

Principles of Effective Negotiation

Negotiation is not a process reserved only for the skilled diplomats, the lawyers or the business people. It is something that everyone does almost daily.

Negotiations occur for two reasons:

1. To create something new that neither party could do on his or her own.
2. To resolve a problem or dispute between confronting parties.

This text explores principles of effective negotiation. These principles are applicable either the negotiation is done via interpersonal communication or the negotiation is done through the Internet. While the latter differs from the former, the core principles of effective negotiation do not change.

The contents of this text refer to:

- The Mutual Gains Approach (MGA)
- The technique for making Smart Choices
- The Alternatives in decision-making and the Alternative Dispute Resolution (ADR)

The Mutual Gains Approach

According to Lawrence Susskind and Patrick Field¹, the six simple guidelines that provide the framework for the Mutual Gains Approach (MGA) are:

1. Acknowledge the concerns of the other side.
2. Encourage joint fact finding.
3. Offer contingent commitments to minimize impacts if they do occur, and promise to compensate knowable but unintended impacts.
4. Accept responsibility, admit mistakes, and share power.
5. Act in a trustworthy fashion at all times.
6. Focus on building long-term relationships.

The six principles of the MGA mean that a good negotiator should:

¹ **Lawrence Susskind and Patrick Field**, *Dealing With an Angry Public -- The Mutual Gains Approach to Resolve Disputes*, Free Press 1996 pp. 9-12, 13 & 37-42 (Free Press, 1996)

- Take a step back from her own interests and try to delve into the underlying interests--as opposed to the positions--of the other side, i.e. consider the interests of both sides.
- Try to generate information that is believable to both sides. Decide what information the other side will find compelling. Engage in gathering data, analyzing data, and drawing conclusions with the other side.
- Minimize the impact of her actions and decisions upfront, rather than wait to pay the premium later. The negotiator should avoid an aggressive style that could probably put the counterpart's representatives in defensive and/or counteroffensive positions. Her style should make the other side's representatives partners, not counterparts.
- Accept responsibility, admit mistakes, and share power.
- Say what she means and means what she says. The good negotiator should not make promises that she does not intend to keep. She should not ask for commitments that the other party is unable to honor, too.
- Focus on building long term-relationships if she cares about her reputation and credibility.

The six principles of the MGA require that the negotiator avoids the following ploys:

1. **Stonewalling:** keeps quiet in the face of a crisis.
2. **Whitewashing:** minimizes the effects of her actions.
3. **Smokescreening:** conceals the truth.
4. **Setting a false front:** enters into a debate or negotiation under false pretences.
5. **Block-and-blaming:** distances herself from the problem and blames somebody else.
6. **Slush-and-burn:** deploys all-out warfare against her critics.

The implementation of the MGA depends on:

- Effective leadership.
- Honesty/Integrity
- Trust

Effective Leadership

The implementation of the Mutual Gains Approach (MGA) requires Effective Leadership². Warren Bennis noted that, "It's not enough for a leader to do things right; he [or she] must do the right thing."

The ingredients of Effective Leadership are:

1. Information sharing
2. Active listening
3. Learning

Effective leaders are likely to value:

- honesty and openness
- inclusion rather than exclusion
- decision making informed by technical knowledge and expertise
- fairness and efficiency
- integrity and success
- truth and efficacy
- emotion and reason
- creativity and chaos
- compassion and competence

Honesty & Integrity

Honesty and integrity aim at sustaining trust among the leader and those who are led. Warren Bennis³ used the metaphor of a tripod to describe how leaders generate and sustain trust:

"One leg of the tripod is ambition; another leg is competence; and the third leg is integrity, moral fabric...I have seen too many leaders who have that formidable combination of competence and ambition absent integrity and they succeed only in the short term, if that."

Trust

A good negotiator should aim at establishing a trusted relationship with the counterpart. Political scientist Robert Axelrod⁴ makes the following suggestions in order to encourage and sustain trusted relationships:

² Ibid, pp. 225 & 229-232

³ Ibid, pp. 225-227

- be cooperative
- be provokable
- be forgiving
- be clear
- use a strategy based upon reciprocity

Smart Choices

The PrOACT Approach

According to John S. Hammond, Ralph L. Keeney and Howard Raiffa⁵, the best way to make a smart choice is to divide and conquer. For a negotiator, the divide-and-conquer technique means that she has to

- break her decision into its key elements
- identify those most relevant elements into her decision
- apply some hard systematic thinking
- make her decision

An effective decision-making process fulfils six criteria:

1. It focuses on what is important
2. It is logical and consistent
3. It acknowledges both subjective and objective factors and blends analytical and intuitive thinking
4. It requires only as much information and analysis as is necessary to resolve a practical dilemma
5. It encourages and guides the gathering of relevant information and informed opinion
6. It is straightforward, reliable, easy to use and flexible

The **PrOACT** approach in making smart choices examines analytically and proactively the following eight elements:

- **P**roblem
- **O**bjectives
- **A**lternatives

⁴ Ibid, pp. 228-229

⁵ **John S. Hammond, Ralph L. Keeney and Howard Raiffa**, *Smart Choices -- A Practical Guide to Making Smart Decisions*, pp. viii, 4, 5-9 (Harvard Business School Press, 1999)

- **C**onsequences
- **T**radeoffs
- Uncertainty
- Risk tolerance
- Linked decisions

Hammond, Keeney and Raiffa warn the decision-maker against the following common **psychological traps**:

1. **The anchoring trap**--over relying on first thoughts.
2. **The status quo trap**--keeping on keeping on.
3. **The sunk-cost trap**--protecting earlier choices.
4. **The confirming-evidence trap**--seeing what you want to see.
5. **The framing trap**--posing the wrong question.
6. **The overconfidence trap**--being too sure of yourself.
7. **The recallability trap**--focusing on dramatic events.
8. **The base-rate trap**--neglecting relevant information.
9. **The prudence trap**--slanting probabilities and estimates.
10. **The outguessing randomness trap**--seeing patterns where none exists.
11. **The surprised-by-surprises trap**--going mystical about coincidences.

Problem

The way a negotiator states the problem frames her decision. It determines the alternatives she considers and the way she evaluates them. Posing the right problem drives everything else. Therefore, a negotiator should⁶:

1. Ask what triggered her decision to consider the problem.
2. Question the constraints in her problem statement.
3. Identify the essential elements of her problem.
4. Understand what other decisions impinge on or hinge on her decision.
5. Establish sufficient and workable scope for her problem definition.
6. Gain fresh insights by asking others how they see the situation.

Objectives

The negotiator's objectives form the basis for evaluating the alternatives that are open to her. They are her decision criteria.

⁶ Ibid, pp. 15-29

The negotiator's objectives:

- help her determine what information to seek
- help her explain her choice to others
- determine a decision's importance and how much time and effort it deserves

Hammond, Keeney and Raiffa⁷ count five steps for identifying a wise decision-maker's objectives:

1. Write down all the concerns she hopes to address through her decision.
2. Convert her concerns into succinct objectives.
3. Separate ends from means to establish her fundamental objectives.
4. Clarify what she means by each objective.
5. Test her objectives to see if they capture her interest.

Alternatives

Probably, the most important element in a negotiation is the invention and generation of alternative solutions. Alternatives are the raw material for decision-making. A negotiator should always have in mind that:

- She can never choose an alternative she has not considered.
- No matter how many alternatives she has, her chosen alternative can never be better than the best of the lot.

Typical mistakes in decision making are attributed to the lack of thought of alternatives. Negotiators might mistakenly perceive the negotiation as a process which could be concisely described as

- "business as usual"
- "incrementalism"
- "choosing-the-first-possible-solution process"
- "choosing-among-alternatives-resented-by-their process"
- "procrastination process"

According to Hammond, Keeney and Raiffa⁸, a negotiator could use the following techniques for generating better alternatives:

⁷ Ibid, pp. 31-43

1. Use her objectives and ask "How?"
2. Challenge her constraints--break free from tradition and habit.
3. Set high aspirations.
4. Do her own thinking first.
5. Learn from experience.
6. Ask others for suggestions.
7. Give her subconscious time to operate.
8. Create alternatives first, evaluate them later.
9. Never stop looking for alternatives.

Alternatives might be

- process alternatives
- win-win alternatives
- information gathering alternatives
- time-buying alternatives

Consequences

The wise negotiator should make sure that she really understands the consequences of her alternatives before she makes a choice.

Hammond, Keeney and Raiffa⁹ suggest four steps the negotiator should take while describing consequences with enough precision. She should:

1. Mentally put herself into the future.
2. Create a free-form description of the consequences of each alternative.
3. Eliminate clearly inferior alternatives.
4. Organize descriptions of the remaining alternatives into a consequences table.

To improve her practice in describing consequences, the negotiator should apply the following techniques:

- Try before she buys.
- Use common scales to describe the consequences.
- Do not rely only on hard data.
- Make the most of available information.
- Use experts wisely.

⁸ Ibid, pp. 47-61

⁹ Ibid, pp. 65-76

- Choose scales that reflect an appropriate level of precision.
- Address major uncertainty head on.

Trade-Offs

Hammond, Keeney and Raiffa¹⁰ suggest the Even Swap Method for tradeoffs. Among others, the application of the Even Swap Method entails:

- Making the easier swaps first.
- Concentrating on the amount of the swap, not on the perceived importance of the objective.
- Valuing an incremental change based on what the negotiator starts with.
- Making consistent swaps.
- Seeking out information to make informed swaps.
- Practicing.

Alternatives in decision making & Alternative Dispute Resolution (ADR)

Alternatives are the raw material of wise decision-making. They represent the range of potential choices a decision-maker will have for pursuing her objectives. Alternatives are of vital importance. An excellent decision-maker must establish and maintain a high standard for generating alternatives¹¹. The reason a decision-maker engages in conflict resolution processes is to produce something better than what can be produced without deploying any conflict resolution process but litigation. For any skilful decision-maker, the alternatives represent an opportunity to explore imaginative solutions to the problem at hand¹².

Alternatives do not just happen -- an experienced and educated decision-maker has to develop them by¹³:

- Inventing a list of actions that she might take if no agreement were reached.
- Improving some of her promising ideas by converting them into practical alternatives.
- Selecting, tentatively, the alternative that seems best.

¹⁰ Ibid, pp. 83-108

¹¹ Ibid, p. 47

¹² See **Roger Fisher, William Ury, and Bruce Patton**, *Getting To Yes -- Negotiating Agreement Without Giving In*, p. 100 (Penguin Books, 1991)

¹³ See **Roger Fisher et al.**, p. 103 (Penguin Books, 1991)

In all cases in which decision-makers perform poorly in inventing alternatives, the common denominator is lack of thought. Lack of thought may have one of the following forms¹⁴:

- **The decision-making mode is "business as usual."** It appears when decision problems are similar to others that have come before, and the decision-maker opts for the same solution as an easy course. "Business as usual" results from laziness and an over reliance on habit¹⁵. While the insightful decision-maker delves into the specific circumstances of every dispute, the inexperienced one handles conflicts that look alike as "business as usual."
- **The decision-making mode is incrementalism.** It appears when the decision-maker does nothing more than "incrementalizing" decisions by making small and usually meaningless changes to previously devised decisions. Instead of developing decisions that reflect fresh thinking and different perspectives, the decision-maker just tweaks the status quo. Hardly can litigation be the default option in the decision-maker's arsenal of conflict resolution strategies. The prudent decision-maker confers fresh thinking and different perspectives. Before taking action, the skilled decision-maker invents options of mutual gain¹⁶. Instead of "incrementalizing" the status quo, the decision-maker contemplates on innovative solutions. Top-notch decision-makers know that "incrementalism is innovation's worst enemy¹⁷."
- **The decision-making mode is the "default alternative."** Instead of focused thinking on the specific circumstances of each problem, the decision-maker adopts effortlessly the "no alternatives" stance and opts for the default option consequently. Focused thinking on the specific circumstances of the conflict under the magnifying glass requires information seeking that pertains to the disputants' interests, not just their positions¹⁸. In a conflict resolution case, the decision-maker should make a

¹⁴ See **Hammond et al.**, pp. 48-49 (Harvard Business School Press, 1999)

¹⁵ See also **Roger Fisher and Danny Ertel**, *Getting Ready To Negotiate -- The Getting To Yes Workbook*, p. 46 (Penguin Books, 1995)

¹⁶ See **Roger Fischer et al.**, p. 11 (Penguin Books, 1991)

¹⁷ See **Tom Peters**, *The Circle Of Innovation*, p. 26 (Alfred A. Knopf, New York, 1997), where Tom Peters mentions Nicholas Negroponte's point of view on incrementalism and innovation. See also **Peter F. Drucker**, *Management Challenges For The 21st Century*, p. 84 (HarperBusiness of HarperCollins Publishers, 1999) about the "systematic innovation" policy of a successful change leader.

¹⁸ See **Roger Fisher et al.**, p. 10 (Penguin Books, 1991), which is about the core ideas of principled negotiation. The second of the four ideas is "Focus on interests, not positions."

substantial effort to find out, to the greatest possible extent, what the other party's aims are¹⁹.

- **The decision-making mode is the "first possible solution."** The decision-maker goes for an easy choice -- which is something different than a smart choice. She avoids looking further for alternative solutions that could generate mutual gains solutions. Even if "the first possible solution" is legal, it does not necessarily mean it is ethical, too. A smart choice abides by laws and ethics. According to Norman Augustine²⁰, former CEO of Lockheed Martin, the criteria for prudent decision-making are four: 1) Is the intended course of action legal? 2) If someone else did it to you, would you think it was fair? 3) Would you be content if it appeared on the front page of your home newspaper? 4) Would you like your mother to see you do it?

Techniques

The science and art of making smart choices by generating alternatives involves the following techniques:

- **Use your objectives and ask "How?":** use your objectives to search for good alternatives. Ask yourself "How can I achieve the objectives I have set?²¹" Unless her objective is to enact litigation against the other party, the decision-maker in a dispute should opt for other conflict resolution processes as soon as she forms the perception that her counterpart is in conflict²² with her.
- **Challenge your decision-making constraints:** to make sure you can examine all viable alternatives, you need to break free from the

¹⁹ See **Janos Nyerges**, Ten Commandments For A Negotiator, p. 192 (in J. William Breslin and Jeffrey Z. Rubin, ed., Negotiation Theory and Practice, The Program On Negotiation at Harvard Law School, 1999). The ninth Commandment titled "Do not act before you find what your partner's aims are" is about intensive fact finding relevant to the disputant's goals.

²⁰ See **Jeffrey L. Seglin**, How To Make Tough Ethical Calls, p. 10 (in Harvard Management Update, Harvard Business Review vol. 78, no. 2, March-April 2000). According to professor Seglin, a prudent decision-maker who has to make a tough ethical call should think of the effects of her decisions as falling into three spheres: 1) the financial sphere -- the cost of the decision in terms of capital and finance, 2) the people who the decision-maker works with, employs or sells to, and 3) the community at large or other bystanders of the decision-maker's environment.

²¹ See **Hammond et al.**, p. 50 (Harvard Business School Press, 1999)

²² See **Joseph P. Folger, Marshall Scott Poole, and Randall K. Stutman**, Working Through Conflict -- Strategies for Relationships, Groups, and Organizations, p. 4 (Longman, 1997), where "conflict" is defined as "the interaction of interdependent people who perceive incompatible goals and interfere from each other in achieving those goals." According to that definition, "conflict" exists not only when there is interdependence between people, but also when these people perceive the existence of incompatibility of their goals and recognize the inescapable need to interfere in order to achieve their goals.

straitjackets of your tradition and habit²³. Joseph L. Badaracco, Jr., professor of Business Ethics at Harvard Business School, speaks about how "sleep-test ethics" affect decision-making when people are confronted with moral dilemmas. "Sleep-tests ethics" -- the ethics of intuition -- refer to people's habit to rely on their personal insights, feelings, and instincts when they face a difficult ethical problem²⁴. Thoughtful people do not turn casually to "sleep-test ethics." Instead, they respond to dilemmas by turning to deep-rooted cultural, psychological, emotional, practical, even biological forces²⁵. If the tradition, habit, and "sleep-test ethics" of a decision-maker bearing the responsibility for conflict resolution were litigation, then the result of her actions would not be a smart choice. Moreover, a litigious disputant is an incompetent decision-maker in negotiation and conflict resolution circumstances.

- **Set high aspirations:** high aspirations will force you think in entirely new ways, rather than sliding by with modest changes to the status quo²⁶. The aspirations of a skilled decision-maker responsible for dispute resolution should revolve around relationship building. Successful negotiators know that there are no problems, only opportunities²⁷. A decision-maker, who perceives herself capable of applying successfully conflict resolution techniques, aims at exploiting every conflict as an opportunity to enhance the disputants' relationship. She knows that the adversarial nature of litigation does not have relationship-building effects.
- **Do your own thinking first:** refrain from consulting others before you have made your own effort to think through the problem. Noted MIT professor Norbert Wiener always spent time thinking through a new scientific problem before reading the existing academic literature²⁸. The decision-maker who has to resolve a conflict must remember that her role is to turn every dispute into a constructive confrontation. Constructive confrontation does not begin with litigation, but rather it begins with an attempt to understand. It begins with an exchange of information -- substantive as well as perceptions and feelings -- that provides new definitions of the problem and new motives for a common solution. The decision-maker

²³ See **Hammond et al.**, p. 51 (Harvard Business School Press, 1999)

²⁴ See **Joseph L. Badaracco, Jr.**, *Defining Moments -- When Managers Must Choose Between Right And Right*, pp. 41-42 (Harvard Business School Press, 1997)

²⁵ See **Joseph L. Badaracco**, p. 50 (Harvard Business School Press, 1997)

²⁶ See **Hammond et al.**, p. 51 (Harvard Business School Press, 1999)

²⁷ See **Janos Nyerges**, p. 190 (in J. William Breslin and Jeffrey Z. Rubin, ed., *Negotiation Theory and Practice*, The Program On Negotiation at Harvard Law School, 1999).

²⁸ See **Hammond et al.**, p. 52 (Harvard Business School Press, 1999)

must have the skill, patience, and persistence to engage in active listening before making her decision²⁹.

- **Learn from experience:** find out what others have done and felt in similar situations³⁰. In case there has been any precedent of the subject at stake, the prudent decision-maker consults with the persons that experienced similar conflicts. Before enacting litigation against counterparts or before reaching her final decision on the most appropriate conflict resolution tactic, the wise decision-maker turns to those who were dragged to the dock because of a careless mistake and asks them what does it feel to be in their shoes.
- **Ask others for suggestions:** seek the input of others whom you think can offer you additional perspectives. Do not do that, unless you have previously thought carefully about the problem and its alternative solutions on your own³¹. One of the most powerful methods for conflict resolution is listening³². The decision-maker who does not seek the input from others who can offer additional perspectives stands few chances for reaching a mutually satisfying agreement. Listening is not easy. Effective listening depends on the questions the decision-maker poses to those who can offer additional perspectives. While asking litigation experts "what is the litigation process for XYZ behavior?" is part of the listening process, it is definitely not the core question of smart listening -- listening that can lead to reconciliation.
- **Create alternatives first, evaluate them later:** do not evaluate alternatives while you are generating them, because you will dampen your creativity. Evaluation narrows the range of alternatives. The competent decision-maker needs to keep her mind unrestrained and open to new -- not necessarily good -- ideas³³. Unless she believes that litigation is the most valuable conflict resolution process, the decision-maker's rush for litigation indicates that she skips at least two important stages of conflict resolution: 1) the creation of alternatives 2) the evaluation of alternatives.

Those who master the art and science of conflict resolution, teach that one should first generate alternative solutions, and then try tailoring those alternatives to the

²⁹ See **James Ware and Luis B. Barnes**, *Managing Interpersonal Conflict*, p. 9 (Harvard Business School, case number 9-479-004, Rev. November 20, 1985)

³⁰ See **Hammond et al.**, p. 52 (Harvard Business School Press, 1999)

³¹ *Ibid.*, p. 53 (Harvard Business School Press, 1999)

³² See **William Ury**, *Getting To Peace -- Transforming Conflict At Home, At Work, And In The World*, p. 164-165 (Viking, Penguin Group, 1999)

³³ See **Hammond et al.**, p. 55 (Harvard Business School Press, 1999)

problem. According to Hammond, Keeney, and Raiffa, the following techniques are useful³⁴:

- **Consider whether a process -- either a new one or an established one -- is a better alternative than a clear-cut choice.** Process alternatives help to ensure fairness of decisions involving conflicting interests. They can also help to preserve long-term relationships.
- **Get involved into information gathering.** First, list all areas of uncertainty. Then list possible ways to collect information that pertains to the areas of uncertainty. Finally, gather necessary information, which reduces uncertainties.
- **Make use of time-buying alternatives.** Consider deferring decision-making in order to reach a better understanding of the problem, gather important information, and dispel uncertainties.
- **Stop looking for new alternatives only when you can answer "yes" to the following questions:**
 - Have you thought hard about your alternatives using the techniques mentioned above?
 - Would you be satisfied with one of your existing alternatives as a final solution?
 - Do you have a range of differing alternatives?
 - Did you consider all the elements of your best alternative?
 - Would time spent on other decisions or activities be less productive than time spent on your best alternative?

Psychological Traps

Any rush for litigation is the outcome of failure to escape from psychological traps in decision-making. According to Hammond, Keeney, and Raiffa, major psychological traps in decision-making are the following³⁵:

The anchoring trap: the decision-maker gives disproportionate weight to the first information she receives -- initial impression, estimates or data anchor subsequent thoughts and judgments.

How to avoid the anchoring trap:

³⁴ Ibid., pp. 56-60

³⁵ Ibid., pp. 189-215

- View the problem from different perspectives. Try alternating starting points and approaches rather than sticking with the first line of thought that occurs to you.
- Think about the problem on your own before consulting others in order to avoid being anchored by their ideas.
- Seek information and opinions from a variety of people to widen your frame and reference and to push your mind in fresh directions.
- Avoid anchoring your advisers and others from whom you solicit information and counsel.

The status quo trap: the decision-maker is strongly biased towards alternatives that perpetuate the status quo. The bias towards status quo alternatives stems from the decision-maker's desire to protect her ego. Breaking from the status quo requires taking action and responsibility for that action. On the other hand, sticking with the status quo represents a safe course because it puts the decision-maker at low risk.

How to avoid the status quo trap:

- Remind yourself your objectives and examine how the status quo serves these objectives.
- Never think of the status quo as your only alternative.
- Ask yourself whether you would have chosen the status quo alternative, if it had not been the status quo.
- Avoid exaggerating the cost of switching from the status quo.
- Remember that the status quo will change over time.
- If you have many alternatives better than the status quo, do not opt for the status quo because you have difficulty in choosing among your alternatives.

The sunk-cost trap: the decision-maker has a deep-seated bias in making new choices that justify past choices, even when the past choices no longer seem valid. In the working environment, the decision-maker is afraid of criticism from her colleagues and boss, thus she replicates past choices even if they are bad.

How to avoid the sunk-cost trap:

- Seek out the views of people who are not involved in the situation you are dealing with.
- Examine whether fear of wounding your self-esteem prevents you from making a new choice that is different from past choices.

- Focus on the quality of your decision-making instead of the quality of the outcome.

The confirming-evidence trap: the decision-maker seeks out information that supports her existing instinct or point of view, while at the same time avoids information that contradicts it. The confirming-evidence trap affects where the decision-maker goes to collect evidence as well as her interpretation of this evidence. The confirming-evidence trap stems from the decision-maker's subconscious tendency to decide what she wants to do before she decides why she wants to do it. It also stems from her inclination to engage in things she likes than in things she dislikes.

How to avoid the confirming-evidence trap:

- Check all the evidence with equal rigor. Do not confirm any evidence without questioning it.
- Get someone you respect to play the devil's advocate and have him/her argue against your decision.
- Be honest with your objectives. Gathering information for making a smart choice is different than gathering information for confirming what you have already decided to do.
- In seeking the advice of others, do not ask leading questions that invite confirming evidence. If you find that an adviser always supports your point of view, find a new one.

The framing trap: the decision-maker poorly frames a problem. She carelessly frames the question that pertains to the problem, thus the possible answers -- the solution to the problem -- she is looking for are undermined.

How to avoid the framing trap:

- Always try to reframe the problem in various ways -- do not automatically accept the initial frame, whether you or others formulated it.
- Try to pose the problem in such a way that it combines gains and losses.
- Ask yourself how your thinking would change if you reframed the problem in a different way.
- When others recommend you decisions, examine the way they framed the problem.

Checklist

Preparing for conflict resolution, you need to think diligently about what you need, want, and aspire to. Howard Raiffa³⁶ suggests the following checklist for conflict resolution through negotiation, when two parties dispute over one issue:

1. **Know yourself:** think about what you need, want, and aspire to. Consider what would happen if there were no deal. Amass your arguments -- facts, data, rationalizations etc -- and assess your "reservation price"³⁷ -- it represents the absolute minimum value you would be willing to settle for, and is based on the price you have set on the "no-agreement" state.
2. **Know your adversary:** consider what would happen to him if no deal were made. Speculate about his "reservation price." Investigate his credentials, legitimacy, and integrity.
3. **Think about the negotiating conventions:** consider how open you should be, and what the adversary might say.
4. **Think about the logistics of the situation:** where the conflict resolution process should take place and who the negotiators should be.
5. **Prepare for the conflict resolution through simulated role playing:** arrange a simulated negotiation if that helps you give careful thought to what your adversary's thoughts and tactics might be.
6. **Iterate your aspiration levels.**
7. **Know how to make your offer:**
 - Beware of opening so conservatively that your offer falls within your adversary's acceptance region; beware of opening so radically that your offer hurts the ambience of negotiation.
 - Avoid being locked in by your adversary's offer.
 - Avoid undermining your integrity by making counterfeit offers.

ADR

The idea behind litigation is that the truth will emerge when opposing parties present their cases as aggressively as possible. Being adversarial by nature, litigation nurtures distrust, distortion and animosity. Since the 1970s, the options for non-litigious conflict resolution have been multiplied through Alternative Dispute Resolution (ADR). ADR requires good communication. Good

³⁶ See **Howard Raiffa**, *The Art And Science Of Negotiation -- How To Resolve Conflicts And Get The Best Out Of Bargaining*, pp. 126-128 (The Belknap Press of Harvard University Press, 1998)

³⁷ See **David A. Lax, James K. Sebenius**, *The Manager as a Negotiator*, p. 119 (The Free Press, 1986)

communication requires some degree of trust. The idea behind ADR is to save time and money while at the same time resolve the dispute. In ideal circumstances, ADR can preserve long-term relationships, too.

According to John R. Allison³⁸, the menu of ADR includes:

- **Arbitration**:³⁹ it is an adversarial in nature procedure, in which a third neutral party produces a binding decision. While in theory arbitration rules are up to the disputants, in practice most disputants adopt the procedures and rules recommended by the American Arbitration Association.
- **Mediation**:⁴⁰ it is a conflict resolution procedure, in which a neutral third party -- which does not have the authority to impose a binding decision -- helps disputants talk to each other, helps them understand the nature of their conflict, provides a suitable environment for negotiation, helps participants develop their own proposals, suggests solutions, and helps disputants accept a specific solution.
- **Rent-a-judge program**: it is a novel variant to arbitration, in which the disputant parties choose a retired judge to hear their case much like an arbitrator would.
- **Summary Jury Trial**:⁴¹ it is a conflict resolution procedure, in which the lawyers of the disputants choose a small jury from the regular jury pool. The lawyers present their arguments in front of the summary jury. The summary jury issues a verdict, which focuses on settlement of the dispute. The summary jury's verdict aims at discouraging the parties from litigating on one hand, and encouraging out-of-court settlement based on the mutual gains approach⁴² on the other hand.

³⁸ See **John R. Allison**, Five Ways To Keep Disputes Out Of Court, pp. 163-187 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)

³⁹ See also **William L. Ury, Jeanne M. Brett, and Stephen B. Goldberg**, Designing An Effective Dispute Resolution System, pp. 304, 305-307 (in J. William Breslin and Jeffrey Z. Rubin, ed., Negotiation Theory and Practice, The Program On Negotiation at Harvard Law School, 1999) about alternative low cost arbitration procedures such as expedited arbitration, med-arb, final-offer arbitration, and advisory arbitration.

⁴⁰ See **William L. Ury et al.**, pp. 302-303 (in J. William Breslin and Jeffrey Z. Rubin, Negotiation Theory and Practice, The Program On Negotiation at Harvard Law School, 1999). See also **Todd B. Carver and Albert A. Vondra**, Alternative Dispute Resolution -- Why It Doesn't Work and Why It Does, p. 209 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)

⁴¹ See **Todd B. Carver et al.**, p. 209 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)

⁴² See **Lawrence Susskind and Patrick Filed**, pp. 37-42 (The Free Press, 1996) about the six principles of the mutual gains approach. According to the authors, who run the MIT-Harvard Public Disputes Program, the six principles are: 1) acknowledge the concerns of the other side, 2) encourage joint fact finding, 3) offer contingent commitments to minimize the impact if they do occur; promise to compensate knowable but unintended impacts, 4) accept responsibility, admit mistakes, and share power, 5) act in a trustworthy fashion all the times, and 6) focus on building long-term relationships.

- **Minitrial:**⁴³ it is a hybrid of mediation, traditional settlement negotiation, and adjudication. It is a voluntary procedure initiated by the disputants or the judge if the disputants have already turned to litigation.

Availability of ADR procedures should be a sine qua non prerequisite in an environment where relationship building is the focus of interest. Long-term relationships are not built through litigation. Relationship building occurs when conflicting parties manage to settle their differences⁴⁴ through alternative dispute resolution.

According to John R. Allison⁴⁵, the success of ADR depends on the following factors:

- **Commitment:** both disputant parties must be committed to the idea of resolving their dispute without making use of unnecessary litigation. Both parties must be willing to act in good faith.
- **Relationship:** both disputant parties must be interested in advancing their relationship. They must be willing to improve and maintain a good relationship.
- **Privacy:** both disputant parties must be interested in protecting the other side's reputation. Hearing in a public forum can lead to embarrassing revelations of professional and personal behavior.
- **Urgency:** both disputant parties must be interested in resolving the dispute as fast as possible.
- **Cost:** both disputant parties must be interested in keeping the cost of the dispute and the conflict resolution process as low as possible.
- **Principle:** both disputant parties must be interested in resolving the dispute in the way that leads to the maximum possible protection for their reputation.
- **Participation:** both disputant parties must be willing and capable of participating in ADR. Compared to litigation, ADR requires greater participation by the disputants. One of the best things about ADR is that it

⁴³ See **William L. Ury et al.**, p. 304 (in J. William Breslin and Jeffrey Z. Rubin, *Negotiation Theory and Practice*, The Program On Negotiation at Harvard Law School, 1999). See also **Todd B. Carver et al.**, p. 209 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)

⁴⁴ See **George Wu**, *Sources of Joint Gains in Negotiations*, p. 1 (Harvard Business School, case number 9-396-241, Rev. October 25, 1999), in which professor Wu supports that "joint gains" are based on two core principles: 1) most joint gains are about differences, 2) joint gains are created when all parties receive something valuable for them in exchange for giving something cheap to them. Perhaps the most common way of creating joint gains is by exploiting differences in interests.

⁴⁵ See **John R. Allison**, pp. 176-184 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)

presents opportunities for the disputants to be creative. On the other hand, litigation is a rather adversarial conflict resolution process based on legalistic evaluations.

According to Todd B. Carver and Albert A. Vondra⁴⁶, aside from wholehearted commitment, ADR's success depends on three key-factors:

- **Time**: the disputant parties must want to settle the conflict as fast as possible.
- **Persistence**: the disputant parties must take great pains in resolving the conflict out of court; they must not be easy to give up efforts for the sake of litigation.
- **Reevaluation & improvement**: the disputant parties must continuously reevaluate and improve the conflict resolution system.

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⁴⁶ See **Todd B. Carver et al.**, pp. 207-208 (Harvard Business Review On Negotiation And Conflict Resolution, paperback series, 1999)