Negotiation in Settling Conflicts

Conflict settlements, whether reached through negotiations or implicit accommodations, may be part of a conflict's transformation or only a pause in a recurring struggle. In this chapter, I examine major dimensions of agreements and how they are reached, especially through negotiations. In the next chapter, I examine not only how a settlement can be a step toward a conflict’s resolution, but also how it may become the bases for new conflicts.

In the past, research and theory concentrated on the outbreak and escalation of conflicts. In recent years, however, popular as well as scholarly attention to settling conflicts and also to the terms of the settlements has increased. The growth of the conflict-resolution field has directed attention particularly to the role of negotiations in settling a conflict.

SETTLEMENTS

It is not always clear when a conflict settlement has occurred. Many members of each side may regard the conflicts between social classes or between ethnic communities in the same country as never ending. Even within these enduring conflicts, nevertheless, opponents and others often regard particular fights to have been settled. Typically, a symbolically important event, an explicit agreement, or an authoritative decision marks a profound change in the adversaries’ conflict. For example, the 1920 adoption of the amendment to the U.S. Constitution providing for women's suffrage ended the struggle over the right of U.S. women to vote in the United States. Later, other contentious women's issues have arisen, but in circumstances that make it reasonable to regard them as new fights. In any case, for most analytic purposes, an explicit agreement ratified by a process the adversaries deem legitimate marks the settlement of a struggle. Factions within one or more parties to the conflict often are not reconciled to the terms of the agreement, but they are unable to overturn it, although they may modify it in time.

A struggle frequently incorporates many individual fights and campaigns, limited in time or locality, yet conducted in the context of a long-enduring struggle. To illustrate, the 1960s' struggle for civil rights for African Americans included many fights, some of which ended in negotiated agreements. For example, the massive 1963 nonviolent campaign in Birmingham, Alabama, was directed to end segregation at lunch counters and public facilities in downtown stores, to establish fair hiring procedures, and to establish a biracial commissary to set a timetable for the desegregation of the public schools. The sit-ins and boycotts and the responses to them resulted in negotiations with the local business elite, and on May 10, 1963, an agreement was reached granting many of the demands made by Martin Luther King Jr. and the Southern Christian Leadership Conference. That particular campaign was over, but the civil rights struggle went on for other goals in Birmingham and the country as a whole.

Identifying a settlement is problematic when no explicit agreement or widely recognized symbolic event occurs. Some conflicts gradually melt away, and it is unclear when the conflict ended. Outside observers or analysts often use their own criteria to decide that the struggle has concluded. Given the frequent use of acts of violence or other coercive actions as an indicator of a conflict, the cessation of that conduct is often used as the indicator that a conflict has ended or been transformed significantly.

In large-scale conflicts, even major actions signaling the settlement of a struggle are frequently contested since spoiler factions may continue the struggle that the authorized leadership has agreed to settle. This has often been the case in the conflicts in Lebanon, Northern Ireland, the Basque region, and many other places.

However designated, when the conflict is deemed to have been settled, the question then arises: On what terms? The deal the adversaries strike in ending a conflict is obviously central to assessing the effectiveness of various strategies for waging the struggle and for settling it. Partisans in a fight usually think about a conflict as ending in victory or defeat. Indeed, that is what parties themselves often proclaim after a fight, and those designations have important consequences. Such characterizations affect who will seek future redress and which conflict modes will be tried in the future. They do not suffice, however, to portray the social reality, since they do not allow for the multidimensional quality of actual outcomes. I first consider the distributive aspects of settlements: the degree of relative gains and losses between the adversaries, not assuming one side wins all and the other losses all. I then discuss joint outcomes: the extent to which the adversaries share benefits as well as costs. Outcomes with a high degree of shared benefits are often termed "integrative." The set of distributive and joint outcomes are shown in figure 9.1. Finally, I consider an additional settlement dimension: the degree of engagement or separation between the former adversaries.

Distribution of Gains and Losses

Adversaries often view the outcome of a fight in terms of the relative gains each side won at the expense of the other. This zero-sum view of conflict is usually
Achieve what it set out to achieve in the struggle. Admittedly, the circumstances at the time the conflict erupted are ambiguous in retrospect and may also be disputed. Furthermore, the parties generally start off in unequal circumstances, and the fight may modify the balance without fundamentally changing the relative positions of the opponents. The party advantaged by the modification, however, may assert that it has gained.

From still another perspective, each side may regard its gains and losses relative to those of its opponent, so a party that inflicted pain on its opponent or prevented the opponent from attaining all that it sought may claim a victory.

Finally, sometimes merely resisting fiercely, under great odds, is proclaimed to be a defining event and a great achievement. It becomes the basis for mobilization in renewed later battles. For example, many Serbs celebrate the Battle of Kosovo, fought in 1389, in which they unsuccessfully resisted the invading Turkish army.

Generally, in this analysis losses and gains are assessed by comparing them with the adversaries’ ostensible goals at the outset of their struggle. This conception is closest to the partisans’ sense that they won or lost. Nevertheless, the other considerations noted are often useful in interpreting the significance of various endings for the adversaries in the struggle. Furthermore, they allow leaders to interpret a settlement in a favorable light, even if the losses have been heavy. Indeed, even a defeat in a campaign embedded within a protracted struggle can contribute to victory in subsequent campaigns: lessons are learned, allies are rallied, and constituents are mobilized.

An important implication of these observations is that both adversaries may regard the settlement as having given them some benefits. Indeed, most conflicts do end in a kind of compromise with each side gaining something of what it sought and failing to gain everything. The compromise may be the result of an exchange of concessions, sometimes reflecting a trade-off in gains in high-priority areas for concessions in low-priority areas. In ideologically driven conflicts and in some cultures, compromise has connotations of betraying sacred commitments. Although adversaries in such circumstances may deny they have agreed to a compromise, outside observers may view the outcome as embodying an exchange of concessions.

The ambiguities of outcomes and the rarity of one side totally overwhelming the other make the attainment of a mutually acceptable outcome more feasible than it might otherwise appear. The changing character of goals and their varying importance for different elements within each side help adversaries find settlements with some joint gains and minimal joint losses.

**Joint Damages and Benefits**

In addition to relative losses and gains for each side, settlements vary in the degree to which the parties have joint gains and losses. That is, one can look at the outcome in terms of the benefits and damages accruing to the opposing parties together. Furthermore, the settlement may be more or less mutually damaging or mutually beneficial, not simply in an additive sense, but as a
shared result. Such joint possibilities are present in every conflict ending, but often are not part of either adversary’s goals when entering a fight. They become more significant when the adversaries begin to consider ending a fight and are generally more salient when a problem-solving approach is taken in conducting the struggle.

For example, Richard E. Walton and Robert B. McKersie describe a union-management dispute regarding the issue of promotion that was transformed into a problem and then solved. Few senior employees were being promoted because management said they lacked the requisite skills. The union wanted to improve the promotional chances of employees with most years of service. Initially, the employees said they wanted more weight to be given to seniority. After considerable discussion, it was agreed that the company would inaugurate a ‘self-help’ program for employees. It would pay for outside education and do everything possible to help the employees improve their skills in advance of promotion opportunities.  

**Damages**

A struggle is usually costly to all of the adversaries. Each is hurt by the coercion inflicted by the other, and both lose the resources expended in coercing the other. Furthermore, the losses are mutual in the sense that all sides have had to forgo the benefits that might have accrued to them if they were acting cooperatively to achieve whatever shared objectives they had. Thus, revolutions often cause great damage to a society’s economy, which takes decades to overcome.

A struggle may end with the adversaries so weakened that parties not primarily engaged in the struggle are able to gain at the expense of the contend ing parties. Thus, the outcome of civil strife may be the domination of the contenders in one country by the government of another country. For example, the outcome of the very long civil war waged among many Lebanese groups between 1975 and 1991 was largely imposed and enforced by the Syrian government. In some cases, the opposing parties contribute to each other’s destruction, as was the case in World War I, the outcome of which included the end of the German, Austro-Hungarian, and Russian ruling dynasties.

Mutual losses also take the form of embittered relations, mutual fear, mistrust, and hatred so that it is difficult afterward to engage in the cooperation that may be essential for either side to regain some of what it lost. This is often the legacy of communal fights, where members of each side experienced atrocious acts perpetrated by members of the other side.

**Joint Benefits**

Some conflict endings, on the other hand, are integrative, yielding the opponents much of what they most sought when they entered the fight. They discover trade-offs that allow members of each side to gain what has the highest priority for them in exchange for their concessions on matters to which they attach low priority. Given the opponents’ different sets of preferences, a formula often can be found that maximizes the benefits they can achieve together. A labor-management agreement, for example, may provide enhanced job security, improved opportunities for training and advancement, and for management experimentation to increase productivity, yielding higher profits.

Another important source of mutual benefits is the avoidance of mutual losses. Stopping a fight reduces the costs each side would bear in continuing the struggle. Even an outcome that favors one side more than the other may yield important mutual benefits. Thus, an agreement for power sharing among various ethnic communities, even if dominated by one, may be seen as mutually beneficial because the resulting stability allows for economic prosperity, which disorder would undermine. Thus, the accommodation in Malaysia between the politically dominant Malays and the economically successful ethnic Chinese minority allows them all to “make money.”

Finally, mutual benefits may be attained at the expense of outsiders to the conflict. Adversaries may negotiate an agreement that gives them much of what they regard as important and passes on the costs to others. For example, labor-management negotiations in a company operating in a market that it tends to monopolize may reach an agreement whose costs of increased wages, salaries, and/or profits are largely paid for by the consumers of the company’s products. In a sense, collusion between the representatives of the opposing sides may be integrative for them but yield a one-sided gain for the constituency of one side. For example, negotiators for one side may accept an unfavorable contract in exchange for personal gains awarded by the opposing side. While outcomes with high levels of joint benefits are regarded as constructive, this is not the case when the benefits are gotten at the expense of other legitimate parties.

**Degree of Engagement or Separation**

A quite different dimension is the degree to which the outcome betokens movement toward greater engagement or toward greater separation. To illustrate, ethnic or other communal groups within a society may move toward increased integration and away from segregation in the use of public facilities, in residential locations, and in occupational positions. Integration may extend to a gradual assimilation or to the preservation of group diversity. At the other extreme, separation may extend to expulsion or to population transfers between states, and it may include the division of territory into separate states. In between are various forms of coexistence with varying degrees of segregation, power sharing, or federal systems with local autonomy. Similarly, within families spouses may be highly involved with each other, sharing many aspects of their lives, or be relatively separated, sharing little and living quite independently. Relations between countries also vary in their degree of integration, with varying rates of trade, movements of people, or shared consumption of popular culture.

Certainly, there are many dimensions of integration, and persons and groups
may be very close along some dimensions and separated along others. Clearly, too, one side may largely impose the degree of interaction or separation, or it may be a matter of mutual preference. Finally, and importantly, the parties to large-scale conflicts are never unitary actors. Consequently, some elements of each side may feel that they gained much of what they wanted, while other factions feel they received little.

Constructive and Destructive Settlements

Conflicts ending with great joint damages are widely recognized as destructive. Conflicts ending with considerable mutual benefit are generally regarded as constructive, unless the benefits are accrued at the expense of legitimate parties not agreeing to end the struggle. The degree to which conflicts ending with one side gaining more than the other should be regarded as constructive or destructive is not obvious. Vindictive is quick to proclaim that the outcome has enhanced many widely shared values and is constructive, and their interpretation often prevails.

In this book, I temper such judgments by taking into account the aspirations of all the parties affected by the struggle and their claims for equity and justice. At a minimum, an outcome in which one side effectively denies the humanity of the members of the antagonistic side is not constructive. Generally, struggles in which a person or group was defeated in its effort to gain basic human rights and a more just relationship with its opponents is not regarded as a constructive outcome.

An improved relationship between the former adversaries is another marker of constructive outcomes. Usually, but not necessarily, this means that outcomes with increased engagement between the adversaries will be regarded as constructive. Separation when it is mutually sought and does not impose severe unequal costs on one side can also be regarded as constructive, but more frequently one side imposes separation on the other.

Since conflicts are not neatly bounded, the constructiveness of their endings should not be assessed only in regard to those most directly engaged in ending a struggle. All the stakeholders are rarely involved in settling a fight; yet in determining how constructive the conflict outcome is, the more distant stakeholders should also be considered. Finally, characterizations should give weight to long-term considerations as well as short-term ones.

The discussion demonstrates that what is a constructive outcome and what is a destructive outcome is not always clear. The designation is often disputed in particular cases. But at the extremes there is likely to be wide consensus, and in the vast middle range variations in constructiveness in one or another regard may be specified. Hence, it is generally possible to characterize outcomes as being relatively constructive or destructive along specific dimensions, relating, for example, to duration, number killed, and traumas suffered.

Paths to Settlements

Struggles are frequently settled by a negotiated agreement. But there are also several nonnegotiated ways to end a fight. These ways are considered as well as the negotiation path because they are the way many conflicts stop and because those alternatives are in the minds of the antagonists and they help understand what negotiations were conducted and their possible contribution to the resolution of a conflict. Although nonnegotiated and negotiated paths will be discussed sequentially, in actuality, they are often combined in diverse ways.

Whether largely negotiated or not, settlements generally are reached between leading elements of the opposing sides. Within each side, various groups and constituencies may happily concur, reluctantly accept, or fiercely oppose the terms of the settlement. The closing deal, negotiated or not, may be largely imposed on the leadership of one side by the other, as when a rebel leader is killed or captured. Whether or not that results in a stable settlement often depends on the way the various groups in the opposing sides are treated, whether many people are put on trial or amnesties are granted, or other conciliatory measures are introduced.

Nonnegotiated Paths to Conflict Settlement

Most small-scale disputes between neighbors, within extended families, and among members of work organizations are resolved without written agreements. Even large-scale struggles sometimes quietly subside to low-level contention after threatening to erupt into violent confrontation or after intense struggle. Sometimes unilateral actions are taken, modifying the status quo, and the other side acquiesces to them.

Six types of nonnegotiated endings are distinguished here. First, a settlement may be externally imposed, with varying degrees of concurrence between the adversaries. This includes, for example, arbitration, judicial proceedings, police intervention, or forceful intervention by an international organization.

Second, one side in the conflict may unilaterally force the other side to capitulate or destroy it as an organized entity. Mutinies, uprisings, and other disruptive challenges to authority are often simply suppressed. Capitulation may also arise from a restructuring of one of the parties so that its representatives no longer contest the goals of the other side. This may result from a change in the leadership of one of the adversaries, especially a leadership whose policies did not represent what major elements of its constituency wanted.

Third, a fundamental conversion of one or both sides may arise from the experience with the conflict. Important members of one side may become convinced that the views of the adversary have great merit, undermining faith in their previous ideology or religious beliefs. Thus, many white South Africans who had believed in the propriety of apartheid became convinced in the course
of the struggle against apartheid that it was wrong and inconsistent with Christianity. Thus, too, in the 1980s many persons in the Soviet Union increasingly found fault with the workings of the Soviet system and viewed the Western democratic and free market system as attractive.10

Fourth, a conflict may be settled by implicit bargaining, as each adversary takes actions, partly in response to what the other side has done, until a new mutual accommodation has been reached. The actions are left to speak for themselves, and each side makes its own interpretations of what has happened. This may reflect a kind of stalemate that neither side can overcome, but that is preferred by the adversaries to acknowledging the reality and giving it legitimacy. Thus, in some civil wars the government may for years control the capital and many regions of the country while insurgents control a segment of the country.11

Fifth, one party to a conflict may raise and pursue a contentious issue, but meeting strong resistance it may abandon the pursuit and the conflict becomes dormant. The challenge withdrawn, the overt struggle dwindles away. Or a diffuse conflict may erupt in a demonstration or other protest in which demands are voiced, but no settlement of the ostensible issues is reached and yet the protests cease. The grievance may remain, but the other factors essential to sustain the struggle are lacking.

Finally, one side may be exterminated or expelled from the social system that the victor controls. This may entail genocide or ethnic cleansing or other forms of driving people out of the organization, territory, or society ruled by the victors.

Note that in many of these terminations, the adversaries themselves may not openly acknowledge that the conflict has ended. This means that the belligerents in a struggle may disagree about when (or whether) a conflict has ended and what the terms of its settlement were. In addition, outside analysts or observers sometimes use their own criteria and judgment for regarding a conflict as terminated.

The relative frequency with which negotiation or one of these other paths are taken obviously varies greatly among different kinds of conflicts. Studies of these variations aid our understanding of the way conflicts end. A detailed analysis was made by Paul R. Pillar of the termination of the 142 interstate, extrastate, civil wars fought between 1800 and 1980.12 Interstate wars were waged among members of the state system; extrastate wars were imperial or colonial wars involving a member of the state system on only one side; and civil wars were waged within a member of the state system. The largest percentage of the 142 cases, 40 percent, ended in a negotiated settlement; in 26 percent of the cases, one side capitulated; in 19 percent, one side was exterminated as an organized force or was expelled; in 6 percent, an international organization intervened and ended the conflict; in 5 percent, one side withdrew from the conflict; and in 4 percent of the cases, one side was absorbed by the other.

The endings, however, varied greatly among the three kinds of wars. Among the sixty-nine interstate wars, 55 percent were settled by negotiation, 16 percent by one side capitulating, and only 10 percent by extermination or expulsion. But negotiated endings were much less likely in extrastate or civil wars. Among extrastate wars, only 25 percent ended by negotiation, 38 percent ended in capitulation, and 23 percent ended by extermination or expulsions. Among civil wars, 29 percent ended by negotiation, 29 percent ended by capitulation, and fully 33 percent ended by extermination or expulsions. The stakes in civil wars and for those seeking freedom from imperial rule are high, and negotiating a termination is very difficult, so the struggle often goes on until one side is defeated. Even if a stalemate is reached, negotiating any recognition of that is much more difficult than in the case of interstate wars.13

Roy Licklider analyzed all civil wars from 1945 to 1993, inclusive, using a definition that includes revolutions and wars of secession.14 He constructed a data set of ninety-one cases, but discarded seven because violence had ended in those cases less than five years before 1994, too early for him to regard as ended. Of the remaining eighty-four cases, 32 percent (twenty-seven) were classified as still ongoing in 1994. Of the fifty-seven civil wars that had ended, consistent with other studies, he found that only 25 percent (fourteen) were ended by negotiation, while the others ended by military victory by one side.

In struggles in which the stakes are not so high as in civil wars or where adversaries regard institutionalized ways of managing the conflict as legitimate, negotiated endings are highly likely. Most interpersonal and intergroup community and societal conflicts have those characteristics. More particularly, negotiated agreements are generally used to settle economic and political conflicts in most domestic settings.

Negotiated Paths to Conflict Settlement

Negotiated agreements are emphasized in this book because they are more likely than nonnegotiated outcomes to reflect mutual accommodation. Negotiations increase the chances that the conflict settlement will be constructive. They also are expected to increase the likelihood that the negotiators' constituents will support the agreement and hence that the settlement will be enduring. The growing literature on how negotiations can be done to maximize efficiency, mutual gain, social justice, and durability contribute to understanding why those expectations are fulfilled in some cases but not in others.

Negotiation occurs in every aspect of social life, between companies buying and selling materials needed in production, among family members deciding where to spend a vacation, between a supervisor and a worker settling how long it will take to finish a task, or between governments setting the conditions to end a crisis.15 The negotiating parties, in all these cases, are trying to find the terms they will mutually accept to act jointly: either to transfer ownership of a house or to cease firing weapons at each other.

Negotiating to end a fight, however, tends to be unlike negotiating a sale of a commodity in several ways. First, in negotiating a sale the seller usually has
alternative buyers and the buyer typically can find alternative sellers. An agreement to end a fight, however, must be made between existing adversaries; peace is negotiated with enemies. Second, negotiations to end a fight usually occur after interactions with the adversary have aroused anger and mistrust. But this is typically not the case in purchasing a car or a house. Third, in a conflict the alternative to not reaching an agreement is often to continue the fight and suffer ongoing costs. In a business transaction, the alternative usually is to find another negotiating partner.

Negotiations to de-escalate or to end struggles, nevertheless, share some qualities with other kinds of negotiations. For example, the logic of the search for a mutually acceptable agreement is generally shared in all negotiations. Furthermore, negotiations generally move through various stages: including each party preparing its positions, the parties arranging who will negotiate and what the agenda will be, and the sides setting forth their positions, exploring possible options, exchanging concessions, reaching an agreement, and implementing the agreement. In addition, the nature of negotiations varies considerably, unrelated to whether they are part of an effort to settle a conflict or to sell a commodity. For example, the negotiating partners may anticipate an ongoing relationship with recurrent negotiations or they may anticipate that after the agreement is reached their interactions will largely cease. The negotiations may also vary in their scope, being about a narrow matter, part of a larger set of negotiations, or about a wide range of matters at the same time. In examining negotiations to settle a struggle, therefore, some lessons can be drawn from other kinds of negotiations, but that should be done thoughtfully, taking into account the peculiarities of negotiations in the context of a fight and the degree to which the particular conflict or exchange context differs.

THEORIES AND STRATEGIES OF NEGOTIATION

People have reflected about negotiations for a very long time, since they are a universal aspect of social life. The reflections have produced general theories, suggested rules of conduct, and provided many observations about how negotiations are conducted. Much theorizing has been based on the analysis of actual behavior, seeking to predict or explain negotiating conduct. Some theorizing also has been deductive, based on assumptions about human nature or the logic of mathematical games. In either case, the reflections often take the form of admonitions, prescribing good negotiating behavior. One variation in these prescriptions underlies much discussion about negotiations and is particularly relevant here. At one extreme, negotiation is treated as a way of waging a contest, and the prescriptions are about how to win for yourself and your side. At the other extreme, negotiation is considered a way to reach mutually acceptable and even beneficial agreements, and the prescriptions aim to efficiently and effectively attain such outcomes for all parties in the negotiations.

Maximizing One Side’s Advantage

In conflicts, people often view negotiations as a way to struggle. Consequently, each side tries to gain as much as it can, expecting that the gains will be at the expense of the other side. Some theorists tend to reason that this is inherent in negotiations and therefore each side must pursue this effort or risk being badly exploited. Others argue that negotiators generally believe that this is so and therefore act on that belief, making it effective but true, that they might be led to believe otherwise.

Adherents of this conventional approach tend to take a hard line in negotiations, arguing that by firmly staking out a desired position and holding to it, negotiators will maximize their benefits. Conversely, making concessions will be viewed as indicating weakness and will invite increased demands or rigidity by the other side. From this perspective, conflicts are essentially zero-sum in character, and negotiations typically take the form of a series of concessions moving toward convergence somewhere between the initially stated positions.

In this approach, much attention is accorded to tough bargaining strategies. The advantages of staking out a relatively high opening position are emphasized. This follows from the negotiating parties’ belief that a series of concessions by opposing sides will be made and an agreement most likely will be reached somewhere between the opposing opening positions, around the midpoint between them. The midpoint assumes salience as a focal point, barring other bases for making a particular division seem natural and legitimate. Persons using this approach give attention to the strategy of convincing the other side that significant concessions cannot be made. Tactics that seem to commit the negotiator to the position staked out and leave little room for maneuver are frequently made. For example, leaders may make their positions public, and even announce them prior to negotiations, so that they would suffer a loss of face if they later backed down. They may also say that they cannot change their positions because of constraints imposed by their constituency, who would not support any concession. Negotiators may also assert that they are under strict instructions and are not authorized to make any concessions.

Consider how Soviet intransigence in negotiations with the United States during the Cold War was often attributed to the inability of Soviet negotiators to deviate from strict instructions.

This conventional approach also tends to emphasize that one side may use or threaten to use coercion in order to convince its adversary that the alternatives will be more costly than the terms being offered. Indeed, in many cases negotiations are conducted while a mutually coercive struggle is being waged, as happens when collective bargaining is conducted while a strike is on or when peace negotiations are conducted while a war continues, as was the case for the U.S. negotiations with North Vietnam in the early 1970s. One side may even intensify the struggle to increase its bargaining power, whether by harming the adversary or strengthening support among coalition partners. Such escalations of a conflict risk severely damaging the process of reaching a negotiated
settlement, as occurred with the second Palestinian intifada that erupted in September 2000.

Duplicity is not so widely discussed in the scholarly literature, but its significance is noted by practitioners and feared by many members of each adversary party. One or more sides often provide deceptive or misleading information about their capabilities, alternatives, and preferences. The degree to which this is done, and is expected, varies by personality, social role, culture, and subculture.\textsuperscript{20}

Maximizing Mutual Benefit

The problem-solving approach has developed in part from critiques of the relatively traditional one-sided maximizing approach. Although derived from many analyses and practices, it has become increasingly recognized beginning in the early 1980s.\textsuperscript{21} Game-theory models and social psychological experimentation have revealed the many self-defeating dangers of seeking immediate unilateral gains. Prescriptions for an alternative approach that would serve the best interests of all or most of the negotiating parties began to emerge. These were skillfully set forth in the vastly influential book Getting to Yes by Roger Fisher and William Ury, originally published in 1981.\textsuperscript{22}

Fisher and Ury name their approach to negotiation "principled," and locate it between the hard-line and soft-line negotiation approaches. They argue that with positional bargaining, negotiators play either a soft or a hard game, but that negotiators should change the game and negotiate on the merits. For example, the goal for those following a soft line is agreement, and the goal for the hard-liners is victory, but the goal for those negotiating on the merits is a wise outcome reached efficiently and amiably. This means, for example, separating the people from the problem, focusing on interests and not positions, inventing options for mutual gain, and insisting on objective criteria in choosing options.

Advocates of this approach contend that in traditional negotiation, bargaining positions are often set forth without adequate reflection about the underlying interests the positions are supposed to satisfy, so that gaining the position becomes the goal, rather than satisfying the underlying interests. Indeed, more than one way to satisfy underlying interests frequently exists. If both sides examine their interests and explore various options to meeting them, it is often possible to discover options that substantially meet the underlying interests of all the negotiating partners. A variety of tactics can facilitate such a problem-solving strategy. For example, negotiators may ask questions, search to understand what the other side’s interests are, and try to communicate their recognition of how the other side sees them. Making such efforts contributes to converting a hostile negotiation session into a problem-solving discussion.

Another important technique is to generate many possible options to solve the problem. Special brainstorming periods may be used for this purpose, in which all participants are encouraged to suggest solutions and these ideas are not to be critiqued or discussed until very many options have been introduced. Only then are ideas that seem to be the basis for actual solutions selected, examined carefully, and modified in discussion. A related basic idea is that a conflict can be reconfigured, under certain conditions, so that a mutually beneficial or at least mutually acceptable agreement can be reached. Reframing the conflict and constructing a formula in order to enter negotiations can help reach an agreement.\textsuperscript{23}

To undertake negotiations, each adversary must come to believe that a joint settlement of some contested issues is possible. Moreover, joint action is needed, a unilaterally imposed settlement is not considered feasible, and each side acknowledges that the interests of the other side must be given some recognition. The diagnoses need not be totally shared, but they must be compatible for serious negotiations to be undertaken. As I. William Zartman and Maureen Berman state: "Negotiation is appropriate when the parties see that a problem can only be resolved jointly and they have the will to find an existing situation they consider unacceptable, while admitting the other party’s or parties’ claim to participate in that solution."\textsuperscript{24}

Such diagnoses come about by reframing the conflict so that it is no longer viewed as purely zero-sum, but that some common interests will be served by a joint solution. Along with the redefinition, possible formulas for settling the conflict emerge. The formulas may begin to be constructed in the renegotiation stage of a conflict or in the early negotiation sessions. The formula may be the result of mutual concessions, as that which occurs in negotiations following a traditional bargaining model. But they also may be constructed by reference to a general conception or principle. A combination of a general framework with concessions and trade-offs is likely for complex, multidimensional problems.\textsuperscript{25}

This new formula may be related to a redefinition of the primary parties involved in the conflict. Conflicts that appear nonnegotiable for one set of parties may become negotiable for a subset of those parties or by including additional parties with a stake in the outcome.\textsuperscript{26} To illustrate, the several interlocked conflicts in the Middle East offer many examples of shifting diagnoses and formulas for settlement. One recurrent difference in the diagnoses of the conflict and of the possible formulas for resolution is whether the conflict is to be considered as a single, multifaceted conflict requiring a comprehensive settlement or a set of related conflicts best dealt with in a step-by-step fashion. Various parties have at different times stressed one or the other formulation regarding the Arab-Israeli conflict. Generally, prior to the Egyptian-Israeli peace treaty of 1979, the Arab governments had sought comprehensive negotiations, including Palestinian representation, while the Israeli government tended to seek bilateral negotiations with one Arab government at a time.

In 1977, President Jimmy Carter sought a comprehensive settlement and worked to organize a peace conference including Israel and all the neighboring Arab countries and Palestinian representatives within the Jordanian delegation. Anwar al-Sadat, president of Egypt, came to believe that such a compre-
hensive meeting was doomed to fail because too many intransigent parties would participate. He decided to break open the barrier to peace by going to Jerusalem and opening a dialogue with Israel, and to the amazement of the world he did this in November 1977. Afterward, with the help of President Carter and the U.S. team of mediators, a treaty was negotiated and signed in March 1979. Sadat also tried to represent the Palestinians and to link Egypt’s peace treaty with a resolution of the Palestinian issue, but he failed to do so.

Sadat was hailed as a great leader and peacemaker in Israel and most of the world, receiving the Nobel Peace Prize along with Israeli Prime Minister Menachem Begin. But Sadat was widely condemned by Arabs as a traitor, and Egypt was ostracized by the Arab world. Clearly, different combinations of disputants will produce different formulas resulting in different solutions. Making agreements among those finding a formula to do so may also outrage many others with a stake in the conflict.

Formulas, in a similar way, may be based by selecting one or two issues from the many in contention or by aggregating many issues to seek a comprehensive settlement. Each strategy can be effective under particular circumstances. By disaggregating or fractionating a conflict, particular issues may be selected that appear relatively easy to solve. They may appear to be less contentious and less risky. If successfully negotiated and implemented, they often become stepping stones to agreements regarding more fundamental issues.

Aggregating several issues can also be the basis for a formula because linking issues facilitates trade-offs among them. Although negotiating parties may have opposing interests on many issues, the priority they assign to each issue is likely to be different. By linking the issues, party A may give up to party B what is much more valuable to B than to A and in exchange, party B will give what is more important to the other side than to itself. For example, after the Israeli army seized and occupied all of the Sinai in 1967, the territory became a matter of contention between Egypt and Israel. The Israelis wanted security from military threats from Egypt and Egypt wanted to regain sovereignty over its territory. Among other matters, the Egyptian-Israeli peace treaty of 1979 encompassed a trade-off: Egypt regained sovereignty over all of the Sinai, and Israel’s security concerns were assuaged by the treaty provision severely limiting the presence of Egyptian military capability in the Sinai.

Finally, a formula may be based on a shared image of the future or an agreed-on conception of the conflict as a problem. Particularly, in ethnic conflicts, having a shared vision of the future relationship between the contending communities is critical. The negotiators may anticipate an outcome in which their communities will become separate countries, establish a system of autonomous regions, or construct a political structure providing power sharing among the different communities. In the case of an international environmental dispute, a problem-solving process is aided if the negotiators agree that they are confronting a shared ecological problem. This likelihood is enhanced when the negotiators from different countries share common professional outlooks.

have developed personal relationships, and are joined by nongovernmental representatives in the negotiations.

What is critical in the problem-solving approach is working together to find solutions. Some negotiators enjoy this prospect but they consequently sometimes become mistrusted by their constituents and the negotiations fail. Innovative thinking can often make conflicts that seem nonnegotiable open to joint solutions, but such thinking must be convincingly communicated to significant segments of each side’s members if the agreement is to be binding.

Combining One-Sided Maximizing and Problem-Solving Approaches

In the minds of some advocates of the traditional one-sided maximizing approach and of some advocates of the problem-solving approach, the two perspectives are incompatible. Some traditionalists argue that ultimately one side wins and the other loses and negotiation reflects and ratifies that reality. They dismiss the adherents of the other approach as being naive and unrealistic. Moreover, some critics of the problem-solving approach argue that it often fails to deal with the existing asymmetries of power and enduring injustices.

On the other hand, some advocates of the integrative problem-solving approach contend that every conflict can be converted into a problem and then solved in a way that is mutually beneficial to those with a stake in the solution. They dismiss the adherents of the traditional approach as rigid and enamored with toughness. Each side seeking to advance its interests unilaterally fosters reliance on force and sustains or increases injustice.

In actuality, the two approaches are often complementary, one being more appropriate and effective under some circumstances than others. Most analysts and practitioners believe that each of the two approaches and the prescriptions derive from both. Some commonalities and complementarities deserve attention.

An analysis of the conflict that is to be settled by negotiations is an important first step to effective negotiation of any kind. Such analyses also require attention to the alternatives each side has if a negotiated agreement is not reached. For rational calculation, the best nonnegotiated alternative sets the minimum terms a party is willing to accept in negotiations. One or more side, however, may not fully estimate what its best alternative would be; its members may get caught up in the process of negotiation and consider not reaching an agreement to be necessarily a failure. A prescriptive admonition of many trainers and consultants of negotiation, therefore, is that a negotiating team carefully considers what its best alternative to a negotiated agreement (BATNA) is.

Advocates of the one-sided maximizing and of the problem-solving approaches tend to differ in how to affect the other side’s BATNA. Persons utilizing the traditional approach tend to believe that it is necessary to change the external reality, often by increasing the costs to the other side of failing to
accept the terms offered. Problem solvers, however, tend to argue that changing the other side’s BATNA may be affected by changing the frame within which the conflict is viewed. Such changes may be brought about by persuasive efforts and by insights gained from exploring the perspectives of the opposing sides.

Another matter of significance to analysts and practitioners of negotiations is the appropriate time for undertaking de-escalating efforts. There is widespread consensus that the effectiveness of de-escalating efforts, whether by partisans or by intervenors, depends on the timing of such efforts. But there is much less consensus about what is the ripe moment for various strategies. Those taking a traditional approach tend to argue that until the adversaries have exhausted the coercive alternatives, de-escalating efforts are not likely to be effective. Ill-timed efforts to de-escalate a conflict will not be successful and can have undesired consequences. On the other hand, problem-solving advocates tend to emphasize the value of de-escalating attempts in a wide variety of circumstances, arguing for finding the suitable long-term or short-term strategy for the particular circumstances. An emphasis on constructing an acceptable formula in combination with a hurting stalemate having been reached between the adversaries provides a synthesis of the two approaches.

Some negotiating techniques fit within either approach. For example, one negotiating partner may offer a “side payment” to the other, which provides some compensation to the other side for a concession in the matter being negotiated. This is feasible when there are significant asymmetries in the relationship between the negotiating sides. For example, a country that is located higher on a river running through another state has a geographic advantage over its downstream neighbor. Although that situation is prone to conflict, it is the basis for many international treaties entailing significant cooperation. There are many issues relating to flood control, hydropower, and pollution that would be well served by up-stream and down-stream cooperation, whose achievement is attributable to compensation or side-payments by one state to the other to balance off the costs and benefits of the cooperative arrangement.

Ethical issues confound the choice of either negotiating approach, as indicated by the moral critiques that can be made of each approach. Critics of the one-sided maximizing approach, for example, may argue that the failure to attend to possible mutually acceptable solutions tends to perpetuate struggles destructively and often results in imposed oppressive outcomes. On the other hand, critics of the problem-solving approach may argue that in the rush to find an accommodation between adversaries, evildoers are rewarded and injustices perpetuated or de-escalating efforts fail and reduce the chances for an agreement when the times are more suitable. As discussed in chapter 12, ethical issues need to be considered in specific empirical conditions, partly because the weighting given to various ethical considerations is influenced by the perceived probabilities of diverse conflict endings.

According to the perspective taken here, the problem-solving approach should be broadly understood to include strategies of constructive struggle.

Those strategies may foster conditions that encourage conducting problem-solving negotiations and reaching outcomes that minimize injustice. Such strategies may also include even escalating a conflict by mobilizing broad support and adhering to policies that do not deny the humanity of the opponents. The inducements used in such strategies include large components of persuasion, the offering of rewards, and coercion that is minimally violent.

Finally, we should acknowledge that not all negotiations are serious attempts to resolve a conflict. Sometimes leaders of one party enter negotiations simply to demonstrate to their constituents, to a wider audience, or even to elements in the opposing side that they are devoted to peace; and they actually seek only to reveal the intransigence and unreasonableness of their opponents. They may formulate positions they expect to be rejected, but that appear plausible to their own side. This was the case in the early years of the Reagan administration arms-control negotiations with the Soviet Union. In the disarmament negotiations in the early years of the Cold War, both sides engaged in such tactics.

Some negotiations, even those pursued for years, then, may be fraudulent. Nevertheless, even these may be transformed and become serious. Changes within one of the parties or changes in the ongoing struggle may produce a shift that facilitates earnest negotiations. The preceding negotiation sessions then may turn out to have been useful, for example, by constraining the tendency toward escalation. Moreover, the negotiators may have established interpersonal relations with each other and each side may have learned enough about the other side’s concerns that when the time is more suitable, they can move speedily toward a mutual agreement. This happened when Mikhail Gorbachev led the Soviet Union into the pursuit of a new foreign policy.

This suggests that one side may be able to transform the course of negotiations, even when the other side entered into them for duplicitous reasons. Treating a stated position, even one suspected of insincerity, as a serious offer and subject to modification may commit the side making the offer to become engaged in serious negotiations. Mediators sometimes are helpful in this regard, as was examined in chapter 8. They take a proposal submitted by party A, object to it by party B, and ask what changes would make it acceptable. They then take the modified proposal back to party A to discover what additional modifications the proposal requires to be acceptable.

Cultural Considerations

One-sided maximization and problem-solving approaches share similar cultural limitations. They tend to focus on independent actors engaged in episodes of social interaction and that may reflect a particular cultural orientation. But other cultural views can be found. Thus, in some cultures, such as the traditional Chinese culture, conflict is viewed as a disruption of community relationships. Negotiation and accommodation is then seen as the right way to restore relations within the community in which the antagonistic parties live.
More generally, the distinction is often made, in this context, between individualistic and collectivist world outlooks. European and North American societies are regarded as generally having individualistic cultures, emphasizing personal freedom and achievement. Non-Western societies, in contrast, tend to be collectivist, according high respect to authority and giving group welfare precedence over individual welfare. Conflicts within individualistic societies tend to be adjudicated within a legal framework based on individual rights, and that framework tends to characterize one side as right and the other as wrong. Conflicts in societies with collectivist cultures tend to be handled through conciliation in order to sustain group affiliation.

Regard should be given to such cultural orientations, but they should not be made into stereotypes, assuming that all members of a given society share the identical culture and there is no overlap among cultures. Within every society, individual differences exist as well as do subcultural variations by class, area of residence, gender, and many other factors. Moreover, all cultures include a broad range of conduct, and persons in each culture are familiar with a wide variety of ways of conducting themselves, differing in their tendencies to act in a particular way in specific circumstances. For example, U.S. negotiators are often reported to go directly to the issues to be negotiated and try to reach an agreement quickly, while negotiators from many non-Western cultures think it is important to build a relationship within which the negotiations can be conducted and therefore take time to build that potential relationship. But obviously there are circumstances when Americans, too, recognize that building a relationship is important and takes time, for example, in courting a potential customer or mate.

As I consider negotiation and other paths to conflict termination, cultural variations should be kept in mind. I will treat one-sided maximization and problem-solving approaches broadly in order to minimize the cultural bias that otherwise would limit their applicability.

FORMS AND STAGES OF NEGOTIATIONS

Negotiations sometimes are completed in a single session, but generally, to settle large-scale conflicts a series of sessions are conducted over a period of months or even years. The negotiations are conducted in a wide variety of forms and generally proceed through several stages. Before discussing the consequences of different negotiation approaches, these contexts need to be mapped out, because the likelihood and consequences of pursuing one or another strategy differ in those various settings.

Forms of Negotiation

Negotiations vary in their institutionalization, size, scope, isolation, privacy, and conflict setting. The variations reflect differences among struggles and their context, and they have significant implications for the results of the negotiations. The various characteristics of negotiations are not wholly independent of each other, but they are discussed separately here.

Institutionalization of Negotiation Procedures

Every society has procedures for settling disputes, generally embodied in political institutions and judicial proceedings. Informal negotiations often are integral to the working of these formal procedures. This obviously is the case in the negotiations among legislators drafting a law. It occurs in adversarial legal proceedings when the lawyers, frequently with the encouragement of the judges, negotiate a settlement of the case before it goes to trial. But the agreement is made binding by the court.

Those formal legal and political procedures available to resolve disputes are the almost universal context for the relatively unofficial and informal methods, generally referred to as alternative dispute resolution (ADR). The disputants often recognize that if the informal procedures they are using do not result in an agreement, they have recourse to legal proceedings or to political action. ADR, then, serves as a complement to the formal and official procedures.

In the United States, and increasingly in many other societies, provisions are made for disputants to negotiate directly or with the support of mediators. The arenas in which such direct negotiations are conducted often function with legally enacted rules about procedures. In the case of collective bargaining, legislation and previous contracts define what is good faith bargaining and specify what is negotiable. In recent decades, understandings about informal conflict resolution procedures have developed in public policy disputes concerning environmental issues and alleged discrimination by gender, age, or minority status.

The form of institutionalization, reflecting culture and institutional structures, influences which negotiation approach is used. For example, in the United States the adversarial style is deeply embedded in the political and legal culture. The founding document of the U.S. government, the Constitution, is based on a system of checks and balances, presuming that a struggle between different government units will preserve and protect liberty. A society in which individuals and groups seek their own advantage is thought best managed by having other individuals and groups contest them in an adversarial manner. This is evident in the way the U.S. electoral and judicial systems function.

Elements of collective solidarity, mutual support, and shared responsibilities, of course, are also to be found in U.S. society. In recent years, conscious efforts have been made to promote less adversarial means to manage possibly disputatious relations and specific conflicts. This has been true within work organizations, among groups differing in religion or ethnicity, and between groups differing in policy positions, for example, about environmental matters.

The conflict resolution movement and the promotion of the problem-solving approach to negotiation in many ways have been part of those developments.

280
Scale of Negotiations

Negotiations vary in scale by the number of parties engaged and by the number of persons representing each party. Although most theorizing about negotiations assumes two parties are engaged, actual negotiations increasingly include more than two parties. In international affairs, multilateral negotiations are becoming more frequent and are conducted in large conferences. For example, the UN Convention on the Law of the Sea was negotiated with more than 150 governments represented.45

The participation of many parties often enables some of them to provide intermediary services and so to foster a problem-solving approach. Some participating parties may not have interests at stake as vital as those of the primary adversaries in the conference, and hence they are subjected to appeals for support from the major antagonists. This also encourages persuasive efforts, couched in terms of shared principles and objective criteria, appeals consistent with a problem-solving approach. This was evident in the extended Conference on Security and Cooperation in Europe negotiations, culminating in the 1975 Helsinki Accords.46

In negotiations involving large entities, each delegation is often numerous, with representation of diverse constituencies. Hence, in interstate negotiations technical specialists, even military specialists, in each delegation may discover some commonalities in perspectives and experience not as well shared with other members of their own delegation. This can become the basis for alliances or at least increased channels of communication across delegation lines.

Scope of Negotiations

Everything about the relations between adversaries cannot be settled at the same time. A subset of issues is jointly chosen for negotiation, although the parties may not wholly agree about which matters should be subject to bargaining at a given time. Negotiations vary greatly in the significance and number of issues that are considered. They may include matters of vital concern to one or more parties or matters regarded as of insubstantial consequence, and they may include only a few items or encompass a great number and variety of issues.

Negotiations covering many significant matters pose difficulties, particularly for traditional negotiations, but bring opportunities for newer integrative negotiations, since the multiplicity of issues on the table enhances the likelihood of finding advantageous trade-offs. Constructing a formula for a solution becomes increasingly important and hence more likely, since it will be more energetically sought.

Isolation of Negotiation Sessions

Negotiations vary in their degree of isolation in several senses. Some negotiations are brief, one-time sessions, while others are conducted in a series of sessions over many years. Some negotiations result in agreements in a relatively short time, and are regarded as unique agreements, some are viewed by the negotiating partners as part of a series of possible agreements, and some are considered to be one in a series of recurrent negotiations to renew expiring prior agreements. When agreements are viewed as the product of recurring negotiations, expectations about trade-offs over time may develop.

Some negotiations are conducted through one set of representatives in a single negotiating channel. For example, there may be only one official, highly visible channel and the negotiators take instructions and report back to the central authority of each negotiating party. But others are conducted through more than one channel. Thus, an official, but private "back channel" may be used in addition to the official and relatively public negotiation channel. Such a dual format was made famous (or infamous) when Henry Kissinger, while the first official Strategic Arms Limitation Treaty (SALT I) negotiations were being conducted, met privately with the Soviet ambassador to the United States and shaped the terms of the SALT I agreement. He was criticized for keeping U.S. officials in the dark and not drawing on their expertise about the terms of the agreement. He later justified what he did by pointing out that he discussed SALT I in conjunction with several other matters in U.S.-Soviet relations, and explicit as well as implicit trade-offs were developed during those talks.47

In international relations, and other conflict arenas, various negotiation channels are used sequentially and concurrently with the official channel, as discussed in chapter 8. Among the many unofficial channels are transnational organizations within which members of adversarial parties meet and discuss matters pertaining to the work of their common organizations. Another kind of track includes occasional meetings or ongoing dialogue groups with members from the adversary parties discussing the issues in contention between their respective countries (or communities or organizations). Such meetings were held between whites and blacks in Rhodesia beginning before official negotiating efforts were attempted for the transition to majority rule and the establishment of Zimbabwe.48

Privacy

Negotiations are conducted with varying degrees of confidentiality. Some are conducted in public; for example, community members may be important witnesses to a political or religious leader's mediation of a dispute between neighbors. Even negotiations between large-scale entities may be public, with news media providing coverage and the negotiators discussing their positions with the general public. On the other hand, many negotiations are conducted in private and the processes considered confidential until they are concluded. Some negotiations are so confidential that only the participants and a few others are aware of them, and even the negotiators' constituents are not informed of them; the proceedings and sometimes even the agreements are considered secret.49

Several advantages accrue with confidential negotiations. The negotiators
are able to be more flexible in considering each other's ideas and suggesting possible options, thus encouraging a relatively problem-solving approach. They are also able to be more flexible in making concessions, thus facilitating traditional negotiation. These arguments are supported by social psychological experiments indicating that if negotiators are subject to attention and evaluation by their constituencies, they are more intransigent in their bargaining.56

In general, secrecy is particularly useful in the preliminary, prenegotiation stage. Explorations of possible agreements and steps to reach them can determine whether or not the time is ripe to undertake serious negotiations. Secret negotiations can also be useful when formal open negotiations become stalemated and positions appear frozen. This was the case when the official Israeli-Palestinian negotiations became stalemated in 1992 and another channel was opened in Oslo for meetings that explored options and constructed a package agreement unknown to the official delegations. The resulting 1993 Declaration of Principles was a startling surprise to the people on both sides.51

Secret negotiations, however, also can have severe drawbacks. The negotiators may reach agreements acceptable to them that do not reflect the interest of their respective constituencies or that may be neglectful of implications damaging to all sides. Furthermore, mobilizing the necessary support to ratify and implement an agreement tends to be hampered by secrecy. A full and open discussion of the agreement reached and a legitimate ratification process are ways to minimize those risks.

Negotiation Stages

That negotiations move through several stages is generally recognized, even if there is no consensus about identifying them. Here, I discuss seven stages: prenegotiation, planning, initial presentations and analysis, search for options and formulas, drafting agreements, ratifying, and implementing. Different negotiation approaches and strategies are varyingly effective at each phase of negotiation.

Prenegotiation

In recent years, considerable attention has been devoted to the processes and conditions that bring adversaries to the negotiating table. In chapter 7, I considered the circumstances and policies that move adversaries toward de-escalation and ultimately toward settlement. Here, the proximate actions prior to direct negotiations are discussed, particularly after protracted struggle.

An early phase of this prenegotiation stage is the signaling by one of the adversaries to the other that it is interested in reaching a negotiated settlement.52 This is not an easy matter. Adversaries often are mutually suspicious and each side has been mobilized to sustain the positions staked out as its goals. Therefore, a leadership group thinking about making a conciliatory gesture as an overture to begin negotiations faces several risks. The other side may construe the overture as a sign of weakness and raise its demands; consequently, the leaders will appear foolish or weak to their followers. Another possibility is that the other side rejects the overture as a trick, aimed at appearing good to various audiences, but not serious; consequently, the overture may seem inept and be counterproductive.

Several policies can help minimize the risks associated with signaling a readiness to start negotiations. One is to use unofficial intermediaries to discover whether the basis for negotiations exists for the parties engaged in the struggle. Another tactic is to conduct secret meetings between high-ranking representatives of each side to probe for possible formulas for negotiations. Such communications help ensure that the overture will be appropriately reciprocated. For example, prior to President Sadat's dramatic visit to Jerusalem in November 1977, the Israeli foreign minister, Moshe Dayan, and the Egyptian deputy premier, Hassan Tuhami, discussed formulas for peace at a secret meeting hosted and facilitated by the king of Morocco in September 1977.53

Other policies involve taking a risk and by doing so making the overture particularly attractive and credible. The fundamental transformation of the Cold War between the blocs led by the United States and the Soviet Union was initiated in a series of statements and acts carried out by the government led by Premier Gorbachev. In many ways, the actions and their effects on President Reagan, his administration, the U.S. public, and the West generally were in accord with the idea of graduated reciprocation in tension-reduction (GRIT), previously discussed in chapter 7. The Soviet actions, however, did entail substantial risks to the Soviet Union, much greater than those recommended by Charles E. Osgood, who directed his articulation of GRIT at the United States. Gorbachev had reason to believe that the risks of the West taking unilateral advantage of the Soviets' military downsizing and restructuring were manageable, given the U.S. and Western opposition to the heightened militancy of the Reagan administration.54 Gorbachev, however, underestimated the internal risks to the Soviet system.

The covert exploration and the grand public commitment can also be effectively combined. The adversary leaders can give each other some assurances, and then the apparently bold public gesture can win over mistrusting elements within the antagonistic side and rally constituents to the new course the gesture seems to initiate. The spectacle of the president of the largest Arab nation flying to Jerusalem in 1977 and addressing the Israeli Knesset was highly dramatic and constituted an irrevocable act. The prior secret direct and indirect communications ensured a warm response when President Sadat publicly expressed his readiness to go to Israel.

Another prenegotiation aspect is the formulation of the structure for negotiations: this includes agreeing on the parameters of the negotiations, on the participants, and on the possible outcomes. Adversaries will avoid entering negotiations if they are convinced that the likely negotiated agreement will be worse than the status quo and deny them what they regard as minimally
acceptable. Consequently, exploratory talks, through various intermediaries or directly between the adversaries' representatives at several levels, are often necessary before negotiations can begin.

Planning

Each party to negotiation, before entering the talks, generally reflects on what it seeks and how it proposes to reach its goals from the negotiations. In large-scale parties, difficult and complex negotiations are generally conducted among the various factions within each side who have a stake in the outcome. The goals of any large entity are always manifold, with varying priorities accorded different goals. The positions articulated for negotiation by each side reflect the relative influence of groups within that side.

It seems wise for each party entering negotiations to work out what it wants, what it will ask for, and what it will settle for prior to meeting with its negotiating counterparts. The negotiators will then enter discussions with detailed instructions about what they should try to get. But this fosters the traditional one-sided maximizing negotiation approach and makes problem-solving negotiation more difficult. The difficulties in combining the internal and external negotiations are severe. Roger Fisher suggests a strategy to reconcile them so as not to hamper a relatively problem-solving approach. According to this strategy, the initial instructions should not include commitments, but directives, for example, to learn the other parties' views of their interests and in concerns, to explain their own side's interests and concerns, and to generate a range of options that might satisfy both sides.

Initial Meetings and Analysis

What happens in the initial meetings varies with the negotiation approach being followed. In the relatively traditional approach, representatives of each side argue their positions. When these sessions are public, the staking out of commitments may subsequently hamper reaching a mutually acceptable agreement. In confidentially held negotiations and when the negotiations are anticipated to be lengthy, the initial sessions may involve a good measure of housekeeping matters, such as getting acquainted and agreeing on ground rules. The procedural understandings may pertain to confidentiality, ensuring space for informal socializing, and scheduling some shared activities.

In these initial meetings, attention may be given to discussing the issues in contention and the concerns underlying the stated positions in order to ensure that each side understands how the other views the matters being negotiated. A shared analysis of the conflict may then emerge that sets the stage for viewing the conflict as a common problem the negotiators will seek to solve, rather than a contest each will try to win. Obviously, this is particularly important for the problem-solving approach. Regardless of the approach used, initial ses-

sions of negotiations that are anticipated to be conducted over many meetings are often devoted to establishing an agenda and common priorities.

Inventing Options and Constructing Formulas

At various times in extended negotiations, sessions may be devoted to thinking of new options and constructing possible formulas for an agreement. Such sessions may be held at junctures in the extended negotiation process when an impasse seems to have been reached. Changing the venue or composition of the negotiating teams, for example, by having subgroups of technical experts meet or by adding outsiders to discuss the issues or to help facilitate the sessions may enhance the effectiveness of such sessions. In addition, discussions of possible trade-offs and formulas may occur in informal conversations over drinks at the bar or in side-channel meetings.

Drafting an Agreement

The product of a negotiated agreement is nearly always a written document and the processes of negotiation are directed at finding the words the negotiating parties can all accept. The more detailed and precise the terms of the agreement are, the more difficult the task of writing is, as provisions for likely but unwanted contingencies are considered and ways to counter them fashioned. An agreement that uses vague and ambiguous terms to paper over differences can be written much more easily. But of course, precisely written documents reduce the likelihood of later misunderstandings and alleged violations. Negotiators try to balance the urgencies of reaching an agreement with their concerns to forge an enduring agreement; as noted later, mechanisms can be instituted to minimize future disagreements arising from inevitable ambiguities in the document.

To reach complex agreements involving many items, another set of choices among approaches must generally be made. According to one strategy, a disposition is first reached on particular items and these are treated as settled. They may be the relatively easy items, but agreeing on them helps create a sense of confidence and trust. Another approach sets aside the items settled early on but allows them to be reintroduced later when they may be renegotiated in the context of a larger trade-off among several items. A quite different approach is to agree on general principles and then work out solutions to specific issues based on those principles. Finally, the agreement may be negotiated as a whole with changes made incrementally to a single negotiating text. The former strategies fit better than the former with the problem-solving negotiation approach, but the best strategy may well vary from struggle to struggle and from its cultural, historical, and social context.

Finally, the style of discourse used in negotiations can affect the speed with which an agreement is reached and its equity. Undoubtedly, there are cultural variations in how positions are put forward, discussed, accepted, and rejected.
The style in the United States is generally viewed as direct, matter of fact, even hasty. But even in the United States, effective negotiators are not confrontational. There is evidence that effective negotiators tend to ask more questions of their counterparts than do less effective negotiators, and they do not preface their remarks with "I disagree." They tend not to attribute feelings and motives to the other side but clearly identify their own thoughts and feelings.

**Signing and Ratifying**

The negotiation process is not over, even when the negotiators have finalized an agreement. Often, the heads of governments or organizations that the negotiators represented formally sign the agreement, frequently at a public event. This gives visibility to the agreement and further commits the signatories to honor the agreement; like a wedding ceremony, its public nature announces the new status of the relationship and serves to bind the parties who have jointly reached the agreement.

Frequently, in addition, the people represented by those signing the agreement must ratify it. For example, a treaty signed by the president of the United States must be ratified by two-thirds of the U.S. Senate for the treaty to be legally binding on the United States. A labor contract signed by a union president usually must be approved by a majority of the union's members for the agreement to commit the union.

Concessions to significant constituency groups to gain their support for ratification may seem necessary; but they sometimes undermine the purpose of an agreement. For example, during the Cold War, after an arms control agreement was reached, promises of weapons modernization were often made to those whose support was important but who were reluctant to provide it. This was the case with the ratification of SALT I, and the result was a continuing increase in the number of nuclear warheads after the number of missile launchers was capped.

**Implementing**

Finally, attention must be given to the degree to which an agreement is adhered to and the signatory parties believe it is faithfully implemented. An agreement that is violated is a source of mistrust and renewed struggle. A sound agreement is one that is self-enforcing, giving both sides reason to comply with the agreement. In addition, committees and other mechanisms may be established to monitor compliance and to reconcile discrepant interpretations of the agreed-on document. Implementation of agreements is increasingly recognized as a vital component in conflict resolution, and is analyzed in Chapter 10.

**Summary**

As we have seen, negotiations incorporate several interrelated stages. Furthermore, various forms of negotiation tend to be suitable at different stages of negotiation. Being aware of these many possibilities helps those engaged in negotiations to conduct them more effectively. Experience and exchanging stories of past negotiations help expand negotiators' repertoires and so improve their skills. Of course, research and training can supplement and specify such experience.

**CONCLUSIONS**

Problem-solving negotiation and mediation are always conducted within the context of many other conflict-ending processes. They are also conducted with the awareness that one or more of the protagonists may resort to more coercive means at various stages of the negotiation process. These relatively coercive means include recourse to the judicial process, to traditional one-sided maximization negotiations, and to the use of violence.

Nevertheless, a struggle's ending is not shaped only by the threat of coercive and legal controls. Settlements are not simply the result of immutable forces and coercive balance. The termination process itself alters the context in which the struggle is viewed. Through negotiation, enemies can become persons with concerns that are appreciated, and the conflict becomes a problem to be solved by joint action. The complexities of a conflict and the negotiation processes can be recognized as often providing opportunities to fashion a mutually acceptable settlement.

Some conflicts between particular adversaries at a given time are not negotiable; for example, after the 9/11 attacks, this was the case for the conflict between the U.S. government and al Qaeda, led by Osama bin Laden. At that point, neither party could imagine accepting a settlement that the other side would consider. That was probably true even earlier, with the October 1996 call by bin Laden to Muslims to fight jihad against crusaders and Jews and the August 1998 bombings of U.S. embassies in Nairobi and Dar es Salaam.

That conflict, however, is embedded within many other relationships. From the perspective of the United States, that wider context provides opportunities to employ a large array of approaches to counter the threats posed by al Qaeda. These opportunities derive from relations with people in many countries, such as Pakistan, Saudi Arabia, Iran, and Israel. Intense efforts and negotiations might have enhanced the conditions that would have isolated and contained the al Qaeda network. Indeed, the United States did induce the Sudanese government to expel bin Laden in 1996. Religious and other nongovernmental organizations might also have been more active in reducing the threat of terrorist attacks, for example, by countering language and actions that
tended to demonize other peoples and by struggling for greater justice using constructive strategies.

NOTES


8. This discussion is beholden to many commentators on this subject, including John Rawls, A Theory of Justice (Cambridge, Mass.: Harvard University Press, 1971); and John W. Burton, Conflict: Resolution and Prevention (New York: St. Martin’s, 1990).


12. Pillar combines data from several sources. Generally, a war is defined as a conflict involving at least one member of the interstate system and causing at least 1,000 battle deaths among the belligerents that belonged to the interstate system. Percentages are calculated from data in table 1 in Pillar, Negotiating Peace, 18–22.


14. “Civil war” refers to conflicts meeting all three of the following criteria: (1) “some influential leaders must be concerned about possibly having to live in the same political unit with their current enemies. (2) There must be multiple sovereignty. (3) [It] involves large-scale violence.” See Roy Ackland, “The Consequences of Negotiated Settlements in Civil Wars, 1945–1995,” American Political Science Review 89 (September 1995): 682.


19. Philip E. Mosley reports how he used that technique in 1944 in negotiating with the Russians about the armistice terms for Bulgaria. The Soviets were opposed to the payment of reparations for Bulgaria, and Mosley informally explained to the Soviet representatives that if they were not included, a review by Congress might lead to an investigation and he might be punished. The next day the Russians agreed to include the disputed provision. See Philip E. Mosley, “Some Soviet Techniques of Negotiation,” in Negotiating with the Russians, ed. Raymond Denney and Joseph E. Johnson (Boston: World Peace Foundation, 1951), 288.


23. Zartman and Berman, Practical Negotiator, 66.


31. Fisher and Ury, Getting to Yes.

32. Richard N. Haass, “Ripeness, De-escalation, and Arms Control: The Case of the...