

Environmental Negotiation Primer

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Issue Discussion

Whether you are negotiating the subtle, yet important, specific input and results of a human health risk assessment or an ecological risk assessment, there are basic principals of negotiation to follow which will facilitate the most productive negotiation process and outcome. Many of these principals come from the larger field of alternative dispute resolution; however, they apply to simple communication and negotiation among any number of parties. This primer provides a brief overview of these principles that can be used to achieve a successful negotiation. For a more detailed exposure to negotiation, it is highly recommended that you attend the Environmental Negotiation Workshop, from which this primer is based. The workshop is offered by the Naval School, Civil Engineer Corps Officers (CECOS) (<https://www.cecos.navy.mil>).

Environmental Negotiation

Negotiation is the process of exchanging promises and commitments in an effort to resolve conflict and reach an agreement. The purpose of a negotiation is to produce an equitable and sustainable outcome in a reasonable time frame that is better than what would result without a negotiation. Environmental negotiation can be uniquely challenging as it involves decisions regarding potential impacts to human health and the environment due to hazardous substances in the environment. These decisions are difficult to make due to the significant technical uncertainty involved in risk assessment, as well as the human emotion involved. Decisions regarding environmental restoration and compliance at federal facilities are further complicated since they often involve several organizations and numerous interested parties.

Negotiation Elements

There are many elements and facets of negotiation. One way to categorize them is to consider that there are Individual, Organizational, and Public contexts of negotiation.

A. Individual Context

The essence of any negotiation involves the interaction of people who often have differing personalities and objectives. Thus understanding and mastering interpersonal dynamics is a fundamental aspect of a successful negotiation. Human emotions are manifested in many forms and can dominate a negotiation, especially when important decisions are being made that may affect human health and the environment. These emotions often play a significant role in the decision making process and thus an effective negotiator should be cognizant of

human behavior. Understanding the cause and effects of common human emotions can be extremely beneficial when negotiating. Therefore, productive agreements can be best achieved if one is in control of the negotiation by being as knowledgeable as possible about the human dynamics involved.

Being cognizant and comfortable with the Individual Context of a negotiation is the building block to being comfortable in a negotiation, and thus confident, convincing and effective. The following principals are offered as a means of assessing and ethically influencing human motivations and behavior in a negotiation.

- **Establish a Relationship:** Realize that those with whom you are negotiating are not your opponents, but your counterparts. Treat them as advocates – people who will be proponents of yours and through which you can communicate your information to others. You should avoid treating them as opponents, which will only foster an adversarial relationship. Build a relationship with your negotiation counterparts as early as possible that is based on trust and credibility, despite the difference in objectives.
- **Know Yourself:** Realize that you have a certain style of communicating and a certain emotional behavior that affects the interactions. How your style and communication is received may differ in different situations. Be aware of what emotional state you are in and how it is impacting the communication dynamic. Be emotionally smart by being in control of your emotions, and avoid getting agitated and irrational in an adversarial situation.²³ Expect conflict but keep calm and avoid responding too quickly with anger or in an irrational manner. Don't take critical comments personally; separate the people from the issue.
- **Know the Style of Negotiation:** Recognize there are different styles of negotiation. The three main arguing styles are validating, volatile, and avoidant.⁴ These range from being very aggressive and assertive to being passive and accommodating. Each can be effective when used the right way. Determine and use the best style of negotiation for your situation. Ascertain the style used by your counterparts so that you can decide if you want to merge with their style, or make them adapt to your style.
- **Know Your Counterparts:** Similar to knowing yourself, realize that your counterparts will have a style of communicating and a certain emotional behavior when negotiating that may change when in different situations. If you can predict and understand the basis of their behavior and style of negotiating, then you can best be in control of the negotiation.⁵ Recognize and respect that your counterparts have needs like you do. Some needs such as respect or recognition are often not obvious. These underlying needs often dictate the emotional behavior of your counterparts. When a good relationship exists, it is possible to learn more about their underlying needs.

B. Organizational Context

While each negotiation is unique, there is a common underlying organizational structure and hierarchy in which a negotiation is often conducted. This structure involves both the roles of those actively participating in the negotiation, as well as the supervisor chain. Individuals tend to take on one of several roles. The following principals are elements to understand the organizational context of a negotiation. Mastering these organizational aspects will help you be comfortable and confident in a negotiation.

- **Know the Organizational Roles and Structure:** Realize that there is a generic structure to a multilateral negotiation (i.e. when there are more than two parties involved).⁶ Within each party, there may be more than one person at the negotiating table. One will often be the lead negotiator, who may inconspicuously take on the role of a mediator with the other parties. The other people within each team may take on other roles, such as those who want to reach an agreement, and then those that wish to remain stubborn. The same roles may exist for the other negotiating team. Appreciate that the information needs and objectives for these roles may differ, and that communication between proponents may be more productive than those between opponents of a settlement.
- **Respect the Ratification Chain:** Supervisors may not be at the negotiating table or directly participating in the negotiation, however, they can still have significant impact on a negotiation. Supervisors need to be kept informed because they will eventually need to approve or ratify any decision, even though they may have given the negotiators at the table “empowerment” to make decisions. The need to check with a supervisor can be used to a negotiator’s advantage. Know whom your negotiating counterpart’s supervisor or ratifier is. Appreciate that sometimes ratifiers may talk to each other and not through the negotiators.
- **Know the Timeline:** The sequence of a negotiation can be broken up into to three phases in a timeline: the preparation phase, active meeting phase, and closure phase.⁷ In the preparation phase, all the elements of the Individual Context are addressed, such as prioritizing objectives, assessing negotiation styles and predicting behaviors. A successful and effective negotiation is often ensured in the first phase by thorough preparation. The active meeting phase consists of the actual face to face meetings and discussions. The agreement is finalized and ratified in the closure phase. Anticipate and plan for the tasks that need to be accomplished in each phase. Know what deadlines must be met and don’t let an impending deadline force a decision that may not be in your best interest.
- **Know your BATNA:** The Best Alternative To a Negotiated Agreement (BATNA) is the best outcome that will result if the negotiation fails. The purpose of the negotiation is to reach a mutual decision that is better than your BATNA. A BATNA should be assessed in the preparation phase such that you will have an acceptable alternative to enable you to walk away from the negotiating table. This will provide protection from accepting a negotiation offer that is not in your best interest. You should also likewise predict your counterpart’s BATNA in the preparation phase.⁸
- **Negotiate Objective Issues, not Positions:** Establish objective issues to negotiate. Take care to define and understand the interests that define these issues. Don’t get caught in positional arguments, where each party takes a position on an issue. An efficient negotiation will focus on interests, needs, desires and concerns of all the parties involved.⁹
- **Build Trust and Advocacy:** The greatest tool of a negotiator is trust. Take the time and the actions to build and maintain a relationship based on trust and credibility. This can be accomplished in many small actions, e.g. show up as promised, deliver documents as promised, etc. Do not make a promise you can not satisfy. Promise to take their proposals discussed at the negotiating table to your ratifier for consideration. Ask your counterpart to likewise be an advocate for your information to his/her ratifier.¹⁰
- **Make Win-Win a Goal:** A “win-win” solution is one that provides a benefit to all the parties. Elements of a win-win solution include the following:

1. There are multiple issues to be settled such that tradeoffs and bargaining can be done. Each party should recognize what needs and objectives the other party wants and should be concerned that they can achieve them.
 2. The negotiators must be creative, rational (not irrational due to uncontrolled anger) and flexible to create alternative solutions that produce benefit for all parties. Look for shared interests and mutual gains.
 3. The parties must exchange information rather than withhold information such that mutual gains can be achieved.
 4. Each party must recognize that the other party may value the same commodity or objective differently, i.e. there may be a different perception of risk or hazard, or monetary gain or loss.
- **Be in Control:** Strive to be in control of the negotiation process, such that you can shape the process and not have the negotiation control you. A successful negotiator is able to predict behavior of the participants and anticipate actions of the participants. Know the objectives and negotiation styles of your counterparts in order to predict their behavior. This will provide the best means to achieve favorable results. Control does not mean to prohibit participation or input from any party, especially the public

C. Public Context

Environmental negotiation inherently involves communicating risk assessment and management information to stakeholders, often under stressful situations. The ability to negotiate a successful agreement can depend significantly on how well health and environmental information is communicated with your negotiating counterparts, regulators and the public.

Since environmental negotiation involves decisions that may affect public health and the environment, the public is rightfully involved as stakeholders. The public wants to be included in the decision making process, and the “court of public opinion” can obstruct or negate a sound technical decision based on their perception of a risk. Therefore the public has considerable impact on the process and outcome of a negotiation.

Thus, as one negotiates environmental decisions with multiple parties in such high concern and low trust situations, we are faced with the challenge of communicating information regarding health, safety and the environment. Fortunately, risk communication research and practice address such challenges. The principals and theory of risk communication are applicable for use in environmental negotiation. The following risk communication concepts provide guidance on how to apply risk communication techniques in environmental negotiations.

- **Recognize Risk Perception:** Recognize that the perception of risk may differ among multiple parties due to many factors. What one perceives to be real is real in its actions and consequences. This relates to and explains the need to predict behaviors and investigate our counterparts’ concerns and issues. Be respectful and aware that our counterparts may have needs and concerns that differ from what we expect.
- **Build Trust and Credibility:** An effective negotiator is trusted and credible. Your counterparts may not agree with your objectives, but if they trust and view you as

credible, they will most likely strive to reach an agreement. The building blocks of trust according to risk communication are to be empathetic, dedicated, competent, and honest.¹¹ Use these to build a relationship with your counterparts early and to maintain the relationship.

- **Credibility Ranking:** Recognize that a government worker is not perceived to be a trusted agent regarding health and environmental issues. A recent survey shows that federal government officials are one of the least trusted organizations regarding health and environmental issues.¹² This broad and even stereotypical judgement may be different at certain locations and does not differentiate among all the various government agencies, however, the undeniable fact is that when communicating and negotiating health and environmental matters, the government is at best, skeptically trusted. Recognize that this limits your power as a credible negotiator with other groups such as community groups or the media, as they are perceived to be of higher credibility according to the aforementioned survey.
- **Credibility Transference:** Use the power of a third party to gain credibility by associating with an organization that has higher credibility. When an independent and trusted organization agrees with you and supports you, you will gain that organization's credibility by transference.
- **Be Positive and Proactive:** Risk communication literature and practice indicates that denying allegations of wrong doing often reinforces the negative allegation. For example, responding to an allegation such as "you have polluted our water" or "you are killing our children" with "no, I am not" will reinforce the allegation. In other words, negativity spawns negativity. Be proactive in your communications and negotiation. Develop positive messages to address anticipated allegations that may be brought forth in a negotiation. For example, a better and more positive response to a question about polluted water would be "the water is safe to drink".
- **Be an Active Listener:** Communication often breaks down because information is not delivered nor received. Use active listening skills to encourage the speaker to provide you with the information you need, and instill in them that what they have to say is important. Active listening skills include: asking open-ended questions, paraphrasing, making eye contact, taking notes and showing empathy.

SUMMARY

When negotiating: Establish a relationship with your negotiating counterparts. Identify their objectives and respect their issues. Predict and anticipate their emotional behavior and negotiation style. React in an emotionally intelligent manner. Debate the issues, do not debate or argue on the positions. Create an environment where brainstorming can flourish, and where information can flow freely in both directions. Build advocacy with the parties. Use advocacy and trust to create doubt in the minds of the parties as to the viability of their objectives. You will be a comfortable, confident and convincing negotiator when these are achieved.

Point of Contact

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Endnotes

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⁴ Gottman, J. *Why Marriages Succeed or Fail*. New York: Simon and Schuster, 1994.

⁵ Courtesy of Robert Maurer, *The Science of Excellence*, Santa Monica, CA

⁶ Colosi, Thomas R. *On and Off the Record: Colosi on Negotiation*. New York: American Arbitration Association, Kendall/Hunt Publishing, Second Edition, 2000.

⁷ Miller, Jeffrey G. and Thomas R. Colosi. *Fundamentals of Negotiation: A Guide for Environmental Professionals*. Washington D.C.: Environmental Law Institute, June 1989.

⁸ Fisher, Roger, William Ury, and Bruce Patton. *Getting to Yes*. New York: Penguin Books, New York 1991.

⁹ Fisher, Roger, William Ury, and Bruce Patton. *Getting to Yes*. New York: Penguin Books, New York 1991.

¹⁰ Colosi, Thomas R. *On and Off the Record: Colosi on Negotiation*. New York: American Arbitration Association, Kendall/Hunt Publishing, Second Edition, 2000.

¹¹ Covello, Vincent T. "Risk Communication", Chapter 6 of *Occupational Health Practice*, Waldron and Edling Editors, Butterworth Heineman, Fourth Editions, 1997.

¹² Covello, Vincent T. "Risk Communication", Chapter 6 of *Occupational Health Practice*, Waldron and Edling Editors, Butterworth Heineman, Fourth Editions, 1997.