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Pan African Lawyers Union /
African Legal Support Facility :
Capacity building seminar
Eastern Africa launch
Kigali, Rwanda

Keys to a successful negotiation

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Summary of talk

(1) Introduction

- What is negotiation?
- How do we define “success”?
- Why do we need the “keys”?

(2) The traditional approach to negotiation

(3) A new approach

- Legitimacy of negotiation
- Identifying objectives
- Establishing interests and options
- Communication and relationship
- Cultural impact
- Adding Value

(4) Building negotiation capacity

- practical lessons for project finance in Africa



What is negotiation?

- In everyday life with family and friends
- In politics, communities and government
- In law and international commercial agreements
- Within all organisations – between continents and across all cultures
- Negotiation is a crucial skill – but not just for lawyers. All of us negotiate every day.
- Lawyer reputations – can lawyers create value?



Types of negotiation?

Advocate – where a successful negotiation is defined by the approach to get most of what their party desires without driving the other party to walk away – the best alternative to a negotiated agreement (“BATNA”)

Creative – the example of the orange – half and half or juice and rind?

The **Harvard** approach of “Principled Negotiation” aka “Mutual gains bargaining” – framing the negotiation as problem solving



Traditional Negotiation: A Commonly Assumed Model





What do we typically mean by “success”?

- Reaching agreement “We’ve signed the deal!”
- Not fighting “Wow – that was easy.”
- Feeling of fairness “That was a good result for both parties.”
- Winning “I did better than they did. They conceded more than we did.”
- Breaking their bottom line “They gave up more things than we thought they would.”



The Eight Keys of Negotiation Success: SOLICITORS

- Standards Of Legitimacy
- Interests
- Communication
- Inclusion
- Timing
- Options
- Relationships
- Substitutes



Standards Of Legitimacy

Definition

External criteria against which to measure possible agreements

E.g. laws, regulations, industry standards, market price or market practice, expert or third party opinion

Measure of Success

Using standards so no one feels unfairly treated

Advice

Use criteria as a “sword” – “Let me show you why this is fair.”

Use criteria as a “shield” – “Why is that a fair number?”

Where external advisers can add value



Interests

Definition

The needs, concerns, goals, desires, and fears that motivate us to negotiate

Measure of Success

Satisfies parties' interests

Yours well, theirs acceptably, and others not directly in the negotiation tolerably enough to be durable

Advice

Clarify yours; estimate the other side's
Probe for interests. Ask "Why?" or "Why not?"
Consider both intangible as well as tangible interests
Understand interests to reduce levels of mistrust



Communication

Definition

The exchange of thoughts, messages, or information by speech, writing, physical cues, or other actions

Measure of Success

Message sent = message received

Advice

Tailor your words and tone to the needs of your intended audience

Combine advocacy with plenty of inquiry

For Governments - speak with other governments at conferences/meetings etc – open dialogue



Inclusion

Definition

Appreciation of culture of party with whom you are negotiating

Measure of Success

No party feels they are in a “foreign” setting

Advice

Do you need to amend your style?
Importance of non-verbal communication
Language and culture



Timings

Definition

Commitments about what a party will or will not do and when

Measure of Success

Specific, firm, implementable

Advice

Avoid committing too early

Use **process** commitments at the beginning to move the negotiation forward

Make commitments of **substance** at the end, not piecemeal



Options

Definition

All of the possibilities on which the parties might agree

Measure of Success

An option that maximizes joint gains, is efficient, and “expands the pie”

Advice

Option generation should follow discussion of interests and be based upon them
Brainstorming rules: separate option generation from option evaluation and commitment



Relationship

Definition

The connection between the parties in the negotiation, especially their ability to manage differences effectively

Measure of Success

As a result of the negotiation, the relationship improves or, at minimum, is not harmed

Advice

Be unconditionally constructive on the relationship
Separate the people from the problem
Speak for yourself, not for them



Substitutes

Definition

What is the alternative position? What happens if the parties walk away if no agreement is reached?

Measure of Success

Better than your “Best Alternative to a Negotiated Agreement” (BATNA)

Advice

Try to improve your alternative before beginning the negotiation
Consider making their substitute position less appealing

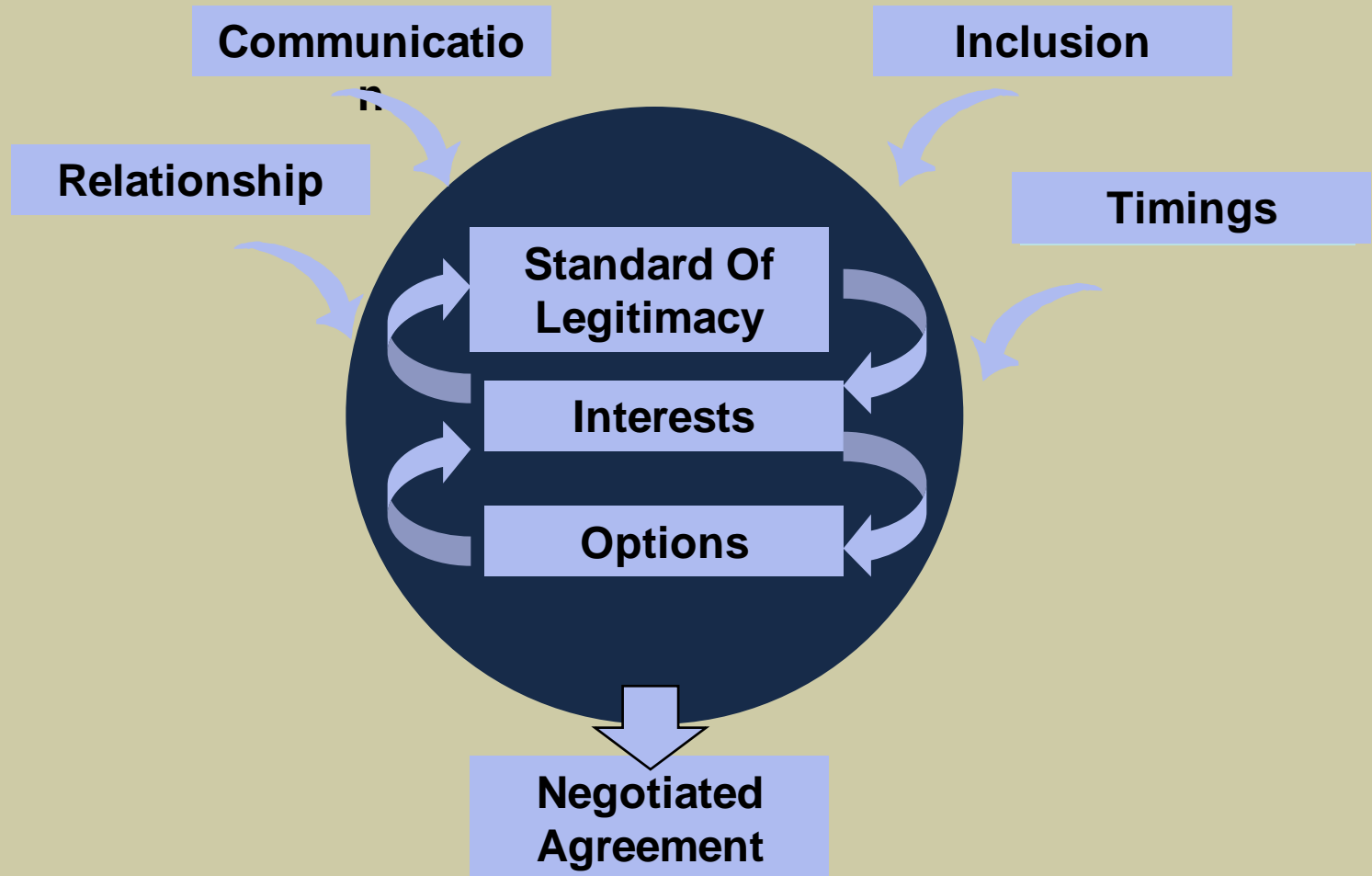


A successful negotiation is one in which any agreement we may reach:

- meets **Standards Of Legitimacy**, supported by objective criteria
- meets your **Interests** well, theirs acceptably, and others tolerably enough to be durable
- is based on clear **Communication**
- is **Inclusive**
- identifies **Timings** that are specific, firm, and implementable
- is the best of many **Options**
- improves, or at least does not damage the **Relationship**
- is better than the **BATNA** or any **Substitute**

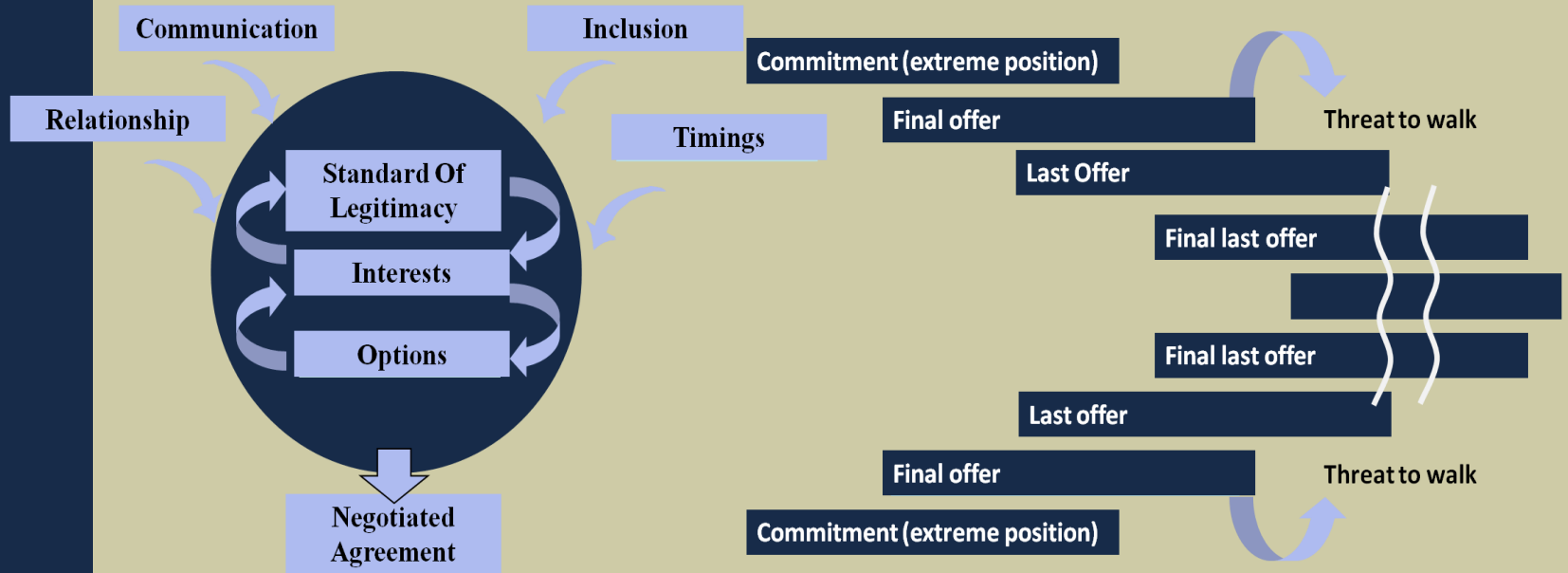


Adding Value to Negotiations





Comparing Negotiation styles



Assumptions

- “Pie” can be expanded
- Negotiators should look to create value before dividing it up

Assumptions

- “Pie” is fixed
- Only job of negotiator is to claim value



The Value of a different approach:

- Provides a systematic way to measure success in a negotiation
- Serves as a simple, thorough way to prepare for a negotiation
- More robust than simplistic uni-dimensional definitions of negotiation success
- Useful in all types of negotiations



Building capacity to negotiate:

Experience

Using consultants, lawyers and other partners who have done it before – secondments and tailored advice

Focus

Building capacity and expertise for the long-term development of a country/its institutions

Innovation

Not be bound by international norms where not appropriate for the country



Practical issues for Project Finance in Africa:

Issues:

- lack of experience in government / parastatals – nothing to be ashamed of;
- mistrust of private sector – can be understandable if private sector is using strong-arming techniques;
- lack of awareness of lender requirements – key for project finance;
- if private sector is undertaking a project, why should host government be under any obligation to provide and assistance at all?
- decision making process in host Governments / parastatals / lenders -how keep a project alive with these timetables?



Practical solutions for Project Finance in Africa:

Solutions:

- use advisers (**Standard of Legitimacy**)
- governments / parastatals to speak to each other more. (**Communication and Options**). Often a large project only happens once in a few years - so not much ability to apply lessons learnt (exception being Kenya) - so use those who have gone up learning curve to train others
- open workshop approach to discuss issues / options (**Substitutes, Interests, Communication, Inclusion, Timings, Options, Relationship**);
- agree timetable upfront and monitor as much as possible (**Timings**);
- private sector needs team in country to maintain communications - negotiations are dynamic rather than a one off meeting, keep up dialogue. (**Communication, Relationship**)



About Trinity

Experience

Senior lawyers from large UK and US law firms

Focus

Emerging markets project finance and corporate transactions across energy and infrastructure sectors

Innovation

First rate service with attractive and flexible fee structures

International reach

Relationship with firms across Africa and other emerging markets

Thought Leadership

Africa Power Guide: Launched in 2010, www.africapowerguide.com



Market position/recognition for Trinity

- **Chambers & Partners 2011:** Trinity International LLP rated as a firm and all Trinity partners named “leaders in their field”
- **Legal 500 2011:** Trinity recommended for its emerging markets finance, infrastructure and power work
- **InterContinental Finance Magazine Global Award 2010:** “Niche Law Firm of the Year - UK” and “Project Finance Law Firm of the Year - UK”
- **Lawyer Awards 2008:** Runner up “Niche Law Firm of the Year”
- **African Renewables Deal of the Year 2009,** Project Finance Magazine/Euromoney and **Best EMEA Sustainability Deal 2008,** EMEA Finance: Olkaria III Geothermal IPP, Kenya
- **Infrastructure Deal of the Year 2008,** for both Project Finance International and Project Finance Magazine: Lekki/Epe Expressway, Nigeria
- **Power Deal of the Year 2008,** for both Project Finance International and Project Finance Magazine: Rabai Power Station, Kenya



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