

**UNITED STATES MARINE CORPS**  
MARINE CORPS CIVIL-MILITARY OPERATIONS SCHOOL  
WEAPONS TRAINING BATTALION  
TRAINING COMMAND  
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## **STUDENT OUTLINE**

### **NEGOTIATION AND MEDIATION**

**0531-126**

**CIVIL AFFAIRS NON-COMMISSIONED OFFICER COURSE**

**M02AAPD**

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## **LEARNING OBJECTIVES**

a. **TERMINAL LEARNING OBJECTIVE**. Given a mission, interpreter support as applicable, Commander's intent, and a target audience, conduct a civil engagement, to mitigate unintended consequences, counter adversary information activities, and increase local support for friendly forces and their mission in accordance with MCRP 3-33.1H Chapter 1. (CACT-EXE-2003)

### b. **ENABLING LEARNING OBJECTIVES**

(1) Without the aid of references, define Negotiation, in accordance with MCRP 3-33.1H, Appendix E. (CACT-EXE-2003e)

(2) Without the aid of references, define Mediation, in accordance with MCRP 3-33.1H, Appendix E. (CACT-EXE-2003f)

(3) Without the aid of references, define Arbitration, in accordance with MCRP 3-33.1H, Appendix E. (CACT-EXE-2003g)

(4) Without the aid of references, define BATNA, in accordance with MCRP 3-33.1H, Appendix E. (CACT-EXE-2003h)

(5) Given a scenario, an interpreter and role players w/scripts, conduct negotiation, in accordance with the PE checklist. (CACT-EXE-2003i)

1. **CONFLICT RESOLUTION.** Being aware of different approaches and styles to conflict resolution will be helpful to CA Marines conducting civil-military operations (CMO). The three methods to resolving a conflict are: Negotiation, Mediation, and Arbitration.

2. **NEGOTIATION.** Negotiation is the process of communicating back and forth to reach joint agreement about differing needs or ideas. Negotiations aid in resolving conflicts of interest, either real or perceived, by conversations and agreements. Negotiation implies the willingness to compromise between one party's maximum goal and minimum terms of agreement.

a. **Who Negotiates?** Marines negotiate as they interact with one another and foreign nationals. CA Marines rarely negotiate major agreements between belligerents, but should have a basic understanding of the art of negotiation. Personnel conducting CMO should avoid becoming part of a negotiation between two parties (i.e., tribes, host nation, local government officials, etc.). Once a CA Marine becomes part of a negotiation, the MAGTF may no longer be seen as a disinterested party and it becomes difficult to shake any ensuing suspicion and mistrust. In the event a CA Marine stands in the role of a negotiator, the following four considerations should guide the analysis and preparation of negotiations:

- (1) Negotiations are a two-sided conversation.
- (2) Negotiation is an exercise in persuasion.
- (3) Study alternatives to negotiating an agreement.
- (4) Be attuned to cultural differences and factors.

b. **Consensus Building.** Negotiation requires the following to build consensus:

- (1) Tact
- (2) Diplomacy
- (3) Honesty
- (4) Open mindedness
- (5) Patience

- (6) Fairness
- (7) Effective communications
- (8) Cultural sensitivity
- (9) Careful planning

c. **9 Steps**. CA Marines should use these nine steps if they have to conduct a negotiation:

- (1) Establish communications.
- (2) Identify common ground on which to build meaningful dialogue.
- (3) Consider cultural aspects of negotiations.
- (4) Set clear goals and objectives.
- (5) Set a clear and reasonable code of conduct for the negotiation process.
- (6) Develop a plan and diagram and analyze the results.
- (7) Determine the composition of the negotiating forum and decision-making mechanisms.
- (8) Establish the venue (keep it neutral).
- (9) Implement.

d. **Negotiation Styles**. There are several styles that may be used in negotiations. For example refer to Thomas-Killman Conflict Mode Instrument handout that describes Avoidance, Competition, Compromising, Accommodating and Collaborating. Consider the consequences of over or under using each style. Although a style is chosen, there is no obligation to continue with it through the entire negotiation. Be prepared for the others to switch tactics. This is especially important in a military context where potentially dangerous situations may arise requiring the use of a competitive style.

e. **Negotiation Tactics**. The tactics that follow are tools for consideration. Experts encourage use of a problem solving approach leading to a "win-win" resolution.

(1) Positional (traditional) bargaining. Most negotiations either begin or end as positional bargaining. This style (win-lose or adversarial) focuses on offers and counteroffers. It is often slow, inefficient, discourages creativity, and is not suited to multiparty negotiations. An example of positional bargaining is buying a house. The owner sets a price and a buyer makes a lower offer. Offer and counteroffers are made, and if the parties do not meet somewhere in the middle, there is no deal.

(2) Planned concessions. Planned concessions is when the negotiator slowly gives up small increments, decided beforehand, so the other person believes he or she is getting a better deal (e.g., bargaining to buy a new car). Another bargaining tactic is to give up minor points to protect or disguise the major interest.

(3) Trading favors (reciprocity). This tactic is when a negotiator gives up more now to get a favor later. This is often used in long-term negotiations or relationships. The drawback of this tactic is environments and personalities may change over time causing the receiver to perceive the magnitude of the favor has diminished.

(4) Brinkmanship ("take my proposal or else"). This tactic delivers an ultimatum (very risky) and is an easy attitude if no respect exists for the other side. This tactic makes relationship building difficult. In many cultures this causes one side to lose respect or honor.

(5) Interest-based (West Point or Harvard method). Often called "win-win" negotiations. This occurs when parties reach an agreement for the mutual benefit of both parties. Neither party may get all of their requests met, but do not "leave the table empty handed."

3. **MEDIATION**. Mediation is a conflict settlement where decisions are made by the disputing parties with the assistance of a neutral third party. Mediation is normally the most effective, least divisive and preferred method of reaching agreements. During mediation, the CA Marine acts as a facilitator to guide the local parties toward an agreement that supports the mission and commander's intent.

a. **Mediation Considerations**. As mediators, CA Marines should:

(1) Assume there is some level of resistance from the involved parties.

(2) Not support the aims or goals of the disputing parties, but fully understand each side's position.

(3) Remain impartial.

(4) Anticipate participants' behavior and outline all possible outcomes should mediation fail.

(5) Provide practical assistance to all parties by passing messages, providing a hot line, or providing a safe, neutral venue for meetings or further discussion.

(6) Ensure the parties understand the meaning of agreements reached, and the resulting obligations.

(7) Identify incentives and disincentives.

(8) Identify cultural considerations along the five dimensions of operational culture.

b. **Factors**. Mediators may use the following factors to leverage the mediation process:

(1) Identify the decision makers at the negotiations.

(2) Use and exploit the media during and after the negotiations.

(3) Maintain secrecy and confidentiality.

(4) Recognize political and military parties to the negotiation.

(5) Use interpreters and translators.

#### 4. **ARBITRATION**

a. Arbitration is the conflict resolution method where a neutral party makes the final decision. There are two forms of arbitration:

(1) Binding

(2) Non-binding

b. **Requirements.** Arbitration requires the CA Marine to act as "judge," and as such, may make adverse decisions affecting one or more parties. Arbitration is normally conducted at higher levels than other forms of conflict resolution. Having the parties adhere to an arbitrator's decision may be difficult. To succeed when acting as an arbitrator, CA Marines must display:

- (1) Patience
- (2) Tenacity
- (3) Creativity
- (4) Focus
- (5) Tolerance
- (6) Innovation
- (7) Flexibility
- (8) Resourcefulness

## 5. **WEST POINT NEGOTIATION MODEL**

a. **Key Elements.** There are seven key elements of the West Point Negotiations Model. They are:

- (1) Interests
- (2) Legitimacy
- (3) Relationships
- (4) Alternatives
- (5) Options
- (6) Commitments
- (7) Communication

b. **Interests.** Interests are not positions. Interests are fundamental needs and goals. Positions are propositions to meet the goals. Focus on interests not positions.

- (1) Think about sharing your interests first.
- (2) Ask "why?" to draw out the other party's interests.
- (3) Use interests to produce options.
- (4) Look for important differences in interests to create value.

c. **Legitimacy**. Legitimacy, or fairness, is crucial to creating a lasting outcome. All parties must see the outcomes as legitimate and fair or the agreement will fall apart.

- (1) Use legitimacy as a strong point.
- (2) Use objective standards to evaluate all options.
- (3) Avoid using biased standards.
- (4) Avoid positional debates by being open to persuasion.
- (5) If you do compromise, base it on your values.

d. **Relationships**. Relationships based on rapport, trust, and mutual respect improves the likelihood of success in negotiations. The other side will be trusted more if its interactions are believed to be legitimate and honest. The opposite is also true. Negotiations will suffer if the other side is perceived as being deceitful and hostile.

- (1) Separate relationship from substance; focus on both.
- (2) Address relationship issues before other issues.
- (3) Remember, the quality of the working relationship is tied to the ability to create value.
- (4) Avoid trying to fix relationships with unacceptable concessions.

e. **Alternatives**. Alternatives, or the best alternative to a negotiated agreement (BATNA), is the course of action that will be followed if a negotiated settlement is not agreed upon. It is NOT the "bottom line". The BATNA is subject to change throughout the negotiation. Remember the other side also has a BATNA.

(1) Disclose your BATNA only if it is a strong alternative.

(2) Be wary of discussing your BATNA.

(3) Do a reality check on your BATNA.

(4) Do a reality check on their BATNA.

(5) Never agree to anything worse than your BATNA.

f. **Options**. Options are possible agreements or segments of agreements that may meet both parties' interests. Options are not offers; they are possibilities.

(1) Brainstorm multiple options.

(2) Link options to specific interests.

(3) Base best options on mutual gains for both sides.

(4) If an impasse occurs, return to the underlying interests.

g. **Commitments**. Commitments are actual agreements or decisions and are clear offers or promises.

(1) Consider your BATNA before committing to anything.

(2) Make all commitments clear, concise, and realistic.

(3) If reasonable commitments are not possible, consider ongoing process commitments.

h. **Communication**. Communication should mean trading information and discussing interests and procedures.

(1) Focus on two-way communication.

(2) Negotiate the process first (i.e., set an agenda, clarify goals).

(3) Listen first, speak second.

(4) Frequently, summarize your understanding of what they are saying.

- (5) Explain your thoughts and what they are based on.
- (6) Account for cultural differences.

i. **Tactical Approach to the West Point Style of Negotiations.** Use the following tactical approaches when negotiating:

- (1) Separate the people from the problem.
- (2) Focus on interests, not positions.
- (3) Legitimize the other parties' interests.
- (4) State your interests and clarify the other participants' interests.
- (5) Determine if there is a problem you both can solve.
- (6) Agree on the problem.
- (7) Discuss possible concrete but flexible solutions.
- (8) Don't forget that interests and positions are often influenced by relationships.
- (9) Invent options for mutual gain.
- (10) Insist on using objective criteria.

j. **What is winning?** In negotiations a good outcome is defined as an agreement that does the following:

- (1) Satisfies our interests.
- (2) Satisfies their interests, at least acceptable to them.
- (3) Satisfies others' interests, at least tolerably.
- (4) Is better than our (BATNA).
- (5) Is a concise, no-waste solution among the best of many options.
- (6) Is legitimate for all; no one feels cheated. The outcome seems appropriate and justifiable for all.

(7) Includes well-planned, realistic, operational, and durable commitments.

(8) Results from a process that helps build good relationships.

(9) Results from a process that is efficient and is a product of effective communication.

k. **Avoiding Pitfalls.** There is not a right way to negotiate, but there are clear pitfalls to avoid, such as:

(1) Not considering cultural tendencies.

(2) Making threats, especially if they cannot be followed up.

(3) Making demands; do not demand concessions to maintain relationships.

(4) Demanding victory in a contest of wills.

(5) Creating a win-lose situation.

l. **Seven Phases of Negotiations.** In the West Point Model there are the seven phases of negotiation: Planning and fact-finding, opening, discussion, proposal, bargaining, closing, and follow-up.

(1) Planning and fact-finding phase. This phase includes information and fact-finding about the other side. Identify all issues, including all issues that could arise for both sides during negotiations. Adopt a win-win, interest-based approach. Prioritize the issues for both sides. This is an estimate of the other side's priorities. Think about the other side's needs. Establish a zone of possible agreement (ZOPA) such as:

(a) The agreement wanted under ideal conditions.

(b) The agreement really wanted.

(c) The agreement that is acceptable.

(d) The point negotiations should no longer continue (i.e., the "walk away point").

(e) The point they will likely no longer continue negotiations (i.e., their "walk away point").

(2) Opening phase. Provides an opportunity to influence the direction the negotiation goes and helps gain control of the discussion. Use simple language that ask lots of questions, then listen carefully.

(a) Use polite titles, such as mayor, governor, or doctor.

(b) Remember, dignity, honor, and reputation are critical in many cultures.

(c) Avoid anything that may embarrass the other participant. Not knowing the answer to a question or criticism is often taken to be destructive and humiliating.

(d) Do not compromise values or be passive.

(3) Discussion phase. This phase allows each side to present its case without interruption or prejudice. This phase requires that good, perceptive questions are asked to understand the other party's position and interests. Create options and brainstorm. Listen patiently!

(4) Proposal phase. Allow the other side to make offers/proposals first, assessing their strength and challenging their position, if necessary. If they present a position (a want) ask them why they think that position is the answer. "Why" questions can help determine their true interests. Base proposals on objective criteria such as standards (e.g., customary tribal law, international law, how a nearby village or tribe handled a similar situation, or standard practices).

(5) Bargaining phase. Consider the other side's main objectives and if they can be surmounted. Invent options for mutual gain resulting in a win-win outcome. Consider the following actions when negotiating:

(a) Focus on common interests.

(b) Focus on the process.

(c) Brainstorm and consider different options.

(d) Elicit genuine buy-in from the other participant.

(6) Closing phase. Summarize what has been decided, rephrase and clarify so there will be no disputing what was agreed upon in the future.

(7) Follow-up phase. Use this as an opportunity for relationship building. Remember, in many cultures the contract is not as binding as the quality of the relationship.

m. **West Point Model TTPs**

(1) Bargaining and word choice. Extremely important during negotiations with members of different cultures, the following is a list of phrases to avoid or to help negotiations remain positive. Avoid:

(a) Assuming you have all the facts: e.g. "Look, it's obvious that..."

(b) Assuming the other side is biased: e.g. "But you are not..."

(c) Assuming the other side's motivations and intentions are obvious, and probably malicious.

Instead:

(a) Be curious: e.g. "Help me understand how you see the situation."

(b) Be humble: e.g. "What do I have wrong?"  
Be open-minded: "Is there another way to explain this?"

(2) Options. Brainstorm before you make a decision and avoid a "single best" answer. Your interests may be met by many different options. Do not get fixed into one position.

(3) Avoid. A two-dimensional approach. Do everything possible to keep the other side from feeling humiliated or defeated and the outcome is seen as legitimate.

(4) Look for win-win options. Avoid:

(a) Making open-ended offers such as, "What do you want?" They will state their position, not their interest.

(b) Making unilateral offers such as, "I'd be willing to..."

(c) Simply agreeing to (or refusing) the other side's demands.

Instead: Ask, "Why is that important to you?" Propose solutions for critique, "Here's a possibility; what may be wrong with that plan?"

(5) Elicit genuine buy-in.

Avoid:

(a) Threats, "You'd better agree or else..."

(b) Being arbitrary, "I want it because I want it."

(c) Closed-mindedness, "Under no circumstances..."

Instead:

(a) Appeal to fairness, "What should we do?"

(b) Appeal to logic and legitimacy, "I think this makes sense because..."

(c) Consider constituent perspectives, "How can each of us explain this agreement to colleagues?"

(6) Build trust first.

Avoid:

(a) Trying to "buy" a good relationship.

(b) Offering concessions to repair breaches of trust, whether actual or perceived.

Instead:

(a) Explore how a breakdown in trust may have occurred and how to remedy it.

(b) Make concessions only if they are a legitimate method of compensating for losses owing to your nonperformance or broken commitments.

(c) Treat counterparts with respect, and act in ways that will command theirs.

(7) Focus on the process.

Avoid:

(a) Acting without gauging how your actions will be perceived and what the response will be.

(b) Ignoring the consequences of an action for current and future negotiations.

Instead:

(a) Talk about the negotiation PROCESS, not just the ISSUES. "We seem to be at an impasse; maybe we should spend some more time exploring our objectives and restraints."

(b) Slow down the pace. "I'm not ready to agree, but I'd prefer not to walk away either. I think this calls for further exploration.

(c) Issue warnings without making threats. "Unless you're willing to work with me toward a mutually acceptable outcome, I can't afford to spend more time negotiating."

6. **HARVARD NEGOTIATING METHOD.** The following is provided for information purposes. It is worth your time to read this, but you will not be tested on the Harvard method!

a. **Seven Elements of Negotiation.** The Harvard Negotiation Method is based on seven key elements. Six of these are identical to the West Point Method. The West Point Method uses "legitimacy" while the Harvard Method uses "standards." The seven elements help the negotiator more clearly visualize the

components of negotiation and account for how and why people make decisions. However, it is important to establish what the seven elements of negotiation are **not**. They are not habits or skills that can be acquired nor are they steps to success that need to be taken in a particular order. The seven elements are:

(1) Relationship. The state of connection between two or more people.

(2) Communication. The transfer of messages by speech, writing, or other means.

(3) Interests. The needs, concerns, goals, hopes, and fears that motivate the parties.

(4) Options. Ideas about how the parties might meet their interests together.

(5) Standards. Criteria that the parties use to legitimize their perspectives.

(6) Alternatives. Steps parties could take to satisfy their interests outside the current negotiation.

(7) Commitments. Promises made to build or finalize an agreement.

b. **Best Practices**. The following are "best practices" for goal-setting, preparation, strategy and measuring success in negotiation. This best practice approach is known as *principled negotiation*.

(1) Set goals for negotiation. Identify goals in for each element. Other practical applications and advice all follow from these goals.

(2) Prepare to negotiate. Success in negotiation depends on comprehensive and systematic preparation. The seven elements serve as a primary checklist for effective preparation.

(3) Prepare strategic advice for achieving negotiation goals. The seven elements provide a framework for how to negotiate "at the table."

(4) Measure success. The seven elements can serve as a checklist for evaluating negotiation success and can be used to back-brief the results.

c. **Principled Negotiation.** The Harvard Negotiation Method provides a "win-win" situation focusing on mutual interests, and negotiating using standards and principles. It enables both parties to meet part of their demands while remaining fair. Both parties should focus on objective criteria and standards. It is framed on four aspects:

(1) People. When negotiating, first separate the people from the problems.

(a) The negotiation is not a personal disagreement, it is business.

(b) If using incentives, be aware incentives may not be the same from one party to another.

(c) Develop mutual understanding, trust, and respect with the other party.

(d) Reason with the other party to sustain the negotiation and do not become emotional.

(e) Be willing to compromise.

(f) Use objective criteria to control the tone of the negotiation.

(g) Continuously revise opinions, share information, and clarify points during the negotiation.

(h) Have strategies to deal with emotions by either party.

(i) Use active listening and empathic actions to display interest.

(2) Interests. Interests are the goal of the negotiation. For each interest there are different positions. To successfully negotiate:

(a) Recognize the interests of other parties.

(b) Maintain recognition by developing strict objective criteria, standards and principles.

(c) Be flexible in accepting the other party's position; but, at the same time, be inflexible with principles and objectivity.

(3) Options. Options are alternative solutions to the proposed outcome.

(a) The absence of options leads to an impasse in the negotiation.

(b) Options should be unique solutions that resolve the impasse.

(c) Find unique alternatives that provide mutual gain and do not focus on the interest of only one party.

(d) The objective is to have a balanced negotiation. The end state is to have all parties satisfied without feeling slighted or frustrated.

(4) Standards (objective criteria). Defining standards is critical to using the Harvard Method. Clear and impartial standards facilitate the negotiations, reduce tension, and lead to an agreement between the parties. When defining standards:

(a) Keep mutual interests and impartiality in mind. Be open to different perspectives. Criteria must be easily understood, applicable to the negotiation, and accepted by all parties in the negotiation.

(b) Support transparency and impartiality.

d. **Harvard Method Steps**. The Harvard process breaks down into the four following steps: Finding out people's reasons or interests, inventing options for mutual gains, choosing objective criteria and reaching agreement

(1) Finding out people's reasons or interests. To avoid settling for a compromise that satisfies no one, find out what motivates the other side's requests. Ask questions to reveal the needs that must be satisfied. Examples of these questions are:

(a) "How will this benefit you?"

(b) "Why do you want this outcome?"

(c) "Why do you believe this is the best option?"

(d) "How does this fit in with your goals?"

(e) "Are the benefits from doing this short-term or long-term?"

(2) Inventing options for mutual gain. Prior to the start of the negotiation, develop possible courses of action based on information gathered during civil preparation of the battlespace:

(a) Analyze interests and motivations of both sides of the negotiations.

(b) Observe the quality of information.

(c) Do not overestimate available options.

(d) Have a broad knowledge of the environment.

(e) Avoid emotional or subjective evaluations.

(3) Once there is a clear sense of the other party's reasons for taking a position (making a request), begin a new phase of the discussion. This phase entails articulating your intent to explore options without yet committing to a result:

(a) Make it clear the other party has to help invent options that will benefit both sides.

(b) Develop new ways to meet as many needs of each party as possible.

(c) Do not respond negatively to the alternatives presented by the other party.

(d) Acknowledge that each possibility has been heard by restating it, sometimes separating it from commitment (e.g., "I can see that as an option, but I don't want to commit to it yet)."

(4) Choosing objective criteria. Insist on objective criteria (e.g., social standards, legal requirements, or a criterion that benefits both parties). Fall back to the BATNA if the other party insists on an unreasonable criterion.

(5) Reaching an agreement

(a) Apply the objective criteria to the options, then arrange the options in rank order or develop COAs combining elements of several solutions.

(b) Develop plans on how to deal with problems that may arise.

(c) When reaching an agreement, take into account different cultures' ideas about how binding an agreement is.

(d) Ensure the other party understands the provisions of the contract and is willing to abide by them.

**REFERENCES:**

MCRP 3-33.1A Civil Affairs Tactics, Techniques, and Procedures  
MCRP 3-33.1H Engagement Teams  
MCRP 3-33.8A Advising

