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<td>ACP</td>
<td>African, Caribbean and Pacific Group of States</td>
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<tr>
<td>AU-MS</td>
<td>African Union Member States</td>
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<tr>
<td>BATNA</td>
<td>Best Alternative to a Negotiated Agreement</td>
</tr>
<tr>
<td>CCP</td>
<td>Crisis Communication Plan</td>
</tr>
<tr>
<td>DWFN</td>
<td>Distant Water Fishing Nation</td>
</tr>
<tr>
<td>DWFS</td>
<td>Distant Water Fishing State</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAO</td>
<td>Food and Agricultural Organisation</td>
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<tr>
<td>FPA</td>
<td>Fisheries Partnership Agreement(s)</td>
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<tr>
<td>GNT</td>
<td>Government Negotiating Team</td>
</tr>
<tr>
<td>ICFA</td>
<td>International Coalition of Fisheries Associations</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
</tr>
<tr>
<td>IPOA</td>
<td>International Plan of Action</td>
</tr>
<tr>
<td>IUU</td>
<td>Illegal, Unreported and Unregulated Fishing</td>
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<tr>
<td>JV</td>
<td>Joint Venture</td>
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<tr>
<td>LOSC</td>
<td>Law of the Sea Convention</td>
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<td>MSC</td>
<td>Marine Stewardship Council</td>
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<td>NGOs</td>
<td>Non Governmental Organisations</td>
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<tr>
<td>PNA</td>
<td>Post Negotiations Analysis</td>
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<tr>
<td>PRC</td>
<td>Peoples Republic of China</td>
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<tr>
<td>QMS</td>
<td>Quota Management System</td>
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<tr>
<td>RFMO</td>
<td>Regional Fisheries Management Organisation</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>US</td>
<td>United States of America</td>
</tr>
<tr>
<td>VIP</td>
<td>Very Important Person</td>
</tr>
<tr>
<td>VMS</td>
<td>Vessel Monitoring System</td>
</tr>
<tr>
<td>WWF</td>
<td>World Wildlife Fund</td>
</tr>
<tr>
<td>ZOPA</td>
<td>Zone of Possible Agreement</td>
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INTRODUCTION

Aim of the Manual
This Manual provides a practical, theoretically informed handbook to support the negotiation of bilateral fisheries access agreements by Africa Union member states (AU MS) negotiators. It seeks to provide guidance on process as well as content issues, as AU-MS enter an increasingly challenging and competitive environment for access to their resources. By process we mean “how” negotiations are conducted, whilst by content we mean “what” is being negotiated. The Manual covers both aspects in detail with more of an emphasis on issues of process. As far as process is concerned, the Manual seeks to provide AU-MS negotiators with:

- theoretically informed inputs into their practical work
- practical examples and questions to stimulate systematic and structured reflection by individual negotiators
- practical examples and exercises that can be used during GNT-based simulations, rehearsals and debriefings
- usable assessment and evaluation tools specifically adapted to the requirements of fisheries negotiations

This manual is partly a condensed version of similar manual by ‘Mfodwo K., Negotiating equitable fisheries access agreements - A capacity-building and reference manual for developing coastal states», IUCN/SRFC, Dakar, January 2008’. The Manual is based on insights from negotiations theory, the authors’ practical experience, as well as the experiences of other negotiators in a variety of contexts (international business; oil and gas; commercial sales; international politics; international law and international diplomacy).

The manual also reflects inputs from stakeholders on the continent during the training workshops, on negotiating fisheries access agreements, conducted by AU-IBAR for personnel from the Departments in charge of fisheries, trade and judiciaries as well as Regional Fisheries Bodies, Regional Economic Communities and other stakeholders in the five regions (West, Central, East, Southern and North) of the African continent. The training manual supports the implementation of the Policy Framework and Reform Strategy for fisheries and aquaculture in Africa especially with regards to the objectives on awareness enhancing capacity building, Trade and Market development, Conservation and Sustainable uses of fisheries resources and Financing and Private Sector Investment.

Fisheries access negotiations – a definition
A fisheries access negotiation is a joint decision-making process in which two or more parties, usually governments, share information, ideas and options in order to reach a mutually acceptable agreement with respect to the commercial extraction of fisheries resources found in the EEZ of one or more of the parties. It is either bilateral (two parties only) or multilateral (more than two parties). It is a joint process in the sense that each participant contributes to the outcome. Because the process involves sharing information, it can also be described as a direct dialogue between the parties. Because it is a dialogue, effective communication between participants is crucial.

Viewed as a process, fisheries access negotiations can be roughly divided into three phases: preparation, bargaining, and post-negotiation. In the preparation phase, negotiators collect information about their opponent(s), study previous negotiations, and identify both the strengths and the weaknesses of their opponent(s). In the bargaining phase, both sides state their positions, bargain with each other and where necessary, make concessions. The bargaining phase either closes with the formulation of an agreement, or
a deadlock (a failure to agree). Finally, in the post-negotiation phase, the parties analyse the negotiation outcome, identify possible mistakes made during the bargaining phase, and ideally adjust their tactics in preparation for future negotiations.

Strategic capacity, as applied to fisheries access agreements (preparation, negotiation, implementation, monitoring, evaluation) is difficult to define precisely. It includes an in-depth understanding of the many linkages and relationships operating within a nation’s fisheries sector- at both national and regional levels. It also consists of a wide range of skills, and refers to the broad knowledge required to effectively link the fisheries agreement arena to the larger stage of national (as well as global) political, legal, economic and other considerations. It also involves a sound understanding of interactions between the fisheries sector and other policy areas such as trade, industrial development, and shipping- as well as internal political and social relations. Finally, strategic capacity includes the ability to rapidly acquire and constantly improve insight into the comparative advantages that different fishing fleets and companies bring to negotiations, and also their implementation. Strategic capacity, more than anything, is else built through experience. To some degree, it can also be acquired through training. Strategic capacity matures best when experience and training are closely linked, and thus operate to strengthen each other. This Manual contributes precisely to the strengthening of strategic capacity.

Skills and capacity are crucial to negotiations
As the discussion above has shown, fisheries access negotiations are not a simple matter. They require a complex mixture of many types of knowledge and skill. Key capacities in this regard are:

- strategic preparation capacity;
- strategic bargaining capacity (including table or conference skills);
- technical fisheries policy capacity;
- technical fisheries management capacity;
- legal capacity;
- supporting non-fisheries capacity – trade, economics, environment, rural development etc;
- skills in effectively integrating a range of stakeholders into the negotiating process.
- Implementing and managing the access agreement process as a whole

During the preparatory phase, strategic skills are required to guide the preparations, to identify key interests and to assess the impact of concessions that may be required. For the bargaining phase, skills in conference or table processes are also required, together with the ability to undertake post-negotiation analysis and evaluation. After the negotiations are complete, agreements must then be drafted and implemented. Finally, the implementation of agreements must be monitored and the benefits gained assessed. The results of evaluations then have to be fed back into the negotiations cycle. At all stages, negative impacts or results must be identified, and measures to manage or limit the extent of these negative aspects devised and applied.

Strengthening bargaining skills and proficiency in table processes
Proficiency in the use of table processes and a well-developed ability to bargain and make tradeoffs under pressure are crucial to the successful conduct of Negotiations Conferences, a key feature of the access agreements process. As noted above, while on the job training is important (i.e. experience matters), training is also critical- indeed, the two should go together. This Manual offers a menu of checklists, practical exercises and illustrations to provide a basis for in-depth training in this aspect of negotiations. Improving negotiations intelligence capacity
Research plays different roles in the negotiating process, and underpins effective bargaining. Research capacity in the context of negotiations refers to
1. the capacity to conduct research;
2. the ability to present research in a format that is relevant and which is easily absorbed by negotiators.

Research during the preparatory stage has a broad ranging character as it helps build up a profile of the negotiating partner. Research requirements become much more narrowly focused during the bargaining phase since at that stage, what is required is the involvement of research analysts skilled at quickly assessing the likely impact of specific proposals made by the negotiating parties. After the conclusion of negotiations, research expertise take a different form again – their role being that of undertaking impact assessment of the likely results of the negotiations. To make research relevant to the needs of access negotiations, the users of research, negotiators, and the producers of the research themselves, have to work hard to ensure that the results of research are useful for negotiations. This requires AU-MS negotiators to work closely with targeted researchers, to develop approaches that closely support the specialised character of fisheries negotiations. Negotiators may also need training in how to quickly absorb and incorporate research results into their work. The Manual has been designed to be of some use in this regard as well.

**Improving the participation of non-fisheries departments**
In all AU-MS, there is a lead agency or department responsible for fisheries negotiations. In some countries, it is the fisheries department, in other countries, it is the Ministry of Foreign affairs or the Ministry of Finance/ Economic Planning. To compose the GNT as well as monitor all aspects of the implementation of agreements, the lead agency for fisheries negotiations are responsible for drawing in specific supporting expertise from other government departments. Despite the need for other departments to participate in negotiations, the reality is that in many other Ministries and departments, understanding of the fisheries sector is poor with very little focus on and insight into issues under negotiation. Capacity-development therefore also involves improving the negotiations capacity of non-fisheries departments. The Manual assists in this arena as well.

Integrating diverse stakeholders into the negotiations process
A striking development in recent years is the sharp increase in stakeholders in the access agreements arena. With respect to globally harvested and traded species such as tuna the following stakeholders in access agreements can be identified. Stakeholders include:
- coastal State governments;
- distant Water Fishing States governments (in the case of the EU – the EU institutions);
- port State governments;
- states in which transhipment of product takes place – either on land or at sea;
- market States for the product;
- sectors and regions dependent on fisheries activities in developed countries;
- relevant International Organisations and RFMOs;
- NGOs (transnational and local);
- harvesting companies and associated economic operators under access agreements;
- local fleets and other economic operators competing for resources with foreign fleets under access agreements;
- processing companies (transnational and local);
- retail enterprises especially transnational enterprises sourcing their products globally;
- fishing communities specifically impacted on by activity under access agreements;
- final consumers in key affluent markets;
sectors and regions dependent on fisheries activities in developing countries.

The presence of stakeholders in the access agreement process may also be said to be direct or indirect. Stakeholders with a direct presence either take part in negotiations or have their interests strongly represented in negotiations. The less visible the actor in the negotiation process, the more they can be described as an indirect, although not necessarily unimportant stakeholder. As discussed in more detail immediately below, calls for reform of access agreements effectively implicate a much wider range of stakeholders in the negotiation, implementation and monitoring of access agreements than used to be the case. In particular, NGOs are becoming important and effective actors within the access agreements framework.

An important skill that was previously not required of AU-MS negotiators is an ability to identify and then manage the wide range of stakeholders who can affect all stages of the negotiations cycle for a fisheries agreement. Some stakeholders are globally influential (for example international NGOs like Greenpeace, Marine Stewardship Council (MSC) and WWF) and their activities can affect markets for AU-MS products.

![Figure 1: A Step by Step Overview of the Negotiations Process](image-url)
PART I – FISHERIES ACCESS AGREEMENTS & ARRANGEMENTS – WHAT ARE THEY AND WHY DO COUNTRIES ENTER INTO THEM?

The global market in access rights
There is also a global market in access rights. In this market the laws of supply and demand operate in the same way as they do elsewhere. The interaction of supply and demand in this market needs to be fully understood in all its rich diversity before AU-MS negotiators can become seriously effective long-term negotiators. To help advance this understanding, the Manual contains a set of case-study maps or vignettes demonstrating the global market in access rights for most commercially important species. It is these maps which shapes the search for access.

The demand for access rights
Following the logic of the market, access demandeurs (fleets, fishing associations, transnational companies, Nation-States) all desire one thing above all else – a right of secure and long-term access to rich fishing grounds which constantly produce high quality fish that consumers will pay high prices for. The right of access is a valuable commodity that the demandeur wants to buy, except he wants to pay the lowest possible price. Access demandeurs have a diverse profile – they are not all the same.

The supply of access rights
In terms of supply, suppliers to this global market are Coastal States which have commercially viable fishing grounds in their EEZs or adjacent high seas. Like access demandeurs Coastal States also have a diverse profile. Some have a strong natural comparative advantage – by this we mean naturally rich fishing grounds. Such a State may have a position of some strength in negotiations. Others may not have a strong natural advantage. However, progressively they have created competitive advantage - they manage their EEZ well and have excellent ports and air facilities. This fact becomes known in the global market place and many access demandeurs are attracted to the EEZ of such a State. In negotiations, the position of this State is strong because of sound management rather than an accident of nature.

The global market in access rights – a Japanese example
To illustrate the concept of the global market for access rights further, have a close look at Figures 2-4. They represent the global marine production space for bigeye, yellowfin and skipjack tuna. Marine farming of tuna is also important but we are not concerned with that here. Consider now the situation of a Tuna Fisheries Association from Japan. Such an association is typically owner of a bundle of access rights located all over the world

• an access agreement with State A;
• a joint venture arrangement with State B;
• yearly licences with State C.

Clearly the legal form of these access rights is different. The end result however is the same – these rights provide a framework within which Japanese interests can secure desired supplies of fish for a variety of purposes. Additionally, fish caught under these access rights or authorisations competes in the Japanese marketplace with imports flown directly to Japan. Such imports are flown in on a daily basis to giant markets like Tsukiji Market. Daily shipments also arrive on refrigerated transport vessels. To increase the supply of tuna caught directly by the Association’s vessels, this Association may periodically search for other States prepared to supply a right of access on terms more favourable than those currently offered under its arrangements with States A, B and C. It can be seen from this example that the negotiation of access agreements takes place in a highly competitive environment, including competition from imports.
This environment must be well-understood by all negotiators. That is why throughout the Manual, we systematically set out the full dimensions of the global market in access rights.

**Types of Fisheries Access Authorisations**

There are many types of access authorisations in use for fisheries. Bilateral agreements are the most complex and in the AU-MS region as in other parts of the world bilateral access agreements are the most important form of authorisation. The types of authorisations in wide use globally are:

- State-to State bilateral agreements
- State-industry bilateral agreements
Each type has its own requirements and issues as far as negotiations are concerned.

**Access agreements and international law**

Access negotiations are necessary because Coastal States have the power under current international law to prevent other States from fishing in their exclusive economic zones (EEZs). Under current international law, it is only after access negotiations have been completed that Fishing States and the fleets associated with them – we call them access demandeurs - have the right to enter a Coastal State’s EEZ. To govern the relationship between Coastal States and the different types of access demandeurs, there are now many types of access authorisation. As the discussion below shows, access agreements are in reality only one of a number of different types of access authorisation. Despite the many types of authorisations that currently exist, access agreements remain one of the most important forms since they can be structured to cover a very wide range of issues, not just purely economic ones. Additionally many of the other types of access authorisations are linked to access agreements; for example one type of authorisation, a licence to fish, is generally linked to a framework or master access agreement. Access agreements are governed by international law in other ways. In particular both Coastal States and access demandeurs have obligations to conserve fish stocks and to engage in responsible fishing and responsible management. Box 1 below sets out the range of international law rules which are part of the framework for negotiation and implementation of access agreements. In this Part and throughout this Manual the main focus is on access agreements rather than alternate access authorisations. It should be noted, however, that many of the issues which are discussed by the Manual also apply to other types of access authorisations.

![Figure 4: The global market in access rights - production regions and fishing grounds for Yellowfin Tuna Source: FAO](image-url)
**Box 1: Law of the Sea Instruments of most relevance to access agreements**

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Is signature/ratification required?</th>
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<tbody>
<tr>
<td>The Law of the Sea Convention</td>
<td>Required</td>
</tr>
<tr>
<td>The UN Fish Stocks Agreement</td>
<td>Required</td>
</tr>
<tr>
<td>The FAO Compliance Agreement</td>
<td>Required</td>
</tr>
<tr>
<td>The Code of Conduct for Responsible Fisheries</td>
<td>Signature not required</td>
</tr>
<tr>
<td>The IPOA Seabirds 1999</td>
<td>Signature not required</td>
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<tr>
<td>The IPOA Sharks 1999</td>
<td>Signature not required</td>
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<tr>
<td>The IPOA Fishing Capacity 1999</td>
<td>Signature not required</td>
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<td>The IPOA-IUU 2001</td>
<td>Signature not required</td>
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</table>

**State to state bilateral agreements**

State to State agreements are bilateral treaties between:
- a Coastal State with sovereign rights over fisheries resources in its exclusive economic zone (EEZ); and
- another State whose fishing enterprises wish to harvest these resources - Fishing States usually called Distant Water Fishing States or Nations (DWFS/DWFN).

**State-industry bilateral agreements**

State-industry bilateral agreements are agreements in which a Coastal State contracts with an industry association representing a foreign fleet. Taiwanese, South Korean and Japanese fishing industry associations have entered into many such agreements with Coastal States across the world. The willingness of many countries to enter into agreements with fishing associations, rather than their governments reflects the following factors:
- the closeness oflinks between industry associations and the governments of Japan, South Korea and Taiwan;
- the importance of the markets for fish in the countries concerned;
- the power and influence of these fishing associations in their countries of origin;
- the knowledge power and influence of these associations in the global market for marine products;
- the uncertain diplomatic and international relations status of Taiwan and South Korea.

Responsibility for compliance with the terms of the agreement by individual companies and vessels is assumed by the industry association. Such agreements may cover the same issues as State-to-State bilateral access agreements (see above). Such agreements are not governed by international law, and require special attention in order to decide which party’s laws will govern the agreement.
Box 2: Typical Contents of Bilateral Agreements

Provisions in the two types of access agreements described immediately above, usually cover:
- flag-State enforcement of Coastal State laws and the agreement itself;
- protection of essential fisheries habitat;
- by-catch;
- scientific research;
- exploratory fishing;
- fees and payments;
- restrictions on foreign fishing operations;
- compliance control;
- monitoring, control and surveillance;
- the content of fisheries management plans;
- offences and defences;
- reporting requirements;
- enforcement;
- forfeiture and seizure of vessels;
- penalties for foreign fishing;
- technical measures (closed areas; prohibited areas, prohibited and endangered species, controls over essential fish habitat, prohibited gear);
- dispute settlement.

Bilateral agreements may also cover the establishment of joint ventures; grant of access to markets; provision of aid and technical assistance, construction of ports and harbours.

Regional access agreements

Access can be granted to foreign fishing companies and fleets through regional agreements. Such regional fisheries management agreements are treaties in which a group of Coastal States establish coordinated fisheries management measures amongst themselves. Regional fishing Registers, which store information on vessels fishing in the region, are often an essential part of such arrangements. Decision making on granting access can then be made by member countries, taking into account the vessel information held on the register. Regional registers also include requirements which allow suspension or withdrawal of the right to fish of vessels on the register where such vessels have infringed against specified rules. Regional agreements often include the following provisions: (a) authorization of a person, body or organization to perform functions required by an access agreement, including (but not limited to) the allocation, issuance and denial of fishing licences valid in the region or part thereof, including the exclusive economic zone; (b) regional observer programmes; and (c) fisheries monitoring control and surveillance. Such agreements are governed by international law. Regional access agreements have significant advantages over bilateral agreements. They also have significant problems in sharing the benefits that accrue under them.

Direct fishing by foreign fleets under license

In this form of fishing, the foreign company or fleet approaches the Coastal State and applies directly for a fishing licence. No agreement between the State of origin of the company or fleet or an industry association is required. The foreign firm may have to register as a local firm before it can fish directly under license. This approach may be an advantage where local firms enjoy more advantageous conditions than foreign firms- for example, local firms may qualify for government assistance or taxation exemptions, export bonuses or other incentives. Vessels owned by joint-ventures established initially under bilateral agreements may able to apply locally for licenses in some countries, since they would be classified as local vessels. Joint venture agreements may also allow vessels owned by joint ventures to fish by applying for licences without them being classified as local vessels.

Operation as a foreign-owned company within a quota management system

Some countries use a quota-management system (QMS) to operate their fisheries (e. g. New Zealand, Iceland, some fisheries in Australia and the United States). In these fisheries, only people who own quotas...
can fish. Quotas clearly grant rights to catch specified quantities of fish in specific geographical areas known as Quota Management Areas or Fisheries Management Areas. Quotas are bought and sold. Provided that foreign companies are allowed to own quotas, foreign-owned firms have to purchase quotas to participate in the fishery. They do not sign agreements to participate. Many QMS schemes place restrictions on foreign firms owning quotas for fear that foreign companies with superior financial resources will purchase the quota right to harvest fish in the richest grounds thereby squeezing out local firms. In addition to owning quota rights, participants in the QMS may also have to secure licences to fish and may also have to register the vessels that they own or charter on a register of fishing vessels. AU-MS negotiators need to be aware that many companies from particularly New Zealand, Iceland and Australia are not familiar with the approaches used in the AU-MS. In negotiations with such companies, it is necessary to check that the access demandeur is aware of the differences between a QMS approach and other systems of management.

Establishment of a local company
This involves incorporation as a local company and becoming subject to local laws. It may also require substantial investment and the registration of fishing vessels as local vessels. This may sometimes be the only way to fish in a particular country’s waters since the country: (i) may not enter into bilateral access agreements; (ii) may not permit or encourage joint-ventures with foreign fishing companies. Local companies may enjoy certain advantages, including fishing close to shore in zones reserved for local fishing fleets. Local companies, however, could equally suffer disadvantages and cannot easily claim diplomatic protection from the country of the foreign shareholders origin, without first exhausting the options available in domestic courts.

Local agents
Local agents are people or companies who are usually citizens of the Coastal State who are appointed to undertake a range of duties on behalf of the foreign fleet or company. They may also be the legal representative of the foreign company and in that role can be taken to court by local authorities and can be served with official documents on behalf of the foreign fishers or fleets. Some countries make appointment of local agents with some level of financial resources a compulsory part of their legal framework.

Charter of foreign fishing vessels
Under this method, a locally based company charters a fishing vessel from a foreign source. The locally based company may be owned fully by nationals of the AU-MS; AU-MS governments or a joint venture between AU-MS interests and foreigners. Payment for the charter can be in cash or in agreed portions of the fish caught by the vessel. Such chartered vessels may be required to register on local registers of chartered vessels or local fishing vessels. They may also be required to register as vessels with the nationality of the Coastal State. Vessel charter is becoming very important in international fishing since the person seeking to charter vessels need not invest in purchasing vessels. Chartered vessels regularly service QMS fisheries and joint-venture arrangements. Chartered vessels normally need the following types of authorisation: (i) a fishing permit; (ii) documents specifying their relationship with the local entity hiring their services; (iii) documents relating to their crew and conditions of employment on the chartered vessel; (iv) documents showing the flag flown by the vessel; (v) insurance and other documents. The move to reduce capacity in the European Union; the collapse of the fishing fleets of the former Soviet bloc and difficulties in the fishing and ship-building industries of Japan, South Korea and Taiwan have created a large pool of ships available for charter.
Types of charter arrangements

The principal types of charter arrangements are bareboat charters and time charters. A bareboat charter is an arrangement in which Party A (the bareboat charterer – fishing company) leases a fishing vessel for a period of time from Party B - the vessel-owner/shipowner. The ships come to Party A completely bare – hence the name. Party A must provide the crew of the vessel together with all stores and bunkers (fuel) and pays all operating costs. Many persons who have no direct interest in fishing, own fishing vessels which they then lease out to companies which actually fish or own access rights or licenses under access agreements. Entities without a direct interest in fishing may for example include financial institutions or banks. There is often an incentive for the bareboat charterer to assemble a multinational crew. This may lead to further problems if the vessel and crew are arrested under Article 73 of the International Law of the Sea Convention.

A time charter is an arrangement in which the fishing vessel is hired by a fishing company for a period of time. The shipowner places the vessel with crew and equipment at the service of the fishing company. During this period, the charterer pays the vessel owner a sum of money. A time charter will be used where the fishing company wishes to utilise the specialised experience and equipment of the vessel and its crew. Thus for example, many vessels and crew members from the former Soviet Union fishing fleet are available for time charter hire. Payment is made by allowing them to sell the fish caught and sharing the proceeds with the fishing company which hired them.

The chartering of vessels has a number of implications for access agreements. Some of the most important are:
1. widespread use of chartering arrangements affects enforcement as such vessels seldom fly the flag of the DWFS which signed the access agreement;
2. there appears to be a relationship between charter arrangements and IUU fishing.

Chartering of vessels does however provide commercial flexibility and lowers costs. Therefore it is likely to continue as a cornerstone of foreign fishing under access agreements and other arrangements. Access authorisations for mobile small-scale/artisan fleets.

The question of the status of non-industrial fleets from neighbouring countries is a major issue in Western Africa and in parts of Asia. Many such fleets operate without formal authorisation and in many cases may operate with a concept of boundaries which is different from that of the Coastal States concerned. The best example is where a sub-national group straddles the boundaries of two States. This is common in West Africa, where the boundaries recognised by tribal, clan, language or lineage groupings are quite different from those recognised by nation states. Policy under the Code of Conduct on access authorisation is required to respect these sub-national forms of governance and authority and the boundaries generated by them. Bilateral agreements are thus required to take account of these differing boundary practices during their negotiation.

Legal categorisation of access agreements

From the point of view of legal analysis, the content of access agreements can be categorised as follows:
• measures and obligations that are responsibility of the Coastal State;
• measures and obligations that are responsibility of the DWFS or the Fishing Association representing the fishing companies;
• measures and obligations that are the responsibility of the Fishing Company.
In negotiating these types of agreements it is always important to be clear about which party to the agreement is required to implement a specific obligation or whether such obligations are to be implemented jointly.

**Access- agreements - the generic interests of Coastal States**
Against the background of the rights and duties described above, the most important generic interests of the Coastal State can be summarized as follows:
- access to convertible currency through fee payments;
- taxation revenues;
- port and customs revenues;
- bunkering taxes;
- financial and development assistance;
- joint ventures; and
- second-hand vessels
- supply of catch to the local market.

**Additionally, food security and support for the local economy are also important.**
The Coastal State is also at least in theory interested in sound management of its EEZ resources and should in theory dedicate part of the proceeds from resource access agreements to better management of the resources. The Coastal State is also interested in building up a profile of the resources in its zone for later exploitation by national fleets. Where Coastal States have well developed national fleets and nationally based processing industries, these sectors are also interested in securing access to the markets of the access demandeur and will want lower tariffs and guaranteed market access in return for granting fisheries access. Finally all Coastal States seek to protect the interests of their artisan and national sectors with respect to the resources in the inshore zone and the EEZ itself.

**Figure 5: Territorial Sea and inshore EEZ fisheries - typical resources, vessels and gear**

**The management tasks of the Coastal State**
The image below show the inshore and EEZ resources which fall within the control of Coastal States under international law. The management task of the Coastal State is to manage interactions between the vessel, gears and resources present in these two zones. It also shows the key species, gear and vessel types requiring management on the High Seas. Here too, the Coastal State must manage the resources in cooperation with Fishing States or access demandeurs.
Management of access agreements by Coastal States – a best practice approach

Viewed broadly, sound management of access agreements & arrangements can be defined as covering the following distinct but also overlapping areas of policy and managerial action:

- Establishment as well as implementation of the objectives to be served by access arrangements within the framework of the overall economic, trade, customs control, environmental, employment, industrial policy, food security, maritime and international relations policies and practices of the specific country.
- Establishment as well as implementation of the objectives to be served by access agreements and arrangements with foreign fleets and processors within the framework of higher level policies connected with fisheries and maritime resource use in the specific country (fisheries conservation and regeneration policy; fisheries resource extraction policy; fisheries policy in the context of competing marine and maritime uses – tourism, oil and gas etc).
- The specific management of relationships with key fleets and/or Fishing States, principally but not exclusively, the European Union, Japan, Taiwan, China and Korea.
- The management of other areas related to access arrangements with foreign fleets and processors, including principally aid, trade, processing sector, value chain upgrading, food security, informal sector as well as gender aspects.
- At the international organisation level, sound management also requires a strategic approach to managing the relationship between foreign frameworks and broader multilateral treaties such as the Indian Ocean Tuna Convention and the ICCAT.

The strategic as well as routine management of agreements

The organisational matters that lie at the heart of management of arrangements with foreign fleets and processors can be listed as follows:

- Cost-effective and relatively successful negotiation of agreements/arrangements (strategy; tactics; review; post-negotiations debriefing; modelling and simulation of options; scenario building; acquisition and timely use of negotiations intelligence).
- Identification and use of the most appropriate agreement/arrangement types.
- Identification and use of strategic characteristics of agreements and licences to maximise African Coastal State advantage – e.g. duration of licences.
- Management of a broad range of fleet issues requiring an understanding of fleet strategies, fishing capacity and links to global value chains etc.
- Management of transhipment activity requiring an understanding of the value chains and global cargo and cold chain arrangements of the global fishing industry.
- Steady period-by-period improvement of economic returns from all aspects of agreements, not just access fees.
- Identification and management of economic and revenue aspects of agreements/arrangements such that revenue aspects do not overshadow all other aspects of the access agreements/arrangements framework.
- Establishment and implementation of a regime of control over IUU fishing, including an ability to respond rapidly to changes in the strategies, tactics and profiles of IUU fleets.
- Management of the organisational and dispute settlement aspects of access agreements/arrangements.
- Incorporation of international organisation rules into access agreements/arrangements practice – eg the precautionary principle, fisheries reference points etc.
- Accurate identification and implementation of bio-diversity and ecological protection in rules in light of changing developments and international trends.
- Effective implementation of MCS across all domains (at sea, on the high seas, in ports and harbours and elsewhere as relevant).
- Effective implementation of VMS as the core of the MCS system.
- Prompt and effective use of domestic enforcement capacity to respond to illegal behaviour by licensed and unlicensed fleets.
- Integration of foreign fleets and joint ventures with the domestic economy, principally through use of local services and companies as set out in agreement/arrangements texts but also as made possible by the characteristics of the specific value chain of the fleet.
- Integration of foreign-owned processing companies into the domestic economy.
- Preventing excessive revenue leakage from the domestic to the external sectors – control over transfer-pricing; over and undervaluation.
- Management of frameworks to ensure support for domestic fisheries rather than their extinction.
- Establishment of adequate data reporting, collection and analysis to support monitoring of foreign fleets and as inputs into strategic planning and resource management.
- Well targeted identification, procurement, cost-effective and nationally-oriented use of the development assistance component within access agreements (goods and materials; services; technical and organisational support) - currently little attention is paid to whether development assistance effectively supports the fisheries sector or not.

**The generic interests of access demandeurs or Distant-Water Fishing States**

Research shows that access demandeurs have the following generic interests:

- national food security interests based specifically on access to fish and fishing grounds (eg. Japan)
- national economic interests especially maintaining employment in areas dependent on fisheries and fishing (eg. EU, Spain);
- securing supplies of fish for domestic markets with specific tastes (eg. markets in Hong Kong, China and Japan);
- supplying fish to highly traded sectors – sashimi tuna, canned tuna, surimi products, shrimp, groundfish - all access demandeurs supply these sectors;
- responding to political demands by influential political groups based on fisheries and fishing interests (eg Spain – the cofradias and key political regions such as eg Galicia);
- political interests with respect to maintaining an international relations profile (Taiwan, South Korea);
- displacing surplus fishing capacity to overseas waters (China, EU);
- serving as a middleman between fish-hungry markets and areas rich in fish (Korea, Taiwan with respect to the Japanese markets).

The drivers of interest in access are always multiple and also shape how much the access demandeur is prepared to pay for access. Another factor shaping how much the demandeur is prepared to pay is the
extent to which the species of interest can be imported into the markets of the demandeur. If imports can satisfy most or all of the domestic demand in the demandeur’s market, they are unlikely to pay highly for access.

**Current management tasks of the Distant Water Fishing States**

Article 18 of the UN Fish Stocks Agreement, paraphrasing Article 117 of the LOSC requires that Flag States or DWFS should ensure that their flagged vessels: (i) comply with subregional and regional conservation and management measures; (ii) do not engage in any activity which undermines the effectiveness of such measures. A Flag State should only authorise a vessel flying its flag to fish on the High Seas where it is able to effectively exercise its responsibilities over such a vessel. The Flag State is expected to take the following measures as part of its duties on the High Seas:

- issuance of fishing authorisations;
- establishment of high seas fishing regulations;
- establishment of a national record of fishing vessels authorised to fish on the high seas and provision of access to information therein on request by other States;
- establishment of requirements for the marking of fishing vessels and fishing gear in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;
- establishment of requirements for supplying fisheries data;
- establishment of requirements for verification mechanisms for fishing effort;
- adoption of monitoring, control and surveillance schemes at the national, sub-regional, regional and global levels;
- regulation of transhipment on the high seas;
- regulation of fishing activities to ensure compliance with subregional, regional and global measures;
- harmonisation of its internal monitoring, control and surveillance schemes with those agreed on at the subregional, regional or global level.

Article 19 of the UN Fish Stocks Agreement requires the Flag State ensure compliance by its vessels with sub-regional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To achieve this, states are obliged to:

- take enforcement measures wherever violations occur;
- investigate alleged violations immediately and in full;
- report back to the State alleging the violation on the measures taken and also to the relevant sub-regional organisation or arrangement;
- require any vessel flying its flag to provide all relevant information to the investigating authority;
- prosecute the case itself if the investigation so warrants;
- ensure that a vessel engaged in serious violations of conservation and management measures does not engage in high seas fishing until it has complied with sanctions imposed for earlier transgressions.

Sanctions are to be of a severity to deter future serious violations and may include the refusal, withdrawal or suspension of authorisation to serve as a master or officer on a fishing vessel. Flag States are also responsible under international law for maintaining two types of registers to assist them to implement their differing types of Flag State responsibility. These two types of Registers can be summarised as follows:
**Table 1: Register Types**

<table>
<thead>
<tr>
<th>Register Type</th>
<th>Type of Responsibility Supported by Register</th>
<th>Legal Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Register of Merchant Ships</td>
<td>Navigation Responsibility</td>
<td>Customary International Law</td>
</tr>
<tr>
<td>High Seas Register</td>
<td>Fishing Vessel Responsibility</td>
<td>FAO Compliance Agreement</td>
</tr>
</tbody>
</table>

**Principal counterparts typically exchanged in fisheries negotiations**

With the generic interests of Coastal States and access demandeurs having been identified, it is now possible to specify the types of counterparts typically traded in negotiations. They are:

**Table 2: Exchange counterparts in negotiations**

<table>
<thead>
<tr>
<th>What the Coastal State has to offer</th>
<th>What the access demandeur has to offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>fishing possibilities; nationalities and flag criteria; technical conservation measures; conservation controls for biodiversity; right to establish joint ventures; concession on joint ventures and other enterprises; air cargo rights.</td>
<td>financial compensation/access fees; market access – concessions on tariffs and rules of origin; development assistance to the fisheries and other sectors; measures with an impact on the local economy; assistance to support management of the zone; investment in all aspects of the fisheries sector and other sectors.</td>
</tr>
</tbody>
</table>

**Development assistance and access agreements**

Access agreements are also closely linked with aid or development assistance. Japan and the EU have particularly active programmes in this regard with their development assistance in fisheries classifiable as a form of non-monetary compensation for access. Both the Japanese and EU development assistance programmes in fisheries have recently been subjected to critical scrutiny by academic commentators and NGOs.

**Figure 7: Overview - Fisheries development assistance programs of the European Union**
PART 2 – NEGOTIATING AN AGREEMENT – THE PRACTICAL ASPECTS

**Negotiating context**

Negotiating context refers to two aspects all of which shape specific negotiations events: (1) the immediate context; and (2) the broader external environment.

The immediate context is likely to be more controllable than the broader external environment. Importantly, both immediate and external contexts have to be taken into account during preparation, bargaining and implementation.

**Issues**

Issues are the matters with respect to which there must be joint assessment and decision-making during negotiations. Issues reflect the needs of the parties. The majority of issues that need to be negotiated are usually identified in the prebargaining phase, and should then be set out in a general way in the Negotiations Conference Agenda. This is done through pre-negotiation exchanges of information between the parties and also during the process of preparation for the negotiation.

Issues can be classified into at least four types:

1. primary issues are matters that must be negotiated, for which concessions should not be taken lightly. The access fee’s price is an issue of this type;

2. fixed issues are matters of such absolute importance to the party that under no circumstances is any compromise possible with respect to this issue. In many cases, a primary issue may also be a fixed issue. A good example is the question of whether a country recognises Taiwan or the People’s Republic of China (PRC) and the implications that this then has for fisheries agreements negotiations between that country and Taiwan or the PRC;

3. auxiliary issues are important enough to be negotiated but are not important or relevant enough to be either primary or fixed issues – they may form the basis for concessions. A good example is the issue of whether or not a foreign fleet will take on domestic fishermen or seamen. In many agreements, this issue is present but it may be addressed by the foreign fleet paying a sum of money if it is not willing or able to take on domestic crew.

4. Inconsequential issues are unimportant so that the party is willing to agree to whatever the other side has proposed – inconsequential issues are essentially concessions that can be given away without much harm to the side proposing them.

Issues are presented during negotiations conferences as positions. Positions on issues are supported by arguments. Arguments in turn are communicated and debated. Compromises on positions are then made. Compromises made do not however mean that the party concerned has compromised on that particular issue. During the next round of negotiations, the issue may again be raised – the form in which it will be raised will however be different.

A finalised set of issues constitutes a negotiations agenda and will always contain primary issues. Auxiliary issues and inconsequential issues can be added later. A negotiations agenda, however, is seldom altered substantially once it has been finalised. The negotiation is successful if solutions are jointly created to manage the issues. The negotiation is unsuccessful if solutions are not found. Fisheries negotiations of the type discussed in this Manual can be classified as bilateral multi-issue negotiations. They have a rich set of issues and trade-offs. A sample negotiations agenda is to be found at Appendix ? Finally, it should be noted that positions or proposals are presented on issues. Bargains centre on the positions and whether these can be reconciled.
**Interests or needs**

Interests are the underlying needs, desires, concerns, wishes of the principals in the negotiation. Interests underlie and drive positions with respect to an issue. An issue for example might be the ways and means of disposing of by-catch. By-catch can be dumped at sea or landed in the port of the Coastal State. The Coastal State might have several interests with respect to bycatch. A state's interest in food security might require that the by-catch be landed. Conservation interests might also support by-catch being landed since then it is possible to keep track of how much by-catch is actually happening. Artisan fishers (who focus on the by-catch as their main catch) might reduce industrial fishers bycatch with respect to that species. And further, the overall joint interest of both the Coastal State and Fishing State is that by-catch be minimised in accordance with the requirements of ecologically sound fisheries management and current international law.

It can be seen that there are many interests associated with the specific issue in the negotiation. A good negotiator will be able to identify the interests underlying the positions that are taken on the issue, and will be able to join the other negotiator in jointly fashioning a solution to the problems or conflicts posed by the different dimensions of the issue.

**Positions**

A position is a preference for a specific result with respect to an issue. Positions can be changed more easily than interests. Positions are expressed by a negotiating entity in the course of the negotiations. Positions are expressed at the start of the negotiations and are altered by the process of bargaining. A good negotiator seeks to go beyond the positions expressed by a party so as to identify the underlying interests driving the position.

**Bargaining power**

Bargaining power in the context of negotiations has a number of sources. First and foremost, bargaining power is shaped by a State’s share of market power and production capacity with respect to the subject-matter of the negotiation. The strength of the EU and Japan in negotiations is based on this fact. A country with a large domestic market to which other countries want access is in a position to make credible threats (as well as credible promises of payment and technical assistance). The capacity to make credible threats is a critical determinant of a negotiation.

A second source of bargaining power is what might be termed the ability to gather and effectively use commercial intelligence through ‘commercial intelligence networks’. These are networks that gather, distribute and analyze information relating to trade, economic and business performance for both companies and countries. A State which has good networks is effective and powerful in negotiations. Included in such networks are the bureaucracy, business organizations and associations and individual corporations. The more integrated commercial networks are in terms of information sharing and analysis the more effective the country is in negotiations. All the leading DWFS have progressively developed sophisticated networks. China is relatively new to distant-water fishing but also has a very powerful commercial intelligence network. A third source of bargaining power is the capacity of a State to enroll other actors, both state and non-state, in a coalition (enrolment power) supporting its interests. A fourth source of bargaining power is a State’s domestic institutions. Internal decisionmaking rules and rules on the delegation of negotiating authority to a negotiator affect the degree of bargaining power a State possesses.

A State that binds its negotiators may, for example, in some negotiating contexts increase its bargaining strength. The negotiators cannot concede and this may produce a better outcome than untying the hands of the negotiators.
Of these sources of bargaining power, the two of most importance are market power, which underpins the capacity to make credible threats, and commercial intelligence networks. Whilst many Coastal States cannot immediately counter-balance the market power and industrial capacity factor, they can improve their bargaining power through improved commercial intelligence, better preparation and improved table skills.

**Negotiations strategy**

A negotiations strategy is a plan setting out decisions or actions that can be taken to achieve a negotiations goal. A negotiations strategy sets out a broad framework within which negotiation experts choose particular tactics or actions that they will take to achieve the defined goals or objectives for the negotiation. Negotiation experts implement strategies to achieve negotiation goals or objectives. They may do so within the framework of a formal negotiations policy or an ad-hoc one. The kinds of questions that a negotiations strategy addresses include:

- should I change my acceptance region?
- should I attack all dimensions of an issue as a whole package or settle them one by one? If handled one by one, what should the sequence be?
- should I solve the easy one first or the difficult one first?
- on which dimensions should I remain firm and on which should I be more flexible? Could I use a linkage strategy among the dimensions of an issue?
- what kind of pace should I have in making concessions?
- how open should I be?
- should my initial position or location within the issue space be reasonable or should it be extreme, allowing me greater latitude for adjustments?

The responses to these questions can be ad-hoc and unplanned. It could be said that there is no strategy where responses are ad-hoc. Strategy can be planned to a significant degree on the basis of significant preparation. A negotiator constructs a strategy on the basis of a number of factors:

- their overall goals;
- analysis of the issues in the negotiation as well as its context;
- their self-assessment of their own personal negotiation style;
- an assessment of the possible strategies and needs of the access demandeur.

A well-organised GNT will have institutional arrangements which allow its members to refer back to previous negotiations as they plan for future ones. Using this kind of historical memory negotiators may decide to keep the same strategy, shift to another strategy selected from recorded strategies, or design a new strategy to suit the circumstances.

**Rules of negotiation**

The term rules of negotiation describes the rules that govern negotiations. There is no authoritative source of negotiation rules. However, the rules recognised by the parties to a negotiation play an extremely important role in the negotiation process. The nature of rules can differ widely depending on the parties, and what aspects they seek to regulate. As a result, negotiation rules are too diverse to be comprehensively listed in this Manual. Although it is unwieldy to discuss all possible rules of negotiation, it is nevertheless possible to partition these rules into several major categories. These categories are concerned with time constraints, rules governing communication; rules of behaviour (such as for example negotiating in good faith) and rules for intervention by third parties. In terms of context, the context of international relations, rights of sovereignty, and free market principles relating to access rights are important aspects. Some
examples of fisheries negotiations rules that have evolved over the last thirty years in international politics and international law are:

- fisheries negotiations can legitimately include non-fisheries issues such as development aid;
- third party interventions are rare – deadlocks and impasses are resolved by the parties or the need of the parties for revenue or access to fish resources;
- Coastal States are free to compete with each other or act co-operatively – countries in the South Pacific act more co-operatively than countries in the Indian Ocean or the SRFC region;
- Coastal States can play one Fishing State off against the other but must ultimately negotiate with each State in good faith.

In terms of negotiations process, the parties also set their own rules which are a mixture of international diplomatic rules and rules drawn from international business negotiations. Previous negotiations also provide precedents for later negotiations so that over time Country Y comes to conduct its negotiations with Country A in a different way from how it conducts its negotiations with Country B. One rule in the SRFC context appears to be that with the European Union, fisheries issues are closely linked with relations under Lome and Cotonou and also that the EU drafts the text of the final agreement. A new rule that appears to be emerging is that fisheries negotiations between the EU and ACP States should not take place in the absence of an assessment of the state of the stocks. In 2001, WWF published a Handbook for Negotiating Fishing Access Agreements setting out a number of principles to guide fisheries negotiations. They are a mix of rules to do with process as well as the substantive content of negotiations. They can be viewed as important rules of negotiation in the fisheries arena. The WWF Principles argue that a responsible fisheries access agreement or relationship is one in which the following phenomena can be observed:

- permitted total catch and total fishing capacity of the fleet is consistent with a sustainable level of fishing based on a clear scientific assessment of the state of the stocks;
- DWFS assume a proportionate share of the environmental costs of sustainable fishing;
- protection of interests of small-scale artisanal fishers of the Coastal State is assured;
- there is effective co-operation between the DWFS and the Coastal State in carrying out scientific research on the status of the stocks;
- DWFS undertake to collect and report catch and effort data in a timely and accurate manner;
- coastal state ensures that its MCS capabilities are adequate to enforce fisheries law and regulations;
- terms and conditions of access are based on best practice fisheries management practices;
- negotiation of terms and conditions of access is transparent;
- parties conduct a thorough review of status of fishery resources before renewal of agreements;
- flag States take action to ensure that flag vessels comply with national laws;
- flag States ensure that flag vessels are subject to prosecution and appropriate punishment under Flag State law for serious violations.

Setting Goals

It is important that at the very beginning of the negotiation process the GNT internally evaluates its goals. These goals may be both immediate and long-term. They may be specific and minor, and they may be broad and fundamental. This exercise is the first and perhaps most important step in developing the GNT’s strategy.

How do you define “Success”?

In a negotiation, it is important to decide in the beginning what the GNT is trying to achieve.

- What is your GNT trying to achieve?
- Or, what is your GNT trying to avoid?

• What does your GNT need?
  - Decide if it is complete victory, partial victory, or any progress at all.

• Break out the elements of your GNT’s ultimate goals – what “successes” are necessary to reach your GNT’s ultimate goals?

**Understanding Short-Term and Long-Term Considerations of All Parties**

Knowing how to weigh the GNT’s objectives is essential to achieving them. Once the GNT has identified its short-term and long-term needs, the GNT has to be able to balance them.

• What are the GNT’s short-term needs? What are the GNT’s long-term needs?
  - Political, economic, health, welfare, safety, other.

• How does the GNT prioritize them?

• Balancing needs: What is the GNT willing to concede in the short-term to achieve long-term goals? What goals is the GNT willing to sacrifice in the long-term to achieve the short-term objectives?

• How does the GNT’s needs match up against the prioritized needs of the other parties?

• What are the GNT’s resources and capabilities that will allow the GNT to achieve its short- or long-term objectives?

**What is non-Negotiable?**

In defining what it is the GNT wants to achieve, the GNT always must keep in mind that there are certain goals that may be considered “non-negotiable.”

• Evaluate the GNT’s short- and long-term needs and, being realistic, determine which are non-negotiable.
  - There may be a range of needs that can be grouped into different categories among those that are non-negotiable to those that your GNT would prefer not to negotiate, but will under the right circumstances.
  - The GNT may have a number of needs or goals, none of which can be categorized as breaking points. However, failure to achieve enough of these goals or needs may itself constitute a breaking point.

• Why they are “non-negotiable”?

• Has the GNT considered all other possible alternatives?

• Be open to new or creative alternatives or solutions.

**Assessing and Anticipating Goals of Other Parties**

Any analysis of your GNT’s own successes and needs must consider the strengths and goals of the other parties.

• Follow the steps above considering the other parties.

• Consider the cultural context of the other parties and how that cultural context will define how other parties view the GNT’s goals.

• Evaluate the other parties’ strengths and weaknesses as well as their perception of their strengths and weaknesses.

**Identify the Best Alternative to a Successful Negotiation**

The GNT’s best alternative to a successful negotiation sets a standard against which proposed settlements should be measured; it is more flexible than the ultimate “bottom line.”

• Define the alternatives to participating and achieving a negotiated solution.
  - It may be that it is not necessarily in your GNT’s best interest to negotiate at all, or even to reach agreement with the other parties.
- It is key that your GNT recognise that a negotiation is part of a longer process.
- Prioritize the alternatives.
- Determine the best alternatives to a successful negotiation of all other parties to determine each of the other parties' relative positions in the negotiation.

**Manage Expectations**
When setbacks take place, it is essential to have managed the expectations of the GNT that the GNT does not lose its focus.
- Identify whose expectations the GNT needs to manage (the GNT’s own, the GNT’s “government,” the GNT’s “citizens”).
  - Consider identifying spokesperson(s) within the GNT to manage the information.
- The GNT might have several spokespersons, each of whom is responsible to particular constituencies or issues.
  - Every communication should be purposeful. In some cases, it may be premature to disclose certain information. In other cases it may be important to disclose as much information as possible.
  - Consider that the other parties may disclose certain information before your GNT is prepared for its disclosure.
- Know and manage the GNT’s own emotional and intellectual expectations.

**Preparation – General Considerations**
One of the most important aspects of a successful negotiation is preparation. A negotiation can be won or lost in the preparation phase. If the GNT has already engaged in an internal evaluation of the GNT’s goals, the GNT has completed the first step in preparing for the negotiation.

**Negotiation Plan**
Designing a plan requires the GNT to consider the issues, interests and parties involved in light of the GNT’s goals, and give the GNT the opportunity to develop the GNT’s strategy based on achieving those goals.
- Address any aspect of the negotiation that could affect the GNT’s ability to achieve the GNT’s goals.
- Know and understand the issues, parties and interests involved (from the GNT’s perspective as well as the perspective of the other parties).
- The GNT’s negotiation plan should include:
  - A clear understanding of the GNT’s goals.
  - The structure of the negotiation(s) including: setting, timing and sequence.
  - Flexibility in the form of alternative plans (in the event there is a change of goals, interests, parties, circumstances, etc.).

The GNT’s negotiation plan should not be too rigid and can be subject to change up until, and even during, the negotiation itself.

**Knowing the Other Parties**
- Learn as much as the GNT can about the other parties before the negotiations commence
- Knowing the other parties includes researching the individuals, organizations and countries involved.
  - Look at each party’s history and the behaviors of the specific GNT representing the other party so that the GNT may try to anticipate their style and how they may approach the negotiation.
- Identify the objectives, priorities and goals of the other parties.
  - Financial interests, political interests, reputational interests
• Avoid making assumptions.
  - Ask the other side to identify their objectives, interests, priorities and goals.
  - Listen.
• Sometimes it may be useful for the GNT to have its own interpreter
• Assess the legal rights and positions of all parties involved.
• Evaluate the respective power, as well as the constraints of all parties.
  - Political, cultural, economic, social, intellectual.
• Understand the cultures, customs and formalities of the other parties, and the relative importance of adhering to such formalities.
  - Formalities can include when, and in what form, the GNT set out the GNT’s “demands.”
  - Formalities may include the custom of communication in negotiation.
• Know and respect the other GNT’s sensitivity points
  - The GNT may be able to get a sense of the other party’s deal breakers by forwarding an agenda in advance of the meeting for their comments. If the other GNT simply refuses to speak about certain agenda items, that is a good indication that those items are breaking points.

Where to Conduct the Negotiation
In preparing for a negotiation, the setting can make a difference.
• Geographic setting.
  - Home location vs. other parties’ location vs. neutral location – weigh the importance of having all parties feel comfortable against the advantage of gaining or losing a subtle psychological advantage (and potentially leaving the other party at a slight psychological disadvantage).
• Ask whether the location allows for the safety, security and confidentiality of all parties involved
• Accessibility.
• Remote location vs. easily accessible.
  - Does the setting allow each party the ability to confer privately in comfortable surroundings?
• Would the GNT benefit from access to external assistance, such as embassies, consulates, etc.?
• Consider whether the proposed location allows equal access to necessary resources, such as communications, as well as equal rights to travel
  - (such as visa requirements).
• Determine the most appropriate party to choose the setting.

Choosing Who Is In the Negotiation Room
• What individuals will help our GNT attain its goals and ultimately achieve success, at every phase of the negotiation?
• Evaluate the status of who should be in the room.
  - The people in the room, from both parties, should be of equal status.
  - The GNT does not want the GNT’s “decision makers” in the room if the other party’s decision makers will not be there.
• Are there other individuals the GNT should have on the GNT based on other considerations? Internal politics?
• Consider who the other side may bring to the room.
• Recognize any potential or actual personality conflicts among parties.

Attributes of good fisheries negotiators
The experienced negotiators consulted in the preparation of this Manual were all asked to suggest three principles which in their view could be set out as goals that good fisheries negotiators should aspire to.
The following principles emerged from those contributions. We commend them to users of this Manual. They are:
1. good fisheries negotiators plan and prepare carefully for all negotiations, renegotiations and reviews, however minor;
2. good fisheries negotiators develop a suite of negotiating styles and strategies and creatively adapt these to the changing situation;
3. good fisheries negotiators learn a range of bargaining techniques and apply them effectively;
4. good fisheries negotiators rehearse all their most important interventions;
5. good fisheries negotiators communicate effectively;
6. good fisheries negotiators tolerate conflict while searching for agreement;
7. good fisheries negotiators project honesty;
8. good fisheries negotiators foster team cooperation;
9. good fisheries negotiators apply sound business judgment;
10. good fisheries negotiators consider available alternatives;
11. good fisheries negotiators focus on positive tactics to resolve differences;
12. good fisheries negotiators gain the support of their stakeholders and their political superiors.

Defining Roles
The GNT needs to establish its roles and responsibilities, which may be influenced by the GNT’s goals. The following people should make up the negotiation GNT:
- Decision maker.
  - The member of the GNT who will be responsible for ensuring that the strategy is implemented and each of the other GNT members fulfill their responsibilities as planned.
- Spokesperson.
  - Generally, there should be one person delegated to speak on behalf of the GNT so as to ensure that a consistent message is being delivered and that the pre-determined negotiation strategy is preserved.
- Technical person who fully understands the key issues.
- Designated member responsible for anticipating the other GNT’s strengths and strategies Interpreter / language facilitator.
- Scribe to document everything being said and to note down any physical responses being exhibited by the various representatives of the opposing party.
- An Observer.

Choosing a Style
- Think about how and whether the GNT should adjust the GNT’s style to account for differences of culture, gender, personality, etc.
- Make a checklist of the key issues and facts involved so that in the middle of negotiations, the GNT does not lose sight of important issues on the way to achieving the GNT’s end goal.
- Consider internal factors such as: the relationships of the parties and organizational and social structure.
- Consider external factors such as: political and economic policies, the international marketplace, geographic locations, resources.
- Evaluate other considerations, including: legal factors and moral or ethical concerns.

Prioritize issues & create tradeable packages
Within the context of your goals and objectives determine the status of each issue as follows:
- “must have.” or non-negotiable issues - you cannot make concessions because of their importance to
Personal Negotiating Styles

<table>
<thead>
<tr>
<th>Accommodating</th>
<th>Competitive</th>
<th>Balanced</th>
</tr>
</thead>
<tbody>
<tr>
<td>behaves like a friend;</td>
<td>behaves like an adversary;</td>
<td>looks for solutions;</td>
</tr>
<tr>
<td>wants agreement;</td>
<td>always wants to win;</td>
<td>seeks realistic outcome;</td>
</tr>
<tr>
<td>makes concessions;</td>
<td>demands concessions;</td>
<td>Approaches concessions reasonably;</td>
</tr>
<tr>
<td>is soft on people and problems;</td>
<td>is hard on people &amp; problems;</td>
<td>is soft on people &amp; hard on problems;</td>
</tr>
<tr>
<td>trusts his/her opponent;</td>
<td>distrusts his/her opponent;</td>
<td>Can generate trust and can work without trust;</td>
</tr>
<tr>
<td>changes position easily;</td>
<td>digs in and concedes reluctantly;</td>
<td>focuses on interests not positions;</td>
</tr>
<tr>
<td>makes offers;</td>
<td>makes threats;</td>
<td>explores interests;</td>
</tr>
<tr>
<td>discloses bottom line;</td>
<td>misleads on bottom line;</td>
<td>has a reasonable bottom line;</td>
</tr>
<tr>
<td>expects and accepts loss;</td>
<td>demands gain;</td>
<td>comes up with options for mutual gain;</td>
</tr>
</tbody>
</table>

the Government position.

• issues open to concession or “give points” - issues that have relatively low importance to the Government but may be valuable to the co-contractor.

• issues to avoid during negotiations or “avoid points” - issues that you do not want to discuss during negotiations. For example, they may be controversial or are weak areas in the Government position.

• issues open to bargaining or “bargaining points.” These are issues where the Government may be willing to make meaningful concessions in return for meaningful concessions by the co-contractor.

Create packages or clusters of issues to be exchanged taking issue status into account

Develop explicit and well-costed tradeoff positions.

You should also identify several trade-off positions that you would consider accepting.

• In some situations, you can use these previously explored positions to evaluate the co-contractor’s final proposal.

• In other situations, you can use these positions to develop counteroffers and establish your negotiation limits.

Price is not the only important issue in access negotiations. In most agreement negotiations, you will also need to develop trade-off positions for several other key issues such as ecological and conservation issues.

Creating a negotiation specific playbook or strategy document

The role of the playbook has already been mentioned. Playbooks can either be general or specific to a negotiation. A negotiator may progressively compile information in one permanent notebook – this then effectively becomes a more general playbook specific to that particular negotiator. The type of information that should be included in a notebook for a specific negotiation will depend upon the type of negotiation and the preferences of the negotiator.

Some generic information includes:

• a summary of vital data & facts;

• a description of authority limits

• a description of the overall negotiation approach;

• questions to be asked of the other negotiator;

• a summary of strong points and weak points for each side;

• a description of the interests and needs of your side;

• a projection of the interests and needs of the other side;

• a comparison of which interests and needs are different, which conflict, and which are complementary;
• a list of strategies, tactics and techniques that may prove effective;
• an initial offer, demand, or position supported by reasons;
• outlines of alternative concession strategies with supporting reasons;
• objective criteria that support the various positions;
• alternative solutions including creative options that provide gains for both sides.

The content of a negotiations notebook is often an extended form of the negotiations plan that you have at the negotiating table.

A word of caution - security of written materials
Country or individual playbooks are clearly an extremely valuable asset. Maximum security will need to be maintained over such documents whether you are in your own country or a foreign one. Protocols need to be designed and implemented to ensure this. A document which is personal to a negotiator may also usefully employ code or other similar forms to protect privacy and confidentiality.

Saying no – the need to be prepared
Current ideas of national sovereignty give a country the right to say no to foreign requests. Saying no may have consequences, but as long as the country is prepared to live with those consequences it has the right to say no. There may be a number of reasons why a country may want to say no. Saying no is clearly a strategy issue and should as much as possible be related to the country's BATNA. A country saying no will have to have options and allies – in the other country, in third countries, among opinion makers, including influential NGOs. Finding allies in a bilateral dispute is clearly more of a challenge than in multilateral negotiations, but it can be done.

Managing typical problems during the preparations phase
There are a number of problems which often occur during the preparations phase. A good GNT leader tries to anticipate such problems and always has some form of contingency plan or means of quick response available to him or her. Sometimes however it is not possible to respond effectively to a problem principally because there is no time in which to do so or because the GNT leader or his or her Minister does not have enough political authority to be able to address the problem. Typical problems that arise during preparations and which can be quickly handled so that they do not derail the negotiations process can be outlined as follows:

<table>
<thead>
<tr>
<th>Problem</th>
<th>Response</th>
</tr>
</thead>
</table>
| Political superiors gives the GNT too little authority or changes authority mid-stream | • Extend pre-negotiations or fact-finding phase if possible whilst the problem is resolved  
• Have a political patron already identified who is able to make a case to political superiors  
• Adjourn negotiations |
| GNT members have inconsistent goals | • Use consensus decision-making techniques  
• Remove destabilising GNT member(s) if possible |
| GNT or political leadership lacks experience or continuity | • Consider experience and continuity when selecting GNT  
• Conduct training and education of the GNT  
• Conduct direct or indirect education of political leadership if politically feasible |
| Other work or responsibilities disrupts GNT | • More effective time management  
• Delegation of duties  
• Use a playbook approach |
<table>
<thead>
<tr>
<th>Problem</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of GNT procedure causes confusion</td>
<td>• Get ground rules and strategy in force early</td>
</tr>
<tr>
<td></td>
<td>• Conduct training</td>
</tr>
<tr>
<td></td>
<td>• Provide written procedure</td>
</tr>
<tr>
<td></td>
<td>• Rehearse relevant issues to demonstrate importance of sound GNT procedure</td>
</tr>
<tr>
<td>Fluid external environment disrupts goals or strategy</td>
<td>• Public – do public relations work</td>
</tr>
<tr>
<td></td>
<td>• Political leadership – improve communications</td>
</tr>
<tr>
<td></td>
<td>• Economic climate – improve negotiations intelligence mechanisms and economic techniques</td>
</tr>
<tr>
<td>Crisis in negotiations process suddenly occurs</td>
<td>• Utilise pre-prepared crisis communications approach</td>
</tr>
</tbody>
</table>

**Have a crisis communication plan**

Negotiations failure - deadlock, ultimatum or withdrawal - occurs from time to time. In such a case you may need to rapidly communicate with your stakeholders and the mass media. This may even include global mass media as the market in access rights is a global market. A key part of preparation is to have a basic and very simple plan ready for situations of crisis. Your crisis communication plan (CCP) may never have to be used - it is however better to be safe than sorry. Another good reason to have a basic plan is because you may need to respond rapidly to one or more of the following:

• destabilising statements made by your negotiating partner either locally or abroad;
• destabilising statements made by others in the negotiations environment (NGOs, other stakeholders).

Where you have back-to-back negotiations scheduled, rapid and truthful communication can be critical as it reassures the international market place and provides stability for other negotiations in the pipeline. Remember that the pending negotiations may well be your BATNA with respect to the negotiations which have just collapsed. A failure to rapidly communicate your version of events may cripple your ability to exercise your BATNA.

The following crisis communication guidelines are suggested:

• Identify the types of crisis that might occur
• Develop a strategy - the primary goal of this strategy should be the protection of national interests with respect to the negotiations. Having a strategy set in advance will allow for quick action, which will decrease the time the media is out looking for answers on their own and also reduces space for rumours to spread amongst your stakeholder groups. Also, when providing explanations to the media or to stakeholder groups
• Identify a single spokesperson and ensure that other personnel refrain from comment and that all enquiries are addressed by the appropriate spokesperson. Brief an alternate/additional spokesperson to deal with excessive demands for information.
• Monitor media attention - evaluate how the media is covering the crisis in order to respond appropriately.

It may even be useful to have a simple and basic plan prepared for your GNT by a professional firm.

**Judging BATNA and selecting a strategy**

**Overview**

This set of note discusses some key concepts in negotiations theory which are useful for understanding, preparing for and negotiating fisheries agreements. The concepts are:
**Distributive vs integrative bargaining**

Distributive bargaining is the name given to an approach to bargaining or negotiation that is used when the parties are trying to divide up or distribute what is available. The goal in distributive bargaining is not to ensure that both sides win, but rather that one side (your side) wins as much as it can. This generally means that the other side will lose, or at least get less than it had wanted.

### Table 4: Distributive vs Integrative Approaches

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Distributive approach</th>
<th>Integrative approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relationship</td>
<td>Temporary</td>
<td>Long-term</td>
</tr>
<tr>
<td>Consideration</td>
<td>Self</td>
<td>Both parties</td>
</tr>
<tr>
<td>Atmosphere</td>
<td>Distrust</td>
<td>Trust</td>
</tr>
<tr>
<td>Focus</td>
<td>Positions</td>
<td>Interest</td>
</tr>
<tr>
<td>Aim to gain</td>
<td>Advantage, concession</td>
<td>Fair agreement</td>
</tr>
<tr>
<td>Information</td>
<td>Concealed, power</td>
<td>Shared, open</td>
</tr>
<tr>
<td>Strategy</td>
<td>End justifies means</td>
<td>Objective and fair rules</td>
</tr>
<tr>
<td>Tactics</td>
<td>Coercion, tricks</td>
<td>Stick to principles</td>
</tr>
<tr>
<td>Outcome</td>
<td>Win-lose</td>
<td>Win-win</td>
</tr>
</tbody>
</table>

Negotiations theory contrasts distributive with integrative bargaining in which the parties are trying to make more out of what is available. The most common analogy used is that of a pie. With integrative bargaining, the parties work together to make the pie bigger, so there is enough for both of them to have as much as they want, whereas with distributive bargaining the parties focus on cutting the pie up, trying to get as much as they each can for themselves. In general, integrative bargaining tends to be more cooperative, and distributive bargaining more competitive. With distributive bargaining, common tactics include:

- trying to gain an advantage by insisting on negotiating on one’s own home ground; having more negotiators than the other side;
- using tricks and deception to try to get the other side to concede more than you concede;
- making threats or issuing ultimatums; generally trying to force the other side to give in by overpowering them or outsmarting them, not by discussing the problem as an equal (as is done in integrative bargaining).

Often these approaches to negotiation are framed as incompatible. Fisher, Ury, and Patton, authors of the negotiation best-seller Getting to Yes (1981) argue integrative bargaining is superior to distributive bargaining in most, if not all, circumstances- even in situations in which something is to be divided up. By cooperating and focusing on interests rather than positions, they argue that the pie can almost always be enlarged or some other way can be found to provide gains for all sides. Other theorists suggest this is unrealistic and does not correspond to how negotiations - and especially international negotiations - work. Conflict theorists Lax and Sebenius have suggested that most negotiation actually involves both integrative and distributive bargaining which they refer to as “creating value” and “claiming value.” Negotiators should do as much as they can to “create value;” once the pie is as big as they can make it, they should claim as much of the value they can for themselves. Knowing which approach to take when is what they refer to as the “negotiators dilemma.”

### Zone of possible agreement

Finally, a **Zone of Possible Agreement (ZOPA)** must exist. As a negotiator, you must start out by knowing what your settlement range is. The task is to discover what the ZOPA is – this means you need to discover what the settlement range of the other side is. If it overlaps with yours then there is a ZOPA and the possibility that a bargain can be struck somewhere within that ZOPA.
Because fisheries access negotiations are multi-issue negotiations there are in fact multiple ZOPAs – one for each issue. However trade-offs and bargains occur with respect to each ZOPA. Thus the access demandeur will be prepared to move upwards and pay more if he is allowed to establish a joint venture in which he has 70% control. However he will want to pay less because he wishes to establish a joint venture in which he has 70% control but the laws on joint ventures only permit 50/50 joint ventures. If, however, the Coastal State agrees to make an exception to this law and allow a 70% joint venture then the access demandeur wins and so does the Coastal State as far as the amount of the access fee is concerned.

**Agreement gap**

When the zones of acceptability do not overlap, then there is an effective agreement gap and reaching a satisfactory conclusion is unlikely.

Where this occurs, there are three possible outcomes:
- one person compromises and moves outside their zone of acceptability;
- both people compromise, giving way on things where they really did not want to concede;
- bargaining failure occurs because neither party concedes sufficiently and they depart without reaching any substantive agreement.
**BATNA/walk away**

A highly influential branch of negotiations theory based on the writings of Fisher and Ury (originally from Harvard University), who argue that an effective negotiator must have a Best Alternative to a Negotiated Agreement (BATNA). This school of thought argues that a key part of the preparations prior to beginning negotiations should be developing a BATNA to provide options during the negotiations. With this approach at the end of the preparations period, a negotiator should have:

1. a strong ability to conduct effective negotiations with the other side;
2. a well-developed ability to walk away from the negotiations with minimum regret and fear because they have an alternative.

Although a party’s BATNA may change to some degree as negotiations proceed, a negotiator is expected to use their BATNA as a reference point throughout the negotiation process. There is a large body of evidence which shows that a negotiator with a BATNA never feels cornered or under pressure to yield to pressure from the other side—this is because they already

1. know very clearly when negotiations are no longer profitable and should thus be ended;
2. what options they have once they walk away from the negotiating table.

Having a strong walk-away alternative is more than just a comfort blanket. When a person in a negotiation realizes that agreement may not be reached, they are forced to think about what they will do if the negotiation fails. If a person does not have a very good alternative then in negotiating they are driven as much fear of not reaching agreement as by the prospect of reaching a satisfactory agreement. They are therefore more prepared to accept a poor deal.

**Developing a possible BATNA**

BATNA theory argues that having a walk-away alternative or BATNA can prove to be one of a negotiator’s most powerful tools. However, the BATNA must be ready. There is no time to prepare one during actual negotiations. BATNA theory argues that preparing a BATNA is in itself a valuable exercise, as it readies the negotiator emotionally for the possibility of not reaching a satisfactory conclusion. It also prepares the negotiator for the prospect of walking away from the negotiation, and stimulates them to think about what would happen next. The steps in developing a BATNA are:

1. contemplate the possibility of being unsuccessful in the negotiation;
2. assess possible things that the country can do if the negotiation is unsuccessful. - this requires the honest assessment of a range of possibilities;
3. choose a limited set of alternatives that you would be prepared to contemplate and that is within your capacity to implement;
4. explore and prioritize amongst the alternatives - in doing this, reduce the list to a realistic few alternatives, typically one to three, that the country will have time and other resources to develop.

**Developing your BATNA/walk-away**

After a set of feasible alternatives are identified, BATNA theory suggests the negotiator/country spend some time developing the walk-away alternative(s), so as to bring them to a situation of readiness so that they can be implemented immediately if necessary. This requirement is central, given that BATNA theory states that if you do not succeed in the negotiation, you should be able to walk away to another situation which although not as good as the desired outcome, is nevertheless anticipated and perfectly acceptable.

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1. BATNA, or Best Alternative To a Negotiated Agreement (Fisher and Ury, 1981).
Strategic dilemma - using the BATNA/walk-away

Once the BATNA is developed, the next question is how the country will actually use it in practice. The most important thing to remember is that walking away is a last-ditch action and the main purpose of having a walk-away is to help keep the other person negotiating. It also defends you, preventing them from using their walk-away as a threat to gain concessions.

Question 1 - Should you hint at your BATNA during negotiations?

It is typical for poorer countries not to develop a BATNA. Very often, the other person will not know that you have such a strategy. They may well not have one themselves (many do not) and have not even thought about it. Just a hint, a small sniff, that you have an alternative to reaching agreement may well alarm them enough to consider your real offer. A way to hint is to indicate that if agreement is not reached then this is not the end of the world for you. Thus the “rather” in a following phrase- “I would rather reach agreement” - indicates to the other party that there is an acceptable alternative to agreement. ‘Rather than what?’ is the thought that such a phrase is intended to convey.

Question 2 - when do you actually show your BATNA?

If, after hinting that you have a walk-away, the other party still does not act in the way you want, BATNA theory argues that you should make the walk-away more visible. Showing that you have actually put effort into developing an alternative indicates that you are serious and are not bluffing when you hinted at alternatives. BATNA theory suggest that you show that you have a walk-away alternative in a number of smaller revealing steps, each time giving the person the chance to collaborate more and accept your offer. BATNA can be revealed in a variety of ways:

- at the negotiations conference itself;
- through mass media reports about what your country is doing with other competitors;
- through mass media and other reports demonstrating that the country has options other than those currently under negotiation.

Question 3 - when do you actually use your BATNA?

BATNA theory holds that if the other party is still not ready to negotiate collaboratively, even after you have shown that you can walk away from the table without losing too much, then you may need to show that you are prepared to do this. Do this with dignity and grace, never with anger or bad favor. Express sorrow that agreement was not reached and wish them well (they may yet call you back). Then leave. Depending on the situation, you might like to wait a few days before actually deploying your walkaway, just in case they call you back.

Relationship between reservation point and BATNA

The point at which a party chooses to exercise their BATNA is not always the same as their reservation point. It may fall below their BATNA or be above their BATNA point.

How applicable is the BATNA concept to fisheries negotiations?

Yes - this concept is highly applicable. In a broad strategic sense, the EU has recently investigated what the results of non-conclusion of fisheries agreements would be for (a) EU markets, fleets and dependent regions! (b) key partner countries. In terms of specific negotiations, most access demandeurs also estimate what their options are should an agreement not be negotiated. For Japan, the general BATNA is to source more imports. For the EU the general BATNA includes managing a period of unemployment for key fleets and heightened imports of the resources desired under a particular agreement. In the case of the EU, legislation explicitly provides compensatory money for shipowners and crew for up to two years.
whenever an agreement cannot be reached. This is the so-called principle of temporary cessation of fishing.

Are any States using the BATNA approach in fisheries negotiations?
Yes – both Japan and the EU use this approach. It would appear that Senegal, Mauritania and Morocco – North-West African States which have from time to time walked away from negotiations with the EU – use their version of BATNA to support their negotiations.

Can Coastal States use BATNA more widely in their fisheries negotiations?
Yes. They can do so. It will however require that governments consciously plan ahead and develop BATNA options.

How relevant is the distributive approach to fisheries negotiations?
This approach is extremely relevant. Indeed the distributive approach dominates fisheries agreements negotiations in the AU-MS region and the rest of the world.

How relevant is the integrative approach to fisheries negotiations?
This approach would yield better results both for the resources themselves, their habitat as well as for the people whose livelihoods are bound up with fisheries. Communities and commercial interests in Coastal States and in the home countries of access demandeurs would all benefit if more information were freely shared and options for sustainable extraction and management of resources were jointly brainstormed, modelled and explored. For instance the EU and Japan could share their extensive knowledge of the region’s resources more widely. This is not the case at present. Fisheries partnership agreements could provide a basis for more integrative negotiations. However this potential is yet to be realised.

Getting Started on the Actual Negotiation
Before The Negotiation
Early decisions, (including selecting a date and location, determining who should and will participate (on the GNT’s side and theirs), and structuring the agenda), can be as important as the negotiation itself.

This is the GNT’s first opportunity to take control and convey the important tenets of the GNT’s position.

Setting the Scene
• Physical Space/Location
  - If the GNT is in a position to select the location, invite the other party to the GNT’s home location. The GNT will have a certain “home” advantage and will be able to control many aspects of the negotiation from the beginning.
  - A neutral location is an acceptable second choice, and preferable to negotiating in the other party’s chosen location.
• If the GNT’s negotiation must be held in a neutral or adverse location, make sure the GNT is the first one to arrive.
• Setting up the space
  - Be there early. Aim to be the first to arrive. This will allow the GNT to claim ownership of the space.

Things to consider in any space:
• Are there windows in the room? If so, the GNT’s members may wish to sit with their backs to the window. In this position, the GNT will also be able to resist any outside distractions and remain focused
on the discussions).

- Inspect the chairs to make sure the GNT selects ones that are of appropriate height. The GNT’s members do not want to be sitting at a lower height than the other party.

- Seat the GNT’s members on one side of a rectangular/square/oval/circular table so that the GNT can face the other party.

Things to consider if your GNT is host: How comfortable does the GNT want the other party to be (think about whether the GNT wants to serve food or drinks and what the temperature should be).

- The GNT’s presence in the space
  - Think about the number of people in the GNT’s group and the message the quantity conveys.
  - Discuss and plan a GNT image

Greetings/Initial Impressions of the Parties

- Carefully consider the GNT’s choice of greeting.
  - Decide manner of greeting while being aware of cultural expectations.

- Does your GNT want to greet in the other parties’ cultural manner or its own?
  - Greeting in the custom of the other parties can generate good will and create an opportunity to foster a positive personal relationship.
  - Greeting in the custom of your GNT may communicate a more formal and less conciliatory tone.
  - Careful consideration should be given to all approaches, consistent with the GNT’s strategy and goals.
  - To convey confidence and serious purpose, the GNT may choose a more formal style.
  - During greetings, observe and study the other parties. Its reaction and response will provide indicia of its mood, receptiveness and expectation.

- Part of a greeting may include reminding parties of the agenda and ground rules. Your GNT is now leading the negotiation.

- Use the greeting as an opportunity to define the GNT’s issues. Alternatively, use the greeting to encourage each party to express their own goals and issues to begin the negotiations.

Starting

- Once the GNT is at the negotiation:
  - Use the GNT’s greeting (and the tone of the GNT’s greeting) to become acquainted.
  - Once the negotiation has started, be prepared to adjust if new information is presented.
  - The GNT’s spokesperson should lead the negotiation by reminding the participants of the rules and goals. By taking charge of the discussion, your GNT will maintain its control.
  - Make some strategy decisions before delving into substantive issues:

- Does the GNT want to invite the other party to talk first (so that your GNT can learn before having to present its positions)?

- Does the GNT want to start with easy issues or areas of agreement (so that the GNT will have success early on and create good momentum)?

- Does the GNT want to present its most important issues first
Starting a Negotiation

| Option 1 | • negotiate the issues of greatest importance first, then go on to address the secondary issues;  
| | • once you begin discussing issues of secondary importance, you can attempt to trade these secondary issues for the more important unresolved issues. |
| Option 2 | • negotiate secondary issues first, then go on to address issues of greatest importance as agreement on secondary issues often creates a climate of mutual cooperation; |
| Option 3 | • negotiate the other side’s demands first.  
| | • by first making concessions on issues important to the other side, you create a win/win environment and may be more likely to receive comparable concessions. |
| Option 4 | • negotiate your government’s demands first |

Negotiation Techniques

Gathering Information

Knowing as much as the GNT can about the other parties to the negotiation and their interests is essential to achieving a good outcome. The GNT must fully understand the GNT’s goals and interests and develop an understanding of what the other parties think the GNT’s goals and interests are.

1. Encouraging Dialogue
   • Ask open-ended questions – this encourages the other side to provide unsolicited information to you.  
   • Let the other parties speak openly  
   • Refrain from making speeches  
   • Generally avoid making non-negotiable statements.  
   • If the GNT has prepared for the negotiation, the GNT can use the pre-gathered information to ask questions both to demonstrate the GNT’s understanding of the other parties’ positions and to focus the negotiations.

2. Active Listening
   • Focus on the speaker and what is being said.  
   • Respond to the speaker’s views; do not rely exclusively on prepared remarks.  
   • Use body language to encourage the speaker and signal interest. Examples include leaning into the speaker, nodding and occasionally orally expressing understanding.  
   • Do not interrupt, let the speaker finish.  
   • Ask questions to confirm the GNT’s understanding.  
   • summarize what the speaker said to demonstrate the GNT understood.

3. Eye Contact
   • Maintain eye contact with the other parties as it shows the GNT is paying attention and listening to them. Caution - be aware of cultural differences in which eye contact may be inappropriate or may even send the wrong message.

4. Using Silence
   • The GNT does not speak just to fill an uncomfortable silence. Silence is not a bad thing – if used properly it can encourage other parties to talk in an unguarded manner.
**Communicating With Your GNT: Signals and Other Strategies**

If the GNT chooses carefully who is in the room and have designed the GNT’s negotiation plan, the need for signaling the GNT’s GNT members during the negotiations should be minimal.

- Don’t use overt signals.
- Remember that all communications made during the negotiations, will have an effect on the negotiations, and could affect, positively or negatively, the GNT’s position or the GNT’s credibility.
- The GNT’s GNT leader should appear to be in control of the GNT’s GNT’s negotiations at all times and should strive to maintain the credibility and value of all GNT members.
Using Time Effectively

• Know your GNT's priorities and focus on those within the time constraints of the negotiations. Be realistic about the time needed to accomplish your GNT's goals.
• Your GNT must also know if any party is under any time constraints that will affect their negotiation strategy or position.
• If a quick resolution is important to another party, your GNT may be able to gain concessions by acknowledging this pressure and quickly making concessions in non-essential areas.

Redirecting the Topic

• Redirecting the topic can be used to effectively focus the discussion away from a problem area to one that can more easily be resolved in the negotiation.
  - Doing so will permit the GNT and the other parties to focus on and resolve the easier topics before taking on the more difficult ones.
  - This technique builds the momentum, trust and confidence necessary to resolve the difficult issues.
• Redirecting the topic can also shift the discussion away from a problem area to one of strength.
  - Remember that it is always easier to negotiate from a position of strength than weakness.

Using Breaks

A break can be used to ease tension in the room. Breaks can also be used to re-focus your GNT and review and incorporate any new information your GNT has learned during the negotiations into your GNT's overall strategy.
• Caution should be used when suggesting or taking breaks as they can interfere with the dialogue that is taking place between the parties.
• Parties may use breaks to refocus their strategy.
• When restarting after a break, a useful technique is to summarize where the negotiations were before the break.

Changing the Players

It may be beneficial or even necessary for the parties to change the members of their negotiating GNTs during the negotiations.

Your GNT may also want to change the roles of your GNT's members in the negotiation. Doing so can permit your GNT to bring a new perspective and voice to the table which could alter the dynamic in your GNT's favor.
• Having a new GNT member take the lead on a particular topic can be a planned strategy that can be effective in either emphasizing or deemphasizing the importance of a particular topic in the negotiations.
• A decision to change roles can also be made when the negotiations stall on a topic.
• The change can reinvigorate the discussion or change the focus enough to permit the parties to reach a resolution.
• Making a change that was not planned in your GNT's initial strategy is a drastic step and should be well thought out and discussed with all members of the GNT's GNT. But, if the negotiations have stalled, then such a change may be necessary to keep the dialogue moving to resolution.

Content and process observers

A very powerful technique in negotiations is having one or more people who sit in the negotiations and observe the other side. The large GNTs from China, Taiwan, Korea and Japan that Coastal States face in negotiations have people well trained as process observers. The process observer is your agent for
assessing what actually goes on during the negotiations. The process observer is also crucial to your GNT’s ability to conduct a sound evaluation of its performance after each bargaining round. This role is thus an extremely important one and should not be entrusted to junior officials. It requires close attention, practice and training. To improve the performance of their process observers it is suggested that GNT leaders should consciously address and practice aspects of table procedure relating to process observation. Clear guidelines must be given to the process observer and also to members of the GNT. The table aspects include:

- where the observer will sit;
- how the observer will signal to others;
- how and in what format the observer will take notes whilst observing;
- how the observer will intervene – most importantly, to get the lead negotiator or GNT leader to call a break or a caucus;
- how the process observer can provide feedback during a bargaining session.

Issues the process observer looks out for include:

- atmosphere - is it tense? relaxed? which issues generated excitement?
- energy level - is it high? low? excited? exhausted?
- control - how much control over was there? how was it exercised? who lost control?
- quality of interaction - how well did the participants listen to each other? speak to each other? did conflict arise? how was it handled?
- clarity - did people understand each other? was there any confusion?
- questions - what questions came up? What were they about?

Thus as part of the preparation process, it is necessary for the process observer to:

- have a clear understanding of the team’s strategy;
- be able to anticipate the strategy of the other side;
- be informed as to the key points they must be alert to.
- be provided with a clear procedure with respect to their seating, signalling, and modes of feedback.

Annex ? provides an example of what a process observation sheet looks like. Countries which do not currently use process observers should strongly consider using them. Content observers are the same as process – they just keep track of content and record what the substantive issues that are addressed during the negotiations (offers, counter-offers, agreements, items that are not agreed on etc.). Annex ? provides an example of an offer and counteroffer sheet that can be used by a content observer.

**Concluding and evaluating the Negotiation**

Confirm Mutual Understanding of Established Successes

At the end of each negotiation session, it is imperative that the parties confirm each and every significant agreement reached. In this regard the parties should:

- Seek verbal confirmation on every significant agreement.
- Stay calm during this confirmation period and be reassuring to the other party.
- Honour the commitments your GNT’s made during the negotiation session and expect the other parties to do the same.
**Closing signals**
The closing of a negotiation needs to be handled carefully. There are a number of signs that indicate that the opportunity for closing negotiations is approaching. These include:

- the difference in the position of the two parties has narrowed significantly;
- objections and counter arguments are less frequent and intense;
- the other side indicate they would like to see a draft final agreement.

In complex negotiations it is often necessary to wait before making a final commitment. This allows both sides the opportunity to reflect, to gain perspective on the whole proposal, and to decide whether they are genuinely happy with the terms set out. In complex agreements the pause required between agreeing in principle and formalizing the agreement is also due to the need for other stakeholders to evaluate and endorse the agreement.

**Timing your closing request**
The time to seek closure is when the bargaining phase is effectively over. A good preliminary tactic is to request a short adjournment. This enables you to take a few minutes to gather your thoughts and consult with your team in caucus. Experienced negotiators will develop their own approach to actually asking for commitment from the other side, and this approach should be adapted to each specific negotiation. Useful transition phrases include:

- ‘That was an excellent point - I think in light of that we have the basis for agreement’;
- ‘I think we’ve made a lot of progress today, and I would like to table this draft agreement’.

**Techniques for closing**
There are many techniques for moving from the Settlement phase of negotiations into the closing phase. A few of these techniques are discussed below. The important point about all of these techniques is that they require a good sense of timing, and require rehearsal in order to be effective. The techniques are:

- the concession close;
- the conditional close;
- the balance-sheet close;
- the alternative close;
- the adjournment close;
- the trial close.

Both the concession and conditional techniques are “opportunistic” in the sense that they are a tool to be used when an opportunity presents itself. The other two approaches are more elaborate, and require more detailed planning, and more time in terms of actual execution.

**Concession close**
The concession close offers the other side a particularly important item that they have requested up until that point. It is important that you make it clear that you expect they will agree to close the deal, in return for the substantial concession. The concession close is also sometimes referred to as a trade-off close. The concession close will come easily to a team which is:

- well prepared;
- working to a concession plan;
- keeping good records of the progress of the meeting;
- reviewing progress regularly in caucus as well as during the meeting itself;
- holding a number of concessions important to the other side in reserve.
Knowing what is in your concession “bank” is easy to determine if you have a concession plan. A good process observer would also have used caucus sessions to keep firm track of the concessions process.

**The conditional close**
In a conditional close, when a substantial objection or issue arises, one party indicates they will respond positively to that issue as a pre-condition to closing the deal. It is important that the conditional close ‘option’ is presented in a manner which does not sound like an ultimatum - as this may alienate the other party.

**The balance-sheet close**
This approach works by appearing to take an outwardly fair and balanced approach. It is designed to shape the other party’s thinking by appearing to be objective in the way that it balances or weighs up the positives and negatives of the proposed agreement. This type of close works particularly well if throughout the negotiation, one or both of the parties have been compiling an ongoing summary of points of agreement and disagreement. The approach has a number of elements, and must be practised to be successfully used, given it involves a fine balance between focusing on the positive, and focusing on the negative aspects of the agreement. A good negotiator who often utilises this approach will soon develop a sense of the right time at which to employ it. Its elements are:

- summarise what you see as the key points in what has been agreed so far;
- list the benefits gained by the other side as well as the areas where their objectives have not been achieved;
- before presenting these results to the other side, make sure that the positives/benefits outweigh the negatives by a clear margin. It may even help to write things out in balance sheet form;
- suggest that on this balanced basis it is best to close the deal now.

**The alternative close**
The alternative close is another option which requires preparation. It works by offering the other side more than one clearly defined alternative. The number of alternative offered should be very few – limiting the alternatives to two or three is often sufficient. The alternatives presented must also, to some extent, attempt to match the thinking of the other side. Sound preparation before the negotiations and good modelling of the position of the other side makes this close quite easy to achieve. Practicing this kind of close within the caucus session is also possible; and it is particularly wise to earlier practise it during preparations.

**The psychological overload close**
This approach works by waiting until the other side is approaching physical and/or emotional overload, or only has a part of its rational mind on the issues. At such a time, they may not be thinking very clearly, and may well agree to close negotiations in order to take some of the pressure off their minds. This is a closing procedure often used in multilateral negotiations.

**The adjournment close**
This type of close gives your co-contractor time to think. It may also be tied to a deadline. Because it gives time to think, it is not wise to use it with most of the other closing procedures. Given favourable conditions, it may however work effectively with the balance-sheet close or the alternative close. The adjournment close is best used in the following circumstances:

- when the other side is not prepared to immediately close the deal – their behaviour, or pressure from external political or economic events indicate that this is the situation;
• when a relationship with the other side is important to you, and pressuring them into making a wrong decision could affect overall long-term relations.

**Suppress the urge to publicly celebrate or blame**

When a final agreement has been reached, there are still a couple of matters that require attention. The first matter is the need to actively manage both sides’ feelings. Experienced negotiators emphasise that it is not a good idea to openly celebrate. It is far better to make the other side feel that they have come out of the negotiations with the best deal that they could have possibly secured. This will help to create maximum stability in the new agreement; whereas celebrating wildly could lead the other side to doubt the strength of deal agreed to. Additionally, by disguising private feelings of elation you will pave the way for easier passage of any future negotiations with that particular set of co-contractors.

Additionally, it is a good idea to assess your GNT’s performance following the conclusion of an agreement. Assessing performance should be done in a structured way, and in particular should not lead to the singling out of individual GNT members, or public rebuking over perceived errors that they may have made in private. A private discussion with them, however, positively counselling them on how to avoid repeating such mistakes in the future may prove worthwhile. Such a conversation should be conducted in the context of an overall evaluation of the negotiation. As shown immediately below, every country benefits from having a structured methodology and set of questions for undertaking evaluations in a professional way.

**Post-Negotiations Analysis**

A post-negotiation analysis (PNA) is a semi-formal structured discussion following a Negotiations Conference. It may also have a much more formal element in which presentations or reports to political superiors might be required. PNAs are sometimes called debriefings. A PNA should be structured such that it fully covers what was intended to happen, what was actually accomplished, what mistakes were made, what lessons were learned, and how participation in upcoming negotiations might be improved in future. PNA discussions may be recorded in a variety of ways as a form of reference for future use. At least a one page written report should be produced. PNAs are excellent learning tools and help to instill an information-sharing culture. They are also a key aspect of institutionalisation as they promote continuity within the organisation. PNAs should not be highly detailed or seek to cover everything that happened in the negotiation. They should cover key elements only. Process observers and their reports are indispensable to conducting PNA. Annex ? provides an example of a post negotiation analysis worksheet.
PART 3 - SELECTING AND ORIENTING THE GOVERNMENT NEGOTIATING TEAM

The GNT
The GNT is the principal instrument for realisation of national fisheries access objectives. It must have a sound composition. Technical as well as strategic elements must all be fully addressed. Members must fully understand the objectives of the specific negotiation but also of negotiations in the fisheries arena in general. Negotiations can also drain energy both physically and spiritually. Members of the GNT should thus also be psychologically prepared and physically able to withstand intense periods of stress. There must also be adequate preparation and orientation through pre-negotiation rehearsal of bargaining strategies and tactics. These issues are discussed in more detail by this Chapter. We begin the discussion by addressing some general and strategic considerations.

The ideal negotiator – benchmark and reference point
It has been suggested that the GNT should have most of the characteristics of the ideal negotiator. In reality the ideal negotiator does not exist. Even so, the concept of the ideal negotiator is a good benchmark or reference point in thinking about how you would compose your GNT. An ideal negotiator has at least the following qualities. It should be noted that some of them are mutually contradictory:

• high levels of self confidence, self-esteem and aspiration;
• an ability to resist persuasion;
• an extremely well-developed ability to tolerate situations of ambiguity;
• an extremely well-developed ability to make decisions at high speed in situations of ambiguity;
• high levels of creativity, inventiveness and lateral thinking ability resulting in immediately implementable practical outcomes;
• a high degree of awareness/attentiveness to others (this is evidenced for example by extremely well-developed observational and listening skills);
• superior communication ability;
• a superior level of attention to detail;
• a superior ability to see ahead and plan strategically;
• an excellent reputation;
• high levels of tolerance for frustration;
• large amounts of patience;
• significant experience in negotiations and a high level of formal training.

Strategic considerations in selecting the government GNT
In deciding the composition and size of a GNT the following questions should be considered:

• what is the significance of the negotiation?
• should the negotiation be contracted out to highly skilled private negotiating firms or should it be done internally?
• what are the advantages or disadvantages of one person only; a duo or a GNT?
• to what extent will on-the-spot authority be required?
• is it necessary for your side to provide evidence of power and authority?
• how many people will the other party bring to the negotiation
• what should we be looking for in the personalities of the persons selected?
• to what extent is technical expertise crucial?
• are third parties likely to become involved in the negotiation at some stage?
• should the negotiation be used as an opportunity to train junior negotiators and build up national
fisheries negotiation capacity and experience?
• is there a need to limit possibilities for corruption by for example varying negotiators?
• is GNT composition to be used as a bargaining tactic?

The Solo Negotiator
There are advantages and disadvantages to using a single negotiator rather than a GNT of negotiators. The choice between individual negotiator and GNT negotiations should be periodically reviewed. Some experts suggest this should be done before every negotiation, whilst others believe a periodic review is good enough.

Table 5: The Solo Negotiator

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• vests responsibility in one person preventing divided opinion.</td>
<td>• may be used to signify that the negotiation is not considered important.</td>
</tr>
<tr>
<td>• can make on-the-spot decisions to gain concessions.</td>
<td>• requires learning all aspects of case (legal, technical, etc.)</td>
</tr>
<tr>
<td></td>
<td>• can have back-up GNT but communication and co-ordination costs are high</td>
</tr>
<tr>
<td></td>
<td>• Highly open to corruption</td>
</tr>
<tr>
<td></td>
<td>• The important roles of process observer and recorder of negotiation minutes are likely to be ignored</td>
</tr>
</tbody>
</table>

Using a GNT
Nowadays most important international negotiations, whether political, trade or commercial are carried out by a GNT. The advantages are significant given that very few people can be master of all the many relevant areas of expertise. As the value and complexity of the transaction increases the tendency is for GNT size to get larger. The negative trade-off is problems with GNT management and co-ordination.

Table 6: GNTs

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• provides wide expertise, skills; better fact-finding.</td>
<td>• danger of disagreement amongst GNT members</td>
</tr>
<tr>
<td>• allows pooled judgment in decision-making, idea-generating.</td>
<td>• GNT control during negotiations becomes more difficult;</td>
</tr>
<tr>
<td>• presents larger opposition (for political, PR, surprise).</td>
<td>• GNT communications become more complex;</td>
</tr>
<tr>
<td>• allows larger participation (e.g. useful for training).</td>
<td>• personnel cost associated with the negotiation increases</td>
</tr>
<tr>
<td>• allows use of sub-GNTs to concentrate on specific issues.</td>
<td></td>
</tr>
</tbody>
</table>

The problems of GNT co-ordination are usually overcome by appointing a lead negotiator, and giving each GNT member a specific role or function to perform. A high degree of management and co-ordination prevents the other side from seeking advantage by either:
• creating divided opinion in other party's GNT;
• aiming questions at the weakest member;
• asking for everyone's opinion;
• getting members of the GNT to talk out of turn or to vent their emotions.

Although GNTs are a good approach a smaller GNT is normally better unless the additional member(s) can make an effective contribution.

Using GNT Size and Composition as a Tactic
It is well known that some countries use GNT size as a tactic, bringing large and sometimes intimidating GNTs to the table. African negotiators should not feel pressurized by this tactic. Sound preparation more than matches any impressions of power and competence that a large GNT provides. GNT composition
can also be used as a tactical weapon. With this approach, the GNT can be consciously composed of people who are seen as hard-liners or soft-liners on the issues at stake.

**Composition and Roles of GNT members.**
The table below identifies common roles in negotiations and potential GNT members to fill those roles.

**Table 7: GNT Composition**

<table>
<thead>
<tr>
<th>GNT Role</th>
<th>Potential GNT Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>GNT leader</td>
<td>Likely to be government official but can be subcontracted outsider or specialist or academic</td>
</tr>
<tr>
<td>Technical analysts</td>
<td>Government ministries; NGOs; contracted personnel from overseas; from fisheries sector; from international organisation; industry sector</td>
</tr>
<tr>
<td>Fisheries; environment; trade; conservation; marine biodiversity</td>
<td></td>
</tr>
<tr>
<td>Price and monetary issues analyst</td>
<td>Contracted personnel from overseas; economists; international NGOs; industry sector</td>
</tr>
<tr>
<td>Management of implementation aspects; monitoring, evaluation aspects agreement</td>
<td>Officer in charge of implementing the agreement (usually from Fisheries and/or Treasury)</td>
</tr>
<tr>
<td>Process observer</td>
<td>This role can be taken by an expert or by a trained technical analyst</td>
</tr>
<tr>
<td>Recorder of negotiation proceedings/Content observer</td>
<td>This role can be taken by an expert or by a trained technical analyst</td>
</tr>
<tr>
<td>Legal issues and drafting specialist</td>
<td>Specialised legal staff if available</td>
</tr>
</tbody>
</table>

**GNT leader vs principal negotiator**

In all negotiations the GNT leader is the person with official political authority to negotiate for the Coastal State. The principal negotiator is the person who represents the government during negotiations and does most of the bargaining. The GNT leader is usually the principal negotiator. However, the GNT leader may delegate the principal negotiator role to others. This is particularly appropriate where the situation requires presentation of issues by an expert. Switching GNT leaders may also be used as a tactic to destabilise the opposition or purely to give one GNT leader a rest. A change from a hard-liner to a soft-liner or vice versa is likely to be read as a tactical move. Provided all members of the GNT have had sound training in negotiation it may sometimes be useful to change tactics so that, for example, a fisheries scientist might negotiate technical issues (e.g., catch rates and establishment of a set of marine protected areas) while a price analyst negotiates access fee rates. When using this approach the GNT leader must be particularly vigilant to assure that the various negotiators share information and work toward the same objectives.

**Other GNT members**

Individuals should only be selected for GNT membership when they can add to the efficiency and effectiveness of the GNT. Individuals should not be added to a GNT purely to reward them with foreign travel or because of their personal relationship to people of importance.

**The process observer**

The process observer is your GNT’s window on what actually goes on within the bargaining process. The process observer is also crucial to your GNT’s ability to conduct a sound evaluation of its performance after each bargaining round. This role is thus an extremely important one and should not be entrusted to junior officials. It requires close attention, practice and training. To improve the performance of their process observers it is suggested that Coastal State GNT leaders should consciously address and practice these aspects of table procedure relating to process observation. Clear guidelines must be given to the process observer and also to members of the GNT. The table aspects include:

* where the observer will sit;
• how the observer will signal;
• how the observer will take notes whilst observing;
• how the observer will intervene – principally to get the lead negotiator or GNT leader to call a break or a caucus;
• how the process observer can provide feedback during a bargaining session.

Issues the process observer looks out for include:
• atmosphere—tense? relaxed? what issues generated excitement?
• energy level—high? low? excited? exhausted?
• control - how much control over GNTs was there? how was it exercised? who lost control?
• quality of interaction—how well did the participants listen to each other? speak to each other? did conflict arise? how was it handled?
• clarity—did people understand each other? was there any confusion?
• questions— what questions arose re: process or content?

Countries which do not currently use process observers should also consider using them. Chapter ?? discusses the role of the process observer in more detail. Sample process observation sheets are also provided together with worked examples.

**Expert support external to the GNT**

This type of support is generally only needed in the period before the differences/similarities between Government and co-contractor positions are clearly defined. After this phase of the preparations process, expert support should only be introduced into the rest of the preparations or the Negotiations Conference itself if it is fully integrated into the GNT. Support which is not fully integrated into the GNT often acts as a destabiliser and may actually be detrimental to the negotiation. This is because such experts are not fully part of the GNT and find it difficult to make the concessions that may be required to achieve final agreement especially where such concessions relate to their specific areas of expertise. They may be so convinced that their relatively narrow position is correct that they may consciously or unconsciously sabotage efforts at compromise. Even so, it should be remembered that highly expert support may be needed throughout negotiations which are complex or highly technical. Clear protocols setting out the roles and limitations of non-integrated expert support are necessary when such support is relied upon periodically throughout a negotiation.

**Playbooks**

A playbook is a document which sets out a preferred approach to negotiations. It can be used by a State or a company. Playbooks set out
• a range of likely positions;
• supporting rationales for these positions;
• acceptable alternatives to the preferred positions at the heart of the book.

Playbooks are written and tested by experienced negotiators and combines their experience with what is known about the country’s needs and preferences. Playbooks are best used as a support tool when resources are stretched and there is little GNT continuity. By using playbooks (these always include detailed checklists and forms) a country or company with limited resources can empower negotiators with talking points and fall back positions to rely upon in negotiations. Good playbooks address points which are most often raised as well as points on which the country or company is willing to compromise. One individual or a GNT with a good playbook may be able do quite well in relatively simple negotiations even though they
are not highly prepared. Playbooks are recommended for countries which have a significant problem with GNT continuity. Playbooks do however have to be updated periodically. Commercial negotiation firms can assist with the generation of playbooks. Categories of information that may be found in playbooks include:

- customs and traditions of negotiations in your country and other countries you deal with frequently.
- procedures and rules that affect negotiations.
- basic elements of strategy, tactics, and technique.
- legal and ethical standards that affect negotiations.
- objective factors and criteria to be used to evaluate issues.
- alternative options that have been employed by that country in the past to resolve other negotiations.
- innovative, creative proposals that you have used in the past.
- characteristics and preferences of other negotiators.

**Orienting the GNT**

A key orientation principle is that every member of the GNT should take part fully in preparations. This can be achieved through regular scheduled meetings and other forms of best practice in the management of GNTs. During preparations, the GNT leader should encourage debate, so that diverse views are heard. As much as possible the GNT should also have a mixture of personalities and styles in the group. It is also useful to arrange for the GNT to be briefed by relevant experts and stakeholders such as NGOs. Finally at the orientation stage it is important to identify members of the GNT who are likely to be destabilisers. Destabilisers may need to be replaced or kept under control. This should be done in such a way that they can still contribute constructive ideas to the work of the GNT. Drafting a negotiations plan together is also a good way of orienting the government GNT. Contents may vary but the negotiations plan should include information such as the following:

- background (e.g., agreement; co-contractor, and negotiation situation);
- major and minor negotiation issues and objectives (both price and non-price);
- negotiation priorities and positions on key issues (including minimum, objective, and maximum positions on price);
- negotiations approach.

It is possible to use the negotiations plan as part of the orientation process as follows:

- present the plan to the GNT.
- encourage input from others on the GNT to identify weaknesses and alternatives - you should give special attention to input from those with more experience in negotiations with the same co-contractor.
- revise the plan as necessary.
- define the role each GNT member will play in putting the plan into action.
- Role-play or rehearse relevant parts of the plan.

**Rehearsals**

It is emphasized throughout this Manual that rehearsals are crucial to success in negotiations. Skilled negotiators prepare not only what they are going to say, but also how they are going to say it, and rehearse a number of options. This not only develops their competence, but also considerably enhances their confidence in managing the overall process. Rehearsals are crucial during preparations and also have a role during bargaining especially with respect to effective closing. (See Part III). Rehearsals can usefully cover both issues of content and process. With respect to process, rehearsal of these areas pays real dividends:

- questioning;
- listening;
- closing;
• making and tracking concessions;
• the use of tactics;
• integrating the process observer into the work of the negotiating GNT
• the different bargaining phases
• transition between the different phases
• comparing distributive with integrative approaches

**Projecting the access demandeur’s road map**
The GNT also needs to try and identify the road-map that is likely to be used by the access demandeur. This can be done as a completely separate exercise before or after you have prepared your own road-map or can be undertaken at the same time as the GNT is preparing its own road-map. The questions that require answers are:

1. What objectives and priorities has the access demandeur probably established for the negotiation?
2. How will the access demandeur’s general business objectives and priorities affect the negotiation?
3. How will the individual objectives and priorities of the access demandeur’s negotiator affect negotiations?
4. What negotiation styles and tactics will the access demandeur’s negotiator probably use?
5. What pressures and constraints will affect the access demandeur’s approach to the negotiations?

**Information sources**
Information on the access demandeur’s likely road map will come from a wide variety of sources. Collecting such information, analysing it and presenting it in a useful format creates what can be called negotiations intelligence a sub-set of commercial, economic or business intelligence. Information sources include:

• any proposals or requests made with respect to that specific negotiation as previous proposals and agreements may provide an idea about how flexible the co-contractor is during negotiations;
• previous PNA prepared as part of debriefings following negotiations with the same co-contractor or a co-contractor with a similar profile or set of needs
• economic or national origin profiles may provide helpful information on where and how the access demandeur is likely to be flexible in negotiations and where and how the access demandeur is likely to be firm
• Administrators, negotiators, and other Government employees who have had previous dealings with the access demandeur can provide information on strategy, style and the approach taken by individual negotiators;
• Information from pre-negotiation exchange sessions may also provide information on flexibility/firmness;
• Other information from your files may indicate how proposals compare with actual performance. For example, during previous negotiations, the access demandeur may constantly have pointed out the high risk for it of performing certain activities under the agreement. Assessing how this issue has been dealt with in practice in the past will help gauge whether the issues raised by the access demandeur are genuine or not. This is particularly the case for long-running obligations to do with investment in joint ventures and similar issues.

Other rules of thumb are that:
• a well supported proposal suggests that the access demandeur expects to negotiate an agreement close to the figures and issues set out in the proposal and has done their homework;
• minimally supported proposals may indicate that the access demandeur is not firmly committed to
negotiating an agreement and may be testing the water or may be engaged in some other type of strategic exercise;
• a poorly supported proposal may mean that extensive negotiations will be required to attain a good result for your side.

Guidelines for leading a negotiating team
From the negotiation conference's outset, the team must function as a single entity. This requires preparation before the negotiation conference, and active leadership throughout the negotiation conference. The team leader must assume leadership responsibility during the negotiation conference even if they are not the team leader at other times. This includes:
• opening the negotiation conference;
• actively leading the team throughout the conference;
• controlling team member participation;
• reviewing facts and identifying negotiation issues;
• bargaining on the issues;
• reaching agreements on the issues;
• closing the bargaining round.

Before every negotiation session, the team leader must ensure that all necessary preparations are complete. In particular, the team leader should ensure that the meeting room is properly set up and that team members are available and prepared to perform their assigned roles in implementing the negotiation plan.

Controlling team member participation
The team leader must exercise the positive control necessary to ensure effective communications, while presenting a unified position to the other government's negotiating team. This is why rehearsals are so crucial. The team leader is authorized to give other team members the floor and must do so when appropriate.

Control involves having a number of practiced methods for interrupting any team member engaged in an uncontrolled discussion with the other side. Control also involves not permitting side conversations between either your own team members or between them and the other government team. The noise from side conversations interferes with the negotiation exchange. There is also a good chance that the team member involved could say things that appear to conflict with your Government's position. Team leaders can for example rehearse and be prepared to use stock phrases like:

«I’m going to interrupt you because I think we’re getting off the track» or
«I’m a little unclear on this point myself, and I’d like to discuss this privately with the team before we continue.»
Part 4 - Generating Usable Negotiations Intelligence

The Role of Negotiations Intelligence
Access negotiations are a highly specialised type of decision-making. This is because negotiators have to take their decisions under the following conditions:
• information uncertainty;
• time pressure and stress;
• ambiguity;
• situations which encourage the use of deception and other tricky tactics. The more distributive the negotiation, the more likely that one or more of the above constraints strongly affects the situation. It is clear then that to be successful in negotiations you need more than good strategy and style. You also need sound, timely and well analysed information about the substantive issues – access fees, costs of fishing, environmental issues, tariff barriers etc.

Because of this requirement it can be argued that the role played by information during the negotiations process makes it a form of intelligence. The definition of intelligence that we are using here that it is information that has been (1) specially prepared for the unique circumstances of a negotiation or set of negotiations; (2) evaluated for credibility; (3) enriched by attention to context; (4) made more valuable due to its insights and/or foresight. Viewed this way negotiations intelligence is a subset of that field of intelligence called business intelligence, competitive intelligence or commercial and economic intelligence. In this Chapter, we focus on how to provide the GNT with useful negotiations intelligence. We address the issue of generating usable negotiations intelligence from two overlapping perspectives.

Box ? Exercise - The relationship between data, information and intelligence
Look closely at the questions set out below and reflect on the questions immediately below
• who is fishing?
• where – in the EEZ? Adjacent?
• what are they fishing with?
• how does the who and where of fishing relate to what is authorised?
• what does the fishing gear catch and how much of the fish does it catch?
• how much by-catch is taken and how much is discarded? (at sea; on land?)
• what relationship does actual catch have with what is authorised?
• where is the catch landed and/or transshipped?
• what is landed/transshipped and how does this relate to what is authorised?
• how much is the fish sold for?
• to whom is the fish sold and with what final destination?
• how do commercial returns affect fishing effort and resource yield?
• to what extent are any stages of the fishing process subsidised and/or overcapitalised?
• do you have real-time data on any of these questions?
• is near real-time data good enough?
• do you have historical information on fishing patterns and practices?

Negotiations Intelligence – some fisheries examples
Sound negotiations intelligence does the following:
• it identifies the factors at play
• it estimates how various actions may affect outcomes
• it suggests what to do to meet your agenda
It can also be divided into various categories – Strategic intelligence (SI); Warning intelligence (WI); Current intelligence (CI); Estimative intelligence (EI); Negotiations Conference Intelligence (NCI); and Tactical intelligence (TI).

### Examples of fisheries negotiations intelligence

<table>
<thead>
<tr>
<th>Intelligence type</th>
<th>Explanation and fisheries sector examples</th>
</tr>
</thead>
</table>
| Strategic intelligence (SI)| - Explanation - SI is geared to the bigger picture.  
                           - Fisheries context - Infofish international is an example of a publication which directly provides SI or would be used to produce an SI document |
| Warning intelligence (WI)  | - Explanation - WI sounds an alarm or carries urgency, and implies the need for a quick policy action in response  
                           - Fisheries context - WI might be found in or based on discussions in Infofish International or reports carried in any of the other Globefish publications profiled in this Chapter |
| Current intelligence (CI)  | - CI - addresses day-to-day events and informs decision makers of new developments so they can assess the significance of such developments  
                           - Fisheries context - CI is provided by or can be generated from all publications profiled in this Chapter |
| Estimative intelligence (EI)| - Explanation - EI deals with what might be or what might happen; it may help policymaker’s fill in gaps between available facts, or assess the range and likelihood of possible outcomes in a given scenario  
                           - Fisheries context - EI is unlikely to be provided directly by any of the publications listed on this page. Negotiators will need to develop their own EI |
| Negotiations Conference Intelligence (NCI)| - Negotiations Conference Intelligence is produced in a tailored, focused, and timely manner to support a particular negotiations conference or event  
                           - Fisheries context – NCI is unlikely to be provided directly by any of the publications listed on this page. Negotiators will need to develop their own NCI based on their own knowledge, other sources of information/intelligence/insights and the raw data or information provided in these publications |
| Tactical Intelligence      | - Tactical intelligence provides information about players and decision makers and what tactics they are likely to use in a negotiations process or during a Conference  
                           - Fisheries example – TI is unlikely to be provided by any of these publications. TI would be provided by PNA of previous negotiations, discussion with others who have negotiated with your opponent before etc. |

### Generating usable negotiations intelligence – some pointers

Given the above background, how then should the GNT go about generating usable negotiations intelligence? The task can be undertaken at two levels: (1) to meet short-term impending negotiations; (2) to build up a longer term capacity. We provide some comments about longer term capacity first.

### Developing longer term capacity

This involves the following activities:

- establish your own information repository – it does not matter if it is small;
- maintain and steadily increase your own information repository;
- gain and maintain access to other information repositories;
- collect information;
- analyse that information;
- produce analytical outputs that can be used by negotiators.
Organise an intelligence audit
An intelligence audit is an examination of an organization’s current level of intelligence activities with the objective of improving those operations in order to gain, and maintain, competitive advantage. It involves:

- identifying those people engaged in relevant activities;
- locating relevant collections of information;
- locating relevant human sources of knowledge;
- establishing a set of key intelligence topics around which repositories will be.

Longer term capacity will clearly be helped by undertaking an intelligence audit. This should look closely at how you currently organise your intelligence gathering processes and how it should be possible to improve them in association with other government departments, embassies in the capitals of the key access demandeurs, outside institutions like the Universities and also the key international NGOs like IUCN and WWF. The process may even be contracted out in part to a private consulting firm or individual knowledgeable in fisheries policy and fisheries negotiations to design the outlines of a long-term capacity framework.

Create action-oriented repositories and a current awareness information system
Negotiations require two types of support. Action-oriented immediately usable support and more basic research support. It is the action-oriented support which is of most interest. You should have a small but up-to-date repository of key information – in contrast to a library it should act as a directory, not a repository. It should contain the following:

- industry directories;
- professional association membership lists;
- hard copies of emailed newsletters from FAO; Globefish; CTA;
- brochures from international fisheries trade fairs etc.
- a collection of relevant trade literature;
- co-contractor, competitor, market, and country files;
- seminar and conference brochures;
- seminar and conference reports;
- lists of Internet sources;
- a Thesaurus;
- a glossary of terms;
- how to negotiate guides and books
- guides to negotiating with other cultures

A librarian or information collection management person should be able to help design such a small repository. It does not have to be more than a couple of filing cabinets. It may also be a small room with a table and a white board. A few relevant maps are also useful. A current awareness system makes you aware of what is being done in the fisheries world through (1) documents & database records (notes, abstracts, clippings, email, and database records); (2) oral briefings (such as face-to-face or telephone conversations).

Preparing for specific negotiations
For the more immediate needs of negotiations occurring in the next few months, the tasks are simple:

1. identify your intelligence needs.
2. gather the information.
3. analyse the information.
4. act based on your analysis.
The key in defining your needs is to define or establish the key negotiations topics (KNTs). It is these which then drive your key intelligence questions (KIQs). Answers to these questions provide you with the negotiations intelligence that you require. Annex I to the Manual has worksheets which illustrate some useful KNTs and KIQs.

Acquiring information and building profiles
Acquiring information for a specific negotiation or more generally to build up your intelligence capacity should be a structured process. It probably requires a minimal collection plan especially for key opponents. To provide some structure, you can think about the arenas for collection as follows:

1. internal information arena
2. external information arena
3. internal knowledge arena
4. external knowledge arena

Internal information arena covers all the formal and informal records that are likely provide you with information from within either your Ministry, your department or the government system as a whole. External information arena covers sources of information like libraries, journals, the Internet, Databases and other sources of information. Internal knowledge refers to the experience that is present within the GNT, the Ministry or department. This is not information that is written down or recorded but comes from the experience, education, training and knowledge of people with respect to your specific negotiation, negotiations with a particular country or negotiations in general. To tap into internal knowledge requires contacts, conversations, discussion, briefings and other types of meeting. The final collection arena is that of external knowledge – embassies, trade attaches, businesses experienced in dealing with your co-contractor fishing companies themselves etc.

You should also progressively prepare profile documents for the key countries, companies and personalities you deal with.
PART 5 – MANAGING BARGAINING FAILURE

Introduction
Negotiations fail for a variety of reasons. The common reasons relate to misunderstandings, or the parties not working well together. Sometimes one side may even generate a bargaining failure so they can exit from the negotiation to pursue a better opportunity. Sometimes deadlocks occur because the wrong people are at the negotiating table - there may be too many people for productive discussion, or the people there may lack authority or the necessary technical knowledge. There are also situations where there is a genuine and extensive agreement gap (see section 3.26). In such a case even though the parties are working well together (in other words process is fine) negotiations will still deadlock over content - the parties simply cannot find a mutually acceptable solution. The result is then a deadlock; a unilateral walkout or a mutually agreed termination of the negotiations. Ultimatums – a demand that particular actions be undertaken by a deadline – often also accompany various forms of impasse.

In the fisheries sector, bargaining failure can have major consequences for all interests whether they are associated with the access demandeur or the Coastal State. This is principally because marine fishing as a form of production based on natural conditions (including seasons) is a time-dependent activity. A failure to gain timely access to fishing grounds can thus be economically disastrous for fishing fleets. Difficulty in securing access fees can also be economically disastrous to countries where revenue from fishing is a large part of the national budget. This Chapter discusses the typical causes of bargaining failure and explores some methods for resolving different types of bargaining failure. It has a close relationship with the Chapter on tactics and communications during bargaining.

Walkouts
Your opponent may walk out quietly or dramatically at any time. A walkout may be a genuine expression of your opponent’s inability or unwillingness to negotiate further, or may be just a tactic to try and scare you into a major concession. In either case you have two choices: offer a concession to encourage the other side to return, or do nothing and hope your opponent comes back.

Terminating negotiations as part of strategy
From a strategic point of view there are two types of termination. Type 1 is based on a good faith use of your BATNA and is acceptable and is even to be encouraged after all options have been explored in the Negotiations Conference. Type 2 is a bad faith use of your right to exercise your alternatives.

Termination based on a BATNA assessment
Earlier discussion emphasized the concept of BATNA. Your BATNA or walkaway option is to be exercised once the negotiations appear to be reaching a point where staying in the negotiations appears to be worse than the alternatives you have available to you. In such a case your self-interest requires that you walk away from the negotiation unless the other party drastically improves their offer to you. BATNA may lead to a walkout after a situation of deadlock, but part of the BATNA approach is also being prepared to come back to negotiations if the other party decides to move in the direction that you desire. A BATNA driven walkout is thus a soft rather than a hard form of deadlock.

Opportunistic terminations
This other type is not ethical – here, one party walks out of the negotiation without exploring options with the other party, merely because a better opportunity has suddenly presented itself. Such bad faith termination of agreements is rare but should still be reckoned with. Although the emergence of a new
opportunity presents a better alternative than the negotiations the party is currently involved in, it is good practice to honestly table the new information and see whether the current negotiations partner is willing to make a better offer.

**Deadlocks**

A negotiation is «deadlocked» when there is no reasonable expectation that the gap between the parties can be bridged. There are a number of steps that can be taken to try and bridge the gap. They include:

- trying to find agreements in principle;
- brainstorming through small expert groups or other subcommittees;
- informal sessions between lead negotiators – a “walk in the woods”
- Minister to Minister meetings;
- adjourning but not ending the negotiating session and reconvening at the later date;
- bringing in other parties;
- developing new information independently or jointly;
- changing venue, including moving to a more informal setting;
- coercion;
- package deals;
- changing team members, leaders or teams;
- change of procedure;
- third party intervention;
- splitting the difference;
- terminating the negotiation permanently after a number of options have been tried.
### Annex 1 – General Preparations Checklist

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>EXPLANATION</th>
</tr>
</thead>
</table>
| A. Set the scene for the preparation phase | • establish communications with top levels of government;  
• identify communication channels to use throughout negotiation process;  
• determine needs and goals of top government level;  
• begin internal negotiations to influence goals and strategies;  
• determine limits of team’s authority;  
• lower top government level’s expectations;  
• establish team operating procedures;  
• determine timeline for preparation phase taking into account:  
  • relevant bargaining deadlines;  
  • availability of personnel for team and other support requirements;  
  • availability of resources to support the team. |
| B. Developing the team | • select team members;  
• determine limits of team’s authority;  
• establish communications within team;  
• conduct team-building exercises;  
• educate team members about different styles of thinking;  
• determine each member’s strengths and roles;  
• train team in negotiation process;  
• lower expectations of team members;  
• balance stabilizers and destabilize;  
• assign preparation phase tasks to each member. |
| C. Gathering information and identifying data needs | • gather information for your side’s position;  
• gather information for the other side’s position;  
• identify external consultants and resources;  
• identify members of other team and determine;  
• their relationship with the top levels of their government or company as appropriate;  
• the needs of the opposing government or company as appropriate. |
| D. Analyse past negotiations and implementation of past agreements | • review past negotiations of both teams;  
• assess past negotiations asking:  
  1. did the team achieve what it sought?  
  2. what procedures did it use  
  3. what were strengths and weaknesses of past negotiations? |
| E. Assess implementation of past agreements, asking: | • what items were difficult for you to comply with?  
• what items were difficult for the other side to comply with? |
| F. Identify and prioritise issues in current negotiation | • determine negotiable and non-negotiable items;  
• determine items that can be given up or "thrown away;  
• determine likely sticking points or areas of difficulty. |
| G. Identify all interested and affected parties | • perform consultation activities;  
• perform public relations activities;  
• educate key parties about negotiation process and team goals;  
• educate key parties about anticipated difficulties and thereby lower expectations;  
• educate key parties and thereby lower possibilities of surprises and sabotage. |
| H. Prepare a basic flexible table strategy | Issues to be covered include:  
• how to open;  
• the order in which you will address issues;  
• how to close;  
• what information will be sought by you;  
• what information will be given by you;  
• what information will be withheld by you;  
• how you will present the information you give;  
• how you will ask for the information you want;  
• what concessions you will make;  
• what concessions you will seek;  
• when and how to make or seek these concessions;  
• what tactics you will use. |
Annex 2 - Sample basic negotiation plan

1. **Agenda**
   - what issues do you plan to discuss and in what order;
   - what issues do you anticipate the other party may want to discuss?

2. **Objectives, interests, positions**
   - your Side;
   - the other party’s;

3. **Strengths and weaknesses**
   - strengths and weaknesses of your position, including key elements of your BATNA;
   - strengths and weaknesses of the other party’s position including your assessment of their BATNA;

4. **Information**
   - what information do you need to learn during the negotiation?
   - what information do you want to reveal during the negotiation?
   - what information do you want to hide during the negotiation?

5. **Strategy**
   - which strategy will you adopt at first (competitive, cooperative)?
   - what tactics do you plan to use to execute your initial strategy?
   - what will you do if the initial strategy does not work?
   - how will you decide it is not working?

6. **Bargaining range**
   - your minimum acceptable settlement package & supporting rationale;
   - your target/aspiration package & supporting rationale;
   - your opening position with rationale/justification;
   - your estimate of the other party’s opening position - rationale/justification;

7. **Questioning plan**

8. **Concession strategy**
   - what concessions can you afford to give away?
   - what must you not give away?
   - key elements of strategy 1;
   - key elements of strategy 2;
   - what concession strategy will you use?
   - how will you switch concession strategies if Strategy 1 is not working?
   - how will you respond to unethical tactics/surprise;

A Basic Plan should be approximately 2-4 pages of typed text.
### Annex 3 - Comprehensively Evaluating a Fisheries Negotiations Process – Some Magic Questions

#### Facet 1: Preparation

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>1.</td>
<td>Is there a detailed plan or other document that establishes the desired objectives of the negotiation? Can this document provide a basis for monitoring negotiating performance?</td>
</tr>
<tr>
<td>2.</td>
<td>Have appropriate tools (for example sensitivity analysis) been used to test financial and economic data and projections. Are the parameters and risks that the negotiating GNT is using acceptable, realistic, and manageable?</td>
</tr>
<tr>
<td>3.</td>
<td>Are sufficient resources (funding, people, equipment) available to achieve the negotiating objectives and fulfill terms of negotiated agreements?</td>
</tr>
<tr>
<td>4.</td>
<td>Are you or your negotiating GNT clear on interim and final negotiating objectives? Do you understand the longer-term implications of possible outcomes?</td>
</tr>
<tr>
<td>5.</td>
<td>Is the timeframe for the negotiations established? Are time pressures and deadlines that constrain all parties understood, acceptable, or flexible or is there an over-pressuring and over-urgent timetable?</td>
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</table>

#### Facet 2: Relationships

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>1.</td>
<td>Does the other party have sufficient power to impose constraints on you? Are perceptions of the distribution of power distorted? Is there potential to bluff or be bluffed in this regard?</td>
</tr>
<tr>
<td>2.</td>
<td>Do you know who or what is the main competition or obstacle to securing a agreement? Do you know how to tackle identified obstacles? Have you assessed the pros and cons of your proposals versus those that can be offered by competitors?</td>
</tr>
<tr>
<td>3.</td>
<td>Have you taken a close look at the track record and current business performance (financial and market perceptions) of other parties? Is there the possibility of a wider or longer-term relationship?</td>
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<tr>
<td>4.</td>
<td>Do you understand the needs and aspirations of the other parties from this negotiation? Do you understand their culture and can you empathize with their position? How do they fit with yours?</td>
</tr>
<tr>
<td>5.</td>
<td>Have you negotiated successfully with the other parties before? Do the other parties favor cooperative or combative negotiating styles?</td>
</tr>
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#### Facet 3: Options for Strategies and Tactics

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>1.</td>
<td>How certain are you of assumptions and perceptions about the other parties? Do they have a track record or reputation for being fair or underhanded? Do you know what tactics to expect and how to counter them?</td>
</tr>
<tr>
<td>2.</td>
<td>Do you have a strategy for presenting your proposals in the best possible light and convince the other parties to accept your terms? Have you considered how the other party will counter your tactics?</td>
</tr>
<tr>
<td>3.</td>
<td>Have you established what strategic questions need to be asked and at what stage of the negotiations? How do you plan to gain insight into the other parties’ true positions and expose any bluffs?</td>
</tr>
<tr>
<td>4.</td>
<td>Is a win-win approach feasible? Can you increase the size of the benefits for more than one of the parties by cooperative negotiations and extending the scope of issues currently on the table?</td>
</tr>
<tr>
<td>5.</td>
<td>Are you aware of negotiating tactics that have worked well for you or other parties in similar negotiating positions? Have you considered how likely counter-tactics can be manipulated to your advantage?</td>
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</table>

#### Facet 4: Documentation and Legal Text

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<tbody>
<tr>
<td>1.</td>
<td>Have agenda been prepared and reviewed by all parties prior to negotiating meetings? Have you or the other parties taken the initiative in preparing the agenda?</td>
</tr>
<tr>
<td>2.</td>
<td>Do you have detailed minutes of meetings for the current negotiation, file notes on research of the other parties, and accessible files on previous relevant negotiations? Are they in usable formats?</td>
</tr>
<tr>
<td>3.</td>
<td>Are you able to take the initiative in drafting clauses and agreements related to agreements agreed verbally? Do you, or your GNT, have experience that is relevant to agreements in this field?</td>
</tr>
<tr>
<td>4.</td>
<td>Have you considered key clauses, related to technical, commercial, operational and possible disputes for inclusion? Do you have wording for those clauses available?</td>
</tr>
<tr>
<td>5.</td>
<td>Does the legal GNT advising you or drafting the agreements have technical, commercial, and operational experience in the field of this negotiation?</td>
</tr>
</tbody>
</table>
| Facet 5 Understanding Goals and Risks | 1. Do you know why you are negotiating this agreement in terms of your strategies? Have other options been explored in detail?  
2. Do you have an adequate technical understanding of the issues being negotiated? Can you call on quality technical expertise that can offer objective advice?  
3. Are technical GNT members and advisors fully briefed on the objectives and primed not to reveal valuable information to the other party during negotiation meetings?  
4. Do the technical members of the GNT agree on the technical issues and risks? Have risks been evaluated objectively and economic and financial projections been properly adjusted for risk?  
5. Are the risks associated with this agreement manageable? If high, how can they be reduced? |
| --- | --- |
| Facet 6 Alternatives & Options | 1. Have attempts been made to apply lateral thinking or formal problem-solving techniques to establish alternative solutions to the agreement being negotiated?  
2. Have related benefits that might evolve from this agreement been identified or discussed? Are there synergies that may be exploited?  
3. Can this agreement or parts of it be linked to existing agreements or with potential future agreements in order to add value and lead to a larger overall agreement?  
4. Will the outcome of this agreement influence your organization’s experience or reputation and help it to secure future agreements of a similar type?  
5. Have you considered or discussed with the other parties future agreements related to other assets or geographic areas where they have more experience? |
| Facet 7 GNT work & Support | 1. Is your GNT’s morale high? Do the members of the GNT work well together and communicate with each other constructively providing valuable feedback? Are they praised for their efforts as well as for results?  
2. Is your GNT creative, positive, optimistic, and dynamic in its outlook? Is it open to new ideas and keen to embrace change? Is the reward system geared to encourage this and benefit those that create solutions and add value?  
3. Are clear roles established within your GNT? Do members accept their roles? Does the leader make most key decisions alone or with the support of the GNT?  
4. How well does your GNT support each other when under pressure or when things go badly? Is responsibility taken fairly for mistakes, and is there a culture of “learning from” rather than “blaming for” errors?  
5. Does your GNT benefit from strong support of your political superiors? Are political superiors fully on board with this agreement and aware of all the risks? |
| Facet 8 Inducements & Concessions | 1. Do you know what can and cannot be conceded during this negotiation? Have you ranked possible concessions in terms of value to your organization and planned an order in which to offer them?  
2. Do you know your bottom line or best alternative to this agreement? Have the consequences of failing to reach agreement, deadlocking, or delaying agreement been evaluated in financial and operational terms?  
3. Do you know and understand the financial and operational value to the other parties of the concessions and inducements you plan to offer to them? Do they differ significantly from their value to your organization?  
4. Have you considered the concessions and inducements the other parties might offer your organization? Have you evaluated their relative strategic, financial, and operational value to your organization?  
5. Have possible gain-sharing, profit-sharing, alliance, and incentive terms been evaluated? Have you considered performance penalty clauses and risk-sharing options? |
| Facet 9 Vested Interests | 1. Does your organization have specific preferences or biases in the way it likes to conduct business or negotiations? Are these beneficial or detrimental to this negotiation?  
2. Are vested interests of your organization or its directors, senior managers, or other stakeholders likely to enhance or inhibit the outcome of this specific agreement?  
3. Does your organization have an ulterior motive, or is it under pressure, to conclude this agreement quickly, even at less than the optimum terms that could be achieved?  
4. Are vested or external interests of your organization or its directors, senior managers, or other stakeholders likely to influence judgments and decisions with respect to this negotiation, either adversely or positively?  
5. Are the other parties focused on issues beyond those specifically being discussed? Will vested interests of other parties disadvantage you, or can they be manipulated to your advantage? |
<table>
<thead>
<tr>
<th>Facet 10</th>
<th>End Games/Pre-Closure Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Do you have the power to close the agreement without seeking approval from higher authority? Is internal higher authority likely to constrain your negotiating options?</td>
</tr>
<tr>
<td>2.</td>
<td>Do the negotiators of the other parties have the power to close the agreement from their side? Do you know where such power lies and the likelihood of such authority being granted without delay?</td>
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<tr>
<td>3.</td>
<td>Have similar agreements been closed cleanly and promptly with the other parties in the past? Are they known for coming back with extra demands after you think you have a done agreement?</td>
</tr>
<tr>
<td>4.</td>
<td>Have both parties addressed the immediate operational practicalities of commencing operations (e.g., permits and access to infrastructure)? Are terms agreed agreeing with grievance procedures and regular</td>
</tr>
<tr>
<td>5.</td>
<td>Are you sure the other parties can deliver what they say they can deliver? Do they have the resources, motivation, and management skills to enable the agreement to function as intended?</td>
</tr>
</tbody>
</table>
Annex 4 - Interactions between Foreign Fishing, Access Agreements and the Coastal State Economy
### Annex 5 - Assessing Coastal State Arrangements and Institutions for Managing Access Arrangements – a self-assessment questionnaire

<table>
<thead>
<tr>
<th>Issue/Theme/Task - Choice of agreement type – access agreement; joint venture; direct licensing; other? How long should these be for? How is this decided? What is the Coastal State preference? Why? What technical work or analysis underpins this decision? Any other factors?</th>
<th>Responsible organisation(s) &amp; Inter-organisational Relationships</th>
<th>Describe immediately below the current network methods/practices for implementing relevant laws, policy objectives, and desired outcomes with respect to this theme/task</th>
<th>Current Skills, Knowledge for addressing theme</th>
<th>Assessment of effectiveness</th>
<th>Assessment of effectiveness</th>
<th>Score network capacity on this item</th>
<th>Comment on skills, knowledge etc required to make Coastal State performance more effective</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Science, Economics, Modelling, Law etc.</td>
<td>Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? Is performance shaped by level of available financial and other resources? How much dependence is there on foreign partners to achieve tasks? Strengths – where possible please provide examples of critical incidents which demonstrate strengths</td>
<td>Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? Is performance shaped by level of available financial and other resources? How much dependence is there on foreign partners to achieve tasks? Weaknesses - where possible please provide examples of critical incidents which demonstrate weaknesses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Issue/Theme/Task - Establishing and managing validity and duration of fishing rights - Agreements, Protocols and Annexes

Guiding questions - How long should these be for? How is this decided? What is the African State preference? Why? What technical work or analysis underpins this decision? Any other factors?

Who makes key decisions? What factors drive these decisions? What technical work or analysis underpins activity? Are procedures ad-hoc or systematic? Is there a procedures manual?

Is it situation, context or country dependent? Is performance shaped by level of available financial and other resources? How much dependence is there on foreign partners to achieve tasks?

<table>
<thead>
<tr>
<th>Responsible organisation(s) &amp; Inter-organisational Relationships</th>
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<th>Current Skills, Knowledge for addressing theme</th>
<th>Assessment of effectiveness</th>
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<tr>
<td></td>
<td></td>
<td>Science Economics Modelling Simulation Law Etc.</td>
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### Issue/Theme/Task
Establishing and managing validity and duration of fishing rights – Licences - Guiding questions - How long should these be for? How is this decided? What is the African State preference? Why? What technical work or analysis underpins this decision? Any other factors?

<table>
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<tr>
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African Union - Inter-African Bureau for Animal Resources
**Issue/Theme/Task** - Managing the fishing capacity of the foreign fleet - Fishing fleet elements – size; no of vessels; fishing capacity


| Responsible organisation(s) & Inter-organisational Relationships | Describe immediately below the current network methods/practices for implementing relevant laws, policy objectives, and desired outcomes with respect to this theme/task | Current Skills, Knowledge for addressing theme Science Economics Modelling Simulation Law Etc. | Assessment of effectiveness Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? Is performance shaped by level of available financial and other resources How much dependence is there on foreign partners to achieve tasks? Strengths – where possible please provide examples of critical incidents which demonstrate strengths | Assessment of effectiveness Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? Is performance shaped by level of available financial and other resources How much dependence is there on foreign partners to achieve tasks? Weaknesses - where possible please provide examples of critical incidents which demonstrate weaknesses | Score network capacity on this item | Comment on skills, knowledge etc required to make Coastal State performance more effective |
**Issue/Theme/Task** - Transhipment controls - Who makes key decisions? What factors drive these decisions? What technical work or analysis underpins activity? Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? How much dependence is there on foreign partners to achieve tasks? Who monitors and verifies compliance? How? With what? When? How often? What follow up is there?

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<thead>
<tr>
<th><strong>Issue/Theme/Task</strong> - Joint Committee with foreign partner - How does this work? Strengths? Weaknesses? Critical or important incidents</th>
<th><strong>How managed? How are decisions made? What is the impact of decisions on the agreement itself?</strong></th>
</tr>
</thead>
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<td><strong>Responsible organisation(s) &amp; Inter-organisational Relationships</strong></td>
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</table>
## Issue/Theme/Task - Determination of access fees - How does this work? Strengths Weaknesses - Critical or important incidents - How managed

| Responsible organisation(s) & Inter-organisational Relationships | Describe immediately below the current network methods/procedures/practices for implementing relevant laws, policies objectives, and desired outcomes with respect to this theme/task | Current Skills, Knowledge for addressing theme | Assessment of effectiveness Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? How much dependence is there on foreign partners to achieve tasks? Strengths – where possible please provide examples of critical incidents which demonstrate strengths | Assessment of effectiveness Are procedures ad-hoc or systematic? Is there a procedures manual? Is it situation, context or country dependent? How much dependence is there on foreign partners to achieve tasks? Weaknesses - where possible please provide examples of critical incidents which demonstrate weaknesses | Score network capacity on this item | Comment on skills, knowledge etc required to make Coastal State performance more effective |

## Issue/Theme/Task - Technical Measures to implement responsible fishing

| Su elements | Responsible organisation(s) & Inter-organisational Relationships | Describe here current AA network methods/procedures/practices for implementing relevant laws, policies objectives, and desired outcomes with respect to this theme/task | Current Skills, Knowledge for addressing theme | Assessment of effectiveness Strengths | Assessment of effectiveness Weaknesses | Score network capacity on this item | Comment on skills, knowledge etc required to make Coastal State performance more effective |

| Biological recovery period |
| Minimum mesh size |
| Fishing zones |
| Scientific observers |
| By-catch |
### Issue / Theme / Task - Bio-diversity and ecological protection and environmental impacts of fishing on other sectors

<table>
<thead>
<tr>
<th>Su elements</th>
<th>Responsible organisation (s) &amp; Inter-organisational Relationships</th>
<th>Describe here current AA network methods/procedures/practices for implementing relevant laws, policy objectives, and desired outcomes with respect to this theme/task</th>
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<th>Assessment of effectiveness Strengths</th>
<th>Assessment of effectiveness Weaknesses</th>
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</thead>
</table>

### Issue / Theme / Task - Monitoring control and surveillance - How does this work? Strengths Weaknesses Critical or important incidents

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#### At sea position and catch reports
- Port catch reports
- VMS
- Other aspects MCS

### Issue / Theme / Task - Support for local economy

<table>
<thead>
<tr>
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<th>Responsible organisation (s) &amp; Inter-organisational Relationships</th>
<th>Describe here current AA network methods/procedures/practices for implementing relevant laws, policy objectives, and desired outcomes with respect to this theme/task</th>
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</table>

#### Port visits and Local landings
- Local crew on-board
- Use of local services
Annex 6 - The qualities of a good negotiator

It has been suggested that the GNT should have most of the characteristics of the ideal negotiator. In reality the ideal negotiator does not exist. Even so, the concept of the ideal negotiator is a good benchmark or reference point in thinking about how you would compose your GNT. An ideal negotiator has at least the following qualities. It should be noted that some of them are mutually contradictory:

- high levels of self confidence, self-esteem and aspiration;
- an ability to resist persuasion;
- an extremely well-developed ability to tolerate situations of ambiguity;
- an extremely well-developed ability to make decisions at high speed in situations of ambiguity;
- high levels of creativity, inventiveness and lateral thinking ability resulting in immediately implementable practical outcomes;
- a high degree of awareness/attentiveness to others (this is evidenced for example by extremely well-developed observational and listening skills);
- superior communication ability;
- a superior level of attention to detail;
- a superior ability to see ahead and plan strategically;
- an excellent reputation;
- high levels of tolerance for frustration;
- large amounts of patience;
- significant experience in negotiations and a high level of formal training.

Annex 9 below lists different negotiating styles in a general way. As a general principle a country wanting to achieve good results would not want to have people with accommodating styles on its GNT as they would give in easily to the other party. Where of necessity people with a significantly accommodating style are part of the GNT, you should view them as destabilisers. You should have well developed control strategies for maximising their contribution whilst minimising how they weaken your GNT. If you are an accommodator you should not be leading a GNT. Alternatively, you should have in place a range of strategies and procedures to ensure that your natural urge to accommodate does not lead to significant losses for your country.
Annex 7 - Understanding negotiating strategies & styles – an exercise

Instructions:
Review the Process observation sheets below:
- Which behaviours do you think are unproductive?
- Which negotiator do you think is likely to be more successful during negotiations and why?
- In your view, which behaviour or activity probably reflects that negotiator’s fundamental personal style, character or orientation?
- In your view, which behaviour or activity probably reflects a conscious strategy choice?
- Do you think any of these behaviours can be altered by training?
- Do you feel your mix of strategy and style is similar to any type exhibited in during these conferences?
- Create an ideal style and strategy profile for Negotiator E in the space provided at the end of the work sheet.

<table>
<thead>
<tr>
<th>Negotiations Conference X</th>
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<tbody>
<tr>
<td></td>
<td>Negotiator A</td>
</tr>
<tr>
<td></td>
<td>Style &amp; strategy profile</td>
</tr>
<tr>
<td><strong>Preparation</strong></td>
<td></td>
</tr>
<tr>
<td>Leaves things open-ended without identifying possible issues;</td>
<td>Leaves things open-ended without identifying possible issues;</td>
</tr>
<tr>
<td>Spends little time gathering information, uses what is at hand;</td>
<td>Gathers information from wide network and variety of sources;</td>
</tr>
<tr>
<td>Makes no assessment of the balance of power;</td>
<td>Assesses the balance of power;</td>
</tr>
<tr>
<td>Concentrates on narrow range of possible courses of action;</td>
<td>Considers a wide range of possible consequences or courses of action;</td>
</tr>
<tr>
<td>Focuses on a single-point for each issue;</td>
<td>Defines range of outcomes, or bargaining range, for each issue;</td>
</tr>
<tr>
<td>Bases supporting case around likely final outcome;</td>
<td>Bases supporting case around ideal position;</td>
</tr>
<tr>
<td>Gives little thought to where may get stuck, plays it by ear;</td>
<td>Anticipates where may get stuck and considers options;</td>
</tr>
<tr>
<td><strong>Opening phase</strong></td>
<td></td>
</tr>
<tr>
<td>Keeps their distance and avoids shows of personal warmth;</td>
<td>Welcomes other party in warm and friendly manner;</td>
</tr>
<tr>
<td>Does not attempt to identify every possible issue at the outset;</td>
<td>Establishes issues &amp; what is being negotiated at outset;</td>
</tr>
<tr>
<td>Flexible about the sequence in which issues are dealt with;</td>
<td>Seeks to agree a fixed agenda for dealing with issues at outset;</td>
</tr>
<tr>
<td>Favours arguments that appeal to either “head” or “heart” ;</td>
<td>Uses arguments that appeal to both “head” and “heart”;</td>
</tr>
<tr>
<td>Targets arguments on the other party, what is in it for them;</td>
<td>Concentrates on getting own position across not what is in it for other party;</td>
</tr>
<tr>
<td>Generally avoids asking questions unless really unclear;</td>
<td>Has no hesitation in asking for clarification if at all unclear;</td>
</tr>
<tr>
<td><strong>Movement to reach agreement</strong></td>
<td></td>
</tr>
<tr>
<td>Thinks personal style and behaviour of little relevance;</td>
<td>Thinks personal style and behaviour are relevant;</td>
</tr>
<tr>
<td>Tries to get exactly what wants, without making concessions;</td>
<td>Willing to concede on an issue provided there is reciprocity;</td>
</tr>
</tbody>
</table>
### Negotiations Conference X

<table>
<thead>
<tr>
<th>Negotiator A</th>
<th>Negotiator B</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Style &amp; strategy profile</strong></td>
<td><strong>Style &amp; strategy profile</strong></td>
</tr>
<tr>
<td>Likes to respond to proposal with immediate counter-proposal;</td>
<td>Likes to clarify and reflect on proposals before making counter-proposal;</td>
</tr>
<tr>
<td>If persuaded, concedes immediately and accepts lesser outcome;</td>
<td>If persuaded by an argument, reflects and takes time before responding;</td>
</tr>
<tr>
<td>Says what wants without preamble;</td>
<td>Uses behaviour labelling to indicate kind of thing going to say;</td>
</tr>
<tr>
<td>Avoids testing understanding, unless real misunderstanding;</td>
<td>Tests understanding of what the other party is saying;</td>
</tr>
<tr>
<td>Moves briskly rather than recapping throughout;</td>
<td>Summarises at regular intervals throughout;</td>
</tr>
<tr>
<td>Likes to keep feelings to self;</td>
<td>Likes to comment on feelings;</td>
</tr>
<tr>
<td>Prepared to get personal when challenged.</td>
<td>Avoids making personal attacks, even when challenged;</td>
</tr>
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#### Closure

<table>
<thead>
<tr>
<th>Negotiator A</th>
<th>Negotiator B</th>
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<tbody>
<tr>
<td>Leaves detailed record of agreed outcomes until afterwards;</td>
<td>Before finishing, agrees detailed record of outcomes;</td>
</tr>
<tr>
<td>Leaves establishment of monitoring and review procedures until afterwards;</td>
<td>Establishes procedures for monitoring and reviewing agreement;</td>
</tr>
<tr>
<td>In the end, believes what is important is getting own outcomes;</td>
<td>At end, likes to comment positively on what achieved;</td>
</tr>
<tr>
<td>If negotiations fail, sees little point in agreeing to meet again.</td>
<td>If no settlement reached, considers it important to agree to meet again.</td>
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### Process Observation Sheets

<table>
<thead>
<tr>
<th>Negotiations Conference Y</th>
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</thead>
<tbody>
<tr>
<td><strong>Negotiator C</strong></td>
</tr>
<tr>
<td><strong>Style &amp; Strategy Profile</strong></td>
</tr>
<tr>
<td><strong>Preparation</strong></td>
</tr>
<tr>
<td>Leaves things open-ended without identifying every possible issue;</td>
</tr>
<tr>
<td>Focuses mainly on own priorities, what is important to them;</td>
</tr>
<tr>
<td>Focuses on short-term issues, considers long term issues unimportant;</td>
</tr>
<tr>
<td>Considers wide range of possible consequences or actions;</td>
</tr>
<tr>
<td>Focuses on a single-point for each issue discussed;</td>
</tr>
<tr>
<td>Gives little thought to where may get stuck during the negotiations, plays it by ear and waits;</td>
</tr>
<tr>
<td>Considers either rational or emotional arguments; has an impact on outcomes;</td>
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</table>
| **Process Observation Sheets**  
<table>
<thead>
<tr>
<th><strong>Negotiations Conference Y</strong></th>
</tr>
</thead>
</table>
| **Negotiator C**  
| **Style & Strategy Profile** |
| **Negotiator D**  
<p>| <strong>Style &amp; Strategy Profile</strong> |
| <strong>Opening phase</strong> |
| Concentrates on presenting case, not establishing constructive climate; | Considers how to establish constructive climate at outset; |
| Believes in survival of the fittest and ignores any requirements to make themselves likeable to the other party; | Makes clear wants to work with other party for mutually acceptable agreement; |
| Does not attempt to identify every possible issue at the outset; | Establishes at outset what issues are what is being negotiated; |
| Seeks to agree a fixed agenda for dealing with issues at outset; | Flexible about the sequence in which issues are dealt with; |
| Willing to dominate the floor to get what wants; | Allows both parties an opportunity to present their case; |
| Concentrates on getting own position across not what is in it for the other party; | Targets arguments on the other party, what is in it for them; |
| Uses questions as opportunity to repeat own key messages; | Gives specific answers to all questions even where difficult; |
| <strong>Movement to reach agreement</strong> |
| Thinks personal style and behaviour has little impact on outcomes; | Thinks it is important to be aware of own personal style and behaviour; |
| Focuses on presenting own case more than looking for signals from other party; | On the lookout for signals showing a preparedness to move; |
| Clarifies and reflects on proposals before making counter proposals; | Responds immediately to proposals with counter-proposals; |
| Signals a preparedness to change position; | Even when prepared to change, likes to keep it to self and wait; |
| When making concessions, considers only what can give afford to give away; | When conceding considers what can afford to give and what other party wants |
| Uses behaviour labelling to indicate kind of thing going to say; | Says what wants to say without preamble – blunt and to the point; |
| Avoids personal attacks even when challenged; | Prepared to get personal when challenged; |
| Recaps or summarises at regular intervals; | Prefers to move briskly and does not recap or summarise at regular intervals; |
| <strong>Closure</strong> |
| Before finishing, agrees detailed record of outcomes; | Leaves detailed record of agreed outcomes until afterwards; |
| Sees little point summarising once agreement reached – sees this as a waste of time; | At end considers it important to give summary of how he/she sees the agreement; |
| Leaves establishment of monitoring and review procedures until afterwards; | Establishes procedures for monitoring and reviewing agreement; |
| If negotiations fail, sees little point in agreeing to meet again; | If no settlement reached, considers it important to agree to meet again; |</p>
<table>
<thead>
<tr>
<th>Process Observation Sheets</th>
<th>Negotiations Conference Y</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Negotiator C</strong></td>
<td><strong>Negotiator D</strong></td>
</tr>
<tr>
<td><em>Style &amp; Strategy Profile</em></td>
<td><em>Style &amp; Strategy Profile</em></td>
</tr>
<tr>
<td>At the end believes what is important is getting what you wanted.</td>
<td>At end, likes to comment positively on what was achieved.</td>
</tr>
</tbody>
</table>
## Negotiations Between Country X and Country Y

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Time</td>
</tr>
</tbody>
</table>

### Topics of Action

- [ ] Introduce team members
- [ ] Provide overview and discuss purpose of negotiation
- [ ] Exchange information on key interests and issues
  - Topic 1
  - Topic 2
  - Topic 3
  - Topic 4
- [ ] Have a break
- [ ] Review agreement on all key interests and issues
- [ ] Agree on detailed terms and conditions
- [ ] Agree on price
- [ ] Review and summarize meeting

### Sample Negotiations Agenda

Date Prepared: ____________________________  Lead Negotiator: ____________________________
### Annex 9 - Table setting out results of a Negotiation

| Negotiations Results Summary
| Agreement Title | Date |
| Parties Involved | Date(s) of Negotiation |
| Brief Description | Location |
| Access Fee and Other Terms Agreed to |
| Extent of difference from Original Proposal |

Date Prepared: __________________________ Lead Negotiator: __________________________
### Annex 10 - Table summarizing Offers and Counter-Offers

<table>
<thead>
<tr>
<th>DWFS</th>
<th>Coastal State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer</td>
<td>Counteroffer</td>
</tr>
<tr>
<td>Offer</td>
<td>Counteroffer</td>
</tr>
<tr>
<td>Offer</td>
<td>Counteroffer</td>
</tr>
</tbody>
</table>
### Annex 11 - Worked Example - Process Observation Sheet

<table>
<thead>
<tr>
<th>Coastal State A</th>
<th>DWFS X</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preparation</strong></td>
<td></td>
</tr>
<tr>
<td>Left things open-ended without identifying every possible issue</td>
<td>Had thought carefully about what the issues were &amp; what was being negotiated</td>
</tr>
<tr>
<td>Had spent little time gathering information, uses what is at hand</td>
<td>Gathered information from wide network and variety of sources and was fully informed of the Coastal State situation</td>
</tr>
<tr>
<td>Had made no real assessment of the balance of power</td>
<td>Assessed the balance of power</td>
</tr>
<tr>
<td>Concentrated on narrow range of possible consequences or courses of action</td>
<td>Had considered a wide range of possible consequences or courses of action</td>
</tr>
<tr>
<td>Focused on a single-point for each issue wanted to argue</td>
<td>Defined a range of outcomes, or bargaining ranges for each issue</td>
</tr>
<tr>
<td>Based supporting case around likely final outcome</td>
<td>Based supporting case around ideal position</td>
</tr>
<tr>
<td>Gave little thought to where might get stuck &amp; left matters to chance</td>
<td>Anticipated where might get stuck and considered ways to overcome any impasse</td>
</tr>
<tr>
<td><strong>Opening phase</strong></td>
<td></td>
</tr>
<tr>
<td>Welcomed other party in warm and friendly manner</td>
<td>Kept their distance and avoided shows of personal warmth</td>
</tr>
<tr>
<td>Did not attempt to identify every possible issue at the outset</td>
<td>Established at the outset what the issues were &amp; what was being negotiated</td>
</tr>
<tr>
<td>Was flexible about the sequence in which issues were dealt with and left it to DWFS to decide</td>
<td>Seeks to agree a fixed agenda for dealing with issues at outset</td>
</tr>
<tr>
<td>Favored arguments that appealed to either the “head” or to the “heart”, not both</td>
<td>Used arguments that appealed equally to both the “head” and the “heart”</td>
</tr>
<tr>
<td>Targeted arguments on what was of benefit for the other party</td>
<td>Concentrated on getting own position across not what was of benefit for other party</td>
</tr>
<tr>
<td>Generally avoided asking questions unless was really unclear as to what was going on</td>
<td>Had no hesitation in asking for clarification if at all unclear and used a large range of clarificatory questions</td>
</tr>
<tr>
<td><strong>Movement to reach agreement</strong></td>
<td></td>
</tr>
<tr>
<td>Thinks personal style and behavior has little impact on outcomes</td>
<td>Thinks it is important to be aware of own personal style and behavior</td>
</tr>
<tr>
<td>Willing to concede on an issue, providing got something that wants in return</td>
<td>Tried to get exactly what they wanted without making any concessions</td>
</tr>
<tr>
<td>Liked to respond to a proposal with an immediate counter-proposal</td>
<td>Liked to clarify and reflect on any proposal before making a counter-proposal</td>
</tr>
<tr>
<td>If persuaded, conceded immediately and accepted the lesser outcome</td>
<td>If persuaded by an argument, reflected and took time before responding</td>
</tr>
<tr>
<td>Say whatever wanted to say without preamble</td>
<td>Used behavior labeling to indicate kind of thing going to say</td>
</tr>
<tr>
<td>Avoided testing understanding, unless there was a real misunderstanding</td>
<td>Tested understanding of what the other party was saying</td>
</tr>
<tr>
<td>Moved briskly rather than recapitulating throughout</td>
<td>Summarised at regular intervals throughout</td>
</tr>
<tr>
<td>Liked to comment on feelings</td>
<td>Liked to keep feelings to self</td>
</tr>
<tr>
<td>Prepared to get personal when challenged</td>
<td>Avoided making personal attacks, even when challenged</td>
</tr>
<tr>
<td><strong>Closure</strong></td>
<td></td>
</tr>
<tr>
<td>Left detailed record of agreed outcomes until afterwards</td>
<td>Before finishing, agreed detailed record of outcomes</td>
</tr>
<tr>
<td>Left establishment of monitoring and review procedures until afterwards</td>
<td>Established procedures for monitoring and reviewing agreement</td>
</tr>
<tr>
<td>At end sought to comment positively on what was achieved</td>
<td>At the end, believed what was important was getting what they wanted</td>
</tr>
<tr>
<td>If negotiations failed saw little point in agreeing to meet again</td>
<td>If no settlement reached, considers it important to agree to meet again</td>
</tr>
</tbody>
</table>
## Annex 12 - Post negotiation analysis worksheet

<table>
<thead>
<tr>
<th>Goals</th>
<th>Did you achieve your goals in terms of content and substance?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Events and Event Flow</strong></td>
<td>• How was the time allocated?</td>
</tr>
<tr>
<td><strong>during the Negotiation</strong></td>
<td>• Offers: opening-offer and counter-offer, progression of offers?</td>
</tr>
<tr>
<td></td>
<td>• How was information exchanged?</td>
</tr>
<tr>
<td></td>
<td>• Were there pivotal turning points?</td>
</tr>
<tr>
<td><strong>Tools/Concepts</strong></td>
<td>• What tools/concepts were at play during the negotiations?</td>
</tr>
<tr>
<td></td>
<td>• Why were they used?</td>
</tr>
<tr>
<td></td>
<td>• Were they effective?</td>
</tr>
<tr>
<td></td>
<td>• Were they assembled coherently into a clear style? If not, why not?</td>
</tr>
<tr>
<td></td>
<td>• How did each side respond to the tactics used?</td>
</tr>
<tr>
<td><strong>Mistakes</strong></td>
<td>• What did you do that you wish you hadn’t done?</td>
</tr>
<tr>
<td></td>
<td>• Why?</td>
</tr>
<tr>
<td><strong>Insights</strong></td>
<td>• What did you learn about your team negotiating capacities from debriefing?</td>
</tr>
<tr>
<td></td>
<td>• What did you learn from the behaviour of the other side?</td>
</tr>
<tr>
<td></td>
<td>• What would you do the same or differently in the future, or how would you like to behave in order to perform more effectively?</td>
</tr>
</tbody>
</table>
Annex 13 - Estimating Interaction between Foreign Fleets and National/Regional Fleets

TEMPLATE 1: PROFILE OF CURRENT AGREEMENTS IN NATIONAL AND REGIONAL CONTEXT

Use one table for each Agreement (even if only 1 private vessel)

Rationale: This aspect of the preparation process analyses the importance of foreign fleets as against national fleets; also conducting this analysis in a regional context. The objective is to provide the African Coastal State with detailed and relevant information on:

1. the degree of access negotiated per fishery within the country’s EEZ;
2. the relationship of access granted, relative to shared fisheries in the sub-region;
3. the total value of access for each type of Agreement;
4. the proportion of foreign over national use;
5. the sustainability of current resource use.

Establishing basic information on access agreements

Prepare a comprehensive dossier overviewing domestic arrangements with foreign fleets (including current use patterns and information) covering:

1. all framework agreements and protocols, EU, bilateral, joint ventures, all private and temporary licences, etc in place that give access to a fishery or allocate some of its resources;
2. details of partner countries or companies, vessel types, sizes and numbers;
3. the amount and duration of access (effort, quotas or fish tonnage) granted per fishery, relevant conditions, allowed species and the fishing areas in question; and
4. the relationship of 1-3 above with fisheries exploited by national fleet(s) (numbers and types of vessels, licence fee etc. for national fleets to be specified as well).

If possible also, prepare a list from a regional point of view. This review should include (see Table 1 this Template):

- all framework agreements and protocols, EU, bilateral, joint ventures, all private and temporary licences, etc that give access to a fishery or allocate some of its resources;
- details of partner country or company, vessel types, sizes and numbers;
- the amount and duration of access (effort, quotas or fish tonnage) granted per fishery, relevant conditions, allowed species and the fishing areas in question.

<table>
<thead>
<tr>
<th>Access Agreement Name .................................</th>
<th>Information on foreign fleet in this column</th>
<th>Implications for national fleets in this column</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Duration / dates</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Country (or countries for EU) or Anonymous Company code</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fishery or Species</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Vessel type</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Average Vessel size (GRT or other, specify)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maximum number of vessels in Agreement</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Financial compensation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Vessel access fee (per GRT, Vessel, tonne, …)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Vessel fees received in year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% use of access in Agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access Agreement Name</td>
<td>Information on foreign fleet in this column</td>
<td>Implications for national fleets in this column</td>
</tr>
<tr>
<td>------------------------</td>
<td>---------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Other compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other specifications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reference of legal text basis for Agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional remarks</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicate year of data if not current; Indicate currency used and provide relevant Central Bank exchange rates per year since (choose reference date eg. 2010) If financial compensation for several fisheries together, then give total compensation and indicate in a table footnote

** indicate fee/tonne or fee/GRT, etc.

Footnotes Table 1 Insert necessary footnotes to provide further explanation
Annex 14 - Estimating Socio-Economic Impacts/Effects Of Agreements

SOCIO-ECONOMIC IMPACTS/EFFECTS OF AGREEMENTS –
Use one table for each Agreement (even if only 1 private vessel)

This aspect of preparation is intended to precisely identify:
1. economic impacts - how does the agreement (negotiated financial compensation; other aspects) contribute to fisheries development infrastructure and capital projects?
2. social impacts– how does the agreement (negotiated financial compensation; other aspects) contribute to social development?
3. fishery management impacts- how does the agreement (negotiated financial compensation; other aspects) contribute to the fisheries management framework?

<table>
<thead>
<tr>
<th>Access Agreement Name ........................................</th>
<th>Information on foreign fleet in this column</th>
<th>Implications for national fleets in this column</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Economics aspects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct financial compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital projects incl. infrastructure, vessels etc (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other support for local fisheries (if social capital indicate below)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MCS projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferential tariffs / trade measures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marketing projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health certification projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aquaculture projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-fishery related support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social aspects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for local markets and food security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for local fisheries (non capital projects)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National crew (indicate if paid by vessel-owner or Agreement)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observers (indicate if paid by vessel-owner or Agreement)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safety at sea projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for other social aspects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fisheries management aspects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support towards Fisheries Management Plan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research &amp; technology programmes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Study / training projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation in International Organisations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution to regional management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for other fisheries management aspects (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>**Total financial compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other remarks or references</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicate year of data if not current; Indicate currency used and provide relevant Central Bank exchange rates per year over Agreement duration;
** If detailed, give figures with details in footnotes; if global sum only, give % per category; one column per fishery or per vessel type