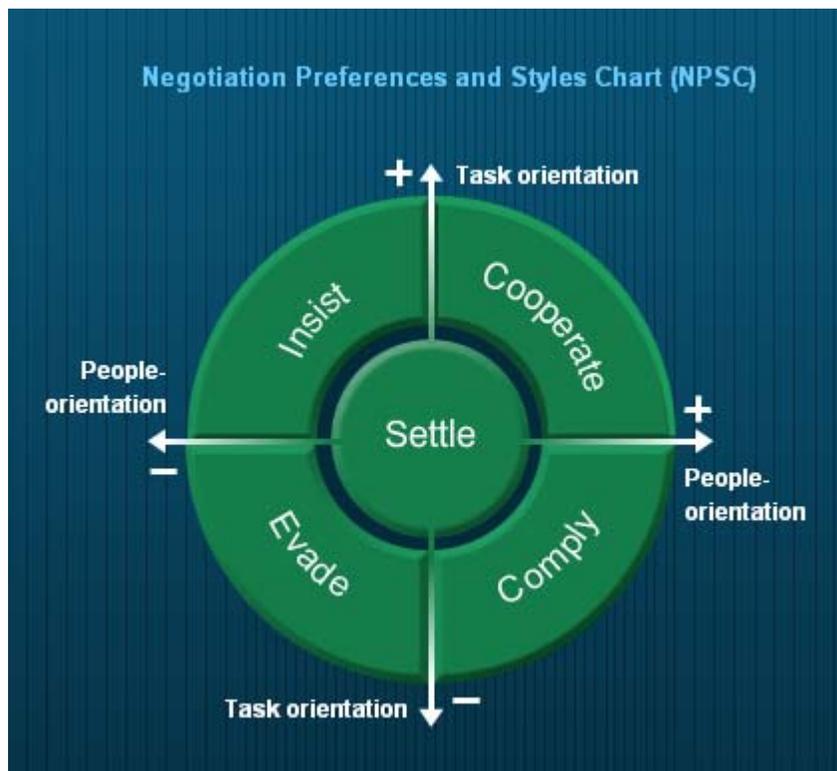


# Warrior/Negotiator:

No longer an oxymoron, but a necessity

Dr. Stefan Eisen, Jr. Col (ret) USAF  
Dr. Kimberly A. Hudson



Air Force Negotiation Center of Excellence, Maxwell AFB

It became clear to me that at the age of 58 I would have to learn new tricks that were not taught in the military manuals or on the battlefield. In this position I am a political soldier and will have to put my training in rapping-out orders and making snap decisions on the back burner, and have to learn the arts of persuasion and guile. I must become an expert in a whole new set of skills.

--General George C. Marshall

### Introduction

There are many times when platoon leaders and platoon sergeants at roadblocks, and company and battalion commanders working in cordon and search operations, must negotiate and communicate with potential belligerents. Leaders need to know that they may be placed in a position that requires them to mediate or negotiate on the battlefield.

--Brigadier General L. Magruder, III, USA CG, Joint Readiness Training Center

The United States needs partnerships, allies, and enduring solutions at all levels in today's contingency operations. The competitive negotiation strategy, which is the default preference of too many military leaders,<sup>1</sup> does not support building partnerships and alliances; in fact, the competitive strategy is often counterproductive to those goals. Although warfighting is still the key skill of the profession, warriors are also tasked with peace-keeping, civil affairs, relief, multi-national cooperation, internal defense, training, and capacity-building missions. In these roles, military members operate in concert with other organizations as well as local officials and citizens to build local capacity as well as security. In many missions, individual negotiating activities have strategic implications. Leaders must master multiple negotiating strategies in order to effectively lead. As David Tressler notes, with regard to Operation Iraqi Freedom:

In the current strategic environment, every junior leader is a 'strategic corporal' and all officers, from lieutenant to general, are expected to be especially adaptable, flexible leaders who are prepared to overcome obstacles and accomplish their missions in what is often a confusing, tense, unfamiliar environment. With thousands of negotiations being conducted by U.S. soldiers..., the aggregate effect of negotiations that damage the reputation of the U.S. military or do not achieve the intended outcomes—or, alternatively, of those that do—has an impact on the ability of the U.S. military to efficiently accomplish its operational mission[s]. More time spent preparing the military's leaders—from squad leader to field officer—for the negotiating they will inevitably and actually do while deployed...is critical for the U.S. military's mission success.<sup>2</sup>

### Negotiations as a Valued Competency<sup>3</sup>

As a recognized process for addressing (and either resolving or settling) problems, the overall demand for negotiating competency is widespread.<sup>4</sup> Examining the racks in a

Books-a-Million store reveals unscientific, yet persuasive evidence. They have over 700 products addressing negotiations.<sup>5</sup> Further, a simple Internet search for negotiations developmental opportunities returns thousands of hits.<sup>6</sup> Reviewing several corporate professional development programs reveals strong evidence for deliberately developing this competency.<sup>7</sup> A visit to Harvard's Program on Negotiations (PON) seminars finds large conference halls filled to capacity as business people, civic leaders, and educators advance their negotiations competency.<sup>8</sup> Although some people have a natural ability to negotiate, the majority achieve competency through deliberate development, either on their own, or through programs sponsored by their employer or community. Some professions or organizations even make development of this competency mandatory, either through required Professional Continuing Education or policies requiring certain competency mastery prior to consideration for advancement.<sup>9</sup> Why might this competency be valued? An examination of the environment suggests the need for these skills is pervasive.

Today's environment, even for junior professionals, is very complex and subject to continuous change – some of it predictable, some of it coming as a system-wide shock. A descriptor that has come into recent use to describe today's decision-making environment is Volatile, Uncertain, Complex, and Ambiguous (VUCA).<sup>10</sup> Illustrations of the VUCA environment are seen through commerce and institutional terms such as globalization, “the earth is flat”, horizontal integration, networking, intercultural and cross-cultural communications, regional competitor, downsizing, multi-tasking, outsourcing, and competition. This global perspective makes commerce, government, and entertainment a 24/7 proposition. All of this continuous activity also creates an environment of 24/7 friction and conflict. To successfully navigate this environment, a negotiating competency is acknowledged by both academicians and practitioners as a potentially useful skill set.<sup>11</sup>

### The Military Environment and Negotiations<sup>12</sup>

Effective negotiating skills are useful to military leaders as a valuable element in organizing and conducting the problem-solving process.<sup>13</sup> A negotiating competency is useful for virtually anyone's professional or personal life.<sup>14</sup> As Gen. George C. Marshall observes in the opening quotation, for the military professional, this competency may become more important as a leader advances in rank and responsibility for several reasons. First, although any military member has the potential to make a tactical decision with strategic impact, at the senior leader level the majority of decisions are more strategic in scope and effect because of the broader nature of the senior leader's responsibilities. Second, the institutional culture of the organization is a reflection of the attitudes of its senior leadership. If the institutional culture is going to value being an effective negotiating organization,<sup>15</sup> it will be the result of senior leaders' attitudes. An essential leadership mantra is that every leader must take the time to train his/her replacement. This mentoring responsibility requires that the senior leader not only coach the junior leader in expected leadership behaviors, but also demonstrate them in his/her own activities and behavior. Third, the VUCA decision-making environment, admittedly more complex today than in the past, is probably more complex at the strategic level than the tactical level, especially when working in Interagency and Coalition environments.<sup>16</sup>

Finally, the single fixed resource for any senior leader, time, is subject to increasing pressure as the scope of responsibility and consequences resulting from any decision (or indecision) is magnified. Unfortunately, time, as a resource, remains constant. Simply put, the problem set is getting larger and more complex without any additional time to find solutions. Senior leaders must therefore be more flexible, efficient, and deliberate in their negotiating and problem-solving.<sup>17</sup> Junior leaders also benefit from possessing effective negotiating skills, because such skills can reduce risk and increase chances for success. In the profession of arms, this may result in lives and other resources saved, disasters avoided, security enhanced, and perhaps combat that is shorter in duration or even avoided altogether. As with most leadership competencies, their development takes time and deliberate effort.

Beyond the garrison and deployed environments, negotiations are useful in virtually every facet of daily life. As valuable as this skill may be, it is always important to consider WHO thinks it is valuable and HOW they frame its value. In the West, most negotiating models, textbooks, teaching programs, college coursework, and case studies center on one of three categories; business, diplomacy, or counseling. Virtually all of the 700+ returns from a search at Amazon.com can be placed into one of these three categories. This article builds on the existing literature and asks: “What’s different about negotiating in the military context?” This article develops a general framework for negotiating, and then it introduces some constraining elements of the military context that may require you to adapt the framework.

### Negotiation Frameworks<sup>18</sup>

In business, you don't get what you deserve, you get what you negotiate.  
--Chester L. Karrass

As William Breslin and Jeffrey Rubin point out, negotiation has a long history going back to the Serpent’s temptation of Eve, who made Adam an offer he did not refuse.<sup>19</sup> Despite this long history, negotiations remain “highly complex not only from a mix of research and practice, theory, and application, but also from the variety of intellectual disciplines, which have focused attention on conflict resolution and negotiation.”<sup>20</sup> In American society, negotiation has often been associated with litigation. As Steven Cohen points out, somewhat tongue in cheek, disputes between wealthy landowners had previously been fought by hired mercenaries who waged war to determine who was right. The battle’s winner won the dispute. That is until lawyers were invented, and disputes were settled by waging law to identify the winner.<sup>21</sup> Many of the first formalized efforts in American negotiation training were geared for lawyers and emphasized an advocacy or adversarial strategy of engagement.<sup>22</sup> U.S. lawyers in particular are known for their direct strategy and frequently take a hard line approach to negotiations.<sup>23</sup> With this adversarial approach, a U.S. lawyer seeks to convince the other party of the righteousness of a certain position. This is in keeping with a U.S. cultural practice of developing solutions to problems by marshalling and defending data to support one’s preferred outcome. It is not surprising that this “my way is the right way” attitude is associated with litigation. It can also be expected that this competitive strategy can lead to an adversarial approach to negotiations with results that are often far from

optimal for both parties. Lawyers continue to view the world from the model of “zealous advocacy”.<sup>24</sup> In the USAF, a recent article argued that negotiations in the world of litigation still have a long way to go before being fully accepted as a valuable tool in the lawyer’s toolkit. USAF lawyers General Dunlap and Major McCarron say that:

...to attorneys in the modern day coliseum who enjoy the heat of battle, the word negotiation conjures up visions of granola eating, tie-dye clad Birkenstock wearing beatniks romping through daisy fields singing “kum-by-ya.” Or worse, the word negotiation implies weakness--that you have to “give in” or you have a “dog” for a case.<sup>25</sup>

Dunlap and McCarron then present an argument that in light of the USAF’s current environment, negotiation skills are indispensable to Air Force attorneys.<sup>26</sup> Rather than advocating for a purely competitive approach to negotiations, Dunlap and McCarron strongly suggest that negotiators expand the tools in their negotiating toolkit.

To fully understand negotiation, the focus on the outcome is important, but secondary to understanding the environment in which problems exist and the processes by which they are resolved. Leah Thompson suggests that the following changes in the business environment have made negotiations increasingly important to the business community: (1) the dynamic nature of business, (2) interdependence, (3) competition, (4) the information age, and (5) globalization.<sup>27</sup>

It is not a great leap to envision the military’s dynamic nature, operating in an interdependent, competitive, information-laden, and global environment. When looking for lessons from business world negotiations that are applicable in the military, the greatest potential for finding similarities is not in the goals sought (the purely business or economic aspects associated with getting the best deal) but in the dynamic environment of the business world and the means by which negotiations are conducted. The basis of all negotiations is an interaction between people as they meet to solve a problem of mutual interest.

The evolution of negotiation theory from its initial focus on profit outcomes to the broader study of the process of negotiations is evident in a migration of academic inquiry from business and economics into the fields of social and psychological theory. With this environment in mind, Thompson develops her definition of negotiation: “Negotiation is an interpersonal decision-making process necessary whenever we cannot achieve our objectives single-handedly.”<sup>28</sup> In complex military operations, objectives can seldom be achieved single-handedly. Looking externally, senior military leaders are often charged with missions that require working with people over whom they have no direct authority; in short, their span of responsibility is greater than their span of control. Additionally, the senior leader’s internal environment is often further complicated when this span of responsibility is also larger than the leader’s span of expertise or information. It is well known that the present environment requires problem-solving and reaching negotiated agreements between culturally and organizationally distinct groups of stakeholders.

Recognizing the necessity of negotiation skills, the USAF identifies negotiating as one of its desired Institutional Leadership Competencies (ICL). The ICL defines negotiating in this way:

- Describes the current situation, repeating all parties' needs, concerns, and initial positions, including own
- Identifies points of agreement/disagreement by managing the interpersonal approach and constructively handling emotions and conflict to keep discussion issues oriented
- Develops others and own ideas engaging in mutual problem solving identifying alternative positions or approaches and evaluating them openly and fairly
- Builds value for preferred alternatives by relating them to the other party's and own core needs resulting in agreement
- Assesses alternatives that can win acceptance of others resulting in selection of most appropriate outcome

#### Negotiations may be a Pervasive Requirement in Deployed Environments

During the early stages of Operation Enduring Freedom, the U.S. opened several airbases in Southwest Asia (SWA). Opening an airbase, even with the host allied nation's cooperation, is not easy. The skills required in planning, designing, and running a new base while preparing for war must be learned and practiced. Accordingly, those people charged with leading the efforts to open an air base are normally deployed first, in an advanced party (ADVON) force, and begin planning operations and preparation to accept follow on-forces. In a perfect world, that's how it should work. However, the environment is often dominated by Clausewitz's fog and friction. This was evident in the following example: In October, 2001, when the U.S., working with the host nation, opened an air base in SWA. Because of the availability of air transport, the geographic origins of deploying units, and the differing ability of units to prepare quickly for deployments, the first U.S. forces to arrive at this particular base were not the expected ADVON force, but rather a security forces squad, two enlisted transportation troops, and a small civil engineering contingent. This was the case for several days. The senior U.S. officer on the ground was a USAF security forces Major. Since the base was used by the U.S. during the first Gulf War, facilities, bed-down locations, and required resources were not pressing issues. The pressing issue was the actual process of how and in what manner the needs of the U.S. were met. Negotiating with the host nation on the base's development was the dominant activity. Everything from water delivery times to what types of vehicles were allowed on the flight line were subject to negotiation with the host nation. Even after the ADVON team arrived, this trend continued.

Despite the ADVON team's training in planning, building, and running a deployed base, they had little formal training in negotiation and few, with the exception of the contracting officer, had any specific experience in negotiating. In the subsequent weeks,

senior NCOs found themselves negotiating with senior host nation officials on issues such as U.S. security forces patrol boundaries and whether wine was allowed for Catholic services. The host nation’s culture valued negotiating and saw it as integral to their daily routine. Price for water? Negotiable. Dress for females? Negotiable. Flying times, aircraft parking spaces? Negotiable. It was not that the host nation disputed the U.S. needs or was uncooperative; they were firm allies. However, the method of fulfilling requirements was subject to constant negotiation. Inefficient U.S. negotiations had a direct effect on the mission. On one occasion during the height of Afghanistan air operations, tanker sorties were cancelled when the host nation base commander and the USAF base commander could not agree on procedures for transporting and transferring fuel from fuel trucks to USAF tanker aircraft. After much effort, the issue was resolved. In the end, the host nation’s interests in having oversight of the transfer operation’s safety, as well as the U.S. interests in efficiently meeting mission demands, were both met. What might have happened if the U.S. commander and his staff had more quickly recognized the mutual interests between the host nation and the U.S. and started working cooperatively to address each party’s interests, instead of becoming competitively entrenched in positions? While this premise is the basis for cooperative negotiations, none of the deployed U.S. personnel were familiar with this concept.

Similarly, a West Point Study expands on the points brought out in the above anecdote. In one 2006 Army study conducted by a team of researchers at the US Military Academy at West Point,<sup>29</sup> 16 Captains and 20 Lieutenants who had recently returned from deployments in Iraq were interviewed about the frequency and substance of their negotiating activity in Iraq. 17% of respondents reported having to develop agreements with Iraqi military or police daily; 50% reported having to do so once or twice a week; 14% reported having to do so once or twice a month, and 19% reported never having to develop agreements with Iraqi military or police. Respondents also reported frequent negotiation with Iraqi civilians. 17% reported daily, 40% reported once or twice a week, 29% reported twice a month or less, and only 12% reported never having to develop agreements with Iraqi civilians (see table).<sup>30</sup>

<b>Frequency of negotiation engagements</b>	<b>USA personnel reporting negotiation with Iraqi military or police</b>	<b>USA personnel reporting negotiations with Iraqi civilians</b>
Daily	7 (17%)	7 (17%)
Once or twice a week	21 (50%)	17 (40%)
Once or twice a month	6 (14%)	12 (29%)
Never	8 (19%)	5 (12%)

This increasingly complex environment is reflected in the *United States Army Future Concept for the Human Dimension*:

The shift from training for operations within sharply defined institutional chains of command, to the conduct of highly decentralized politicized and collaborative operations involved in future full spectrum operations (FSO), has placed a high value on negotiation skills. America's strategic success in future FSO may well depend on an expanding range of skills

that leaders at all levels require-- particularly junior leaders-- that includes negotiation skills. Negotiations have immediate tactical importance, operational significance, and implications. Traditionally, Army leaders have a great deal of experience negotiating but not necessarily in context of the ambiguous authority, limited political guidance, and significant cultural diversity. Too many military leaders approach negotiations simply as a battle of wills, skillful posturing and tactical positioning, rather than as a collaborative search for mutually acceptable solutions. While the confrontational approach is appropriate in some circumstances, leaders facing complex day-to-day challenges of influence need to develop a more sophisticated understanding of negotiation and a robust repertoire of negotiation approaches that takes account of the various cultural perceptions and expectations of those they hope to influence. A successful negotiator begins by reflecting upon the assumptions they bring into the process and develop the skills to identify and test assumptions in each negotiation. Negotiators consider many possible measures of success and develop their abilities to choose the proper measure for the given situation. As part of their preparation, negotiators must be ready to seek new instructions, if those given do not seem suitable. They need to develop the techniques to prepare for negotiation instantaneously or over time. Leaders need to develop approaches to negotiation, ranging from principled bargaining [the Cooperative Negotiation Strategy (CNS)] to positional bargaining (one of many tactical approaches [referred to in this article as Insist and Settle]), with myriad variations in between. In addition, a negotiator needs to develop the skill of changing the game when facing a hard bargain and managing the communication and relationship dynamics of negotiations in different cultures. Lastly, the leader needs to learn from each negotiation and leverage lessons from one interaction to the next.<sup>31</sup>

### **ESSENTIAL NEGOTIATING TERMS**

Throughout this article, several technical terms will be referenced frequently. It is useful to define these terms up front. Understanding how the terms are defined and used should help you to better differentiate between the five negotiating strategies presented in this article's negotiating model.

a. **Position**: In negotiating, a position is "what you want." Your position is what you envision as your best possible outcome. However, to be useful in a negotiation, this "best possible outcome" must be rationally bounded. Getting a new car for free may be a fantastic position, but it is not bounded by rationality. To be a viable position, it should meet some standard for reasonableness, and also be accepted as reasonable by the other side. If not, negotiations may stall or be broken off.

b. **Interest**: An interest is one or more underlying reasons for why you are aspiring to a position. To help determine interests, it is often useful to investigate one's

position through a series of interrogative questions. Interrogative questions are the “who, what, when, where, how much” and especially “why” questions. The answers to these questions will often reveal the underlying reasons and rationale for a position. If these interrogative questions cannot be successfully answered, then the validity of the position may be in question.

As an example, a position in a negotiation with HHQ may be for more flying hours. Asking the interrogative questions may reveal the reasons behind the position: flying safety, equipment maintenance, aircrew proficiency, a desire for upgrades, or a myriad of other reasons. For example, perhaps one of the responses to the “why” question was for more training on the upgraded equipment just installed in the aircraft. The position (want) may still be more flying hours, but this interest (the need for more training on the upgraded equipment) may also open up discussion for alternative ways to get the training – i.e. other ways to get the job done. Interests become particularly important when using the cooperative negotiation strategy (CNS) (also known as collaborative or interest-based negotiations (IBN)).

c. **Aspiration Point:** An aspiration point is the best each party hopes to get out of a negotiated agreement--what each party aspires, or desires, to achieve.<sup>32</sup> As with a position, setting a rationally bounded aspiration point helps create a positive negotiating environment. However, more aggressive negotiations tend to be marked by a wide divergence in parties’ aspiration points. For example, when negotiating your holiday work schedule in a unit that runs 24/7, you might have an aspiration point of getting to take leave during the entire Christmas holiday (from Christmas Eve to New Year’s Day), while the unit scheduler’s aspiration point might be two days. To be useful, an aspiration point should be rationally bounded.

d. **Reservation Point or Bottom Line:** In many negotiations, the reservation point is the least favorable option or offer either side might accept (for example, the lowest price a seller will accept, or the highest price a buyer will pay). If the agreement doesn’t fall between both parties’ reservation points, then the likelihood of entering into the agreement is low and negotiations may cease as one party elects to execute its best alternative to a negotiated agreement (BATNA).<sup>33</sup>

e. **Bargaining Range or Zone of Possible Agreement (ZOPA):** The area between each party’s aspiration and reservation points defines their own bargaining range. Critical to this definition is understanding that any overlap between two parties’ bargaining ranges defines their ZOPA. If there is no overlap, there is no ZOPA.<sup>34</sup>

As an example, let’s say you are negotiating that holiday break. Your aspiration point is getting the entire holiday period as leave, a total of 8 days. Your reservation point may be that you’ll agree to only three days, Christmas Eve through the 26<sup>th</sup> of December (the 26<sup>th</sup> being your spouse’s birthday). The scheduling office’s aspiration point may be to give you no more than two days off total during this holiday period from Christmas to New Year’s, but as a reservation point, would accept as much as five days off total, as long as it didn’t include both the 24-25 December (Christmas Eve / Christmas Day) and 31 December – 1 January (New Year’s Eve / New Year’s Day). The ZOPA would then range from three days (to include December 26<sup>th</sup>) to five days (but can’t

include both of the holidays as described above).

f. **Anchoring:** Anchoring is a common negotiating tactic. When a person makes an offer, they are providing the other party some indication of their aspiration point and bargaining zone. Anchoring is a tactic that creates an offer that is at the limit of (or slightly beyond) the rationality test assigned to the aspiration point. The expectation is that the anchor will reduce the other side's expectations. Research strongly suggests that in simple bargaining situations, known as the Settle strategy in this article, the stronger one's anchor, the closer the final agreement is to that negotiator's aspiration point.<sup>35</sup> Negotiators who make modest offers do not usually do as well as those who open with more optimistic anchors. This is common in the retail business, especially for big ticket items. Retailers will set an "anchor price" in bold print (such as the MSRP or the "Package Value" of bundled items) and then offer you a significant discount – and usually do much better than if they would advertise their actual cost for that product and add their mark-up.<sup>36</sup>

g. **Demand:** A demand is a statement of terms with no room for adjustment. It is very positional and embodies the most precise use of a "take it or leave it" option. A demand is presented at face value, allowing no opportunity for adjustments or adaptation to new information, ideas, or options. When making a demand, the negotiator is stating a reservation point and an aspiration point simultaneously. A demand is a feature of the Insist Strategy.

h. **Offer:** Like a demand, an offer is a statement of terms, but it anticipates counter-offers, counter-proposals, and modification. It is much more flexible than a demand since the negotiator anticipates that once the offer is made, it'll be adjusted to some degree. Sometimes offers are made that exceed the aspiration point, as in anchoring, with the anticipation that the counter-offer will probably shrink expectations.<sup>37</sup>

i. **Best Alternative to a Negotiated Agreement (BATNA):** A BATNA is an alternative that a negotiator is able to execute independently of the other negotiating party. If a negotiated agreement cannot be achieved, this is the alternative action plan. To be a viable BATNA, the negotiator must have both the capability (resources) and the will to execute; otherwise the BATNA is useless. BATNAs may serve as motivators to keep a negotiation going, or to help determine when negotiations are no longer useful.<sup>38</sup> Here are some illustrations:

- 1) If your BATNA is better than your aspiration point, you shouldn't negotiate.
- 2) If your BATNA is strong (i.e. you are in the market for a new car, and your current car is in fine shape), your ability to bargain with the dealer is relatively strong (as compared to negotiating with a weak BATNA.) You may use your strong BATNA to motivate the dealer to bargain to your advantage, especially if the dealer's motivation to remain in the negotiation is strong.

3) If your BATNA is weak (i.e. you are in the market for a new car, and your current car is broken down), you may be very motivated to engage and continue the negotiations, although your bargaining power is not as strong as in “2” above.

In addition to knowing your own BATNA, you should also estimate the other party’s BATNA. If they have a strong BATNA (for the car dealer, it may be a very popular car with a waiting list of buyers) they may not be motivated to negotiate in earnest. If they have a weak BATNA (for example, several SUVs on the lot at the end of the sales quarter, they are behind quota, and gas is selling for \$4.50 a gallon) they may be very motivated to negotiate in earnest. In fact, determining the BATNAs may influence which negotiating strategy (of the five described in this article) you choose. One thing to keep in mind when thinking of your counterpart’s BATNA, as well as your own, is to be realistic and objective. People tend to overestimate their own BATNA, and to underestimate their counterpart’s.<sup>39</sup>

Finally, a BATNA is not static, and you may have the ability to strengthen your BATNA or weaken the other party’s. In the car buying scenario, waiting until the end of the model year may be a way to anticipate a weakening of the dealer’s BATNA, especially if they have a large inventory of cars that aren’t selling well.

*BATNAs are critical to the military leader. In deployed environments, negotiations are often impromptu and unexpected, so planning may be difficult. However, if at all possible, before sitting down to negotiate, the negotiator or the team should work its walk-away possibilities. In the case of an impromptu negotiation, this step is still essential, although it may need to be completed quickly. One tactic is to make a list of possible alternatives, and estimate the difficulty involved in achieving them. The BATNA must actually be achievable, and the negotiator must have a good sense of the costs and benefits associated with choosing that alternative.*

The reason to negotiate is to achieve a better solution than the BATNA. Sharing your BATNA, if it is strong, may also work to keep counterparts motivated to create an even better solution. Of course, if one’s own BATNA is weak, that information ought not to be shared. Think of your BATNA as your benchmark comparison for whatever solution you are considering. When negotiating, you should never agree to anything unless it is better than your BATNA. Although the previous statement seems like conventional wisdom, negotiators often agree to outcomes that are worse than their “walk-away.” There are several reasons for this. First, negotiators fail to work their BATNA in advance and therefore, they do not know what their BATNA is. People will often say things like, “Let’s see how this negotiation goes and if it doesn’t work out, we’ll cross that bridge when we get to it.” If you don’t know what your BATNA is, you have no appropriate measuring stick to judge whether you should agree to a solution. Another reason that negotiators agree to solutions that are worse than their BATNA is the phenomenon called “escalation of commitment;” when negotiations have gone on for a very long time and a lot of effort has been invested in the relationships and the approach, negotiators may become so determined to reach agreement that they accept a “negotiated” solution worse than their BATNA.<sup>40</sup>

It is a good strategy to try and improve your BATNA before you negotiate. A strong BATNA is an important power source in negotiations. Additionally, you should try to think about means by which you may be able to make the negotiating partner's BATNA look less attractive. It is useful to cast doubt on your negotiating partner's BATNA, or to modify and weaken it by constraining the counterpart's options or helping them see the problems with whatever BATNA they may have in mind.

The following case illustrates the application of a BATNA in a deployed environment where force is an alternative. The task is putting a security outpost or a checkpoint at a certain location. The leader charged with this task will get it done, by force if necessary. In a deployed environment, the BATNA has a component of force. Military members will attempt to negotiate with the local stakeholders, but in the words of a former Army company commander in Iraq, "I have people, resources, and ammunition. What I have been tasked to do is going to happen, whether the counterpart likes it or not."<sup>41</sup>

This BATNA (use of force) may not be a very good alternative at all; it may be the worst way to execute the mission. However, force is often an alternative available to the military negotiator who is unable to reach an agreement. The use of force may be an authorized option to achieve one's immediate task; however, in counterinsurgency, occupation, reconstruction, stability and/or other operations, using force (the BATNA) is often counterproductive to the underlying strategic interests. We should not assume that using force is the default BATNA in any tactical level of negotiation; the BATNA should be thought through and worked out in each case. If the 2<sup>nd</sup> and 3<sup>rd</sup> order effects of using force to achieve the tactical task undermine the relevant strategic interests at stake (in this case, the relevant interests are "security" and the "protection of life"), negotiators should be motivated to look very hard for a negotiated agreement or to find a different way to meet the interest.

In the military environment, there will always be cases where the force option is either too costly, disproportionate, or unlikely to succeed, even when it is the BATNA. The services recognize this, and in a 2004 Army Lessons Learned Report, the USA noted that soldiers should weigh short-term tactical gains against long-term implications and second order effects.<sup>42</sup>

*Negotiators may mislead their counterparts about BATNAs in order to improve their negotiating position. For example, some people, when shopping for a new car, may rent or borrow a luxurious car for the trip to the dealer. This deception is used to create a perception in the dealer that the buyer has a strong BATNA. However, the use of deception should be bounded by your ethical standards – would you find it acceptable if the dealer misled you about his BATNA by falsely claiming the existence of other buyers for the car you are interested in?*

j. **Stakeholder / Constituents:** The classic negotiation scenario is where two people or parties meet, and "hammer out" an agreement. However, in the real world, negotiations may only include a few people but impact a much wider audience. This wider audience is known as stakeholders or constituents. Stakeholders and constituents are people or parties that have an interest in or will be affected by the outcome of a negotiation, but are not at the negotiating table. The "mother of all negotiating arenas"

(i.e. a Congressional or representative government organization) only has a few directly involved negotiators, but has millions of stakeholders and constituents. In more modest negotiating arenas, there may still be situations where the people at the table are few, but the impact is widespread. For example, imagine a “hard-nosed” wholesale buyer for a manufacturing company that does work in “batch processing.” Through tough bargaining, the buyer extracts major concessions from a supplier on price, but allows the supplier to string out the delivery schedule over an extended period of time, delivering a small amount of product at each delivery. The stakeholders (in the buyer’s factory) responsible for producing the manufactured goods might be negatively affected if machinery has to stop operating as they wait for enough incoming supplies to fill the next production “batch.”

k. **Divergent / Convergent Thinking Processes:** This is a preference, not a diagnosis. All people can operate in either thinking process, but operating outside one’s preference requires deliberate effort. As examples, most engineers prefer convergent thinking, and most artists prefer divergent thinking. Divergent thinkers tend to see problems as opportunities. Convergent thinkers tend to see problems as obstacles. For divergent thinkers, the problem is a starting point from which to imagine solutions. For convergent thinkers, the problem is a target to be destroyed, managed, or overcome.

- 1) Divergent thinkers’ mental processes tend to be creative and spontaneous. They are comfortable with uncertainty and ambiguity. They prefer flexible plans with as many options as possible. “Divergers” tend to dislike settling on one solution and continually search for alternatives. Divergers work at continuously adding options to the table.

Strengths:

- a) Capable problem solvers when working novel issues.
- b) Creative, not limited by conventional boundaries, such as budget, policy, and/or precedent.
- c) Comfortable with uncertainty and ambiguity.

Weaknesses:

- a) Dislike of finality may result in pushing or missing deadlines.
- b) Most thinking is outside the box; in fact, often don’t even know where the box is.
- c) Resist boundaries and limitations; see them as negatively impacting the creative problem-solving process.

- 2) Convergent thinkers’ mental processes tend to be reliable and rational, and principle-based. They constantly work to reduce uncertainty and ambiguity. They prefer thorough plans that fully address all contingencies; however, convergers are most comfortable when one clear solution has been identified. Once a solution is identified, convergers prefer to discontinue considering alternatives and focus on finding support for the preferred solution. Convergers work at continuously taking options off the table.

Strengths:

- a) Capable problem solvers in crisis or emergency situations.
- b) Effective problem solvers within conventional boundaries, such as budget, policy, and/or precedent.
- c) See limitations as guideposts rather than impediments to the problem-solving process.

Weaknesses:

- a) Once convergent thinkers have decided on a solution, and are marshalling support for that solution, they often ignore or dismiss new or contrary information.
- b) Starting point for problem solving is “inside the box.”

### **THE TWO BASIC NEGOTIATING CATEGORIES: Distributive and Integrative**

There are two basic categories that virtually all negotiation strategies fall into: distributive and integrative. The distributive category assumes resources are limited. The task of any distributive negotiating process is to divide up a fixed set of resources. The distributive category is also known as “value claiming,” because the objective is to claim a portion of whatever value is on the table. In distributive or value-claiming negotiations, negotiators usually meet to exchange proposals, offers, and counter-offers.

Distributive negotiations are essentially zero-sum. Because resources are seen as fixed and limited, any gain by one side represents a loss for the other. Conflict is seen as inevitable, and competition rather than cooperation guides negotiations. Parties to the negotiation often perceive the other side as an enemy, a barrier to their success. In a competitive situation, information is regarded as a source of power, and therefore protected. Because information is seen as a source of negotiating power, deception may occur, so distrust is characteristic of this approach. This is one of the most serious drawbacks of distributive bargaining for military negotiators. The zero-sum approach can be executed through one of three negotiating strategies presented in this article; parties can “comply,” “insist,” or “settle.”

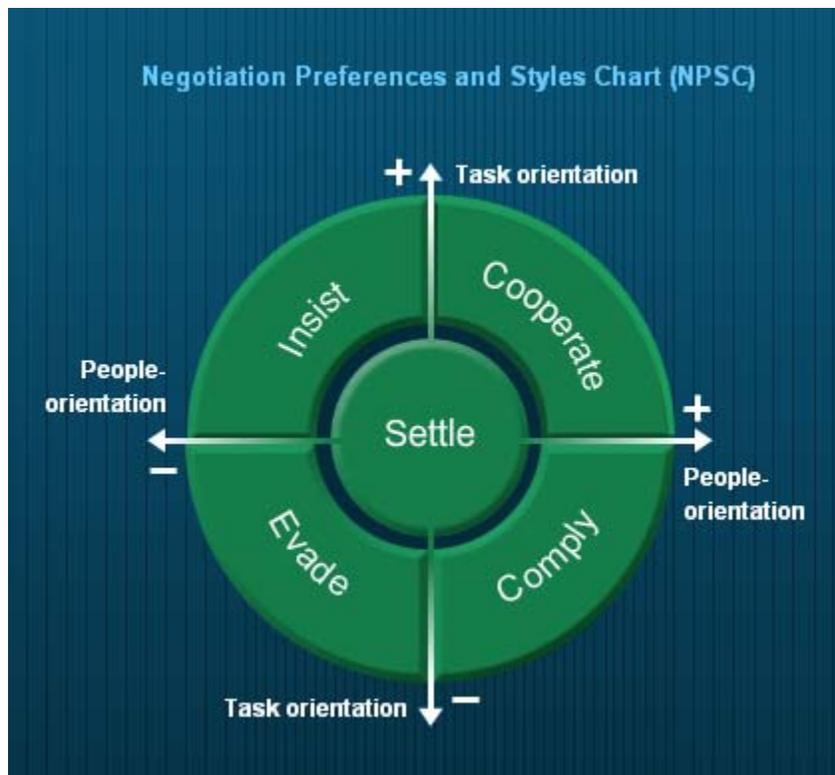
Second, the integrative category, while still acknowledging that in the end, resources must be distributed (there is “value claiming” at some point in any negotiation), does not see resources as necessarily fixed. This means that integrative negotiations are not necessarily zero sum. Conflict is not seen as inevitable; there is the possibility for mutually beneficial, “value creating” cooperation between the parties. Negotiators see the other side as potential partners in the problem-solving process. Cooperation between the parties has the potential to “create new value” from the existing resources under consideration by combining them in new ways or using the resources in different ways. In this value-creating process, trust-building measures are actively pursued to help develop a cooperative environment. Information is shared between the parties, and power is also shared. This approach can be executed through a “cooperative” (or win-win) negotiations strategy. The cooperative negotiator is concerned with maximizing absolute *gains* while simultaneously meeting the counterpart’s interests, rather than

maximizing their *relative gains* over the other party. In this strategy, the negotiator's goal is to arrive at an agreement that satisfies the most important interests of all parties. As a general rule, except in cases of unambiguous emergency, the authors argue that military negotiators will achieve better solutions by using the integrative category. One hallmark of integrative negotiation is asking questions of all sides about their interests, concerns, and circumstances; this approach is advocated in AFDD 1-1, which asks leaders to "consider underlying consequences for key stakeholders while seeking and negotiating win/win solutions."<sup>43</sup>

The authors argue that agreements reached by integrative means will be more sustainable, and will tend to enhance relationships, whereas distributive negotiation tends to degrade relationships. Lack of cross-cultural competence intensifies this harm. It is suggested that combining cross-cultural competence with integrative negotiation skills leads to better relationships, better agreements, and, therefore, serves tactical and strategic objectives.

### **THE TASK / RELATIONSHIP VARIABLES**

There are two basic variables that form a common thread between the five negotiation strategies. Every negotiation involves a problem or task of some sort and requires the interaction of at least two people or parties. The relative importance of these two variables (task orientation and people orientation) forms the basis of the Bull's-eye framework used to visualize the differences between negotiating strategies.



The Negotiation Preferences and Styles (NPSC) Chart, or “Bulls-eye” Chart, has two axes, one indicating how important the relationship is to the negotiating party and the other axis indicating the importance of the task.<sup>44</sup> By depicting the two variables on the Bull’s-eye chart, the relative importance of each variable can be visualized, and the type of negotiating strategy reflecting those two variables can be described. Since “words do count” when building frameworks, we will specify definitions for these two variables.

The first variable is the importance of the relationship. In other words, how important is it for you to develop and/or maintain a productive relationship and mutual trust with the other party? If the negotiator intends to harm the relationship, the relationship orientation variable can take on a negative value. If the relationship is of low or no importance, then the relationship can have a low or zero value. This is sometimes the case when one is negotiating a “one time” deal with little or no chance of ever re-engaging with the other party. However, if interaction is expected to re-occur, perhaps in the execution of the agreement, or if multiple negotiations may occur over a period of time, trust-building is much more important. This could result in a positive value assessment. Likewise, if local reputation is important, the relationship orientation variable may take on a high value even if multiple negotiations are not expected with the particular counterpart.

The second variable is task. In this chart, task orientation refers to the importance of resolving the problem in a way that meets your interests. A high task orientation means that you are very motivated to resolve the problem in a way that satisfies your interests. Conversely, a negative task orientation means that you are not motivated to resolve the problem at all, or you may not understand the problem (poor task clarity). A zero value means that this issue is not a priority for you.

The following five sections combine the two variables as seen in the Bull’s-eye Chart. We examine each negotiating strategy, with reference to task and relationship orientation. For each strategy, we begin with a description and then explain the process. Each section concludes with a discussion of the pros and cons of adopting the strategy, and we describe situations which might motivate the adoption of one strategy over another. We begin this section with one negotiation strategy that (unlike the other four) is neither integrative nor distributive--the Evade strategy.

### **EVADE Strategy**

1. Concept: In the Evade strategy, the negotiator seeks to avoid engagement. If the negotiator lacks any task orientation (a negative value) and lacks any motivation to develop or maintain a relationship characterized by mutual trust, or lacks the power necessary to be successful with the Insist strategy, then the Evade strategy may be a more appropriate way to handle the situation. Since no deliberate interaction occurs, the Evade strategy is neither integrative nor distributive. By NOT negotiating, one preserves the option of entering into negotiations later. People usually use the Evade strategy when:
  - a. they perceive that the costs to negotiate exceed any possible benefit from a negotiated settlement;
  - b. more time is needed to develop a negotiating strategy;
  - c. more time is needed to better understand the issues involved and/or;

- d. it is believed that the issue may go away with the passage of time.

Evade is often the preferred negotiation strategy for dealing with terrorists, hijackers, and kidnappers; it is thought that by denying them benefits from their actions, a harmful precedent will not be set. This is a form of negotiation, even though it takes the form of non-engagement.

2. Process: To better compare and contrast the negotiating styles, this article uses the following phases as a guide where appropriate: pre-negotiation planning, negotiations engagement, and agreement execution. In the Evade strategy, only one of the three phases is actively used, the pre-negotiation phase. During pre-negotiations, the negotiator weighs the possible benefits of engagement versus the alternatives available if negotiations are evaded--the negotiator is establishing a BATNA. If the assessment results in a BATNA better than anything a negotiated agreement might deliver, then the Evade strategy may be useful. Immediately executing the BATNA (or doing nothing) may be favored in that case. The Evade strategy is especially preferred if there is no desire to develop, maintain, and/or improve the relationship between the parties. If, however, relationship-building is a desired priority, while task orientation remains low, another negotiating strategy (Comply) may prove more beneficial.

### Pro/Con

3. Evade strategy advantages:
  - a. It is a simple and straightforward concept, although it may be exceedingly challenging to accurately employ.
  - b. This strategy is useful when you need more time to plan your negotiation, to work your BATNA, and to understand and influence your counterpart's BATNA.
  - c. If your planning reveals that you or your counterpart has a very strong BATNA, the Evade strategy can save time and effort.
4. Evade strategy disadvantages:
  - a. Very limited ability to influence other party.
  - b. Solving problems early is often less costly than allowing them to simmer and having to face them later. In the context of security, an ounce of prevention may often be worth a pound of cure.
  - c. Making accurate predictions on the future of a situation is difficult at best and disastrous at worst.
  - d. Other party is free to engage someone else.

Commentary: Opportunities to solve problems may be lost when parties hold off engaging until the problem can no longer be ignored. Conflicts that might have been solved, if addressed early, can become intractable over time. "Early" often translates to "more proportionately," with a more attractive cost/benefit ratio, especially if armed

conflict may be averted altogether by root cause or immediate prevention.<sup>45</sup> For example, consider this cost estimate of delaying engagement in the 1990's:

Those with the means to act prefer to play the odds, sometimes betting that the situation will somehow resolve itself, or that it will simmer without reaching a boil, or that the resulting conflict will prove less dire than predicted, or that conflict if it does break out can be quickly contained. The result, according to the Carnegie Commission on Preventing Deadly Conflict, was that the international community spent approximately \$200 billion on conflict management in seven major interventions in the 1990's (Bosnia and Herzegovina, Somalia, Rwanda, Haiti, the Persian Gulf, Cambodia, and El Salvador) but could have saved \$130 billion through a more preventive approach.<sup>46</sup>

### **COMPLY Strategy**

1. Concept: The compliant negotiator is concerned above all with establishing, preserving, or improving his/her reputation and relationships. Simultaneously, s/he has a low task orientation. The combination of high people orientation and low task orientation motivates the negotiator to accept almost any proposal from the other side. The result is a value-claiming process where the counterpart may claim all the value. If the task orientation or task clarity is very low, and the relationship value is very high, the compliant negotiator is likely to make unilateral concessions in the interest of relationship preservation, even to the point of disclosing his/her bottom line right away or accepting a solution worse than his/her BATNA.
2. Process: Similar to the Evade strategy, the Comply strategy requires relatively little preparation. As in the Evade strategy, the Comply-oriented negotiator weighs the possible benefits of engagement versus the options available without negotiations. However, in this case, the Comply negotiator sees any outcome from the upcoming negotiation to be better than any BATNA s/he envisions. There is no motivation to determine either an aspiration point or a reservation point. The ZOPA is whatever the other side establishes as a ZOPA. In the Comply strategy, a successful negotiation is one that improves or maintains the negotiator's relationship regardless of the substance of the agreement.

#### **Pro/Con**

3. Comply strategy advantages:
  - a. The Comply strategy is a simple strategy to envision and employ. Agreements are made regardless of costs in order to preserve or advance relationships.
  - b. The Comply strategy can be effective when a negotiator is not concerned with the material or policy outcome of a particular negotiation, and resolving the issue is very important to the

counterpart. The Comply negotiator will accept any offer, so virtually any other strategy used by the counterpart (except Evade) will be successful.

- c. If properly used, the Comply strategy may help set up positive expectations for some sort of better treatment in future exchanges. For example, if you acquiesce in the first negotiation, and carefully craft how the agreement is framed, you may set up an expectation of reciprocity (of favorable treatment towards you) by the other side. However, this interpretation of reciprocity will not necessarily resonate in all cultures.
- d. If an issue is not of critical importance, and the negotiator is very concerned with reaching an agreement and preserving a harmonious relationship with the counterpart, complying is a useful tactic for limited use. For example, when deployed and negotiating with host nation nationals or coalition partners, a negotiator may need to respond to several side issues before he / she is able to negotiate the major issue. Adopting a compliant posture for these side issues as a method of trust-building and relationship building is often useful. Early trust-building measures in the form of compliance on side issues may motivate the counterpart to engage and interact with the negotiator. Also, by complying in these relationship-building stages, you may induce your counterpart to see you as a person with whom future engagements may be beneficial. This strategy may be leveraged by working the discussion so you agree to terms that are low cost to you, but high value to the counterpart.

*Comply as a confidence-building measure: A counterpart may present side issues that s/he would like resolved before they are willing to move on to the issues you care about most. If you refuse to deal with the initial side issues, you may not get the opportunity to negotiate the issues of larger concern. For example, in a deployed situation, the counterpart might ask “Where is my cousin? I think the coalition forces picked him up. Can you give me some information about his location and his safety?” The counterpart may think that you are unwilling to “give and take” if you will not comply on side issues of comparatively low cost to you, but potentially of high value to your counterpart.*

4. Comply strategy disadvantages:
  - a. This strategy may be seen as a “non-negotiating” strategy by the other side and be interpreted as weakness or appeasement.
  - b. In some cultures, complying without reciprocity may cause you to lose face.
  - c. The Comply strategy may set an expectation of continued compliance in future engagements. The Insistent or hard bargaining negotiator may be encouraged to think that if s/he holds out long enough, the compliant negotiator will always give in.

- d. This compliant precedent may also extend to other relationships; the compliant negotiator may earn a reputation as an “easy mark” or someone who can be manipulated. Such a reputation could make future negotiations with other counterparts more difficult.
- e. A compliant agreement, since it doesn’t seek to maximize mutual gain, most likely leaves value on the table.

*A cautionary note about Comply: Concern with the counterpart’s outcome (high relationship orientation) combined with low role clarity or low mission clarity may lead to sub-optimal negotiating outcomes.<sup>47</sup> It may be more appropriate to Evade than to comply when role/mission/task clarity is low. One strategic implication of this insight is the importance of assuring that negotiators have role clarity and mission clarity.*

Commentary: At this point, you may wonder if you’ve ever seen a Comply strategy work. If you’ve ever watched the American dating process, you’ve seen the Comply strategy. A question like “Where would you like to go for dinner?” is often met with the reply “Wherever you would like to go is fine with me.” This is an example of the Comply strategy. Preserving or improving the relationship is more important than the choice of restaurant.

If both sides in a negotiation adopt a Comply strategy, it’s likely that nothing will get done as each side defers to the other. If, however, one side uses the Insist strategy while the other side uses the Comply strategy, then the outcome is almost certain; the Insist negotiator will be victorious. In the extreme, the “rock always beats scissors” scenario may find a compliant negotiator always losing, but s/he is especially exposed when dealing with an “Insist” negotiator. An “Insist” negotiator can easily sense and exploit the compliant negotiator’s desire to avoid conflict. However, it is not always in the interest of the “Insist” negotiator to take advantage of the “Comply” party for at least two reasons. First, the “Comply” negotiator may so dislike the experience and the outcome of interaction that s/he will not return to the negotiating table with the “Insist” negotiator in the future. Second, if the agreement reached is not in the interests of all parties, it may not be successfully implemented.

### **INSIST Strategy**

1. Concept: If one has a very high task orientation and a low relationship orientation, then the Insist strategy may be preferred. In this strategy, the negotiator uses strictly convergent thinking to see that all his/her outcomes are met and has little or no regard for the relationship. The Insist negotiator’s goal is to claim all the value on the table and leave nothing for the other side. In the extreme, the regard for the relationship can be so negative that the intent is to not only win the negotiation, but also to crush and defeat the other party. Further, if both sides adopt the Insist strategy, then “fight’s on,” and to the victor go the spoils. In this instance, one side

may eventually wear out the other and “win” while the losing side ends up with nothing (or perhaps what is left over). With this strategy, since resources are seen as limited and fixed, the inevitability of conflict is assumed, rather than the possibility of cooperation. Relative gains (the difference between the winner and the loser) rather than absolute gains (maximum benefit without reference to the other party) are prized.

- a. To gain the advantage within the Insist strategy, specific tactics and counter tactics are used. Specifically, power must be gained in order to overcome the opponent. Any type of power is valuable: formal power associated with rank; informal power ascribed by peers; referent power, the negotiating power that comes from having a very strong BATNA, and important to this discussion, the expert power associated with the possession and use of information. In the Insist strategy, protecting information, releasing only what is advantageous to your cause and/or damaging to the other side’s arguments, is a key tool.
  - b. The Insistent negotiator’s goal is to gain total acceptance of the solution s/he has developed. Thus, planning and execution within the Insist strategy takes on a distinctively adversarial flair. Often, the other side is viewed as an enemy, someone that may get in the way of success. Indeed, in some quarters, the other negotiator is seen as someone that must be vanquished in order to reach the prize. Much like a lawyer’s trial strategy, the Insist strategy attempts to make “your side look good” and “their side look bad.”
  - c. Instead of opening with flexible offers, the Insist negotiator opens with a rigid demand. The demand is delivered with a “take it or leave it” attitude. Key to success is intractability and stubbornness; a certain degree of success may be achieved by merely outlasting the opponent.
  - d. Meetings are used to present unilateral positions, implicit or explicit threats, and instructions. There is little emphasis on social processes designed to build relationships, trust, and rapport.
  - e. If both sides adopt the Insist strategy, the “other side” in the negotiations also has their own positions and demands. The resulting negotiation will likely be marked by tension. Depending on the counterpart’s strength and plan, they might give in to the pressure from the insistent negotiator, walk away from the interaction, switch strategies and push for a compromise, or seek to move the insistent negotiator from a distributive to an integrative mindset. Regardless, the Insist strategy can be visualized as a clash of wills.
2. Process:
- a. In pre-negotiation planning, the negotiator examines the problem, breaks it down into solvable pieces, creates one or more possible solutions, selects the most preferred solution from those developed and then marshals the data to support this solution. This is not unlike the military planning process, and perhaps that is one reason it is a comfortable negotiating strategy for military leaders. In the military context, this phase of the negotiation shares similarities with the intel “preparation of the battle field.”<sup>48</sup> In the Insist strategy, aspiration points and reservation points are identical. Similarly, the

ZOPA is essentially a single point with no input from the other party, since again there is no anticipation of an exchange of offers.

- b. The Insist negotiator should also estimate both sides' BATNAs. The Insist negotiator's reservation and aspiration point must be better than his/her BATNA. If the counterpart's BATNA is weak, the Insist negotiator will have a better bargaining position from which to insist on the acceptance of his/her demand.
- c. In the actual negotiations, a "present and defend" process, similar to courtroom litigation, is used. In the extreme, the Insist strategy involves opening statements that establish not only the party's selected position (the aspiration point), but also proof that the position is the correct position and that it should be accepted outright. If both sides choose to pursue a pure Insist strategy, they will not make offers (that may be subject to modification or compromise). Rather, they will make demands to be accepted or rejected – deadlock can easily arise from such a situation unless one side has the preponderance of power or authority, or one side has a very weak or nonexistent BATNA. These conditions may compel the weaker side to accept the demand at face value.
- d. Because this is a zero-sum game, an accurate scorecard is usually developed for use in the post-negotiation phase – little direct trust exists between the two sides, so the two sides usually invest in a written document to assure trust. To facilitate this, these written "scorecard" agreements are usually detailed and as quantified as possible (dates/milestones/amounts/quality/standards, as well as incentives for superior performance and penalties for sub-standard or non-performance).
- e. In post-negotiation, there is usually a heavy reliance on inspections and/or exacting adherence to milestones etc. as a measure of performance. Since the U.S. has a lengthy and strong legal tradition, reliance on contract documents and legal inducements is often the preferred method of monitoring the execution of agreements. In fact, it is suggested that the American preference in the execution phase is to have no interaction with the other side. Since the agreement is spelled out in a detailed document, all the parties have to do is execute the agreement – thus, post-negotiation interaction should not be required.

In reality, when inevitable difficulties do arise in execution, the post-negotiation process continues to resemble the American courtroom, with each side advocating that the other side is in violation of the agreement. Often, third parties get involved to referee the post-negotiation process.

3. Insist strategy advantages: This competitive, distributive, hard-driving strategy may be appropriate for emergencies where at least one of these conditions is present: a) the solution is evident, and complex problem solving is not required or has already been done; or b) any solution is probably better than the status quo. This is perhaps not so much a negotiation as order-giving.

- a. The Insist strategy is relatively simple, taking comparatively less time for analysis and preparation. This may be useful in situations where there is little complexity and ambiguity, and where a decision must be implemented quickly. BUT you need power, authority, and/or a compliant counterpart to pull this off.
  - b. The Insist strategy may also be relatively easy to develop and implement. The more singular the nature of the negotiation (for example something as singular as making a “take it or leave it” offer on merchandise where the purchase price is the only variable) the easier it is to develop and deliver a demand. The term “demand” is specifically chosen because in the Insist strategy, you have no intent to adjust that demand in light of any counteroffer, whereas you might adjust when you use the Settle strategy described in the next section. A demand is an exact term – it is both your reservation point and your aspiration point.
  - c. It is also relatively easy to judge success – the demand is either accepted or rejected. However, having the demand accepted by the other side may be a false indication of success--an agreement may be reached but not properly executed.
  - d. This strategy may work well if you have a high level of negotiating power in the form of a very attractive BATNA; you are willing to walk away from the negotiation if your demands are not accepted. If the other party’s BATNA is less attractive than your demand, you may be able to maximize your outcome with the Insist strategy.
4. Insist strategy disadvantages: One drawback to the Insist strategy is that negotiators convergently form their own solutions and then psychologically “dig in” to support their selected solution / demand. This normal human tendency to “buy into” the selected solution can create a serious pitfall. If you have deliberated and then developed a solution, then it must be the “best solution.” If it wasn’t the best solution, you’d have come up with another “best solution” and presented it at the negotiation. Once the solution is presented, there is often an emotional need to continue to support it. The ego creates a psychological ownership of the solution/demand, and it makes it very challenging to listen to or accept counter proposals. Furthermore, people often fail to make adjustments to their demands, even in light of new and significant information from the other side – that’s how strong the emotional attachment can be to a “solution.”
- a. In the Insist strategy, demands/solutions are unilaterally created, usually without access to all the available/relevant information or perhaps all the relevant stakeholders’ perspectives on the data. One of the challenges in any negotiation is agreeing not only on the data, but what the data means when it is transformed into information. Two parties to a negotiation can look at identical data and derive different information. This may be the result of conflict over values used to interpret the data, the data itself and what it represents, or the interests (purpose or motivation) that this data is supposed to serve. In the Insist strategy, no attempt is made to reconcile or come to a

common understanding to help resolve these value, data and/or interest conflicts.<sup>49</sup>

- b. In the above section on the advantages of the Insist strategy, one of the advantages was its ease of implementation when the circumstances are simple and straightforward. Conversely, and as is often the case, further reflection, especially by other stakeholders, yields new perspectives and reveals even more complicating factors. For example, assuring the security of your remote airfield by extensive and thorough screening at every entry point may get you to your “security” goal, but prevent workers from getting to their worksites on the airfield – thus impacting mission effectiveness. If you handle the security issue by yourself, you may not consider the unintended consequences of the security procedures you are about to implement. Including the maintenance chief in the discussion may add complexity to the issue. As a parallel example, the Israelis have a similar issue with their security fence; it is keeping BOTH the terrorists and the workers out of the Israeli settlements. The settlements are secure, but they are also an economic disaster due to lack of labor. In short, the more complex the situation, the more disadvantageous it is to utilize a purely distributive strategy.
- c. An aggressive Insist strategy can create problems in execution. Although an insistent negotiator may succeed in forcing an agreement, if the other side concludes the agreement is unfair or contrary to their interests, they may not subsequently fulfill their obligations, to the point of actively sabotaging efforts to execute the agreement. The “losing” party may not only cause problems in execution, but create a scorecard of their own – working to gain the advantage in the next negotiation they may have with the “winner.” Another option would be to void the current agreement by non-execution, and refuse to engage in any subsequent negotiations on this or any other issue.
- d. Within the Insist strategy, the *process* may be the source of negotiation failure, even if both parties agree that there is a problem that needs resolution. As Lewicki, Barry, and Saunders note, “Negotiators generally resent a take-it-or-leave-it approach. An offer that may have been accepted had it emerged as a result of concession-making may be rejected when it is thrown on the table and presented as a *fait accompli*.”<sup>50</sup>

*The Insist strategy has at times been a feature of labor/management contract negotiations (especially in the legendary 1970s United Auto Workers union negotiations with major US auto manufacturers, Ford, GM, and Chrysler).*

*One hallmark of this strategy is the unilateral development of a demand, offered as a take-it-or leave it package. One variant of this strategy involves making a fair initial proposal that leaves no room for negotiation. The initial offer is made at the expected settlement point; no concessions are requested or given. This positional approach is also known as Boulwarism, named for Lemeul Boulware, who so disdained the haggling of labor-management contract negotiations that he refused to negotiate. Instead, he determined the maximum amount his company (General Electric) could offer in a contract, and offered that as the initial, first, last, and final offer. The automobile industry also adopted this practice for a time: “[Managers] insisted there were no concessions to be made because the initial offer was fair and reasonable based on their own analysis. Unions bitterly fought these positions and continued to resent them years after the companies abandoned this bargaining strategy.”<sup>51</sup> This practice has been abandoned by industry in labor contract negotiations, because it often led to deadlock and labor union strikes.*

Commentary: The “Insist” strategy is the strategy most U.S. DoD senior leaders are comfortable and familiar with. In a traditional garrison environment, everyone on the military installation works within a hierarchy with a clearly defined leadership chain. As long as negotiations occurred within this chain, the leadership at the upper echelons had the requisite power to ensure their requests became requirements. This is an insistent strategy. It must be emphasized that this is a descriptive, rather than evaluative comment. It is essential to maintain good order and discipline in a warfighting organization, and hierarchy and a clear chain of command ensures the maintenance of this order and promotes morale and mission effectiveness.

Additionally, research from three years of U.S. Senior Developmental Education student data indicates a preference for the Insist strategy. More than two-thirds of the students surveyed indicated a preference for the Insist strategy when approaching any negotiating situation (not only in cases of emergency). Students with career development paths that included the deliberate development of CNS (for example, the acquisition, equal opportunity, chaplaincy, and some medical support service career fields) showed preferences for the CNS.<sup>52</sup> Further, this senior leader preference for the Insist strategy is not unique to the military; most large organizations are run by people with negotiating preferences similar to the military’s senior leadership.<sup>53</sup>

However, as noted above, certain costs are associated with imposing unilaterally developed solutions. Even when the negotiator’s goal is to deliver some valuable resource for the benefit of the counterpart, such as civil affairs/development projects in the context of stability and reconstruction operations, a unilaterally developed solution is

often rejected and resented. General Stanley McChrystal has noted with regard to unilaterally developed solutions about stability operations in Afghanistan:

“Often, we will have a very clear vision that we're trying to bring stability and economic development to an area, but then we'll take an action which will be hugely misperceived. We will want to put in a school or a road or create some activity, and then we'll do it in a way that has the opposite effect. We'll bring in outside contracts and they'll think this is a corrupt thing. They'll miss the good intentions because we don't have the abilities to interface and talk.”

According to the Army's *Future Concept for the Human Dimension*, “too many military leaders approach negotiation simply as a battle of wills, skillful posturing and tactical positioning, rather than as a collaborative search for mutually acceptable solutions. While the confrontational approach is appropriate in some circumstances, leaders facing complex day-to-day challenges of influence need to develop a more sophisticated understanding of negotiation and a robust repertoire of negotiation approaches that takes into account the various cultural perceptions and expectations of those they hope to influence.”<sup>54</sup> Military members often negotiate in environments that are at best, neutral; and at worst, hostile. Combine this challenging environment with the counterpart's perception that he/she is being viewed as a negotiating “enemy” and that the negotiation is a zero-sum game, and unilaterally developed settlements or Insist negotiations are likely to generate negative emotions (resentment, anger, hostility) on the losing side. These negative emotions often have adverse consequences for relationship building, as well as agreement implementation for future engagements. Domination by the winner can humiliate the loser, which has the potential to fuel counterproductive political, military, and paramilitary activities. As General David Petraeus said, “We have to make sure our tactical level actions do not undermine our strategic goals.”<sup>55</sup>

### **SETTLE Strategy**

1. Concept: The Settle strategy is also known as the compromise approach, or the “give and take” approach, where negotiators expect to settle somewhere between each party's original, opening offers. It straddles the center of the “Bull's-eye” Chart since task-orientation and relationship-orientation both get some consideration.

The Settle strategy falls in the distributive category. It is a value claiming strategy; there is generally no search for value creation. Similar to the Insist strategy, resources are assumed to be fixed and limited, and the only task for the negotiators in this zero-sum process, is to split up the existing resources. Settle negotiators are in some sort of adversarial position, competing (usually with some civility and politeness) for their (hopefully) larger share of the fixed-resource pie. Although the exchanges may be polite, conflict is an inevitable feature of this negotiating strategy. Information about interests is usually not shared, out of concern that the adversary may take advantage of such information. Deception about priorities and interests can be commonplace.

Most Americans are familiar with this negotiating strategy. It is a common practice in buying homes, automobiles, and other large-ticket items. Additionally, in many parts of the world, a “give and take approach” is expected. If the overall custom or social expectation is to use the Settle strategy, then you might be socially bound to use this strategy. For example, the American garage sale and flea market are customary places where the Settle strategy is not only accepted, but expected. In many other cultures, the market or *Suq*, are customary places for the socially accepted use of the Settle strategy. After a series of reciprocal and polite concessions, parties tend to accept compromise agreements as legitimate; they feel better about the results after engaging in a negotiation that involves a progression of concessions.

The Settle strategy may also be appropriate when one or more of the following conditions are evident:

- a. The negotiation is over a single variable, like price. If that is all there is to bargain over, and no other possibilities exist (or they have been exhausted, like delivery schedule, quality, payment terms, etc.), then the “split the difference” strategy may be a way to quickly conclude the process. To introduce this strategy, you might make a statement like, “what would you think if we just met somewhere in the middle?” By avoiding numbers (like avoiding the statement “I’ll come up \$50, if you come down \$50”) you first see if the other party is even interested in this strategy without defining the exact terms. If they accept, then you can make a more definitive offer. Splitting doesn’t always mean exactly 50/50; sometimes a fair settlement involves something close to 50/50. Making a rationally bounded offer will often work. (In surveys, US military respondents tend to agree that something between a 60/40 to a 40/60 range is supportable as a “fair” range for making Settle offers.)<sup>56</sup>
- b. As noted above, if there is an expectation of a Settle strategy, then it may be the appropriate tool. For example, if previous interactions with the other party have worked with the Settle strategy, and the overall conditions in this situation are like those previous interactions, you might counter their opening offer with a counter offer, repeating the process until you are close to where you think you can close the deal; then make an offer to settle.
- c. If time is critical, and the expectations from previous encounters exist for the Settle strategy, then the other party’s initial offer may be immediately countered with a Settle offer. If this path is considered, then ensure that you understand their opening offer. You want to be certain that their opening offer is rationally bound, instead of a very strong anchoring position before you agree to “split the difference” and find yourself obligated to an agreement you don’t consider fair. The key is to never rush into this strategy.
- e. In the retail business, particularly in America, if it is a big ticket item such as appliances, electronics, cars, or real estate, the Settle strategy may be a useful option to close the deal. Hagglng in the formal retail market over smaller ticket items (for example, a countertop appliance like a toaster) is not considered customary or acceptable unless extraordinary circumstances exist,

like purchasing a floor model with minor imperfections due to being handled by other customers.

2. Process: In the Settle strategy, pre-negotiating planning is vital. In advance of the negotiation, you should know several things not only about your own bargaining options, and also about the other side as well.
  - a. Determining your own BATNA and estimating the other side's BATNA provides overall boundaries for the negotiations. By knowing the walk-away possibilities for both sides (BATNAs), you'll have a sense of your counterpart's level of motivation, and how motivated you should be as well. Also, by knowing the BATNAs, you can take measures to strengthen yours and weaken theirs.
  - b. Second, negotiators should calculate a reservation point.<sup>57</sup> Although reservation points are normally not disclosed, it is possible to do some research and estimate what a counterpart's reasonable reservation point might be. Finding similar situations might provide a clue as to the other party's reservation point. In Iraq, reconstruction teams were able to figure out the reservation point on wages in a village by finding out what similar laborers in similar villages (same tribe) were being paid.<sup>58</sup> An advantage to estimating the other party's reservation point is that you may be able to make your opening offer (anchoring) very near that mark. Without this estimate, making the initial offer becomes riskier because you may be making an offer that is more favorable to the counterpart than necessary, or you may make such an outlandish initial offer that it sours the negotiating process (inadvertent "lowball").

In the negotiation itself, the atmosphere may be civil, but not necessarily trusting, since protecting information and making incremental concessions is the usual path that the Settle strategy follows. After the initial offers are made, each side usually takes turns politely discounting the other party's last offer as not quite good enough to close the deal, and one of three options are usually exercised:

- i. The responding party makes a counter offer somewhere between the other party's offer and their last offer.
- ii. The responding party asks the offering party to make another offer, just a bit better than the last one.
- iii. The responding party says nothing – silence is a great tool in a negotiation. Western cultures (especially Americans) loathe silence. When faced with a quiet counterpart, the American negotiator may be motivated to make a new offer, just to keep the process moving along.<sup>59</sup>

In this negotiating process, a unique social exchange may be observed--the expectation of reciprocity. Reciprocity means different things in different cultures. When a US negotiator makes a concession, it sets up the expectation that the other side will respond with a similarly sized concession. This back and forth incremental concession-making usually culminates with one last reciprocating offer: "Let's just split the difference and close the deal." However, in some other cultures, concessions made

by the more powerful party to the weaker party are sometimes expected or perceived as obligatory, with no social requirement for a reciprocal concession.<sup>60</sup>

Another bargaining process may also be evident in a Settle strategy. The process involves the size of the concessions as time goes on. Initial concessions are usually much larger than concessions made later in the exchange. In other words, concessions don't usually follow a series of \$1.00 trades back and forth. The process starts at some amount, for example \$20.00, and then subsequent concessions incrementally get smaller with each exchange (perhaps \$15.00, then \$9.00, then \$4.50, then \$2.00, etc.) until an agreement is reached or the negotiations stall. Large concessions signal more room for negotiation, while smaller concessions are a tactic used to signal a less flexible negotiating posture or a smaller bargaining range.

The post-negotiation phase features many of the items described in the Insist strategy, i.e. written detailed contracts, etc. but the execution is usually smoother because all parties, at least psychologically, feel that they received some sort of a fair deal. There may still be problems in execution, but since the negotiators didn't set out to antagonize each other, the execution phase should not be negatively impacted. The parties will likely remain as professional in their behavior during the execution phase as during the negotiations.

### Pro/Con

#### 3. Settle strategy advantages

- a. The Settle strategy is widely accepted; in many settings it is often the expected course of negotiations. If the interaction with the other party is not expected to continue for an extended period of time, if the ZOPA is fairly clear, and if implementation of the agreement does not require continued close cooperation between the parties, then the Settle strategy has advantages.
- b. It is a straightforward process, and seeing what value is on the table and how you propose to get your share of it is relatively uncomplicated.
- c. It has a generally predictable negotiating process of offer and counter-offer. Experienced negotiators will accurately anchor their initial offer so as not to offend their counterpart, establishing an incremental concessions process, while still positioning themselves for a satisfactory outcome in the value claiming process.

#### 4. Settle strategy disadvantages:

- a. Like all strategies that focus on distributive value claiming, the Settle strategy is likely to leave value on the table, because this strategy assumes a zero-sum situation and makes no attempt at creating value.
- b. If a negotiator did not choose the Settle strategy to begin with, but has migrated to the Settle strategy after a failed attempt at the Insist strategy (insufficient power, demands weren't rationally bounded, etc), two complicating factors need to be considered:

The savvy negotiator in the other party may realize they have just “won” a concession from you by the mere fact that they detect a switch in strategies. They may press this advantage by pursuing the Insist strategy themselves, especially if they perceive that your BATNA is weak or they have the upper hand in power.

The savvy negotiator in the other party may have interpreted your demand as your aspiration point, and now has an idea of where to start their Settle strategy concession process. They may make a strongly anchored opening offer to see how far you are willing to move from your previously unmovable demand to a new position.

Commentary: While many negotiation situations appear at first to be zero-sum, at times the potential for creating value could be found if an integrative approach was used. The Settle strategy, however, does not intuitively search for options to create value. But often, while executing the Settle strategy, one or both parties uncover information that produces a potential for creating value; and this signals the opportunity to change negotiating strategies from the distributive category to the integrative category. For example, when buying a car, price may seem to be the only consideration, and a Settle strategy may become the opening strategy. During the negotiation, however, you might find opportunities for seeking creative agreements on warranty plans, option combinations, color choice and delivery date, among other possible areas of potential interest. In a real estate transaction, the bargaining mix may include the closing date and responsibility for repairs, either of which may constitute an opportunity to create value. In both of these examples, parties may start with the Settle strategy and discover an opportunity to shift strategies to take advantage of new information or circumstances. However, sometimes this shift is impeded by the lack of a positive relationship.

A relationship with the counterpart may be more important than first thought. Although relationships in the Settle strategy are usually civil, they are not necessarily trusting. When shifting strategies from Settle to CNS, identifying the possibilities for future cooperation is made more difficult by the psychological tendency to discount or disregard conflicting information—because negotiators habituated to operating in the distributive strategy, seeing the counterpart as an adversary, it is difficult for such negotiators to identify opportunities for cooperation. For example, in a deployed environment, when parties are suspicious of each other’s motives, the Settle strategy is often chosen:

“In Iraq, officers report that negotiation behaviors on the part of Iraqi counterparts were secretive and untrusting. Collaborations therefore were mainly in the “Settle” category—splitting differences instead of creating new solutions—since parties did not share interests. It should be noted that US officers did not share interests either—secrecy seems to have been due to force protection concerns and responding to the demands of different sectarian groups.”<sup>61</sup>

## The Cooperative Negotiation Strategy (CNS)

1. Description: The key feature of CNS (also known as the collaborative or Interest-based Negotiations (IBN) strategy) is that CNS negotiators purposefully seek opportunities to create new value from the available resources, while maintaining or developing a relationship. In this integrative process, the potential to maximize gains for both parties may be realized. The central idea is for two parties, by working together rather than competitively, to potentially come up with a better solution as a team than either could invent on their own. Cooperative negotiators approach negotiation as a creative problem solving exercise, not a zero-sum situation. The negotiators believe the “resource pie” is more than just a fixed and limited object that needs to be carved up. They believe that the potential exists to actually expand the pie through divergent thinking with the other party (value creation). After the pie is expanded, it is divided according to a convergent thinking process that uses some sort of mutually acceptable value claiming process to pick the best option that satisfactorily meets both sides’ most critical interests and/or meets some sort of objective standard of legitimacy.

In CNS, negotiators often reach agreements about the substance of the negotiations and also about the strategy by which agreement will be sought. The authors suggest that CNS is very often the best starting point and overall strategy for negotiations in a non-hostile environment. In contrast with the Insist strategy, CNS does not suggest coming to the negotiating table with demands. Avoiding this competitive strategy, the CNS negotiator begins negotiating with critical thinking questions about the other parties’ interests, concerns, and circumstances. Unlike the Insist strategy, CNS seeks to equitably exchange information with the counterpart. In CNS, there is no advantage in misleading your counterpart about your interests or priorities; exchanging information about priorities and interests is vital to identifying options that help create value. Furthermore, the process of exchanging information is part of the trust-building process that is so essential to building relationships, partnerships, and alliances.

2. The Process: The CNS Strategy -- Four Key Principles

CNS is based on four key principles featured in Fisher and Ury’s seminal work *Getting to Yes*. CNS adapts Fisher and Ury’s framework to better address the issues faced by the military negotiator and to help foster the negotiation competency.

The four adapted principles are:

- a. Focus on the problem, *but continuously* manage the *relationship*;
- b. Acknowledge *that there are* positions, but focus on interests. Find common ground between the negotiating parties by *understanding both sides’ underlying interests*.
- c. *Mutually propose solutions through the use of divergent thinking*. Develop options that satisfy *interests* without passing judgment on any *individual proposal* developed.

- d. Agree to *converge* on a solution that best satisfies *each party's* top priorities and/or meets an external objective standard of legitimacy.

The four principles are further explained in both concept and process in the following sections. Although these principles are presented in an order that suggests a certain chronological sequence, these principles are not linear; i.e. they should not be “accomplished and checked off,” never to be addressed again in the negotiations. These principles may need to be addressed again and again in a negotiation as new information is brought to light, new contexts are revealed, new people get involved, and/or new situations impact the relationships between the negotiating parties. This negotiation strategy is as much an art as a science. To aid the process, a negotiation planning worksheet that synthesizes the key elements of CNS is provided at the end of this article.

### **CNS Principle #1: Focus on the problem, and constantly manage the relationship**

CNS recognizes people are often part of the problem. However, the problem solving process should focus on the substantive problem, not the people—but not by ignoring the people. This means that the relationship with the negotiating counterpart is one that acknowledges emotions, but doesn't allow emotions to rule the problem-solving process. This is easier than it sounds. By constantly managing the relationship, you are better able to keep your conversations focused on the problem instead of the person. For example, when you are working an issue with a subordinate that has violated an Operations Instruction, thereby putting flight mates at risk, the focus should be on the violation and not the violator. If you are dealing with a host nation military member who doesn't treat punctuality as a mission requirement as seriously as you do, your problem-solving approach should address how to deal with the tangible effects of his/her lack of punctuality. The focus is on the common interest, mission success, and not necessarily on the specific person who is late for the formation. This may seem trivial at first, but this is essentially a “reframing technique” that helps both negotiators put the problem at the center of the table, rather than the trouble-maker. By framing the problem in this manner, it is a bit easier to manage emotions and maintain focus on CNS. With this focus, your counterpart has a greater potential to become a creative partner in the process because you took the time to manage the relationship in a positive manner. In FM 3-24, General Petraeus put a related concept this way: “focus on the environment, not the enemy.”

On balance, however, you must always keep in mind that both of you are complicated individuals with emotions, the capacity for irrational decision-making, and egos. Also remember that this current negotiating partner might be a person with whom you negotiate repeatedly. It will be helpful to think of your counterpart as someone with whom you have a *shared interest* in solving a problem. Constantly managing the relationship means that as you discuss positions and interests, you are keying on the verbal and non-verbal responses of the negotiating counterpart. When the responses begin to inhibit rather than support the problem-solving process, you further “manage the relationship by taking the time to reframe the issue, ask follow-on questions, and / or clarify the issue to ensure the counterpart remains positively engaged in the process.”<sup>62</sup> As an example, in the military context, mission failure is usually not an option and

BATNAs may be possible (such as unilateral action), but not politically or legally feasible. In such instances, the counterparts, if they begin to walk away from the negotiation, may be motivated to return to the table if you discuss the impact of having to return to your respective leaders without a solution. Managing the relationship in a military context sometimes requires keeping in mind the relationship between your counterparts and their superiors. The consequences of going back to the superior without an agreement may be a strong enough motivator to keep your counterpart in the negotiation.

In the Insist strategy, massing and protecting power and information gives you a distinct negotiating advantage. Conversely, in CNS, exchanging information to create a good working relationship is a source of negotiating power. As Fisher and Ury note:

If you understand the other side and they understand you; if emotions are acknowledged and people are treated with respect even when they disagree; if there is clear, two-way communication with good listening; and if people problems are dealt with directly, not by demanding or offering concessions on substance, negotiations are likely to be smoother and more successful for both parties. In this sense, negotiation power is not a zero-sum phenomenon. More negotiation power for the other side does not necessarily mean less for you. The better your working relationship, the better each of you are able to influence each other.<sup>63</sup>

Although sharing and conceding power is not a common practice in the military context, an action as simple as treating the negotiating counterpart as a respected peer may motivate the counterpart to share information with you, thus improving your ability to identify options for mutual gain.<sup>64</sup> In this context, sharing power is not necessarily yielding control, but increasing cooperation. Often, the process of this discourse may provide insights to help identify and possibly reconcile conflicts over data, values, and/or interests.

In another contrast with the distributive strategies, the concept of trust is handled differently in CNS. In the distributive negotiating environment, conflict is seen as inevitable, so distrust of the other side's motives and intent is expected. In the extreme, the other side may be demonized. However, in CNS, the treatment of trust is distinct from the conventional understanding that associates trust with friendship. Trust is a necessary condition for friendship; however, friendship is not a necessary condition for trust. CNS does not require personal, identification-based trust (i.e., friends) as much as calculus-based trust (i.e., professional relationship)—that is, if individuals expect to gain more from preserving than from severing the relationship, they are likely to act in a trustworthy manner.<sup>65</sup>

The ability to rely on the other person's words and actions as genuine is cultivated through deliberate confidence building measures, and trust combined with reciprocity are key factors in supporting the exchange of interests and ideas. We are not merely concerned with building the other party's trust in us; we should also understand that our interest is served by his ability to increase our trust in him. We can more confidently enter agreements with persons in whom we have some trust. Developing trusting

relationships in conflict zones is difficult, not least because of the difficulty distinguishing between hostiles and friendlies and the prevalence of threats against one's own forces.

The cooperative negotiator sees his negotiating counterpart as an active, participating, problem-solving partner, rather than a friend. Trust is not necessary to initiate negotiations with CNS, but its processes tend toward building trust. Fisher and Ury call this strategy "Principled Negotiation." Because CNS relies on sharing information and developing options for mutual gain, stakeholder participation is not only accepted, it is required. There should be a mutually satisfactory outcome because all interests are acknowledged and as many of them as practical are integrated into the negotiated solution. Relationships are improved because participants work together to maximize value, the focus is on cooperation rather than conflict, and there is no urgent motivation to deceive, haggle, or use hardball tactics, all of which can damage relationships.

In a garrison situation, trust may be developed by:

- a. building on the assumption of trust inherent in the services' core values;
- b. showing sincerity in the pre-negotiation phases, such as earnest efforts to come up with a balanced agenda, being responsive to requests for basic information, coordination on meeting dates and times, etc.;
- c. making pre-emptive contact (personal or via the phone) to make sincere offers of help or comments about looking forward to working together to resolve the issue at hand;
- d. getting to know the counterpart through research via biographies, news reports, etc., and then using this information to develop some shared interest. It need not be a shared interest that is directly related to the issue under consideration. For example, knowledge about a counterpart's interest in sports, a charitable activity, professional expertise and/or accomplishments, community involvement, family history, etc., all can contribute information to make the introductions go smoother and the development of some common ground easier.

In a deployed environment, where common cultures may not exist between the negotiating parties, developing trust is a more deliberate process. We often hear anecdotally of American military members' frustration at spending days or weeks engaged in seemingly fruitless "small-talk" without making progress on issues of substance. The normative word "small" suggests the insignificance Americans may ascribe to this type of communication. When viewed in the light of "managing the relationship," however, small-talk takes on a new meaning. The person with whom you are building a relationship is to be your partner in attacking the problem. Therefore, we prefer to use positive descriptions such as "social talk," "relationship building," or "non-task-related talk."

This relationship building is critical in many cultures. In cultures where the legal enforcement of contracts is less predominant than shame- and honor-based enforcement, a person's "word is his bond." In these societies, there is no impartial arbiter to enforce contracts, so trustworthiness and reliability are paramount. Contracts are enforced by word of mouth and reputation; if a person breaks a promise in such a culture, s/he may shame him/herself, the family, the village, and perhaps the entire tribe or clan. As a

result, nobody will be willing to do further business with him/her. Preserving a reputation for keeping one's promises, saving face, and maintaining honor and prestige is often a matter of survival.

In American society, individual trustworthiness and reliability are important, but we are also willing to do business with people we do not know because our business relationships have an impartial arbiter and enforcer in the law. Americans relate to each other in business and other transactions with the expectation that all parties are protected by the law. In cultures where people do not have a strong relationship to a central legal system, or where the law is seen as favoring some members of society over others, interpersonal trust and reliable relationships are far more important. In these conditions, a sincere "pre-emptive concession" from you may help establish bridges between you and your counterpart. Some examples given by respondents in a survey of deployed DoD personnel in the Middle East included:

- a. Agreeing to meet at their location (balancing this with your force protection needs). It lends prestige and respect to the negotiating counterpart when an American meets at the counterpart's location.
- b. Agreeing to agendas that are less ambitious than what an American usually pursues. Americans like to "get down to business," while many other cultures need to first establish a relationship prior to discussing issues. Agendas that foster for this relationship development process show respect for the negotiating counterpart.
- c. If security situations allow, releasing some small part of a cache of confiscated equipment or weapons to a local leader shows that although you may not trust the entire situation, you trust him/her.
- d. Following through on casual/minor promises, such as promising to look into the status of a detainee or other family member that has restricted movement or the delivery of incidentals promised, such as medical and other supplies, transportation equipment, minor construction supplies, etc.

The leaders debriefed as a part of this study cautioned that all such trust-building measures should be carefully considered, to avoid giving the impression of weakness and to avoid establishing undesirable precedents of unreciprocated US compliance with host nation demands.<sup>66</sup> Another note of caution is self-evident, but still needs mentioning. A Western business maxim applies in this trust-building activity. "Under promise, but over deliver" is a maxim suggesting that you do not over-extend yourself and make commitments that you cannot fulfill.<sup>67</sup> It is much easier to build trust and maintain it than to recover it once lost. It is better, therefore, to avoid making promises to a negotiating counterpart unless one is sure one can deliver. Another issue, somewhat unique to the military context, is the difficulty of relationship-building in an environment where units and/or personnel rotate on a frequent basis. Thus, a negotiation may begin with one military member, but conclude with another. A common complaint from returning OIF/OEF warriors is that they were just beginning to reap the benefits of a hard won, patiently built relationship with local counterparts and making progress on important issues when it was time to rotate. To help minimize the impact of rotating negotiators, seek overlap between rotating personnel so introductions and perhaps a few

combined meetings occur – all in an effort to *transfer* the positive relationship from one to another, rather than have to *build* a new relationship.

**CNS Principle #2: Acknowledge that there are positions, but focus on understanding both sides' interests**

In principle, CNS requires the negotiator to begin with a position; however, this position is not for presentation as a demand (Insist strategy) or offer (Settle strategy) at the negotiating table. Rather, the position should be used as a foundation for the pre-negotiation planning phase. In this phase, the divergent problem-solving process (using critical thinking questions) helps determine why that desired position exists. Positions are the statements that distributive bargainers come to the table with—prices, demands, offers, unilaterally developed solutions, and wish lists. Interests are the underlying reasons that animate each party's position. They are often the motivators behind the positions. You get from positions to interests by asking questions—the interrogative “who, what, when, where, how, how much” and especially “why” questions. Any question that can't be answered by a “yes,” “no,” or “maybe” is an interrogative question.<sup>68</sup>

Interests are usually much broader than positions, and this is the key to finding possible solutions. Why is this so important? According to Fisher and Ury, the “basic problem in a negotiation lies not in conflicting positions, but in the conflict between each side's needs and desires.”<sup>69</sup> This may be illustrated with a simple story:

In the Harvard Library one day, in one of the smaller rooms, someone wanted the window open; I wanted it shut. We opened the window in the next room, where no one was sitting. This was not a compromise, because there was no curtailing of desire. We both got what we really wanted. For I did not want a closed room, I simply did not want the north wind to blow directly on me; likewise the other occupant did not want that particular window open, he merely wanted some more air in the room.<sup>70</sup>

The next story helps further illustrate the difference between positions and interests and how understanding interests might be more useful than just knowing positions:

The Story of the Ugli Orange

Two children are observed by a parent arguing over an orange. A parent gets involved to stop the fuss and simply cuts the orange in half (a distributive settlement) and gives each child one piece. The children stop the argument, but are not in the least satisfied. As the parent looks on with smug satisfaction that another intra-family squabble has been squelched, glee quickly turns to confusion as one child throws away the peel and uses the fruit for juice, and the other child throws away the fruit and keeps the orange peel zest for use in a cake. Upon further examination, better solutions may be possible when the two parties in conflict can find some common interest. From this basis in a common interest, possible solutions may be developed. Since interests are generally broader than

positions, the likelihood that a shared commonality exists is greater than when presenting only positions. The first child's interest was getting a glass of orange juice and the second child's interest was using the orange peel zest to bake a cake. Had these questions been asked prior to the solution being implemented, both children could actually have gotten an integrative solution (a whole orange worth of juice and a whole orange peel for the zest) rather than a sub-optimal distributive solution.<sup>71</sup>

### **Pre-negotiation:**

First, identify the relevant parties who have interests at stake. Although it is convenient to write about and to think about negotiations as involving only the people at the negotiating table, it is important to remember that others may be significantly affected by the outcome of the negotiation. These constituents on both sides will have interests; the first step in focusing on interests is to identify the parties who will be most affected. The negotiator should begin to do this as part of the pre-negotiation planning.

Second, once the constituents on both sides are identified, the next step is for the negotiator to clarify the interests of these parties (on both sides). The negotiator should ask himself/herself, "What do my constituents care about? What would I care about if I were the other party? What are some concerns of the others who will be affected by this negotiation?"

Third, once the negotiator has an understanding of his interests and a good estimate of the other parties' interests, he/she should probe more deeply to see if he/she can find underlying reasons for these interests. The method for revealing underlying reasons, or bedrock interests, is to ask, "why is the interest important?" and "what purpose does this interest serve?" This exercise can be done with a negotiation planning worksheet, such as the one provided at the end of this reading, or it may be done by writing a simple list of questions and answers; the crucial thing is that a pre-negotiation examination of interests is completed. These interests must also be prioritized. So the critical thinking to develop your interests goes beyond "why" you might want or need something, to also include which of your interests are more important than the others. It is essential that you have a full understanding of your interests and those of your constituents well before heading to the negotiating table; and to the extent possible, the priority of his counterparts' interests as well.<sup>72</sup>

In your pre-negotiation planning, ask yourself what you believe is important to your counterparts and their constituents; what do you think that they care most about in the negotiations, and why? Estimating and prioritizing your counterpart's interests is also important for at least two reasons. First, it gets you to look at the situation from the counterpart's perspective. Second, and most important, during the negotiations, when your estimate of their thinking meets the reality check of what they are actually thinking, it gives you another opportunity to do some additional critical thinking.

*For example: as a maintainer, you are dealing with operations. You estimate that your counterpart's top interest is getting a certain piece of equipment fully operational by a certain date (Day XY), but you can't get there by Day XY. In an Insist strategy, you might go into the negotiations defending why Day XY is not achievable. In CNS, you might ask your operations counterpart what capability they need (not want) for the mission. Your counterpart may reveal that a partial capability would meet mission needs on Day XY and that partial capability by Day XY is more important to them (a higher priority interest) than the need for full capability. The problem may not be solved, but the chances for success have increased since both sides now have more clarity on what the problem really is and have established a common interest--in this case, a satisfactorily (but perhaps not optimally) capable piece of equipment that can get the mission done on time. As a technique, reframing your counterpart's positions in terms of interests is a useful approach. For example, if your counterpart says, "I need six generators and 400 cases of water," you might reframe this as "reliable electrical power and safe water." The essential point is to move from the "wants" to the "needs." It is possible that there is a better solution to providing safe water and reliable power (these are needs and interests) than with generators and cases of bottled water (these are wants and positions), but negotiators need to get beyond positions to interests to start to solve that problem.*

Once discussions begin, it is important to ask many interrogative questions (be the divergent thinker) to better understand the counterpart's underlying interests. The answers should help clarify some of the assumptions you had to make about your counterpart during the planning phase. If the other side presents a position or a demand, you should ask him: "Why do you want that? What is important to you?" The person who has the most power in negotiations will be the one who is able to ask lots of questions and get an understanding of the counterpart's interests and reasons. Asking questions will do little good if a negotiator does not take time and patience to listen carefully to the counterpart. Negotiating skill is dependent on being a good communicator, which includes understanding what the other party is trying to communicate and signaling comprehension. Often, effective questions will help reveal divergent views about data, values, and/or interests. A counterpart will be willing to listen only after they are sure that everything they are trying to say has been understood. A good CNS negotiator should summarize the most important highlights of the message and repeat that back to the counterpart. This is an effective tool for confirming understanding. Additionally, the CNS negotiator should listen for interests, areas of agreement, possible dovetails (issues important to one party but not important to the other), and possibilities for trading resources to create value—these are all issues that require the suspension of judgment and the deliberate application of divergent thinking skills.

After interests are shared and further clarified and prioritized with more critical thinking questions from both sides, the process can continue. The next step is developing possible solutions that best meet both sides' interests. However, it is critical to invest the time needed to ensure both sides have a common understanding of the problem, as well

as understanding each side's interests and priorities, before attempting to develop solutions. Remember that there will likely be constituents who will not be at the table; some of these parties may have the ability to block implementation or execution of an agreement. Identifying the parties who will be affected, and what is important to them, is crucial to the creation of solutions that can achieve wide buy-in from all sides.

**CNS Principle #3: Mutually propose options through the continued use of divergent thinking that satisfy interests without passing judgment on any individual proposal**

Once you begin to build and manage a positive relationship, have an understanding of your prioritized interests and an understanding of your counterpart's prioritized interests, know your BATNA and have a good estimate of your counterpart's BATNA, and you have done what you can to improve your BATNA and influence your counterpart's, you are ready to begin the solution process by developing options for mutual gain. This solution process may start when the two parties, by sharing information about their interests, begin to find some complementary interests (dovetails, items of high value to one counterpart and low cost to the other) or common interests, where both parties desire the same outcome. From this basis in a mutual understanding of both sides' interests, an answer may evolve that is mutually acceptable because it can trace its roots back to something that both parties agree upon.

This is a multi-stage process. Three of the main features are 1) brainstorming to create options that might meet interests on either or both sides; 2) suspending judgment and withholding criticism of any suggested option; and 3) suspending commitment to any option until brainstorming is completed.

To foster the creative brainstorming environment, framing comments can help the process along. For example instead of responding to an idea with "yes, but," say "yes, and." Another non-judgmental additive technique is to say, "what if we took your option and did X; would it still meet your interests?" There should be no tradeoffs or concession making, in this phase; it is all about finding potential ways to maximize joint gains. Keep looking for ideas that combine skills and resources in different ways to satisfy key interests, and pay special attention to possibilities for creating more value by dovetailing. This process is "easier said than done," but the following ideas may help the process.

- a. Both parties need to agree that this part of the process is all about divergent thinking – constantly putting options on the table without judgment. This is a not a preferred process for most American problem-solvers. Our military culture, as well as our overall American culture, develops a distinctly convergent problem-solving process where options are constantly evaluated and removed from consideration. This is the opposite of divergent thinking or brainstorming, where ideas are purposefully added to the table without judgment, and left there for others to modify, expand upon, or re-arrange. This is not an indictment of the American problem-solving process, for convergent thinking is an effective problem-solving tool. This article advocates keeping that skill while deliberately developing and utilizing divergent thinking skills in the brainstorming, dovetailing, and value creation processes.

- b. Using the following lead-in questions might help elicit ideas from the negotiating counterpart:

“How might you solve your #1 interest?”

“How might you see us solve both of our top interests?”

“If you’ve seen this problem before, how was it solved?”

“If this problem is different than what you’ve seen in the past, what makes it different?”

“With your expertise in \_\_\_\_\_, tell me how you might build a solution?”

- c. With reserved or reluctant participants, you might use the following lead-in questions to make any idea sound like their idea. “What do you think of\_\_\_\_?” and/or “Could we consider \_\_\_\_\_?”
- d. When listening to a proposal, responses like “How might it work if we also did\_\_\_\_\_?” provides feedback to your counterpart without otherwise judging the proposal.
- e. Finally, linking a proposal to one or more interests helps keep the process on track, and reinforces the divergent thinking process. This is the key to helping the value creation process.
- f. Patience and active listening are the keys to the negotiation process. Throughout the negotiation process, it is critical to deliberately and carefully listen to the counterpart for interests, possible dovetailing opportunities, and possible areas of agreement. You can safely assume you do not have all the information until you have patiently gone through this critical thinking and active listening exercise with your counterpart. It is unwise to convert assumptions about the other side’s interests into fact; ask questions instead. This difference in perspectives over the same data set is especially amplified when working across cultures.

*The Ugli Orange story is a tactical level illustration -- The 1978 Camp David Accord offers an illustration of how defining and sharing interests, and brainstorming for solutions that address the interests, can provide breakthrough momentum at the strategic level:*

*In 1967, Egypt responded to a false report of Israeli troops massing on the Syrian border by placing Egyptian troops on “maximum alert,” massing their troops in the Sinai, expelling the United Nations from the Sinai and the Gaza Strip, and closing the Straits of Tiran to Israeli shipping on May 22, 1967—this closure itself was a casus belli. By the end of May, the Egyptian President Nasser had announced that “if war came, the goal would be nothing less than the destruction of Israel;” Jordan, Syria, and Iraq announced their alliance with Egypt against Israel during the next two weeks. Diplomacy seemed to be useless. Israel preemptively launched attacks and against most expectations won the war in just six days.<sup>73</sup>*

*The Israelis had occupied the Sinai ever since; they did not want Egypt to be able to mass tanks on their border again. When Israel and Egypt tried to negotiate a peace, their positions appeared irreconcilable: “Israel insisted on keeping some of the Sinai. Egypt insisted that every inch of the Sinai be returned to Egyptian sovereignty.” The Settle strategy was attempted; many proposals were floated suggesting compromise boundary lines, but none of these satisfied Egypt’s interest in sovereignty. A cooperative strategy provided the breakthrough:*

*Israel’s interests lay in security; they did not want Egyptian tanks poised on their border ready to roll across at any time. Egypt’s interest lay in sovereignty; the Sinai had been part of Egypt since the time of the Pharaohs. After centuries of domination by Greeks, Romans, Turks, French, and British, Egypt had only recently regained full sovereignty and was not about to cede territory to another foreign conqueror. At Camp David, President Sadat of Egypt and Prime Minister Begin of Israel agreed to a plan that would return the Sinai to complete Egyptian sovereignty and, by demilitarizing large areas, would still assure Israeli security. The Egyptian flag would fly everywhere, but Egyptian tanks would be nowhere near Israel.<sup>74</sup>*

*Although some critics of this example will point to the US foreign aid to both sides as a sweetener that helped close the deal, the important item to note is that the sweeteners were also available under the Insist and Settle strategies; however, they only became useful after the cooperative strategy provided the breakthrough proposal.*

*Consider another tactical level example:*

*A company commander is meeting with a village leader to arrange the use of roads in his area of control/influence.*

*The Positions: The company commander's position is that all American vehicles should have complete freedom of movement through all roads in order to achieve mission success. The village leader's position is that he wants his village to be left alone; he wants the status quo.*

*Insist Strategy: There is no overlap between the positions. The negotiators may deadlock. The relationship may deteriorate to the point where the village leader does not welcome US vehicles in his area at all, potentially leading to a show of force (company commander's BATNA) that further damages relations.*

*Interests: The reason the company commander wants freedom of movement is to pursue suspected insurgents. The reasons the village leader wants to restrict movement are to show his dominance, importance, and authority to his people, to prevent the disturbing of his villagers (this village is not overtly sympathetic to the insurgents), and to avoid insurgents' punishment activities resulting from the appearance that the village is collaborating with the US military.*

*BATNA: The village leader's interest in this scenario is preserving the status quo, to be left alone, and not to have a US military presence in his town. His initial BATNA is that he will say "no," and the outpost or checkpoint will not be installed. An effective negotiator is always looking for ways to influence BATNAs. In this situation, without overtly threatening force, the US negotiator could modify the counterpart's understanding of his BATNA by suggesting that the US presence will have to be ramped up in the area, radio towers installed nearby, and military vehicles may be continuously patrolling the village outskirts, if no other agreement can be reached. An unattractive BATNA provides motivation for parties to stay in the negotiation and attempt to reach a settlement, so the ability to make a counterpart's BATNA less attractive is an extremely powerful negotiation tool.*

*CNS: In CNS, parties focus on discovering interests behind positions, and work to find a solution that meets those interests. In order to meet the US commander's interest without sacrificing his own, the village leader might allow a "right of hot pursuit." In order to meet the village leader's interests, the commander might agree to stay on the main roads and refrain from patrolling in residential areas in the village whenever possible. To help ensure the village leader's authority, the company commander may provide the leader a cell phone, and agree to pre-coordinate the patrols with the village leader. To complete negotiations, the parties have to discover their reasons for wanting their demands—in this way they can discover that the original positions are not what the parties required after all, and they can design a way to meet both their interests.<sup>75</sup>*

**CNS Principle #4: Agree to converge on a solution that best satisfies each party's top priorities**

Before parties create options, both parties should agree on some standards of legitimacy by which to converge or choose the best solution from all the options that may be proposed. The authors of *Getting to Yes* suggest using external standards as a sword and as a shield--as "a sword to help you persuade others and a shield to protect you from giving in to arbitrary demands."<sup>76</sup> The rationale here is that an objective standard, such as "the going market rate," "blue-book value," "precedents practiced elsewhere" or "what a neutral third party might decide" provides a more principled guideline for choosing among competing possible options than simply picking a favorite. No party to the negotiation is likely to feel cheated, because the option chosen is fair--it is based on some sort of objective criteria and not personal bias or favorite. A necessary feature of an objective standard is that it be "independent of each side's will." It should also be practical and legitimate.<sup>77</sup>

There are pitfalls to avoid when choosing a selection tool. Equality of opportunity (such as drawing lots) is a nominally fair objective standard where each side gets an equal chance to choose an outcome. Equality of opportunity is very different from equality of outcome. It is fair insofar as each party had an equal chance, not because each party has an equal outcome. However, this standard is not easy to sell to stakeholders who are not present at the table, and it does not create sustainable foundations for enduring agreements. A more saleable standard should answer the questions "how are my interests met by this resolution?" or "what would a neutral party decide?" or "what would an expert decide?" or "what would someone with no stake in the outcome decide?"

In Western culture, the concept of a neutral third party resonates clearly; however, in some cultures, this idea does not translate with the same meaning. In culturally complex environments, negotiators must seek standards of legitimacy that will work for all parties to the negotiation. While ideas of fairness, legitimacy, and objective standards are present in all cultures, they may have different expressions.

In the military context, finding "industry standards" and "market value" may have limited applicability. In light of the difficulty of identifying external standards of legitimacy, the authors suggest that internal standards may provide a way to establish a choosing mechanism that yields an outcome each side can see as fair. One such internal standard might be choosing an option that best satisfies each side's top interests. This is outcome based; if each side has identified and prioritized their interests, this standard should satisfy each side as long as they find a solution that addresses both sides' interests to the extent possible.

*In a military environment, or in any negotiating environment where one negotiator has a great deal more leverage or coercive power, there are several reasons why s/he should seek a standard of legitimacy instead of merely using leverage to secure the most advantageous option. First, a solution will either be legitimate or coerced. Coercion may work to get your solution executed, but the relationship may become adversarial rather than cooperative. Opportunities for future cooperative problem-solving may be lost. Second, a solution that is coerced rather than legitimate will likely require continued coercion during the implementation phase. Third, if both sides affirm that the solution is fair, based on some objective, external measure of fairness and legitimacy, or because both side's top interests have been met, then both sides will be able to sell the solution to their constituents. It is easier to explain that one's top interests have been met than to explain that one has given in to threats or demands. In some military environments, for example, if you are negotiating with local government officials, it may be in the long-term interest of stability for you to help the officials build and maintain credibility among their constituents. It may be part of the negotiator's job to help local officials sell negotiated solutions to their constituents. Often it is difficult to find "objective criteria" in the military environment. However, as has already been discussed, if the interests are valid and truly prioritized, then the selection criteria might be the one that meets the top interest (or as many top interests as possible) for both sides.*

1. Process: The attached guide helps illustrate how the CNS process unfolds. There are five distinct pieces to the process, but once a portion of the process is closed, that doesn't mean it can't be reopened, especially in light of new circumstances or information. Three of these processes should be well developed before the first negotiations meeting, the remainder to be completed during the meetings. The three steps accomplished in the planning phase--positions, interests, and BATNA--are required to prepare you for the actual negotiations. These three steps, unlike the preplanning steps in other negotiating strategies, draw no conclusions, but help to organize thoughts. As you read the following five steps, reference the attached CNS planning worksheet.

#### Step 1

**Positions:** In this step, you establish what your position should be and estimate what you think the counterpart's position might be. This is an exercise in thinking about WHAT you might want.

#### Step 2

**Interests:** In this step, you assess why you think this position is the one you need and estimate why you think your counterpart might desire their position. Integral to this step is to ensure you prioritize what interest is most important to you and what you think is most important to your counterpart. This step helps supply the essential topics you will want to cover during the actual negotiation meetings. For example (this example

is taken from an actual case study), if you are negotiating in a deployed setting for departure corridors from the airfield, your top interest might be a consistent and safe departure routing for your assigned aircraft regardless of the weather conditions. Your counterpart's top interest might be to ensure that the routing avoids national historic and religious shrines and sites. If both of you have agreed that these missions need to happen, then these top interests might form the basis for some options that will address both sides' top interests.

### Step 3

**BATNA:** The last step in the planning process involves determining your BATNA and estimating your counterpart's BATNA. This information should not be used to bludgeon the counterpart; it should be used to motivate the negotiating parties to engage in negotiations that will exceed their BATNAs by as much as is practical. Part of this step involves thinking about ways you might strengthen your BATNA, as well as how you might influence your counterpart's BATNA.

### Step 4

**Develop Options:** When you look at the attached guide, you'll notice that in the first three steps, there is a line on the guide that separates you from the counterpart. In Step 4, that line disappears, because you are now engaged in negotiating with your counterpart and using divergent thinking skills to develop ideas that will satisfy the interests you have developed. "Differences in the relative value of interests, forecasts of future events, aversion to risk, and time preferences may offer opportunities to develop options for mutual gain."<sup>78</sup> As this step is executed, remember that developing good options is only possible after you have a robust discussion about both sides' interests. You cannot brainstorm proposals until you have a good mutual understanding of interests and priorities. Negotiations effectiveness and efficiency are negatively affected when information about interests is not shared.

Once you begin brainstorming options for mutual gain, it is essential to list all the options developed without judgment -- often the best solution is one that grows out of an initially incomplete or weak option. The only way such options can be transformed into good options is if both parties suspend judgment on the original idea; this allows the idea to improve through subsequent suggestions. It is also advisable to set a ground rule during this phase that you are only brainstorming; no party is committed to any option put forward during brainstorming.

### Step 5

**Selection:** In this final step, the best idea from all those presented is selected by agreement of all negotiating parties. Up until this point, integrative processes have dominated CNS. In this step, however, distributive processes predominate as the resources must be split up in some fashion to close the deal. Here, in the military context, it is suggested that the option that best meets the most important priorities for

both sides is the option that should be selected. To help this process along, it is suggested that critical thinking questions continue to flow as options are suggested as the “best.” For example, if your counterpart suggests that Option D is the best, you might ask the counterpart which of his/her interests Option D satisfies, as well as which interests of yours that they think the option satisfies.

Managing ego and emotions is important in all the steps of CNS, but it is especially so in the selection step. All negotiators have egos and would certainly be pleased if their suggested idea was adopted as the solution. Although affirmation of one’s brilliance may be desired, it is not essential when picking the best option as the solution. Ego must be suspended in favor of picking the idea that best meets the prioritized interests of both sides. Additionally, some elements of other negotiating strategies might be appropriate in this phase. For example, if the results of this agreement are more important as a stepping stone to more negotiations over more important topics in the future (immediate task orientation is lower than relationship orientation), you might elect to blend a bit of the Comply strategy in this phase as you consent to an option that meets more of your counterpart’s interests than yours – all in an effort to set a precedent of reciprocity or other mutually beneficial concession in future negotiations. You may also have an opportunity to use the Settle strategy if the difference between a stalemate and a deal involves “splitting the difference” on one element of the bargain.

### Pro/Con

#### 3. CNS advantages

- a. The process hinges on parties’ agreeing to work in a genuinely cooperative manner. This cooperative attitude is a positive aspect of the cooperative strategy. The strategy depends on cooperative attitudes to succeed and the processes within the strategy are designed to establish and develop this attitude. Trust building measures, respectful treatment of the people and their emotions, and effective critical thinking are deliberate efforts to ensure each support the cooperative attitude.
- b. CNS can achieve a consensus. In this context it is important to realize that a consensus doesn’t necessarily mean that all sides are happy with the solution, but they can live with it because it best meets their essential interest and is better than either side’s BATNA. If these conditions cannot be met, then negotiations need to be re-engaged or the negotiations broken off.
- c. Since both sides had genuine opportunities to express interests, discuss perspectives, and help choose the criteria for the selection of the solution, the resulting agreement should be more complete. Usually, solutions developed by a genuine peer process of open discussion and critical thinking results in a better solution than one side could develop on their own.

- d. In a deployed setting, it may be critical to cooperatively create solutions so that the local population (constituents in the process) has some ownership of the process, because such ownership is likely to increase the perceived legitimacy and the sustainability of whatever solution is implemented. As Gen. Stanley McChrystal notes, “As the Afghans say, ‘If you sweat for it, you will protect it.’”<sup>79</sup> Furthermore, cooperatively developed solutions (as opposed to unilaterally imposed solutions) tend to bolster the credibility of local officials, which can improve stability.
- e. When a consensus is achieved through a CNS, a positive environment should exist for both follow-on negotiations in the execution phase of the agreement and future negotiations on other issues. In both the detailed agreements preferred by Americans and less detailed agreements preferred in some other cultures, unforeseen problems do occur in the execution of the agreement. When they occur, a cooperative environment that led to the initial agreement should help support a cooperative process in the follow-on negotiations.
- f. CNS has the potential to create new value by combining resources in new and novel ways. You have significant experience in this already. It isn’t uncommon to hear from a member of a problem-solving team after another member floats an idea, “I never thought of doing it like that before – that just might work”. These “eureka” moments are the result of people sharing ideas and building on each other’s proposals.
- g. CNS helps overcome distrust with deliberate confidence building measures. Open communications, delivering on promises, mutual respect, and an attitude that one side doesn’t have all the answers, helps overcome distrust that is a natural barrier to most any negotiating process, and also improves your reputation for fair dealing.

4. CNS disadvantages:

- a. CNS takes deliberate efforts to plan and execute. This takes time, a commodity that is in ever increasing scarcity. When there is a *bona fide* emergency that requires an immediate decision and immediate action, and the situation is not complex or ambiguous, CNS may be too time-consuming.
- b. There is risk in using CNS in that you are sharing information. If the counterpart takes advantage of the situation and misleads you with their information, then your counterpart may take advantage of you and you might enter into an agreement that is flawed. Continued critical thinking, asking the interrogative questions of both the information your counterpart shares with you and their proposed solution, and sharing information reciprocally, rather than unilaterally, should help minimize this risk.
- c. As noted above, the need for flexibility in CNS can sometimes run counter to mission orders. Thus, CNS and the solutions it may create

may require flexibility in mission orders, and this may require coordination with multiple levels of command.

Commentary: CNS often develops mutual gains and yields solutions that serve the interests of all sides better than a solution that is created by one party (without all the information) and imposed. In contexts where issues are complex and ambiguous, it is unlikely that one party could imagine a solution that would meet both sides' interests; a process of interest discovery is required. Especially in cases where the counterparts' cooperation is required for successful execution (implementation), agreements achieved through CNS are more "likely to create order and stability, foster social harmony, and reduce the likelihood of future conflict."<sup>80</sup> When a solution is affirmed by all parties for their own reasons, problems are less likely to arise in the execution phase. Difficulties exist in applying this method in a military context. Sometimes a negotiator is given mission orders that are inflexible, and s/he does not have the latitude or authority to create new solutions in cooperation with the counterpart. Strategic leaders may have to generate more flexible mission orders around "interests" rather than "positions." Such flexibility will avoid forcing negotiators to operate in the Insist strategy, but it may require coordination with multiple levels of command. CNS is also difficult because our pre-disposition is competitive. CNS is a skill that can be learned, but it takes practice to execute well, and maturity and experience is necessary to expand a competitive negotiator's thinking from win-lose to also include win-win.

### **Conclusion**

The purpose of this article has been to introduce distributive and integrative bargaining and to explain the context-dependent utility of five major categories of negotiation strategies in the military environment. The authors don't advocate that you grab one strategy and run with it. You may start with one strategy, move to another, and then a third: "There are no panaceas or cookbook answers to negotiations and mediation and the broader context of conflict management and resolution. The process is complex and what works in one situation may not be applicable in the next operation."<sup>81</sup> Nevertheless, with proper preparation, planning, and care, military negotiation outcomes can often be improved by utilizing appropriate techniques and strategies. Future operations may require unprecedented levels of negotiation and interaction between US military members and host nationals, including military and civilian officials as well as private citizens. One limitation of this article has been that the authors have not taken space here to explain at significant length the complicating factor of cultural dissonance on negotiation, nor have they addressed the impact of emotions, such as the role of fear, anger, and grief in the negotiation context. The impact of such factors on negotiation in deployed environments is likely to vary widely. Applying your knowledge of local cultures, inter-cultural communication skills, and interpersonal relations will be extremely helpful to you in reaching successful negotiation outcomes.

# Cooperative Negotiation Strategy Worksheet

	Yours	Theirs
<p><b>Position:</b> <i>WHAT do I think I want? WHAT do I think They want?</i></p> <p><b>Aspiration Point:</b> <i>What might the best possible outcome be for me and for them?</i> <i>(Rationally Bounded)</i></p> <p><b>Reservation Point:</b> <i>What's the minimum I'd accept? What's the minimum they'd accept?</i> <i>(Rationally Bounded)</i></p>		
<p><b>Prioritized Interests</b></p> <p><i>Why do I want the above outcome? How important are each of the interests?</i> <i>Why might they want the their position? How important are each of their interests?</i></p>		
<p style="text-align: center;"><b>Best Alternative to a Negotiated Agreement : (BATNAs)</b> <i>What can I /might they do if we don't reach an agreement?</i></p> <p style="text-align: center;"><b>Worst Alternative to a Negotiated Agreement: (WATNAs)</b> <i>What might be the worst option I / they might have to execute?</i> <i>Is the use of force a wise fallback (WATNA)?</i></p>		
<p><b>Agenda</b></p> <ol style="list-style-type: none"> <li>1. Trust building measures and / or pre-emptive concessions?</li> <li>2. Who opens?</li> <li>3. What are the common interests?</li> <li>4. Are options presented as a single full proposal or incrementally?</li> </ol>		
<p><b>Zone of Possible Agreement: (ZOPA)</b></p> <p><i>From your reservation point to theirs. Is there overlap?</i> <i>If no overlap, what needs to be done to gain some common ground?</i></p>		
<p><b>Options for Mutual Gain</b></p> <p><i>Adhering to brainstorming processes, suspending judgment, using active listening and critical thinking to develop proposals, but not commitments.</i> <i>(Satisfying as many interests of both parties as possible)</i></p>		
<p><b>Objective Criteria</b></p> <p>Industry standards, historical data, or, for the military context, the option that best meets the top interests for both / all sides as established above</p>		
<p><b>Execution Process</b></p> <p><i>What elements were developed to help with conflict resolution during execution?</i></p> <ol style="list-style-type: none"> <li>1. Periodic meetings / inspections /exchanges of information, etc.</li> <li>2. Third party oversight?</li> <li>3. Formal or informal grievance processes?</li> </ol>		

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<sup>1</sup> *United States Army Future Concept of the Human Dimension*, 187.

<sup>2</sup> Tressler, David, *Negotiating in the New Strategic Environment: Lessons From Iraq*, (Carlisle, PA: Strategic Studies Institute, 2007), 1.

<sup>3</sup> This section “Negotiations as a Valued Competency” is a revised excerpt from Eisen, Stefan Jr., ed., “Negotiating in a Military Environment,” Air War College Group Research Project, 2008.

<sup>4</sup> Pruitt, Dean G. “Strategic Choice in Negotiation,” in *Negotiation Theory and Practice*. Edited by J. William Breslin and Jeffrey Z. Rubin, (Cambridge, MA: PON: Harvard Law School, 1999), 27.

<sup>5</sup> On-line Google enabled search of the Books-a-Million web store (searching with the key word “negotiations”) returned 791 books. Search performed on 23 August 2007.

<sup>6</sup> On-Line Google enabled search, using the specific key phrase “negotiations training” and limiting the results to “.com” sites, returned 12,000 sources.

<sup>7</sup> Ertel, Danny. “Turning Negotiating Into a Corporate Capability,” *Harvard Business Review on Negotiation and Conflict Resolution*. (Cambridge MA: Harvard Business Review, 2000), 104.

<sup>8</sup> An on-line search of the Program on Negotiations web-site reports a schedule of 26 executive seminars in the next calendar year as well as multiple offering of semester-long courses. Overall, PON supports 11 distinct programs. Source: PON website.

<sup>9</sup> Lehigh University’s on-line Professional Continuing Education opportunities at

[http://www.lesn.lehigh.edu/course\\_info/documents/NonCredit-Summer07.pdf](http://www.lesn.lehigh.edu/course_info/documents/NonCredit-Summer07.pdf)

Mr. Freeman White’s comments on corporate development in the architect career field

[http://www.aia.org/aiarchitect/thisweek02/tw0906/0906tw5bestpract\\_firm\\_ces.htm](http://www.aia.org/aiarchitect/thisweek02/tw0906/0906tw5bestpract_firm_ces.htm)

Texas State Department of Information Resources Continuing Education Requirements.

[http://www.dir.state.tx.us/CEG/irm\\_edu.htm](http://www.dir.state.tx.us/CEG/irm_edu.htm)

<sup>10</sup> Murphy, Robert. “Educating U.S. Senior Military Leaders: Case Method Teaching in Action,” (paper presented at the Method Research and Application world-wide conference, Edinburgh, Scotland, July 1998); “Strategic Leadership and Decision-Making Course” (National Defense University, Washington, D.C.); Guillot, Michael. “Strategic Leadership: Defining the Challenge” *Air and Space Power Journal*. (Maxwell AFB, AL: Air University, Winter 2003); Kurchner-Hawkins, Ronnie and Rima Miller. “Organizational Politics, Positive and Ethical Strategies for Surviving and Thriving” (paper: ASTD 2006 Conference, Dallas, TX, May 2006); Satish, Usha and Siegfried Streufert. “Value of a Cognitive Simulation in Medicine: Towards Optimizing Decision Making,” *Quality and Safety in Health Care*, 11, (2002) 163-167.

<sup>11</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1981); Cohen, Steven. *Negotiating Skills for Managers* (New York, NY: McGraw-Hill, 2002); Breslin, J. William and Jeffrey Z. Rubin. *Negotiating Theory and Practice* (Cambridge MA: The Program on Negotiation at Harvard Law School, 1999), preface.

<sup>12</sup> This section, “The Military Environment and Negotiations” is a revised excerpt from Eisen, Stefan Jr., ed., “Negotiating in a Military Environment,” Air War College Group Research Project, 2008.

<sup>13</sup> Eisen, Stefan. Jr. “Air War College Student Survey,” (Maxwell, AFB, AL: USAF Air War College formal survey, August 2007); Eisen, Stefan Jr., “Air Command and Staff College Student Survey,” (Maxwell, AFB, AL: USAF Air Command and Staff College formal survey, October 2007); Eisen, Stefan Jr. “Air Command and Staff College Student Survey.” (Maxwell, AFB, AL: USAF Air Command and Staff College formal survey, October 2007).

<sup>14</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 5, 26, 49, 84.

<sup>15</sup> Susskind, Lawrence and Hal Movius, “Built to Win: Creating a World-Class Negotiating Organization,” (Cambridge, MA: Harvard Business School Press, 2009).

<sup>16</sup> Moskos, Charles C. “From Institution to Occupation, Trends in Military Organization,” *Armed Forces and Society* 4, no. 1 (Fall 1977): 26.

<sup>17</sup> Wong, Leonard, Stephen Gerras, William Kidd, Robert Pricone, and Richard Swengros. *Strategic Leadership Competencies* (Carlisle Barracks, PA: Strategic Studies Institute, September 2003), 9; Toiskallio, Jarmo. “Military Pedagogy and the Postmodern Transformation of Soldiership” (paper presented at the 46th annual conference of the International Military Testing Association, Helsinki,

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Finland, October 27, 2004.; Burk, James. "Military Culture," in *Encyclopedia of Violence, Peace and Conflict*, ed. Lester R. Kutz and Jennifer Turpin (San Diego, CA: Academic Press, 1999), 459.

<sup>18</sup> This section, through the end of page 4, is a revised excerpt from Eisen, Stefan Jr., ed., "Negotiating in a Military Environment," Air War College Group Research Project, 2008.

<sup>19</sup> J. William Breslin, Jeffrey Z. Rubin, and Program on Negotiation at Harvard Law School., *Negotiation Theory and Practice* (Cambridge, Mass.: Program on Negotiation at Harvard Law School, 1999), 1.

<sup>20</sup> J. William Breslin, Jeffrey Z. Rubin, and Program on Negotiation at Harvard Law School., *Negotiation Theory and Practice* (Cambridge, Mass.: Program on Negotiation at Harvard Law School, 1999), 1.

<sup>21</sup> Steven Cohen, *Negotiating Skills for Managers*, (New York: McGraw-Hill, 2002), 3.

<sup>22</sup> Demers, Julie, "Negotiating Skills Can Be Learned," *CMA Management*, Nov 2002, Vol. 76, Issue 8, 34.

<sup>23</sup> Lourie, Jonathan, "Negotiation American Strategy," *Practical Lawyer* 48, no. 6 (2002), 58.

<sup>24</sup> Christopher Honeyman and Andrea Kupfer Schneider, "Catching up with the Major-General: The Need for a 'Canon of Negotiation'," *Marquette Law Review* 87, no. 4 (2004), 639.

<sup>25</sup> Charles Dunlap and Paula McCarron, "Negotiations Goes to War," <http://www.au.af.mil/au/awc/awcgate/usafa/negtoward.doc>, 1.

<sup>26</sup> Charles Dunlap and Paula McCarron, "Negotiations Goes to War," <http://www.au.af.mil/au/awc/awcgate/usafa/negtoward.doc>, 1.

<sup>27</sup> Thompson, Leigh L. *The Mind and Heart of the Negotiator*, (Upper Saddle River, NJ: Pearson, 2004), 3.

<sup>28</sup> Thompson, Leigh L. *The Mind and Heart of the Negotiator*, (Upper Saddle River, NJ: Pearson, 2004), 3.

<sup>29</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, "Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants," (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007.)

<sup>30</sup> Orly Ben-Yoav Nobel, Donald Campbell, Sean T. Hannah & Brian Wortinger, "Soldiers' Negotiations in Combat Areas: The Effects of Role Clarity and Concern for Members of the Local Population." *Journal of Conflict Resolution*, (forthcoming in 2010).

<sup>31</sup> *The United States Army Future Concept for the Human Dimension*, "Chapter 9, Leadership: 9-2 Changes that Challenge Leadership," 187.

<sup>32</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 115.

<sup>33</sup> Roger Fisher and William Ury popularized this acronym in their 1981 bestseller, *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991).

<sup>34</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 12

<sup>35</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 123.

<sup>36</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), et. al., 123.

<sup>37</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 123.

<sup>38</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 100.

<sup>39</sup> Susskind, Lawrence and Jeffrey Cruikshank, *Breaking the Impasse: Consensual approaches to resolving public disputes*, (New York: Basic Books, 2001), 84.

<sup>40</sup> Bazerman, Max, "Negotiator Judgement: A Critical Look at the Rationality Assumption," in J. William Breslin and Jeffrey Z. Rubin, eds., *Negotiation: Theory and Practice*, (Cambridge, MA: Program on Negotiation, 2009), 196-197.

<sup>41</sup> Non-attribution comment from an Army member with significant deployed experience in Iraq.

<sup>42</sup> 2004 CALL (Army Lessons Learned) Report, 42, note 3.

<sup>43</sup> AF DD 1-1 *Leadership and Force Development*, 42.

<sup>44</sup> The dual concern model was adapted from economics for negotiation theory by Dean Pruitt and Peter Carnevale in *Negotiation and Social Conflict*, (Buckingham, England: Open University Press, 1993), chapter 7.

<sup>45</sup> International Commission on Intervention and State Sovereignty and others, *The Responsibility to Protect*, (Ottawa, Canada: International Development Research Centre, 2001), 38-39.

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- <sup>46</sup> International Commission on Intervention and State Sovereignty *The Responsibility to Protect*, (Ottawa, Canada: International Development Research Centre, 2001), 20. See also Michael E. Brown and Richard N. Rosecrance, *The Costs of Conflict : Prevention and Cure in the Global Arena* (Lanham, Md.: Rowman & Littlefield Publishers, 1999), 278.
- <sup>47</sup> Nobel, Orly Ben-Yoav, Sean Hannah, David Campbell, and Brian Wortinger, “Effect of Role Clarity and Concern for Others’ Outcomes,” Forthcoming in the *Journal of Conflict Resolution*.
- <sup>48</sup> Author’s experience at MAJCOM HQ, the Air Staff, and ad hoc and formal teams assembled to deal with Congressional inquiries, etc. all took the flavor of a battlefield scene where our objective was to either “win them over to our side” or “destroy their argument.”
- <sup>49</sup> Eisenhardt, Mary Warren and Michael Spangle, *Collaborative Approaches to Resolving Conflict*, (Thousand Oaks, CA: SAGE), 2000, 13-15.
- <sup>50</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 43.
- <sup>51</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 44.
- <sup>52</sup> See Eisen, Stefan, Jr. “An Argument for Deliberate Negotiations Competency Development for Senior Leaders,” Paper presented at the biennial international conference of the Inter-university Seminar on Armed Forces and Society, Chicago, IL, October 27, 2007.
- <sup>53</sup> Eisen, Stefan, Jr. “An Argument for Deliberate Negotiations Competency Development for Senior Leaders,” Paper presented at the biennial international conference of the Inter-university Seminar on Armed Forces and Society, Chicago, IL, October 27, 2007.
- <sup>54</sup> US Army, *Future Concept for the Human Dimension*, 187.
- <sup>55</sup> Army/Marine Corps, *Counterinsurgency Field Manual 3-24*.
- <sup>56</sup> Eisen, Stefan, Offer Game Data, 2008-2009.
- <sup>57</sup> Roy J. Lewicki, Bruce Barry, David M. Saunders, *Essentials of Negotiation*, (New York, NY: McGraw Hill, 2007), 35.
- <sup>58</sup> Debrief item from interviews conducted by the authors at TRADOC Culture Center, March 2009.
- <sup>59</sup> Camp, Jim *Start with No: The Negotiating Tools the Pros Don’t Want You to Know*, (New York: Random House, 2002), 124.
- <sup>60</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, “Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants,” (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007), 19.
- <sup>61</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, “Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants,” (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007), 22.
- <sup>62</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 11.
- <sup>63</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 180.
- <sup>64</sup> Interviews with senior officers from Saudi Arabia, Kuwait, Pakistan, and Iraq, Mar-April 2009
- <sup>65</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, “Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants,” (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007), 13.
- <sup>66</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, “Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants,” (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007), 13.
- <sup>67</sup> Attributed to Tom Peters 15 May, 1987 accessed 22 July 2009 at [http://www.tompeters.com/col\\_entries.php?note=005091&year=1987](http://www.tompeters.com/col_entries.php?note=005091&year=1987)
- <sup>68</sup> Camp, Jim. *Start with No: The Negotiating Tools the Pros Don’t Want You to Know*, (New York: Random House, 2002), 107-114.
- <sup>69</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 40.
- <sup>70</sup> Davis, Albie M. “An Interview with Mary Parker Follet” in Breslin and Rubin, eds., 1-15.

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<sup>71</sup> The story about the sisters' conflict over the orange has been attributed to Mary Parker Follett, see Deborah M. Kolb, "The Love for Three Oranges, Or: What Did We Miss about Ms. Follett in the Library?" *Negotiation Journal* 11, (October, 1995), 335.

<sup>72</sup> Cohen, Steven, *Negotiating Skills for Managers*, (New York: McGraw Hill, 2002), 73-79.

<sup>73</sup> Hudson, Kimberly. *Justice, Intervention, and Force: Re-assessing just war theory in the twenty-first century*, (London: Routledge, 2009), 10.

<sup>74</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 41-42; for a more comprehensive discussion of the Camp David negotiations, see Raiffa, Howard. *The Art and Science of Negotiation*, (Cambridge: Belknap/Harvard, 1982), 208-215.

<sup>75</sup> The example is modified and adapted from a scenario published in *Dispatches—Lessons Learned for Soldiers* "Negotiations During Peace Support Operations," Army Lessons Learned Centre, Kingston, Ontario, Canada, 5.

<sup>76</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 8-9, 183.

<sup>77</sup> Fisher, Roger and William Ury. *Getting to Yes: Negotiating Agreement without Giving In*, (New York: Penguin Books, 1991), 85.

<sup>78</sup> US Army/US Navy Joint Doctrine for Civil Affairs, JP 3-57.1, p VII-24.

<sup>79</sup> 25 August 2009, COMISAF COIN Guidance, 5.

<sup>80</sup> Nobel, Orly Ben-Yoav, Brian Wortinger, and Sean Hannah, "Winning the War and the Relationships: Preparing Military Officers for Negotiations with Non-Combatants," (Arlington, VA: US Army Research Institute for the Behavioral and Social Sciences, 2007); Rubin, J.Z., Pruitt, D.G., & Kim, S.H. *Social conflict: Escalation, stalemate, and settlement* (New York: McGraw-Hill, 1994)

<sup>81</sup> US Army Peacekeeping Institute, as quoted in the Joint Doctrine for Civil Affairs JP 3-57.1, p VII-24.