summarise briefly the nature of the differences or disputes between the two parties (each of the parties will represent its own country). Usually, the contracting party (the party that initiates to negotiate the differences between the parties) opens the negotiation process after summarising the nature of the difference/dispute in regard to a matter on which the two parties have decided to negotiate.

After the negotiation process has commenced, the leader of the party may advise the relevant member of the party to present his/her contention on behalf of his/her country before the negotiating session. Then, of course, his/her counterpart will respond to that contention. This process will be observed throughout the negotiation process, and hopefully, they will eventually narrow down their differences and bring about a solution to the problem. Of course, best negotiations take place during tea or coffee breaks, that is, in an informal way, but the result of the informal negotiation can be formalised at a negotiation meeting.

After a negotiation process has successfully completed a joint report in an agreed language should be drafted in a simple way, and the heads of the