

Negotiation and DR

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This paper was prepared and settled jointly by the members of ADRAC.

Definition:context

Henry Kissinger defined negotiation as ‘a process of combining conflicting positions into a common position, under a decision rule of unanimity’ (Kissinger 1969).

Negotiation is a core skill and process that people use in interacting with others. It has also been referred to as deal-making, bargaining, reaching agreement and consensus. It occurs in different ways in a broad range of contexts and across cultures. Due to the wide use of negotiation, many different disciplines have theories on negotiation that reflect the salient concerns of the discipline.

Overall themes in the definition of negotiation

Most theories accept a basic assumption that those who negotiate share the belief that their respective purposes will be better served by entering the negotiation with the other party. Implicitly they have decided to meet their goals by coming to agreed solution rather than by attempting to meet them unilaterally. It is this mutual perception that encourages people to enter negotiations and creates the dependence that exists (to varying degrees) between the negotiating parties.¹

Different theorists provide categories and approaches to negotiation (see for example Zarman 1976, Raffia 1982, Bacharach and Lawler, 1981, Fisher and Ury 1979).

Dispute resolution and negotiation

Facilitative types of dispute resolution processes are influenced in practice by an integrative approach to negotiation. This approach frames negotiation as an interaction with a win-win potential. This theory looks for ways to 'expand the pie' so that there is more to share between parties as a result of negotiation. Problem solving, cooperation, decision-making and mutual gains are emphasised with a view to uncovering interests, generating options and searching for commonality between parties. The well-known, principled theory of negotiation is one that falls into the integrative school.²

Integrative theories of negotiation provide parties with tools to assist them in reframing problems in ways that allow for joint problem solving. These tools include thinking frameworks such as the 7 elements used by Fisher and also extend to processes such as mediation where the role of the third-party is to assist the parties to jointly resolve their problems through understanding interests and generating and selecting suitable options.

Distributive bargaining, also called 'claiming value', 'zero-sum', or 'win-lose' bargaining, is a competitive negotiation strategy that is used to decide how to distribute a fixed resource. This approach involves the presumption that negotiations are zero-sum transactions: a contest over a fixed amount of some mutually desired benefit. Distributive strategies are designed to secure the biggest slice of the pie possible (also called claiming value). This involves leaving the other side with the smallest slice possible. Since competitive strategies produce win-lose outcomes many who follow the integrative school view such strategies as destructive.

In practice, many complex negotiations will have components which lend themselves to an integrative/expansive approach and other components that require skill in claiming value or distributive. It is useful for negotiators to be aware of both type of approaches.

Views on the philosophy in turn influences the training of negotiation and the associated skills.

Mapping ADR

The interrelated nature of the global economy has seen a period of negotiation training in the West that favours the tools for integrative negotiation (expand the pie and collaborate) as part of both management and dispute resolution. This trend is across a variety of fields including positive psychology, collaborative management and facilitative styles of dispute resolution. It is also used to formulate and advance policy within government.

Early research suggested that negotiation in the context of the courts and within the legal system had adopted a more distributive form of negotiation aligned with the adversarial nature of the court system. In the last 10 years many within the legal system have adopted ADR both formally – in a mandated way – and informally. Dispute Resolution in industry has also moved out of the courts and into private industry systems both in the wholesale and retail market.

Mapping ADR: where to next

It would be interesting to consider how the shifts in the way problems are solved affects the negotiation styles used to resolve those problems. The label for litigation in major law firms has shifted to resolution practices. Similarly, complaint functions have been renamed to focus on the customer experience. Anecdotal evidence from [FOS](#) and the [TIO](#) suggest that the systemisation of dispute resolution in this way has led to a process that seeks to resolve problems in an expedient way which is more aligned with 'compromise' rather than truly within the integrative philosophy. It would be useful to understand more about the effectiveness of the different types of negotiation strategies in different contexts.

1. See 'Negotiation theory and practice: a review of the literature', EASYPol Module 179 Conceptual and Technical Material, 6.
2. Fisher and Ury, *Getting to Yes* (1981).