

Negotiation Success—An Application of the Halpert et al. Path Model

Ray Fells

Business School, University of Western Australia

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Correspondence

Ray Fells, Business School,
University of Western Australia,
M261, 35 Stirling highway,
Crawley, WA 6009, Australia;
e-mail: ray.fells@uwa.edu.au

Abstract

Negotiations by two mining companies to conclude a Deed of Cooperation are examined using Halpert et al.'s (2010) Path Model of Negotiation Success. The goal-cooperation path identified in the model is found to be a key dynamic in the case study. However, other factors, such as a strategic leadership role and the task of document drafting, also had an impact on the process. The parties' measure of success related more to the substantive than to the relational aspects of the outcome. The article shows how experimental and case study research can complement each other to enrich researchers' understanding of the negotiation process.

Introduction

The normal practice for mining companies is to compete with each other rather than cooperate. In the industry's typically blunt language, they spend their time "pissing in each other's pockets." However, in 2010, two mining companies negotiated and concluded a Deed of Cooperation through which they committed to work with each other in the development of their mining and processing operations. Their agreement was distinctive. It charted the way forward for ongoing cooperation between the two companies in an industry where the instinctive response is one of competitiveness. Both parties regard the negotiations as an ongoing success.

The Wellamby–Monger negotiation (disguised company names) has both intrinsic and instrumental interest (Stake, 2000) by providing insights into the nature of business negotiation and offering an opportunity for an analysis of why the negotiation progressed the way it did to reach a successful outcome. Weiss (1997) has suggested that the central question to ask of any negotiation is "why did this outcome occur?" (p. 247), the analysis of the particular case then providing insights for conduct of future negotiations. A related question, addressed by Halpert, Stuhlmacher, Crenshaw, Litcher, and Bortel's (2010), is "what causes a negotiation to succeed?" Their approach was through a meta-analysis of experimental research that again provides insights for the conduct of future negotiations.

This article will provide a description and analysis of the Wellamby–Monger negotiation using the Halpert et al. Path Model as the primary tool of analysis. The Halpert model is chosen for the appropriateness of its fundamental question, given that the parties regard their negotiation as a success. Its use is also an opportunity to explore how the findings gathered from negotiations under controlled experimental conditions can usefully be applied to an actual negotiation in the business context. The article finds that the Halpert model holds up well as an explanation of the success of the Wellamby–Monger negotiation: Success emerges from a having a strong goal that leads to cooperation. However, the case also demonstrates that the richness and complexity of actual negotiations offer further insights into the goal-cooperation path to negotiation success. In this way, the bridge can be strengthened between actual

negotiations and laboratory research by considering how the literature informs the analysis of events and whether the analysis of the case suggests further avenues for research.

Success in Negotiation: The Path Model

Halpert et al. (2010) undertook a meta-analysis of negotiation research to identify factors that contributed to the success of a negotiation. Success was defined in three variables—profit gained, satisfaction with the outcome, and perception of the other negotiator. The factors that influenced whether a negotiation would be regarded as successful by any of these criteria were the nature of the goal that the negotiators set for themselves, the extent of their prior relationship, whether they expected cooperation, and whether there actually was any cooperation. The researchers found that, with one exception, these factors had a positive relationship with the three outcome variables (Figure 1), but the strongest path to success was through the presence of negotiator goals.

Having a clear strong goal leads to more cooperation that then leads to greater profit and to an improved perception of the other negotiator. This favorable perception toward the other party was helped by the negotiator having done well out of the negotiation. On the other hand, despite doing well, the negotiator might not feel too satisfied with the outcome, although the reasons for this finding are not all that clear. Perhaps if the negotiations seemed too cooperative then a negotiator might feel he or she could have done better. A complementary though less strong contributor to success is having a prior relationship with the other negotiator which helps engender an expectation of cooperation, which in turn, leads to more actual cooperation and improved perceptions. However, the core of success is the goal–cooperation link. What really seems to matter is to have clear strong goals, which will then cause the negotiators to work hard, to cooperate, and to find ways to achieve those goals.

The Analysis of Cases

There is intuitive sense about the relationships identified by Halpert and her colleagues, and the implications for negotiation practitioners are clear. The sheer volume of studies included in their analysis adds to the robustness of the model. Laboratory and other experimental research, such as that reviewed by Halpert et al., far outweighs case studies as a means to understanding negotiation (Buelens, Van de Woestyne, Mestdagh, & Boukenooghe, 2008), in part because investigating an actual negotiation poses a

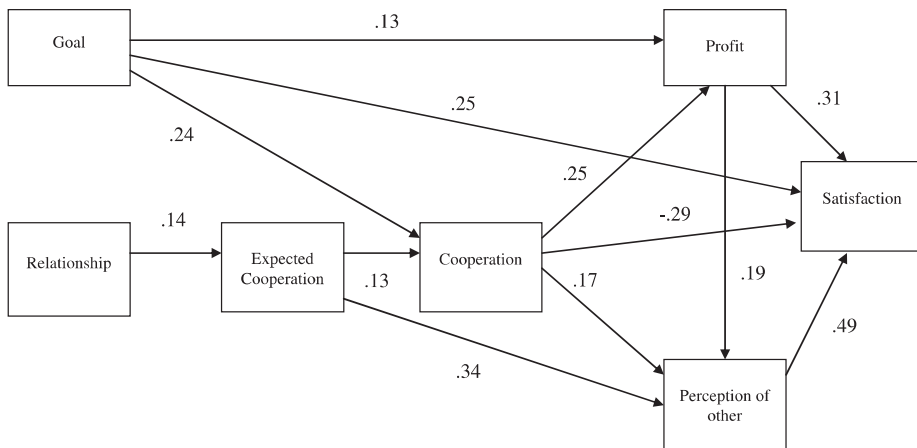


Figure 1. Path model of negotiation success (Halpert et al., 2010; figure 2).

number of challenges for the researcher. These include gaining access, authenticating the data collected through interviews, and identifying lessons that might have a broader application beyond the specific case (Druckman, 2005; Flyvbjerg, 2007; Yin, 2009). Nevertheless, case studies contain a richness of context that is not possible in experimental research, and, in addition, the negotiators bring their own (not necessarily accurate) understanding of that context (Barley, 1991; Friedman, 2004; Zartman, 2005). The result can be a more complex process that offers different perspectives on how negotiations work and why they succeed. The lessons learned from the parties' experience can and should be related to the findings of other research and can offer guidance to practitioners (Carnevale & De Dreu, 2005; Druckman, 2010; Sebenius, 2011; Weiss, 2011).

Researchers have drawn upon negotiations from a range of contexts but particularly from management–union negotiations, the field of international relations, and the business arena. Although each one is unique, involving a mix of science and intuitive touch (Raiffa, 1982; Sebenius, 1992; Watkins, 1999), these negotiations do show some common features, some of which are reflective of the Halpert et al. model. Other features of the negotiations are beyond the scope of the Path Model, one reason being the difficulties of creating a complex context for negotiation exercises under laboratory conditions.

Many management–union cases are of the parties endeavoring to transform their negotiating relationship in the context of economic difficulties, for example Cutcher-Gershenfeld (2011) and Korshak (1995). This motivation of the parties, coupled with the interest-based bargaining approach they often adopt, accords with the Path Model's goal–cooperation nexus. These cases point to the need to bargain over how to bargain, as do reconstruction negotiations in the political arena (Cutcher-Gershenfeld, 1994; Du Toit, 1989). These prenegotiations are aimed at strengthening relationships and raising the expectation of cooperation—two other elements in the Path Model.

As in the workplace and in the resolution of international conflicts—the process followed does matter. A cooperative problem solving approach yields better outcomes (Irmer & Druckman, 2009). Similarly, Elms (2006) found that in contentious trade disputes an integrative approach will produce a better outcome than a value-claiming one (although she notes that issues of risk seem to encourage the latter). Cooperation takes the form of clarifying agendas, exchanging information, and concession making, measures used by Halpert et al.. Although, as would be expected, when researchers have the opportunity to observe a negotiation or analyze a transcript they note the presence of competitive as well as cooperative interactions (Fells, 2000; Goering, 1997; Putnam & Wilson, 1989), and when issues are essentially zero-sum, then distributive strategies will emerge (Da Conceicao-Heldt, 2006).

Many negotiations are complex—multiparty, multi-issue, and occurring over an extended time frame. These broader dimensions provide other opportunities for bringing about (or exploiting) a solution such as the linkage of issues (Crump, 2007) and the use of back-channel negotiations (Putnam & Carcasson, 1997; Wanis-St John, 2006). Their presence in a negotiation is indicative of a broader strategic dimension with the result that leadership, including the ability to place the potential agreement in its broader perspective, is a factor in the negotiation's success (Sebenius, 2002; Weiss, 1997, 2011). Hence, changing the nature of the game is recognized in business and international negotiations (Druckman, 2003; Lax & Sebenius, 2006; Watkins, 2006) as well as in the management–union context (Walton, Cutcher-Gershenfeld, & McKersie, 1994).

The presence of constituencies can undermine the cooperative processes even in a cooperative context (McKersie, Sharpe, Kochan, Eaton, Strauss, & Morgenstern, 2008). This is one element that is outside of the Path Model's consideration although a strong constituency mandate would be an element of defining the goal. In management–union negotiations, the report back on the worker side is a key element in the process, and these negotiations can provide examples where too much cooperation leads to lower satisfaction (Bacon & Blyton, 2007), the one inverse relationship in the Path Model.

This brief review of what researchers have found from their analysis of actual negotiations suggests the propositions of the Path Model would go a long way in explaining the presence of success in these negotiations. At the same time, the cases themselves are suggestive of some additional insights into how

negotiators successfully reach agreement, particularly the need to exercise leadership in managing the impact of the complex context on the negotiation process.

Data Collection for the Case Study

The two companies responded positively to the author's request to write an account of their negotiations for teaching and research purposes. Material for this case study was obtained primarily through interviews and from company documents. From Wellamby Mining, the author conducted interviews with the chief executive officer, the chief operating officer (three interviews), and the company's legal officer (three interviews). The legal officer conducted the bulk of the detailed negotiations. In addition, the author met with other staff to gain background material, for example in relation to lease holdings and the railway. From Monger Mining, interviews were held with the chief operating officer (two interviews), the company's legal officer (two interviews), and the project officer, these last two being responsible for the management of the negotiations from their company's side. The interview material was related to information from company files, particularly Monger Mining's meeting notes, and the final agreement. Information was provided on condition of confidentiality on commercial and related issues. The follow-up interviews provided opportunities for clarification of detail and interpretation. Draft reports of the case were provided to both companies for their comment. As the data collection proceeded, the newly published Halpert et al. (2010) article became an appropriate framework to guide the research. Further background information was obtained from the two company's websites, from the regional industry association, and from an interview with a government official who had close knowledge of the two companies.

The Case Study

Wellamby Mining, Ltd. and Monger Mining Corporation, Ltd., the companies featured in this case study, are both developing iron ore mine and processing operations in the mid-west region of Western Australia. Developing a mine is a mammoth task taking several years and typically costing more than \$1 billion. The process involves a company acquiring leases that grant the right to mine, acquiring the funds to underwrite the project, securing commitments from steel companies to purchase the ore, and then proceeding to build the mine and its associated infrastructure. If in a remote location, the mine would also need a link to port, access to power and water, an airfield, and accommodation facilities for the fly-in fly-out workforce. At almost every stage, the company will be in negotiation with government departments, local landowners and communities, contractors, and other suppliers.

The Companies

Wellamby Mining, Ltd. (WML), a joint venture between an Australian mining and a Chinese steel producing company, is developing a major facility to process ore from Mt Karara in the Blue Hills Region at an initial cost of \$3 billion. The joint venture agreement was signed in September 2007, and it was anticipated that the mine would be in production by the end of 2011. Annual output would increase through a second stage of the project from 10 to 30 million tons per annum (at an estimated value of \$3 billion a year) for the 30 years of the mine's expected life.

Being a new mine, the project involved significant infrastructure. The nearest rail connection to the port at Geraldton is 85 km to the west of Karara at an estimated building cost of \$165 million. Before a power line could be built (estimated cost: \$240 million), the company had to secure access leases from over 40 landowners. Similar negotiations were needed for the 140 km long water pipe line and communication towers. A camp for nearly 2000 construction workers was required, as was an airstrip for them and, later, for the regular work force which will grow to 500. The mine's development is WML's only

project, and so, management was under pressure to complete the development on time and within its capital expenditure budget to alleviate the concerns of its financial backers.

Monger Mining Corporation, by contrast, is larger and has a longer-term perspective. It is a wholly owned subsidiary of SinoTrade Corporation (a pseudonym), a Fortune 500 company that is the largest iron ore importer into China. Essentially a trading company rather than a steel producer, the SinoTrade Corporation established the Australian-based Monger Mining when it acquired leases over major deposits throughout the region, including Koolanooka (the original iron ore mine in the region) to the south east of Geraldton and two deposits in the Blue Hills, known as Mungada West and East (see Figure 2).

The acquisition of these leases took SinoTrade beyond resource supply into becoming an iron ore producer and the company recognized the need to establish its mining credentials. The Koolanooka mine resumed production in July 2010 with ore being delivered by road to Geraldton, the next stage being the development of the Mungada deposits. However, SinoTrade’s major long-term development will be of large ore deposits at Weld Range to the north-east of Geraldton that will result in the company becoming one of Western Australia’s major ore producers. Being small, the Mungada deposits are not a priority for SinoTrade, but their development has significant strategic importance. Developing them and operating the Koolanooka processing plant would provide SinoTrade with both experience and credibility as an iron ore producer and provide the foundation for the development of Weld Range.

Both companies were members of the Geraldton Iron Ore Alliance and collaborated through the Alliance to influence government policy in favor of mining development. As will be shown, the initiative that the two companies cooperate at the operational level emerged from individuals. There is no evidence that the ownership structure—the companies being part or fully Chinese-owned—had any impact on the initial approaches or subsequent negotiations. As described by the chief operating officer (COO) of Monger Mining, the cooperation was still self-interested; the successful development of Wellamby’s operations would strengthen the government’s commitment to mining in the area. But there was a threshold to cooperation: Make sure the other party is doing ok, then get a better share of the remainder.

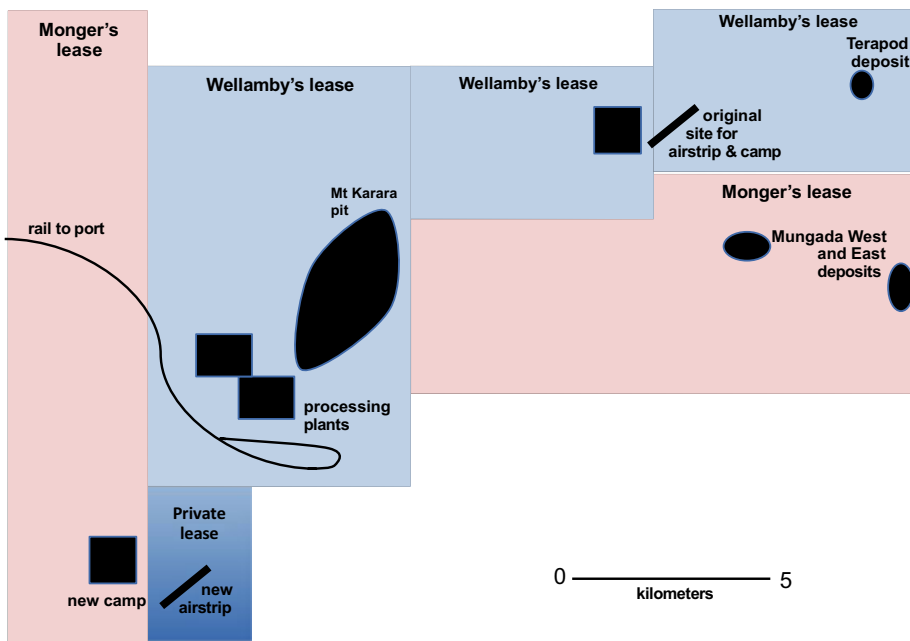


Figure 2. A schematic map of the Wellamby operations and MMC deposits in the Blue Hills region of Western Australia.

The Context for the Negotiations

The Issues and Interests of the Parties

During the development phase of a mine, the driving interest is to keep capital expenditure to a minimum. As indicated above, mining operations cost billions of dollars and take several years to develop. The priority for the boards of mining companies is to complete the project on time and on budget. This then becomes the primary concern of all levels of management within the company. This pressure was more intense within WML as it was the company's sole project and so would be its only measure of success. There were longer-term considerations in MMC, but the immediate goals were similar to those of management in WML—to develop the Mungada deposits on time and on budget—because not to do so would place the ultimate objective, the development of Weld Range, at risk.

Critical to any mining development is the need to acquire the necessary leases or access permissions to build the mine and its infrastructure. A lease is, in effect, permission given by the landowner to the lessee to access specified parts of the land for designated purposes. One mining company may hold a lease over some land giving it the right to mine; another company might then apply to it for a lease to put its own road over the land. Over time a mining area becomes a patchwork of leases held by a myriad of companies, some exploring and developing their leases, others just holding them for the future. This is the case for WML and MMC, which both hold mining leases in and around the Blue Hills area. Figure 2 shows the proximity of the two companies' operations. MMC also held further land and leases toward the west, the area through which Wellamby Mining needed to build a railway.

Not unnaturally, companies are very reluctant to give another company access to their land or where they hold leases. The suspicion verges on paranoia and requests are routinely rejected. The dispute is then lodged with the Warden's Court pending further, usually competitive, negotiation to decide if access would be granted and, if so, on what beneficial terms for the landowner or initial lease holder. Where the parties cannot reach agreement, the Warden's Court has the power to make a determination. The dealings between WML and MMC were no different in this regard. It was "business as usual" for the two mining companies with applications being countered by objections and disputes lodged with the Warden's Court.

The Alternatives to Negotiation

When locked into these negotiations over leases, what alternatives do the parties have? The project team would have worked out what it believed to be the most cost-effective solution to each technical challenge, but in many cases, the options are few. There would probably be only one technically efficient route for the rail track, and this then places the landowners on that route in a strong bargaining position. Faced with disagreement from the landowner, a mining company does not really have the option of finding a new route. It can either attempt to persuade the owner to accept the amount being offered for access or increase the offer; there is little scope for meaningful value-adding solutions. The landowner's best alternative to a negotiated agreement (BATNA) is to refuse access; the mining company's BATNA is the Warden's Court, which can impose a settlement but first would encourage further negotiation.

Being the larger company, MMC held more leases, some in proximity to WML's operations and others straddling the proposed WML rail line further to the west. Access for the rail line was critical, and WML had no real alternative to rail transport, so its alternative to securing a negotiated access was through the Warden's Court. MMC could and did say no as a matter of principle, this being the normal first step in a typically competitive negotiation to extract maximum value from its asset (the lease). It did this in the knowledge that the eventual outcome of continued disagreement would be a ruling by the Warden's Court that would inevitably grant WML access but perhaps with less beneficial conditions for MMC than might be secured through negotiation. So both parties knew that in the end a deal would be done, but it would be a time-consuming argument all the way. Given WML's situation—that delays over leases could become project critical—it would be the one to make the deal happen, to push the process, and, if

necessary, make the concession. For MMC, the prospect that at some point in the future they might need access to a WML lease would caution against taking too rigid a line on any of WML's requests.

Relationships Between the Negotiators

Mining is a specialized business with a lot of staff movement from company to company. There are strong industry associations and regular conferences (including an internationally-recognized annual "Diggers and Dealers" conference in the gold mining town of Kalgoorlie). The head offices of companies are located in Perth. Most people know, or know of, others who work in the same professional discipline, such as in procurement, geology, or finance.

Both companies were following similar paths through the many approval processes, including each having their initial application to the Environment Protection Agency rejected, their ore deposits being in what was designated as an area of biodiversity richness (DEC & DoIR, 2007). Because of this similar experience and through their dealings over access, the protagonists knew each other. They recognized each other as competent, but competent at their task, not necessarily competent as a negotiator and solver of problems. Attitudes on the latter would depend entirely on whether the other person was agreeing to a request, in which case, "they are good at their job," or whether they were disagreeing, in which case, "they don't know what they are doing!"

However, one of the key players was new to Western Australia, his previous mining experience being in Queensland. WML's new chief operating officer's own preference was for a more collaborative approach, and on his arrival in Perth, he sounded out his counterparts in other local mining companies. He found only the chief operating officer at MMC to be something of a kindred spirit. Other companies were prepared to cooperate at a political and regional level (such as through the Geraldton Iron Ore Alliance) but not on operational matters.

The Trigger for the Negotiations

In May 2009, as WML reviewed their mine development plan they realized that the site they had identified for their campsite, which would be on one of their own leases to the east of the main pit, could be improved by locating the camp on a lease held by MMC (see Figure 2). This was a critical decision because failure to meet a construction start-up deadline for the camp would throw out the development schedule for the whole Karara project.

The new chief operating officer at WML approached his counterpart at MMC again—could a deal be made? In fact, could a deal be done over all of the lease and other issues that were festering away between the two companies? The two senior executives agreed that they should at least look for ways that the two companies could assist one another. This is not something that mining companies normally agree to.

The Negotiations Over a Cooperation Agreement

The task of exploring what might be done then involved the companies' in-house lawyers, supported by project officers. Company lawyers are heavily involved in a mine's development work simply because of the legal processes relating to the access applications through the Warden's Court, as well as being involved in drawing up any contracts with utility and construction companies. Over the next 6 months, the negotiators met regularly in formal meetings and also constantly communicated by email and phone. A timeline of the negotiations can be found in Table 1.

Creating an Issues List

In the initial meetings, the parties collated all the applications that were in place, identified others that were in the pipeline, and then, by talking through each of their project timelines, identified other issues of potential overlap. Some issues would be potential sources of conflict; others might be an opportunity

for cooperation. One obvious area of potential cooperation was that MMC might use WML’s railway rather than build its own road (its volumes would be smaller and not justify the capital cost of a railway). There was a potential safety issue where the WML rail would be crossing an MMC road. The companies could share their communications systems or at least give each other access to their towers. MMC had facilities at the port that perhaps WML could use. Data from environmental surveys could be shared. If the camp were to be relocated then it could be used by MMC rather than build its own facilities. MMC had not planned a fly-in fly-out operation but having access to WML’s airstrip would be advantageous. Some ideas were explored further; others were seen to not really be of any mutual benefit and were dropped.

As is the lawyers’ way, an issues list was drawn up. This comprised 15 items identified as potential synergies. This issues list (MMC/WML Synergies, July 2009) summarized in two main columns the current plans that each company might have with regard to each of the issues. For example, MMC identified a potential need for water supplies during construction of one of its roads, so this need was summarized in the list as an item for discussion. Another item was a summary of each company’s current plans for their respective roads across a particular area, the prospect being for there to be just one road.

Following further clarification of these issues, a Heads of Agreement document (August 2009) was drafted as “a summary of relevant negotiation points” (p. 1) between the two companies. On some issues, such as accommodation and rail access, the proposed separate activities of each company were summarized with notes on what each would be willing to do for the other. There was agreement in principle to share data and water resources, but some longer term and more commercial items were listed as requiring further discussion. The document was not a formal agreement but was indicative of intent and of what might be achieved.

Table 1
The Negotiation Timeline

<i>2009</i>	
To May	WML makes a request to SML (and other land holders) for access rights; each request being routinely rejected pending further negotiation
May	Camp-site issue emerges WML approaches SML for a more collaborative approach to the issues between them
June	
July	Formal negotiation meetings Identification of a 15 item list of possible issues for cooperation
August	Formal meetings Heads of Agreement drafted Key issues agreed and acted on (e.g., MMC’s objections to WML’s request for access for the campsite are withdrawn); Negotiations continue over the detail of issues
September	Heads of Agreement is redrafted by MMC to encapsulate the cooperative intent and commercial implications on each issue
October	Formal and informal negotiations continue MMC’s draft document goes through several iterations
November	WML is unhappy with the complexity of the emerging document Senior executives from both companies reframe the negotiations
December	New document is drafted by WML Further formal and informal negotiation Some issues are finalized; settlement parameters are established for the remaining issues Parties agree to ongoing cooperation
<i>2010</i>	
January	Final negotiations over points of procedural detail The agreement is signed
1 February	Announcement of the agreement

Being commercial lawyers, the negotiators—separately—began to calculate the cost as well as the operational implications of each issue on the list. The numbers were beginning to add up. Not building a road might save several million dollars. Sharing a water resource would spread both their overheads. Environmental surveys can each cost a quarter million dollars or more, and many surveys need to be done, so coordinating surveys and sharing data would be further ongoing savings.

However, even where the ledger might show potential savings, the details had to be worked out and the risks evaluated before any savings could be realized. The question of the shared use of the relocated camp is an example. There were clearly joint gains from the proposal: WML would have an unanticipated revenue stream from renting out accommodations; MMC would avoid the capital costs of building its own accommodations. This prospect then had to be worked out in detail. Since both companies were strongly focused on reducing costs, WML would prefer to receive more in rent than MMC would wish to pay. Company negotiators, and company lawyers in particular, were charged with protecting their company's interests and mitigating risk so as possible solutions for each issue were raised and discussed, the "what if's" also had to be considered: What are the risks and how and might they be controlled? WML agreed to build the camp to accommodate MMC staff but what if MMC's development was delayed? Who would then pay for the empty accommodations? What are the tax implications of the proposed arrangement?

Drafting a Document

The negotiators then began to rework the draft Heads of Agreement document into a formal document, a necessary step because the agreement would have commercial implications and obligations. Initial drafts contained principles of cooperation as well as commercial detail, and as the negotiators "drilled down" past the broad cooperative intent of each issue into the operational and commercial aspects, the clauses in the draft documents became more complex.

Both sides had a good understanding of the operational and financial aspects of the various issues between them—for example the normal level of profit being earned by companies operating mining camps—and so neither made demands that could be regarded as excessive. However, this is a matter of degree and in the midst of a negotiation any demand from the other side that a party cannot agree to is too large and can seem competitive. On several of the issues WML would reap immediate benefits, while the gains for MMC were longer term so the MMC negotiators were more cautious in their calculations. "We felt we were being peppered with requests; are we losing on each one?" said an MMC negotiator. This defensiveness resulted in them placing larger financial figures on the table so that WML's negotiator felt that those across the table were sometimes making the negotiations more difficult.

Subsequent redrafts by MMC's lawyers reflected wordsmithing over points of detail as they were discussed by the negotiators, sometimes in meetings, sometimes through email. For example in one draft, which was by now titled "Principles for Broad Co-operation and Heads of Agreement," a subclause stated that "WML will agree to assist MMC to obtain rail access," but there was a handwritten note, "why 'assist'" (the other possibility being that WML guarantees rail access). Redrafting is what lawyers do, and rightly so, to achieve a clear understanding of what the contract terms mean and what would be the implications if they were not fulfilled. At the same time, giving attention to detail is what project managers do, with their eye to trimming costs and improving the financials whenever they can. Thus, through October and into November, the negotiations became more competitive. One negotiator later reflected that it seemed both parties had "lost sight of the intent to help each other." WML's COO considered that they were "just being lawyers." The result was that broad intent to work together was now becoming a 30-page document full of legal definition and contingency clauses, all of which were up for negotiation and redrafting.

This did not mean the negotiators were at loggerheads and unable to cooperate, but progress was stalling. It was emerging that the broad intent of reaching an agreement to cooperate was open to different interpretations. This was merely a question of emphasis but one that became increasingly

apparent as the negotiations progressed. The WML negotiators were looking to secure an agreement that provided a framework for present and future cooperation; they did not envisage this would be a lengthy or complex task as both parties had clearly indicated their intent to draw up such an agreement. At the same time, they were looking to resolve some pressing issues such as the site of the camp and the rail-access leases. The MMC negotiators also wanted to establish cooperation between the two companies, and to achieve this they were prepared to accommodate WML's requests (while ensuring that what was agreed on each issue was still favorable to MMC and did not pose future risk). For them, the document would be more comprehensive, and by showing how issues could be resolved it would lay the foundation for continued ongoing cooperation. There were several iterations of how best to express the cooperative intent of the agreement: Should it be through a statement of general principles or in relation to each issue? Or both? And what would be the form of words? One version of cooperation clause contained seven subpoints; another had just two short sentences. (The parties settled on this shorter version.)

A Critical Intervention

At this point, in November, the senior executives of both sides made a significant contribution to the eventual success of the negotiations. Although it was clear that the negotiations had been finding ways the companies could, and would, cooperate, the two senior executives were concerned that the document was taking the parties away from where they wanted to be. It was getting too detailed to be a workable agreement on cooperation. There was an inherent paradox: if parties need to refer to a document for the precise terms on which they must cooperate then really they are not cooperating but complying. The COO of WML felt the emerging document would be unworkable "so I went to (the COO of MMC) and said 'I'm not going to sign this; are you?' He wasn't either." So they intervened to re-establish the strategic intent of the negotiation and reaffirmed to their respective negotiating teams that priority was to be given to the overarching goal of establishing a cooperative relationship. The COO of WML described this as "keeping focus on the cooperation rather than write a tight legal and commercial agreement" while the COO of MMC operationalized the intent to cooperate in terms of "not standing in the way of WML's project and dealing with remaining issues in good faith." In practice, it meant the negotiators should subordinate the priority of financial consideration, the measure by which the proposed solutions were being evaluated.

As noted earlier, the proposed WML rail line passed over land and leases held by MMC. Rather than cooperate through granting access leases, MMC offered a cleaner solution of selling the land to WML. Further, rather than argue over price the negotiators agreed to a market valuation. When the negotiators exchanged valuations they found that, unusually, the purchaser's (WML) valuation was higher. In a normal land sale, this would then have been the settlement price, but the MMC negotiators agreed to split the difference, which is what would happen if valuations followed the normal pattern. This put cooperation—mutual benefit—before profit and was commented on by negotiators from both sides as an action that did much to set the tone for the resolution of subsequent issues.

The negotiators continued to meet weekly and worked on a new draft that went some way to reflect the view that what the parties were agreeing and committing to was a cooperative relationship rather than a contractual one. Agreement was confirmed on some critical access issues. On others, parameters were agreed to in anticipation of finalizing the detail in subsequent issue-specific agreements. Cooperation would be extended through the declared intent to meet regularly to work together on as yet unidentified areas of mutual interest. Surrounding these key points were more clauses of legalese that, in the end, constituted the bulk of the twenty three page document. The Deed of Cooperation was signed at the end of January 2010. The cooperation then continued through the issue-specific agreements being reached and over new issues, such as a special delivery of Wellamby's ore to MMC's Koolanooka plant for processing. According to MMC's COO, the agreement helped in lowering "Cap Ex (capital expenditure) now and helped balance the budget for the owners." There is more direct contact between the

companies, said the COO of WML, citing contact at finance, legal, environmental, and operational levels, getting away from “the instinctive reaction to a request by another company to make life as difficult as possible until you could see some benefit in it for you, but to take a broader approach.”

Analysis

The parties regard their negotiation as a success, and the Path Model generated by Halpert and her colleagues helps identify the factors that lead to this success. The dynamic of the negotiation also shows other elements that are less easily identified in an experimental context.

Outcomes

The Path Model suggests three criteria for evaluating the success of a negotiation—profit, satisfaction with the negotiation, and perception of the other negotiator. Negotiators may bring their own values to the negotiation that will shape their understanding of success (Clyman & Tripp, 2000), but in this case company-oriented perspectives dominated. The substantive measure of success was predominantly financial—a successful outcome would be one that reduced the company’s capital expenditure liability. WML used the negotiations to make significant progress in key elements in their mine development plan. This minimized delays and reduced the likelihood of cost blowouts which, in turn, eased the pressure from shareholders and the financial markets. By this crucial bottom line criterion the negotiation was a success. MMC also achieved significant reductions in its capital expenditure requirements, which then released funds into the development of the company’s broader projects. The negotiations were again viewed as successful because of this beneficial financial impact.

The negotiators also had a clear expectation that gains of this sort would continue—an attitudinal outcome that would lead to additional substantive outcomes. So the negotiators were satisfied with what had been achieved and also with how it had been achieved (although perhaps not as quickly as WML would have liked). As the Path Model (Figure 1) shows, the better the outcome then the greater the satisfaction with the negotiation overall. There was personal satisfaction with achieving such a distinctive agreement. This sense of achievement was reinforced by seeing the agreement make a positive contribution to their respective company projects.

With regard to their perception of the other negotiators, there was respect and familiarity, but this was not a measure they used in judging success. Having high regard (or not) for the other negotiator is incidental to whether the negotiation itself was regarded as successful. This outcome dimension becomes more important when viewed as part of the parties’ ongoing relationship and the effect this might have on the expectation of future cooperation when they next meet to negotiate. This suggests an iterative element to the Path Model.

Goal

The Path Model regards a negotiator as having a goal where there is a specific and difficult target (and perhaps resistance) point rather than having a low goal or no goal (essentially, merely setting out to do the best one can). In the WML–MMC negotiations, the goals for the two parties were clear—the intent was to improve the cooperation between the two companies, and the negotiators were charged with achieving this objective, not just with merely exploring the prospects for cooperation. It was also an aspirational and difficult goal, to achieve something that was far from normal practice for the mining industry.

However, as the negotiations progressed and became increasingly focused on the detail of what cooperation might mean in practice, the clear, committed goal of a cooperation agreement was operationalized differently by the negotiators. For WML, the whole purpose of the negotiation was to secure a

commitment from MMC that the two companies would work together and, as part of this process, resolve some pressing issues. The MMC negotiators were also working toward a collaborative arrangement but placed greater emphasis on putting together a package of resolved issues as a foundation for the future collaboration.

The two senior executives, not being directly involved in the negotiations, still held the primary objective in focus. The strength of the goal of cooperation was sufficient to cause them to intervene in the process to refocus it when it seemed that negotiations over specific issues was becoming the *de facto* priority. Their intervention maintained the strategic intent of the negotiation.

In this respect, the Path Model's finding that a strong, clear goal is the engine of negotiation success finds good support. Having a clear, firm objective generated cooperation between the parties, not only in relation to the issues under negotiation but also in their maintenance of the process. Had the parties been less committed—that a cooperative relationship had potential but was not project-critical—then the mandate from the two senior executives to their respective negotiators might have been in terms of “do the best you can.” Either senior executive could have concluded that the negotiations were not going to be worth the effort and could have allowed the negotiation process die. Instead, the strength of the goal motivated their intervention and led to further negotiation and the agreement.

Relationship and the Expectation of Cooperation

The Path Model defines the relationship factor in two ways: (a) the parties have a consistent pattern of ongoing interaction, or (b) they have an expectation of future interaction. Both will lead to an expectation of cooperation from the other negotiator. We can equally envisage that if our past experience of another has been uncooperative we might expect the same the next time we negotiate, although, drawing on the Model's understanding of relationship, a conflictual one is probably not going to be consistent and so would not really be a relationship at all.

The circumstances of the WML–MMC negotiations support the Path Model's identification of relationship and expected cooperation as being subsidiary, but generally complementary factors, in contributing to negotiation success. When the WML COO considered whether to broach the prospect of a cooperative arrangement between their two companies with his opposite number at MMC, it was the expectation of future cooperation based on the stated values of the MMC executive (from their earlier more general meeting), rather than any past track record, that encouraged and motivated him to make the approach. The negotiators themselves expected their counterparts to be cautious and calculative rather than overly cooperative, in the way mining managers and lawyers typically are in their dealings with each other. As indicated above, the case suggests an iterative aspect to the process that further supports the model in that having reached agreement and being committed to cooperating, the expectation of future cooperation is stronger. The companies have subsequently cooperated on other operational issues that were not on the original list.

Cooperation

Defining what exactly is a cooperative behavior in negotiation is not easy. A single behavior can serve different purposes or can be interpreted differently (Putnam, 1990). A negotiator may provide some information or make a move on the issue with the intention of being cooperative, but their action might not be viewed that way by the other party. Consequently, the cooperative behavior might not generate further cooperative interaction nor contribute to the negotiators finding an added-value solution. Researchers tend to overcome this problem by assuming intent, for example, that to provide information is cooperative whereas to make a threat is not. However, one can also envisage situations where making a threat, particularly one to walk away, may be helpful and, therefore cooperative, if it causes the other negotiator to develop a more realistic understanding of the settlement range.

From their review of the experimental research literature, Halpert et al. (2010) identified two broad categories of negotiator behavior—one being communication and the other relating to offers and concessions—that could be measured as indicators of the level of cooperation in a negotiation. The WML–MMC negotiations give further insights into these forms of cooperation and suggest some other aspects of cooperation (and competition) that are not normally open to those negotiating under controlled experimental conditions.

Managing the Issues

One measure of communication used in the model is *exchanging information*, and the information in question may be at several levels. It may relate firstly to what the issues for negotiation might be, then to what is actually wanted, and to why it is wanted. The exchange of information may extend into the broader context of the negotiations with, for example, negotiators presenting the implications of not reaching agreement. The way information is used to present and discuss issues can influence what sense negotiators make of the issues and the strategy they then follow (Fisher, Ury, & Patton, 1991; Putnam & Holmer, 1992; Walton & McKersie, 1965). The various levels of information were evident in the negotiations, but particularly important, in terms of contributing to the success of the negotiation, was the creation and management of an issues list.

After the first meeting by the senior executives to discuss the prospects for a cooperative approach, the negotiators for the two companies had the task of translating that cooperative intent into an agreement. To make sense of this task, they developed an issues list that clarified what they each wanted. Generating such a list against a background where previously such issues had been dealt with competitively had the obvious potential to set the negotiations off down the positional path. However, working off issues lists is what lawyers do, so it brought some organization to the process, and it also provided an opportunity for both parties to add to the list other aspects of their respective mine projects where there might be scope for collaboration. Issues were listed more as their current intentions rather than as demands, and in all these respects creating a clear but open agenda was cooperative in the sense of showing intent.

This cooperative intent was then reinforced by the ensuing discussion around why each issue was a particular concern. In this regard, all the negotiators around the table were experienced, and if one raised an issue, such as a problem of a road crossing the railway, they all knew the practical implications without need for much exploratory discussion. The exploration of these issues was done later when, away from the negotiation table, the two negotiation teams calculated the costs that the problem was causing and the cost of any potential solution.

Concern for Other

Another element of cooperation in negotiation identified in the Path Model is expressing concern for the opponent. Those employed in the mining industry are not noted for their emotional sensitivity or expressions of empathy. They are, however, practical people, and usually if one company is facing a problem, such as getting approval for the alignment of a road, then those on the other side of the table have probably experienced the same problem or something like it. Because of this, they can readily sympathize with both the frustration and the cost implications. That said, they can still take the attitude of “well, that’s your problem, don’t look to me for a solution, I’ve got enough of my own!” But the WML and MMC negotiators took on board the other party’s operational problems and discussed them openly.

Offers and Concessions

Knowing that both sides had their issues led to a “we’ll help you because we know you’ll help us” approach—a practical expression of cooperative intent. This might approximate, in a pragmatic way, *matching offers*, which is listed by Halpert et al. as another cooperative behavior, although offer matching was a more problematic and messy process than might be evidenced when two negotiators have a list of issues with points values that they can trade.

The authors of the Path Model also listed accommodating, collaborating, and problem solving as cooperative behaviors. These are more commonly used as descriptors of strategy (usually in the context of the dual concerns model) and are open to interpretation. Accommodating may well mean making concessions, which as Fisher et al. (1991) rightly pointed out, is often an indication of a failed competitive strategy, and is not cooperation in any meaningful sense. Similarly, conflict avoidance, a strategy that is listed as being a noncooperative behavior, may, from the other negotiator's perspective, look very cooperative indeed.

Strategic Insight and Leadership

The case suggests one further dimension of cooperation that relates to the strength of the goal element that starts the path to negotiation success but is somewhat broader. The two senior executives were not involved in the direct negotiation of the issues nor in drafting the agreement. However, their intervention to reframe the negotiations back to the primary objective of cooperation between the two companies was a critical event leading to the eventual success of the negotiations. This suggests there is a place for strategic insight that contributes to the success of a negotiation. This insight is intuitively exercised by a negotiator when he or she senses the negotiations are going off course. Perhaps following Ury's (1991) advice to go to the balcony the negotiator realizes the need to lead the negotiations in a different direction. Strategic insight can be more explicitly exercised when negotiations occur in an organizational context. This broader context gives an opportunity for people not directly involved in the negotiating to have input and exercise leadership over the process. When they intervene to uphold the strategic focus of what the parties are trying to achieve, as in the WML–MMC case, then their action will be recognized as having contributed to the overall success of the negotiation.

Elements of Competitiveness Within Cooperation

Descriptors of competitive negotiation behavior listed by Halpert et al. (2010) include being aggressive, threats, punishments, insults, and large demands. The WML and MMC negotiators were aggressive on the issues (an outworking of their clear goals) but not aggressive (give or take the odd adjectival swear word) toward the other negotiator. Threats were not a real feature of the discussions; neither were punishments or insults. Both parties knew that the walk away option was the status quo ante, the costly competitive pattern of intercompany dealings that they were trying to break away from. They also knew that trying to punish or insult an opposing negotiator was unprofessional but, more importantly would have been counterproductive. The relationship between the negotiators was toward the robust end of the cooperative spectrum.

One element of competitiveness to emerge in the negotiation related to the increasing perception that the other party's demands were too large. Whether a demand is too large or a concession is too small depends on which side of the table a negotiator is sitting, pointing again to the difficulty in objective interpretation. However, as shown in this case, the negotiators' own interpretations are subject to change. When the negotiations were reoriented back to the broader focus of establishing cooperation between the parties, then previously unacceptable demands were reassessed and could be agreed to, as in the case of the rail leases.

Detail and Documents

Two other elements in the negotiation contributed to a level of competitiveness. First, when exploring possible solutions, it is incumbent upon negotiators to fully explore the potential downsides and risks and to cover these in the agreement. To the opposing party, this risk management approach can seem obstructive rather than conciliatory, looking for problems rather than overlooking them. This approach to the issues continued even though the negotiators started to place greater focus on the broad cooperative purpose of the negotiation.

In addition, committing agreements to paper adds another layer of competitiveness to the interaction between the negotiators. Once a preliminary agreement is drawn up then the practice of working through the document, drafting clauses, and checking the wording, tends to narrow the focus, even when the negotiators are cooperating on the issues themselves and finding collaborative solutions. The different ways to express the cooperative intent—through general principles or specified in each issue—was an ongoing example of the impact of drafting on the process of interaction between the negotiators. This cautionary drafting process continued even after the negotiations had been given the strategic big picture impetus by the two senior executives.

Discussion

The Path Model provides a valuable tool to analyse why negotiations are successful, as in the WML—MMC case, where following the goal—cooperation path led to an agreement that both parties regarded as a success. The insights gained from properly constructed experimental exercises and research projects help inform the practice of negotiation despite the scepticism that some practitioners might feel.

Halpert et al. (2010) identified some further areas for research, such as into notions of subjectivity and perception, that influence a negotiator's reaction to an offer or concession. Another area is the challenge of dealing with nonlinear relationships; perhaps the attitude of one negotiator to another will be of this sort, contingent in part on the other's behavior. They also draw attention to the tendency to regard competitiveness and cooperation as polar opposites, and the WML—MMC negotiation similarly suggests that interaction between the parties is more complex.

When compared with many laboratory experiments, the richer context of an actual negotiation provides more strategic and behavioral options that might move a negotiation on toward a successful outcome. These include the task of formulating an agenda, strategic intervention by non-negotiators, and document drafting. Complex scenarios are needed should a researcher wish to incorporate opportunities for these aspects of agreement reaching to occur in an experimental setting.

Having strong goals is clearly a critical element in negotiation success, but in a rich context where related but potentially competing goals have to be managed the articulation of the goals can be difficult and the goals themselves can change over time. It is difficult to envisage a negotiator being set a low goal or be given instructions just to “do your best.” In situations where their prior analysis might suggest they are in a weak bargaining position, the instructions might be conditional—“see if you can get them to agree to X but if not, then do your best.” Even then, the lower aspiration is likely to take the form of a new settlement target (which in the circumstances might still be difficult to achieve) rather than an unspecified but hoped-for outcome.

The organizational context of negotiation—an aspect beyond the scope of the Path Model—provides another dimension to the success factors, namely the opportunity for critical interventions by people other than those doing the actual negotiating. The intervention to re-establish the key priorities in the WML—MMC negotiations reinforces the finding of the Path Model that clear, strong goals contribute to success. It was also an act of leadership that became a turning point in the negotiations themselves. The process of reaching agreement will often require a negotiator, especially when the negotiations are between teams rather than two individuals, to have sufficient confidence (or perhaps desperation) to take the initiative and redirect the negotiations. This could involve reframing how the issue is presented (Curseu & Schrujjer, 2008), making a strategic intervention to redirect the process (Olekals, Brett, & Weingart, 2003), or more broadly to manage the whole process around a different script (Fells, 2010).

The complexity of the negotiation itself will also impact how the negotiations are conducted. Scenarios for negotiation exercises rarely have the complexity of context that requires a risk management perspective on the part of the negotiators. This is an integral part of many negotiations, especially when the parties are going to write up their agreement in a legal document, as was the case in the WML—MMC

negotiations. The use of a statement category such as “limits” (as in Morley & Stephenson, 1977) would be one indication of negotiators critiquing an offer without necessarily rejecting it. A frequent use of process-management statements could be an indication of cooperation in these document-focused situations.

The case also suggests how practitioner negotiators might define success through the relative emphasis they place on the outcome measures of profit, satisfaction, and perception of other. The measure of profit would be dollar value, achieved through resolving specific issues (in this case, project-critical tasks where delays cost money). The negotiators may have the additional expectation of resolving similar issues in the future, again using a dollar value as measure of success. The negotiators’ personal satisfaction would be felt if the organization was achieving its goals as a result of the negotiation. One’s regard for the other negotiator may be an outcome of the negotiation but is immaterial. In practice, the links between relationship, expectation, and actual cooperation are not going to be strong. A past relationship may count for nothing more than a normal expectation that the other person is going to be reasonable and will continue to be reasonable for as long as they seem to be achieving their goals. It is the goal that motivates cooperative behavior. If the negotiators are not motivated to achieve a good outcome, then their past history of cooperation may cause them to be pleasant and concessionary and, in doing so, miss the opportunity of achieving a more worthwhile outcome.

Conclusion

This article has sought to enrich our understanding of negotiation by relating the findings of laboratory research to the evidence from a particular case. The successful outcome of the Wellamby–Monger negotiations confirms the central proposition of the Halpert et al.’s (2010) Path Model, namely that the path to success is through a strong goal and cooperation. The context of the WML–MMC negotiations showed some additional steps on the path—creating an issues list and having the insight to maintain a strategic direction—but these complement rather than detract from the central proposition. The case also shows that negotiations can be robust while still being cooperative but also alerts us to the possibility that the task of preparing a complex document may of itself generate a competitive dynamic within the negotiation. Finally, in this case—as might be expected in a business negotiation involving billion dollar projects—the primary definition of success was measured in substantive rather than relational terms. While providing further support for the Path Model, the case suggests further research into whether some of the additional steps taken in this negotiation are to be found on the path taken by other negotiations en route to a successful outcome.

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Ray Fells is Professor at the University of Western Australia. His industrial relations background led to his research interests in negotiation and mediation, particularly in the workplace, but also in the broader business context. In addition to a wide range of publications he is the author of *Effective Negotiation: From Research to Results* (Cambridge University Press).