



3 STRATEGY

THE SECOND PHASE of planning a negotiation involves devising a good strategy. Strategy is the overall plan of action to achieve the negotiation objectives defined during the analytical stage.¹ Five key activities are usually involved in the strategy phase.

- Planning options to maximise compatibility.
- Activating levers and forming a negotiation team to maximise leverage.
- Identifying the starting point and defining the basic approach that needs to be adopted during the negotiation.
- Choosing the right tactics for this approach.
- Preparing strong arguments.



CHAPTER 8 MAXIMISING COMPATIBILITY: PLANNING OPTIONS

In the analytical phase, we defined compatibility as the distance between the interests of the two parties to the negotiation. The smaller this distance, the more likely that they will reach a mutually satisfactory agreement. In the early strategy phase, you can work on increasing compatibility in order to pave the way for smoother negotiations. The most effective way of increasing compatibility is to consider as many options as possible before meeting the other party.

Options are basically possible negotiation scenario outcomes from which you and your interlocutor will be able to choose. Rarely is there only one possible agreement that will satisfy your interests. The more diverse options that you can present, the more likely it is that you will be happy with the result. If you sense that you may soon face a stalemate in your negotiation, it can be helpful to put another option on the table. Furthermore, the reaction of your interlocutor to the various options that you propose will give you a sense of what his/her true interests are and possibly what his/her bottom line is. This will allow you to further increase the level of compatibility. One of the key tasks during the strategic phase is to identify diverse options in collaboration with your negotiating team.

How to Create Options

To come up with options, you need to think flexibly and creatively. Consider all of the different possibilities that might satisfy your own interests and those of your counterpart. The following recommendations by Fisher and Ury may help you to construct a list of different options. We have illustrated their suggestions with a humanitarian example.²

- **Look through the eyes of others** How would somebody else deal with the problem at hand? For example, you may be trying to set up safe water points in a village to protect women from rape and abduction, but the community leaders do not agree to the locations you propose. Do not simply insist on your proposals but actively seek the views of others regarding alternative sites. Can water points be established in other places and meet the needs of all

groups? What would a social worker or anthropologist say about the impact of new sites on community dynamics? What would another organisation do? What do the women and children think?

- **Tone down the agreement** If the community leaders do not agree to the location of your water points, will they at least agree to the principle that people need safe water sites? Will they agree to discuss the problem with somebody who is a protection or water specialist? Will they reach a provisional agreement with you that can serve as the basis for future negotiations?
- **Alter the scope of the agreement** Could you agree to set up one safe water point first, and see how well it fulfils its purpose before establishing others? Could you agree to set up all water points but only for a limited period, and then decide whether to provide more? Could you agree to pilot water points in a certain area? Could you initially reach an agreement with a smaller group of village leaders and enter into a wider agreement with others later?

Working out options together with your counterparts by *brainstorming* can be very productive and help to establish a good rapport.³ But bare in mind that brainstorming is a very Western practice. Others may misunderstand its purpose and may see it as manipulation of some kind. It may also be difficult to include in a meaningful way groups that are often perceived as less powerful, such as women and children. Nevertheless, if you decide to hold a joint brainstorming session, make sure that your counterparts distinguish it clearly from the official, on-the-record negotiation sessions.

Whether your counterparts accept or reject the options that you put forward depends to a great extent on how you present them. It is important to demonstrate very clearly to the other side how each option will help it to satisfy its interest. An attractive set of options can help you to be convincing.

Checklist for Planning Options

- Have you brainstormed with your team or your counterpart to come up with as many possible scenarios as possible?
- Have you asked yourself how someone else would look at the problem; can the strength or the scope of the agreement be altered?
- Have you considered brainstorming options together with your counterpart?
- You may want to consider writing down or illustrating your options in order to understand them better and to visualise them.

CHAPTER 9 MAXIMISING LEVERAGE: ACTIVATING YOUR LEVERS

The analytical phase served to identify the sources of power that negotiators can draw on. In the early stage of developing the strategy, it is important to use these levers so that you can be employed in the actual face-to-face negotiation.

Incentives and Threats

Activating incentives and threats is often a complex and long-term process. It would go beyond the scope of this manual to describe the detailed steps that have to be taken to mobilise all available humanitarian levers. Table 4 simply summarises each possible lever and lists some basic

Table 4 Steps Necessary for the Activation of Humanitarian Levers

HUMANITARIAN LEVER	ACTIVATION
QUIET ADVOCACY USING INTERNATIONAL LAW	<ul style="list-style-type: none"> • Identify applicable treaties • Look into possibilities for legal investigation and prosecution
LOUD ADVOCACY USING THE MEDIA	<ul style="list-style-type: none"> • Identify national and international media outlets that exert the most influence over your counterpart • Start making contact with these bodies, ensuring that all staff members are aware of the message you want to convey
ASSISTANCE/EXPERTISE	<ul style="list-style-type: none"> • Draw up realistic scenarios to show the conditions that will exist depending on whether aid/services are provided or not, so that you can offer credible incentives or make credible threats
ALLIES	<ul style="list-style-type: none"> • Identify actors that have an interest in your region or sector and that enjoy influence over your counterpart • Consider all possible allies, including actors at the international, regional, national and local levels, other humanitarian organisations and private enterprises • Start engaging with these entities, while always keeping in mind that they will have their own political interests and agenda; distance yourself if necessary

actions that have to be taken to activate them. For more information, we recommend referring to the guidelines that your organisation provides.

But, given that the effectiveness of these humanitarian levers is likely to be limited, it is important that you also spend time mobilising alternative sources of power.

Activating Alternative Sources of Power

Developing Fallbacks

Negotiation theorists recommend implementing the measures set out below.⁴

- **Invent possible fallbacks by asking ‘How else could I reach my objective?’** This requires creative thinking and flexibility. Who else could you approach with your request? Could you discuss the matter with your counterpart’s superior? Could you ask a person in a different department or someone with a different function? Who would be open to your request and has the power to help you satisfy it? What other methods are there to meet your demands? Who else could distribute the assistance for you? If you cannot reach the population in need, can they reach you?
- **Research and develop the most promising ideas** If you think that the Minister of the Interior may be more open to your request than the Minister of Aid Cooperation, then start a dialogue with him/her. Introduce yourself; inform him/her about your objectives and talk about the specific problems that you are facing. Ask as many questions as possible about his/her interests and implementation power to get a sense of whether he/she could really be of assistance to you. Try to obtain a concrete offer from the Minister. If you think that some influential religious leaders may also be helpful, start the same process with them. With concrete alternatives to hand, it will be much easier to decide whether it is worth continuing to negotiate with the Minister of Aid Cooperation.

Once alternative ways of meeting your objectives are clear, a judgement is required on whether it is wise to reveal your fallback to your original counterpart. If you have a strong fallback, it may be worth revealing some of its specifics, or even showing the entire proposal. If your fallback is weak, however, it may be best to hide it, so that an aspect of your leverage remains mysterious.⁵

Improving Your Credibility

When planning your negotiation, you should identify some confidence-building measures that can be introduced to heighten your credibility. For example, is there a way to increase the other party's understanding of your objectives so as to dispel any perception of mixed motives? How can you make sure that they have the right expectations of what you can do? Is there any information that you could pass on to them – directly or indirectly – to make them believe you more? Are there third parties that could speak convincingly in your favour? Is there a possibility to conduct field visits together?

Gaining Control Over Time

As already explained in Chapter 7, significant leverage can be gained by avoiding time pressure and by being able to identify when a good moment has arrived or even by creating a better moment should the timing of your negotiation not be perfect.

The most effective way of dealing with time pressure is not to let it affect you, or, if it does affect you, not to reveal this fact to the other party. True, this is easier said than done. The usual advice that experienced negotiators give is to stay calm and to reflect carefully on your negotiation objectives. If the proposed agreement does not fulfil them, there is no need for you to allow yourself to be pressured into signing. Try to identify the source of the time pressure. Is it real? Is it your own sense of urgency? Is it being imposed unwisely on you by your agency? Or is it being imposed on you as part of the strategy of the other party?

Optimal use of time is an essential part of a strong strategy. If you have to rush off quickly to a meeting with a Minister and feel that you have not had enough time to prepare and to discuss the agenda with your team, consider postponing the meeting. It may be preferable to reschedule than to jeopardise an important negotiation. In many cultures, the end of the day is the most appropriate time for dealing with certain problems; good timing can increase your leverage, even if it means that you have to spend the night at the negotiation site.

Finally, thinking strategically about time means being sensitive to ripe moments: catching them when they come and creating them. Negotiation expert Josh Weiss suggests the following ways of helping to generate ripe moments.

- Change negotiators or introduce a mediator to change the dynamics of the negotiation

- Actively look for ways to create new incentives or new reasons to negotiate.
- Discuss with your counterpart the consequences of a failed or interrupted negotiation.
- Secure small but irrevocable commitments, which will serve to re-motivate the parties.⁶

Checklist for Activating Levers

Activating your levers is a long-term and ongoing process.

- Identify the treaties that your counterparts are failing to adhere to and research whether they may face legal prosecution?
- Initiate contact with media bodies and other potential allies.
- Draw up scenarios outlining the consequences of not acting with respect to the provision of aid items or specific technical services.
- Develop strong and viable fallbacks for what you will do in the event that the negotiation fails.
- Come up with some measures that you can take to increase your credibility and to build confidence.
- Think about ways to gain control over time.

CHAPTER 10 MAXIMISING LEVERAGE: FORMING A NEGOTIATION TEAM

Selecting a capable and appropriate negotiating team is an additional way of maximising leverage in the early strategic phase. Many experienced negotiators recommend putting together a strong and diverse group of people with different and apposite skills, knowledge and personalities to help you make a convincing case.

There is a general rule never to negotiate on your own:

“Never see a government official on your own, because you can be exploited. He may lie about what you said. You should always have someone with you to take notes. Never go alone unless you are making a very personal point. Sometimes we have done this. We said to the others ‘Could you leave so we can have a tête-à-tête?’ We did this once, when the minister was very difficult. We asked everyone to leave and said ‘if you cannot do this, we cannot have further discussions and we cannot implement our programme. Please stop talking to us like this.’ And then we brought the others back in again. It worked in that case. But I would never do a negotiation alone. You can complain, object, threaten and say embarrassing things on your own in a tête-à-tête, but never negotiate alone.”

(Aid worker reflecting on experiences in South-West Asia)

Advantages of Negotiating as a Team

A team approach will increase your leverage because it offers the following advantages.

- **Witnesses** When doubts arise about what was actually said during a negotiation, your colleagues will be able to confirm or deny particular claims.
- **Protection from physical threats** When dealing with highly

irrational counterparts, having one or several colleagues by your side may prevent the negotiation from descending into violence and placing you at physical risk.

- **Broader representation of your organisation** Having colleagues with you will enable your counterparts to get a better image of your organisation and may increase their trust in you.
- **Division of tasks and responsibilities according to capacity** Negotiating in a team will make your tasks more manageable and allow you to increase your performance, since you can delegate specific tasks and present a range of characters to the different people you are dealing with.
- **Shadowing** Having one person act as a *shadow* can be a particular advantage of negotiating as a team. The shadow team-mate never plays a direct part in the process. She or he is spared the heat or frustration of the talks but is kept fully informed and acts as an objective and unemotional adviser.

Criteria for Selecting a Team

During the strategic phase, you decide who in your team may be the best person to approach your counterparts. The best person may not always be the most senior – gender, age, knowledge of the context, culture and character may be more significant criteria. In their eighteenth century *Encyclopaedia*, Diderot and D’Alembert give some advice on this topic:

“Look carefully for those whose character fits best the task with which you would like to charge them. Seek for an audacious person to make complaints and reproaches, a soft person to persuade, a subtle person to discover and observe, and a proud person for a somewhat unreasonable or unjust affair.”⁷

Today, it is wise to consider the following the points.

- **Who can best present and explain your objectives?** If discussing specific subject matters, such as the construction of sanitary facilities or the protection of IDPs, it may be worth taking a specialist who can add expertise to your discussions. At the same time, you may want to take someone along whose level of authority is equal to that of your counterpart, so that he/she feels that he/she is on an equal level.

- **Who can best develop a good personal rapport with your counterpart?** Which colleague has the most apt interpersonal skills for the negotiation? Who is a good listener? Who has the most suitable cultural background, conflict style and personality type to appeal to your counterpart? Who shares the same background?
- **Who can best ensure that the negotiation process advances smoothly?** Who are the good facilitators in your team? Who can play a long game well?

Humanitarians often highlight the importance of identifying team members who have the right profile to convince counterparts:

“Only a mature woman (old enough to be their mother) speaking their language was able to make them think about the atrocities that they were committing.”

(Humanitarian reflecting on an experience in Southeast Europe)

Checklist for Forming a Negotiation Team

Have you selected team members who are similar to your counterpart in terms of:

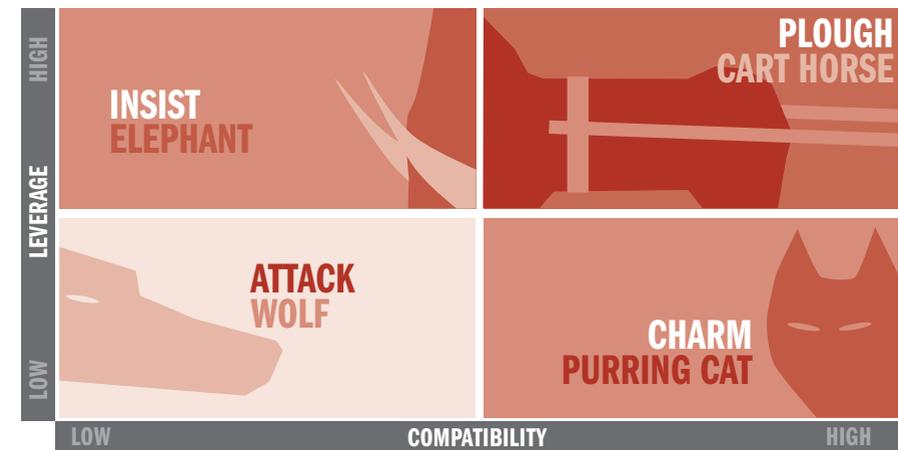
- position;
- expertise;
- cultural background;
- personality type; and
- facilitation skills.

CHAPTER 11 DEFINING YOUR STARTING POINT AND APPROACH

Now that you have worked on compatibility and leverage separately, it is time to put the two together.

The Compatibility and Leverage Matrix (C-L Matrix)

The compatibility and leverage matrix (*C-L Matrix*) helps identify compatibility and how much leverage you have when you start your actual negotiation. Your relative position on this matrix suggests a corresponding approach to adopt when you start discussions with your counterpart. As an aid, we have assigned an animal type to each position that best symbolises that position and the corresponding approach.



If you are in the high leverage–high compatibility square you are doing well! You will probably be able to meet both your interests and those of your counterpart rather easily through a collaborative attitude. We have, therefore, called this approach *plough*, since, like any good *cart horse*, you simply need to keep going, pulling your negotiation forward along clearly

agreed lines, giving equal consideration to substance, relationship and process.

In other situations, compatibility may be high, but you may not have much leverage. Consequently, you will not be able to put much pressure on your counterpart and will have to rely on your charm to keep your opposite number focused, as might a *purring cat*. In this case, your attitude will be soft and you will concentrate more on relationship than on substance and process.

If, instead, you face more conflict, yet enjoy the luxury of leverage. You will need to use the latter to your advantage as much as possible. It is the only way to achieve your objectives. You will need to insist on substance, while being somewhat imposing, as might a determined *elephant*. Your attitude can be either aggressive or collaborative.

The most uncomfortable square to be in is that of low leverage–low compatibility.

In this situation, with little tools at your disposal, you may have little choice but to attack aggressively like a *wolf*, since you have nothing to lose. While trying to employ all possible means, you are likely to rely on substance, relationship and process in equal parts.

Finally, of course, there will be instances when none of these approaches are wise. For example, when a situation is life threatening, it may make more sense to *retreat* and to disengage from the negotiations altogether.

When you tried to maximise compatibility and leverage in the early strategy phase, you were actually trying to get as close as possible to the upper right corner of the matrix. But, in many instances, you are likely to find yourself in a less perfect scenario. This is why it is vital to utilise the right tactics and arguments. The next two chapters will examine tactics and arguments.

Checklist for Defining Your Starting Point and Approach

- Are your interests and those of your counterparts compatible or is there little room for dovetailing?
- How much power are you likely to exercise over your counterpart?
- Depending on your answers to these questions, you will choose an approach that is more or less aggressive and that pays differing levels of attention to substance, relationship or process.

CHAPTER 12 CHOOSING THE RIGHT TACTICS

Tactics are specific behavioural tools or techniques that help to influence the other party.⁸ Negotiators employ a range of tactics. The tactics that you will choose will depend on how much you need to underline substance, relationship or process in your negotiation. Keep in mind that the appropriate mixture is determined by your position in the C-L Matrix.

Substance

The greatest obstacles in any negotiation are often connected to matters of substance. Talks can easily reach deadlock if they follow a single path or continually look at problems in the same way. Successful negotiators are often agile and creative with respect to the way in which they treat the substance of discussion, at every sign of deadlock finding ways to look at facts differently, changing the emphasis in an argument, and making novel offers. The following techniques can be useful in making progress on substance.

Appealing to Reason, Not Feelings

Many negotiation theorists advise shifting the substantive focus of negotiations from subjective to objective matters whenever emotions are rising and threatening to produce a stalemate. Moving the discussion from feelings to facts can present greater opportunities for problem solving.

For instance, you might be negotiating with a member of the Ministry of the Interior about the construction of a road to a remote rural area. You want to build the road because otherwise your trucks cannot reach the inhabitants of this area. Your counterpart resists the construction of this road, but favours another road between two towns. In order to break down emotionally held opinions on the road, you could introduce some objective criteria, such as financial and engineering considerations, to help settle this dispute. What if the road between the towns is more expensive and adds less value to the local economy? What if experts say that the road between the towns is difficult to build because it would have to cross two rivers that flood twice a year?

If handled well, such factual issues can help to stimulate a more informed discussion and provide your counterpart with the opportunity to save face, enabling you to escape potential deadlock.

Introducing such objective criteria is not a panacea. It certainly does not solve a problem outright because, of course, there are still vigorous arguments to be had over the different considerations. In the above example, your counterpart in government may well contend that greater political benefits are to be derived (securing urban votes and increasing his/her party's legitimacy) from the urban road, despite the extra cost and the deprivation of the rural area. But at least the shift from feelings to facts has uncovered some real interests and shown where the negotiation needs to focus. As humanitarians, you are bound to operate on the principle of greatest need and equal treatment and you can now start to solve problems objectively around your competing interests.

Re-framing the Problem

In negotiation theory, *framing* refers to how people define and perceive a problem that exists between them. The way one frames things and the language one employs to talk about them is important, because it determines the attitudes and emotions that people bring to the subject and the actions that they pursue. Good translation and language skills are essential for successful re-framing.

In an insurgency, for example, you may see a government's refusal to allow humanitarian access to an area with high concentrations of IDPs from rebel-held territory as a deliberate violation of international law. The government, however, may view it as an essential part of its strategy to guarantee the survival of the state. Unless you can find a way to re-frame the problem, which doesn't accuse the government or underestimate the threat that the insurgents pose to the state, you are unlikely to reach an agreement without significant leverage. Re-framing the situation so that the problem is perceived as one of hunger and the question of access as a matter of good government might help to nurture a more reasonable discussion.

Sometimes negotiation involves a delicate balance between both using and challenging the other person's framework. Gently adapting a counterpart's language – without necessarily challenging his/her position – can be a very useful way of slightly, but significantly, re-framing a problem to your advantage. For example, serious security problems along a border may be preventing the safe repatriation of refugees to their places

of origin. However, while you are urgently negotiating a postponement to their return, your counterpart in government refuses to acknowledge that there is a security problem and insists that conditions along the border are normal. Are there other terms you could use to describe the same problem, thereby re-framing it? How about telling your counterpart that refugee returns do not seem to be sustainable at the moment because significant numbers of repatriated refugees are returning to the camps in a bad physical condition? Your counterpart may be willing to discuss this problem with you in terms of sustainability, but not in terms of security.

Relationships

A good working relationship can greatly facilitate difficult talks on issues of substance. Successful negotiators know how to develop a personal rapport with their counterparts, a bond that will help them overcome differences of opinion on substance. The following tools and techniques can assist in creating such ties.

Bonding

When you bond with a person, it usually means (loosely speaking) that there is a common sense of affection and obligation that connects you. The strongest bonds are usually forged through shared experience.

In negotiation theory, bonding refers to an incremental relationship that emerges slowly out of chance, attraction and small achievements. It can start when both parties agree on the smallest possible strand of a discussion (for example, an opinion, a shared impression or a joke) and then develops and grows. They will tend to continue bonding around other strands until they reach a mutually satisfactory agreement.

For instance, imagine arriving at a checkpoint where a fierce looking guard stops you from passing through. Explaining the purpose of your mission has no effect. He refuses to let you through and heightens the tension by starting to search your vehicle aggressively. All of a sudden, he discovers a compact disc of reggae music on your backseat. *'You like Reggae?!'* he exclaims. You then start chatting and bonding around reggae and he eventually agrees to let you continue your journey.

Appealing to Super-Ordinate Goals

In psychology, super-ordinate goals are higher common objectives with regard to which two parties agree to cooperate despite lower level

differences. Appealing to such higher-level goals is different from bonding, which may be connected to more mundane things, often not related to the substance of the talks.

Super-ordinate goals are meta-goals that the parties can come together round in order to overcome their differences and which they can use explicitly as a basis for working jointly on a common cause. A classic example would be two groups of English football fans that loathe each other's club teams – Arsenal and Manchester United. These fans insult one another vehemently across the terraces. Later, they travel abroad together, wearing the same colours, to support the national team.

Politicians often use super-ordinate goals to rally people around national unity, and, of course, the sinister construction of super-ordinate nationalist or ethnic identities can be the reason why humanitarians are in a war zone in the first place. But it is often possible to find a good example of a super-ordinate goal or identity that brings you and your counterpart together for a common cause and with a common interest. This might involve you both agreeing that 'these people are all human beings' or recognising common higher level values like 'no-one should ever have to experience this', although such principles may not always be shared, especially in conflict environments that de-humanise enemies. But common goals may also consist of a mutual recognition of more personal and prosaic common interests between a frontline humanitarian and a district governor:

"Let's sort this out as soon as possible so that we can both leave this place and get home to our families."

Process

It will not always be possible to control all aspects of the negotiation process – where, when, with whom, how often it occurs and who sets the agenda. In urgent and unexpected situations, or when the power symmetry is not in your favour – such as rapid onset operations or at hostile checkpoints – you will exercise little influence over the process. Nevertheless, good negotiators always think about how best to use time, space, layout, participants' lists and unexpected opportunities to their advantage.

A great deal of the conflict in any negotiation is often played out in a struggle over process. It may sound ridiculous to outside observers

that international talks often breakdown because of a failure to agree on a venue, the participants' list or the ranking of items on the agenda. In reality, however, a great deal of advantage can be gained by dominating key aspects of the negotiating process, so that what might be considered detail becomes a primary battleground.

Below are some suggestions for managing the negotiation process that might prove helpful.⁹

Applying Time Pressure

If you are not on the receiving end of time pressure, in certain situations, it can be useful to impose deadlines on your counterparts. For example, you may start the negotiation by saying that you will have to leave after one hour because of another obligation. You may also put time pressure on your counterpart by pointing out the consequences if you have not reached agreement by a specific point. However, these techniques should be employed with care. Individuals react very differently to time pressure and your counterpart may feel overly pressured and refuse to engage in further talks. The better you know your counterpart the better will be your judgement call on how much time pressure you can apply wisely.

Choosing the Right Venue

Negotiations can be conducted in several different locations – each with its own advantages.

- **Your place** As the host of the negotiation, you will be able to control the physical environment and create an atmosphere conducive to agreement – perhaps by serving food or drinks. You will also be expected to lead the discussion.
- **Their place** As a visitor, it will be easier for you to walk away from the table if the negotiation takes an unfavourable turn or if you want to apply time pressure.
- **A neutral place** This is a fair option if a visiting party believes that it is at a disadvantage due to the negotiations taking place at the other's venue. In a neutral place, neither side enjoys home advantage. Decisions on all other procedural matters can be reached through mutual consent.
- **Close to the victims** You may also consider holding the negotiation close to the affected population that you are trying to assist or

protect. This will allow you to stress the urgency and the importance of the issue.

Physical comfort will often facilitate negotiations. Clearly, when you are negotiating in open country in extreme temperatures and are craving a cold drink, it may not be as easy to concentrate as in a cool room with good food. However, be aware that things can seem much better than they actually are in a nice place with a beautiful view, tending to make both parties slide easily into idealistic agreements, which lose sight of the realities at the sharp end of the conflict.

Selecting the Participants

When deciding on the number of colleagues who will take part in a negotiation, be sure that the team is at least equal in size to that of your counterpart. Some negotiators like to *gang up*. This certainly puts the team in a more powerful position, but it may also intimidate the other party and prove counterproductive. Nevertheless, remember the risks of negotiating on your own (refer back to Chapter 5).

Seating Arrangements

Seating can be a key issue in your negotiation. It has a power dimension and also determines who has good eye contact with whom. There is both a science and an art to getting it right and to making it work in your favour. Annex IV provides some guidelines on how to manage seating arrangements.

Agendas, Draft Proposals, Minutes and Ground Rules

Leading on other areas of negotiation process can also deliver some important advantages. Whoever is in a position to set the agenda for any talks, submit draft proposals, record meetings or insist on certain ground rules often gains the upper hand in a negotiation.

Try not to become a passive participant in somebody else's process. Instead, actively take the initiative whenever possible by proposing an agenda (prioritising the issues to be covered in the talks), presenting draft proposals or suggesting certain ground rules that could guide the negotiations (for instance, no weapons in the meeting room).

Safety

Negotiating without physical security guarantees will always put you

in a defensive position. If possible, it is clearly preferable to agree with your counterpart that no weapons can be taken into the negotiating room. In many instances, though, you may no choice but to negotiate in the presence of guns. This will, by default, make you the weaker party. In such cases, you should at least request that the weapons be unloaded. Otherwise, staying calm and not provoking your counterpart will be the only effective tactics.

Confidentiality

It is very important to stick to any agreement to hold secret negotiations and hence to keep all relevant information confidential. Even if the disclosure of some data may seem to offer significant advantages – such as widespread public support – vital credibility can be lost and a good negotiating relationship can be compromised by such a breach.

Sometimes, however, humanitarian mandates or a specific negotiation objective may make it impossible to keep some information confidential (for instance, grave human rights violations and mass killings). Humanitarians have to face the familiar dilemma of going public and risking the future of the negotiations.

Formality

The degree of formality accorded to a negotiation can often be a sign of the status and legitimacy of those involved. This is especially true of talks with representatives of rebel groups who are often seeking international recognition. They may insist on a very formal protocol under which written invitations are sent, minutes are taken and reports are prepared. Depending on your organisational mandate or mission, and the ethical risk of granting legitimacy to groups that seriously disrespect international humanitarian law or human rights, you may not always be able to satisfy such requests.

Some More Aggressive Tactics and How to Counter Them

Some tactics are more appropriate than others with respect to a humanitarian negotiation – guilt tripping and blackmail in their raw form may, for example, not be good practice and thus should not be recommended. Nevertheless, it is important to be aware of the more coercive tactics that they may be used against you. Table 5 lists some of them and offers some suggestions on how to counter them.

Table 5 Aggressive Negotiation Tactics and Possible Ways to Counter Them

TACTICS	DESCRIPTION	POSSIBLE COUNTERMEASURES
Take it or leave it	Accept their offer in its entirety or do not receive anything at all.	Test their commitment; appeal to their sense of fairness; highlight the advantages of splitting the offer.
Hands tied	They say that there is nothing they can do to change the situation because they do not have the authority.	Check the facts and establish whether they are telling the truth. If yes, identify and approach the real authority.
Bulldozer/shotgun	They present all issues and use levers in a single session.	Insist on breaking the session up into several meetings dedicated to different issues.
Good guy/bad guy	They negotiate as a pair. One of them threatens you and takes a tough line, while the other shows compassion and apologises.	Tell them that you know what they are doing and/or try to drive a wedge between them.
Deception	They deliberately conceal facts or their real interests.	Verify the facts; perform an in-depth analysis of interests.
Blackmail	They ask for something in exchange or threaten to reveal information that could disgrace you if you do not agree to their offer.	Ignore the tactics; tell them that you know what they are doing; appeal to reason and objective criteria; take a break, if necessary.
Guilt trip	They make you feel bad by not agreeing.	

Checklist for Tactics

- Have you chosen some tactics based on how much importance you give to substance, relationship and process? Below are all of the techniques and tools available.
 - Appeal to reason, not feelings.
 - Re-frame the problem.
 - Bond.
 - Appeal to higher goals.
 - Apply time pressure.
 - Choose the right venue.
 - Select the participants.
 - Seating arrangements.
 - Agenda, draft proposals, minutes and ground rules.
 - Safety.
 - Confidentiality.
 - Formality.
- Are you prepared for the fact that more aggressive tactics may be utilised in the negotiation?

CHAPTER 13 PREPARING YOUR ARGUMENTS

Once all necessary steps have been taken to maximise compatibility and leverage and to define your approach and tactics, strong and appropriate argumentation should be put together to help you influence the other party further and make a compelling humanitarian case. Arguments are the reasons that one side advances to show the other that a specific negotiation outcome is in his/her interest. For example, what reasons can a humanitarian cite to convince a military commander that it is in his/her interest to provide water to a densely populated suburb even though enemy troops are hiding there? The answer, of course, is that there is no single magic argument that will work in every situation. The best arguments will be shaped from a good appreciation of the specific situation and the personalities involved.

This chapter sets out the main humanitarian arguments that can be employed in any given situation to help humanitarians build appropriate arguments for their various negotiations during the strategy phase. It draws on a study carried out by the ICRC in 1997, which examined a range of different arguments developed by delegates around the world.¹⁰

What is the Challenge?

The days when it was enough simply to invoke legal obligations or to fall back on orders received from a superior are long gone, if indeed they ever really existed. Even in the 1930s, the famous ICRC delegate, Marcel Junod, noted that, in the Spanish Civil War, and during the Italian invasion of Abyssinia, it was always necessary to draw on factors other than international law and authority to make a convincing humanitarian argument. Merely evoking the law has never been enough.¹¹

Today, the daily reality of weak nations, incredibly strong states, armed groups, fanaticism, ethnic nationalism, terrorism, violent commercial exploitation and frequently loose chains of command is common to the humanitarian. In such different and difficult settings, how can humanitarians build an argument that is sensitive to context, while, simultaneously, remaining faithful to humanitarian values and principles? This challenge is compounded by the fact that there is often little time to

prepare for negotiations, which may begin at any time, be it at the wheel of a 4x4 vehicle or in the corner of a bar where one's physical security is far from guaranteed. Building a good argument requires strategic thinking, psychological insight, preparation and flexibility.

Different Types of Humanitarian Argument

Every argument used during a negotiation process can be understood to have *objective* elements and *subjective* elements. The former relate to international norms, dispassionate calculations of need and particular agency expertise. The subjective aspects, meanwhile, are those that seek to get under the skin of the actual person in front of you. They speak more to this particular person's needs, interests, beliefs and fears. They are, therefore, more informal, personal and emotional. To be effective, humanitarians need to argue well on both levels.

Objective Arguments

Objective arguments are messages developed on the basis of one's institutional mandate or mission – what it stands for, what it wants, what it can do and what it says. This message will only be clear if the institution has a clear vision of its aims and is consistent in practice. Broadly, there are three types of argument at your disposal.

- **Legal** – arguing for humanitarian protection and assistance on the basis of national and international law.
- **Your organisation's mandate and principles** – the mandate or mission under which your organisation is entitled to engage in humanitarian work and the principles on which you operate.
- **Your organisation's expertise** – the practical added value that your institution can bring to a situation.

Example: An Objective Argument for Assistance

Below is how an ICRC representative might make an objective case to be allowed to participate actively in assisting victims of war.

Key Message

Keep victims alive, reduce their suffering and prevent the consequences of illness, injury or nutritional deficiency from negatively affecting their future.

Legal Argument

Aid activities are governed by the Geneva Conventions (for example, Articles 59 to 62 and 108 to 111 of the Fourth Convention) and the Additional Protocols (for instance, Article 70 Protocol I). In non-international conflicts, activities are also governed by Common Article 3, which states that:

“Persons taking no active part in hostilities ... shall in all circumstances be treated humanely”; and that

“... the wounded and sick shall be collected and cared for.”

Mandate and Principles Argument

The ICRC is empowered to provide these services by virtue of Articles 3 and 9 of the Geneva Conventions, as well as its Statutes. It does so in accordance with its operational principles of impartiality, neutrality and independence.

Expertise Argument

The ICRC brings to its activities extensive knowledge and experience of managing large-scale operations acquired over a number of years (the first ICRC aid mission was launched in 1876 to help victims of a revolt).

Subjective Arguments

The subjective elements of an argument take into account the particular context and the interests and character of the counterpart in front of you at any given moment. Good subjective arguments can be utilised in two main ways. They can be used to get past objective arguments that are obviously not working:

“You may not believe in the Geneva Conventions but surely you can see that your people will benefit from this too.”

At other times, subjective arguments can complement objective arguments and thus be more suitable for the person you are dealing with:

“You have nothing to fear from agreeing to this, as my superior and yours have already agreed to humanitarian access in your area.”

There are six different subjective factors that, usually, can increase the effectiveness of a humanitarian argument:

- fear;
- authority;
- self-interest;
- reflection;
- universal values; and
- culture.

Fear, authority and self-interest are often particularly powerful motivators – particularly if one agrees with Machiavelli’s pessimistic dictum that ‘man [sic] only does good through necessity’. But appealing to the self-interest of military and political personnel is also a difficult line to walk and must be done judiciously. Is it really the role of a humanitarian to point out to his/her opposite number from the military, in a concrete and explicit way, the precise political, military and economic advantages to be gained from humanitarian restraint in a given situation?

A super-ordinate appeal to universal values can work, but it cannot always be relied on. Values that are obvious to you may not be so apparent to others. For example, although nepotism is considered to be a failing in the West, there are many places where it would be unthinkable not to offer preferential treatment to one’s relatives. This means that the universal notion of impartiality is not always the best card with which to lead.

Actively encouraging the other party to think through and reflect on the situation can also sometimes prove to be a creative move. If all goes well they may reach conclusions that are similar to your own.

Table 6 uses the earlier example of depriving a civilian population of water to illustrate the different types of subjective arguments one can make. It also points to the risks inherent in such arguments by indicating what you need to know in order to make such arguments effectively and the kind of moral hazards that might encounter.

Finding the Right Argument

Ideally, humanitarian negotiation will need to draw on a strong combination of objective and subjective elements to make its case effectively. There are four main criteria to which any argument must correspond. The diagram on page 108 visualises these criteria in the form of circles and shows that the perfect argument is to be found at the intersection of them all.

FACTOR	ARGUMENT	WHAT YOU NEED TO KNOW FIRST	DILEMMAS
FEAR, THREAT	Depriving a civilian population of the basic necessities needed for survival is a war crime and you may be held personally accountable.	Details of international humanitarian law and if there is a genuine possibility that those responsible for these particular violations will be punished.	Your threat runs the risk of creating security problems for humanitarian workers.
	We will denounce you to your superiors.	Do their chains of command really work and carry weight?	
	We will denounce you to the media.	What influence does the media have in this particular situation and what effect would such a denunciation have on the future activities of humanitarian workers?	Using the media to denounce violations may not be usual practice for your institution, nor in keeping with the confidentiality commitment you have entered into with the authorities concerned.
AUTHORITY	Your attitude is unacceptable ... I order you to supply the town.	What influence does your institution have in this situation?	Is this the image you wish to give of yourself or your institution?
INTEREST	Lack of water is likely to cause epidemics and you and your troops are likely to suffer too.	The specific strategy the army is going to employ to occupy the town.	Are you providing advice about military strategy that is contrary to your neutrality?
	If the civilians are subjected to the same suffering as the rebels, they are likely to sympathise with them.	Has the civilian population already been won over with respect to the cause of the rebels? If not, does the scenario you are developing seem realistic.	
REFLECTION	I am aware that your military mission obliges you to arrest the rebels. However, how do you plan to distinguish between combatants and civilians?	Is the distinction between civilians and combatants recognised and valued by your counterpart?	Recognising the very real problems associated with distinguishing between civilians and combatants may lead your counterpart to argue that the use of a much more indiscriminate strategy as being inevitable.

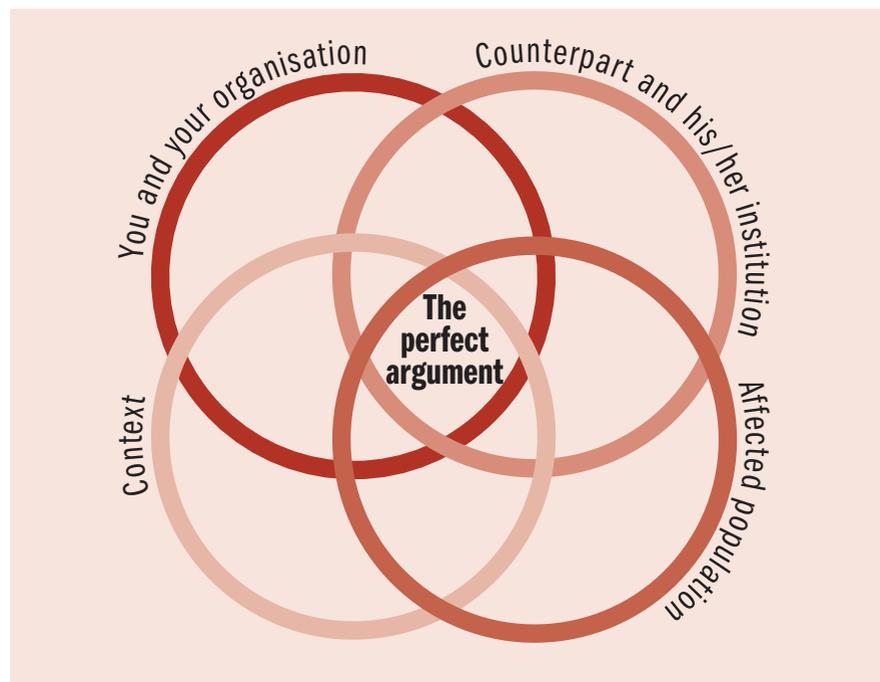
FACTOR	ARGUMENT	WHAT YOU NEED TO KNOW FIRST	DILEMMAS
UNIVERSAL VALUES	No-one can accept that civilians be deprived of a commodity as vital as water. How would you feel if your family was in this town?	Is your counterpart the kind of family man/woman who might be sensitive to such an argument? Does your counterpart have family in the town anyway?	Your counterpart may have experienced similar violence against his/her own family and feel that such retaliation is morally right.
CULTURE	Your country/your religion states that: "You will not refuse a glass of water even to your worst enemy".	Know the culture(s) of the country. Do not confuse and quote a dictum that is from the country but applicable to a rival group.	What gives you the right to "teach someone their own culture"? A national staff member would be in a better position to do this than an international one.

First, the right argument will need to be compatible with international law and accurately represent the mandate or mission of your agency. But it should also be the argument that you are most comfortable making, so that you present it with conviction. This point is important. Medics make the most convincing medical arguments; lawyers make the best legal arguments; but atheists or Christians are not usually best suited to making arguments concerning Islam.

Second, the perfect argument will appeal to the diverse interests of your counterpart and his/her personality. For instance, you will put forward different arguments when speaking to a member of the Ministry of Health than when you are speaking to someone who represents a religious group.

Third, a good argument will also take account of the local context, the overall conflict situation and the national cultures.

Fourth, your argument will also appeal to the population you are trying to protect. This is important because its needs are your primary concern and anything you say during your negotiation has to relate to them. In addition, if your argument does not take account of the needs of the affected population, your counterpart may be able to use them against you. He/she may, for example, try to publicise your argument to discredit you, claiming that you are a cynic and scornful of the population.



As the diagram above illustrates, the intersection of the four circles is very small.

The examples in Box 9 illustrate the principles that lie behind the circle diagram. They show how humanitarian workers from different backgrounds use particular arguments when trying to convince a counterpart to respect international humanitarian law and how they were queried by some of their colleagues.

Box 9: Which Arguments are the Most Adequate?

Religious Duty

A humanitarian from South-West Asia repeatedly put the following argument to his counterpart:

“Rules to limit violence in all situations, including times of war, have always existed. These rules are sacred and are found in the Koran.”

Some felt that such an argument came close to proselytising (as opposed to spreading ideals concerning international humanitarian law) and thus wondered whether he was endangering his neutrality as a humanitarian. His response was that, for those combatants who listened to him, there was only one Book and that they felt no need to respect orders coming from profane works like the Geneva Conventions. He also pointed out that expatriates could not employ this type of argument. His white beard, his local origins and his obvious religious belief enabled him to use this type of argument effectively.

Extreme Military Pragmatism

A Cambodian aid worker said that he had often used the argument:

“If you kill a baby and its mother you will already have wasted two bullets, this is not going to make you more effective.”

His colleagues were very surprised by the pragmatic military nature of his argument. He explained that, as a former soldier, he was aware that strict orders are issued not to waste bullets. He also pointed out that, as his country had recently experienced genocide, more general appeals to humanitarian values carry little weight. But does such an argument fit with the beliefs of an impartial and neutral humanitarian organisation? Or does it give the impression of offering military advice, which could sound extremely partisan to opposing forces if they heard it. Depending on one’s judgement, this argument either falls cleverly within the four circles or lies well outside the context circle.

An Argument Too Far?

A Western European aid worker in the Balkans who was given the opportunity to address a military audience described a similar case. He used the following argument to try and improve detention conditions for prisoners:

“By treating your captured prisoners properly, you reduce your enemy’s will to fight.”

While this argument may have made sense to his audience (affected population circle), it seems to stray too far into the realm of military advice (rather than humanitarian argument).

A good argument does not have an indefinite lifespan. While it is not wise to come up with a new argument at every meeting, it is important to gauge the effectiveness of any arguments you use over time and to adapt them as necessary.

Not only is it difficult to make a perfect argument, but often humanitarians only have a fraction of a second in which to frame an argument or response. Yet, a humanitarian's own life and the lives of those he/she is trying to protect rely on a swift and appropriate reply. Hence the importance, once again, of treating humanitarian arguments in a strategic way – be as well prepared as possible.

Good Practice in Developing an Argument

To put the two elements of a good argument together – the objective and the subjective – requires thought and skill. It also requires good teamwork, making sure that they are applied consistently across the entire programme of the agency, and adapting them when necessary.

Any arguments made at the objective level must be based on good knowledge of international legal norms and on clear and precise principles and practices that are adhered to by all staff members within an organisation. It is not enough for humanitarians just to be acquainted with institutional principles. Similarly, everyone needs to know the objectives and priorities that their organisation has set for any programme, so that the right arguments can be developed to satisfy them.

If objective arguments require a certain amount of logical precision, subjective arguments serve as a reminder that negotiation is an art, not a science. There is no single good argument, but rather an almost infinite palette of them. Artistry, insight and adaptation will be required to get your message across in an appropriate way.

Box 10: Planning an Argument

One humanitarian team decided to pay particular attention to the arguments it used:

Prior to each field visit, the team organised a meeting to bring together national and international participants in the mission and drafted a list of possible questions that could be raised by their counterparts. The team then explored and decided on the best answers that could be given, as well as those answers and explanations that should be avoided. This kind of explicit and collaborative work enabled the team:

- to discover better arguments;
- to be consistent in terms of its answers and explanations;
- to avoid contradicting itself from one visit to the next;
- to reduce levels of personal frustration and stress – members now felt sure of what to say; and
- to challenge constructively its own preconceptions/prejudices.

One of the biggest problems the team faced was rapid turnover of international staff – newcomers were not aware of what arguments had already been used or discarded. As a result, the team decided to keep a written record of those arguments that had worked and those that should be avoided and to pass this on to headquarters for wider institutional learning.

Developing good arguments requires a high degree of flexibility and a willingness to re-evaluate one's position and approach constantly. The making of good humanitarian arguments does not always occur spontaneously. It requires preparation. Some people may find that staring down the barrel of a gun at a roadblock suddenly brings out diplomatic talents that they did not know that they possessed, but most of us feel safer and perform better if we have prepared in advance.

Checklist for Preparing an Argument

- Have you thought through the objective and subjective elements of your arguments in advance?
- Are your arguments appropriate given: your organisational mandate or mission and your own personality; your counterpart's institutional objectives and personal background; the wider context; and the needs of the population you are trying to assist?
- Have you involved the necessary personnel in preparing your argument?

SUMMARY PART THREE

In the past few chapters, we have described the six steps involved in devising a good negotiation strategy.

- 1 Taking appropriate steps to maximise compatibility and leverage, as this will increase your chances of reaching a successful agreement. This can be done by:
 - Considering as many options as possible;
 - Activating all available levers. This may involve, for instance, identifying applicable legal treaties and possibilities for investigation and prosecution, contacting the media, approaching your potential allies or drawing up assistance scenarios contingent on the realisation of the negotiation. Special attention should be paid to activating levers like fallbacks, credibility and time; and
 - Forming a negotiation team with the right level of authority and expertise, a suitable cultural background and personality type, and appropriate facilitation skills.
- 2 Finding your starting point on the C-L Matrix and defining your basic approach.
- 3 Choosing the right tools and techniques for your approach that will help you to exercise maximum influence over your counterpart. Among the most important are re-framing, bonding, defining common goals, and effective use of location, time and protocol.
- 4 Preparing effective argumentation that is in line with the humanitarian mandate or mission and the personality of the negotiator, the interests and personality of your counterpart, the negotiation context, and the needs of the affected population.

NOTES

- 1 Strategy in the original Greek sense concerned the art of planning a war. See Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 109.
- 2 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 69–70.
- 3 *Ibid.*, p. 63.
- 4 See, for example, *ibid.*, pp. 103–106.
- 5 *Ibid.*
- 6 Weiss, Josh. *Module on Negotiation for an Online Training Course*. Topic No. 10. Geneva: Centre for Humanitarian Dialogue, 2001.
- 7 *L'Encyclopédie ou dictionnaire raisonné des sciences des arts et des métiers par une société de gens de lettres*, (translated by the authors). Paris: 1757.
- 8 Tactics are usually defined as “short-term, adaptive moves designed to enact or pursue broader (or higher level) strategies.” See Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 110.
- 9 These suggestions are inspired by Teply, Larry. *Legal Negotiations in a Nutshell*. St. Paul, MN: West Publishing, 1992. See Chapter 4 in particular.
- 10 Final Report of the DD/PRO, *Etude sur la Diffusion dans les nouveaux contextes de conflits et de violence interne*. Unpublished. DD/PRO 224/97.
- 11 Junod, Marcel. *Le troisième combattant*. Lausanne: Payot, 1948 (most recent edition 1989).