Lessons from Brexit Negotiations

The aims of international negotiation

- International negotiations are nearly always aimed at achieving win-win outcomes.
- Because any deal must provide incentives for all parties to implement their sides of the agreement.
- International law, whether “hard” or “soft” can nearly always be circumvented unless it suits all

This note is not intended as an argument for or against Brexit, it simply draws on my training course for IFMSA Students, who need to learn something about international negotiations to participate in the World Health Assembly, as a basis for considering some basic issues raised by the negotiations.

Some international laws are described as “hard law”, when ratified agreements specify consequences of non-compliance in national and international courts, other resolutions can be described as “soft law” agreements expressing intentions, but without clear consequences. In practice virtually all international laws whether “hard” or “soft” can be circumvented if they are not seen as in the interests of all parties.

**What are the key interests of the UK and EU in Brexit negotiations? How would a deal be enforced?**

The position taken by parties in negotiations may reflect, or sometimes hide, underlying interests. These are the bedrock for any negotiation, so clear understanding of the interests of all sides is essential. In this case the UK is seeking to avoid EU Federalism, to take control of its own laws and borders and to be free to make trade deals in world markets. Some Member States of the EU were seeking closer union, while others stressed the importance of maintaining integrity and principles of free movement of trade and labour, while ensuring Member States benefit from union. There are also financial considerations including the contribution of the UK to the EU and future commitments, such as pension payments.

**Discuss the interests of parties to Brexit negotiations. What would a win-win outcome look like?**

UK Brexit was decided in broad terms by democratic mandate of a referendum, while others claim that, as a representative democracy, Parliament must be paramount. Equally it is argued that membership of the EU imposes governance on the UK without accountability to the people. This is difficult to deny not only because the mechanisms of the EU are complex but because it has been easier to blame the EU than to explain how and why decisions were agreed. The view that EU laws are made by “unelected bureaucrats” persists, though in fact laws are determined by the EU elected parliament and Council of Ministers from Member Countries. Both the EU and the UK must also seek to maintain their membership (the 27 remaining states of the EU and the Home Countries of the UK).

**How is the lack of understanding of democratic processes destroying trust in the EU and UK government?**

While trade, democracy and border issues have been much debated there are also wider questions of global governance at stake. Threats arising from: climate change, pollution of the seas, global health, terrorism, corruption, poverty and sustainable development urgently need international collaboration. Moreover globalisation, which is one factor driving public concern, also requires global governance of the multi-national corporations. Regional bodies including the EU, often created to ensure peace and cement trading relationships have begun to address these global governance issues.

**Will the UK voice in global governance be stronger within or independent of the EU?**
Lessons from Brexit Negotiations

Mega Diplomacy: Power and Interests

- To negotiate with many different groups you need to
- Support self organisation (coalitions) and
- Understand what underlies their positions.
  - Power:
    - Discursive, decision making, legal, economic, influence
  - Legitimacy
    - State, moral, democratic, experience, knowledge,
  - Interests
    - Political, financial, reputational, association
- This is a basis for negotiation and win-win outcomes

The modern world of mega diplomacy requires leaders to work with many different partners and sometimes opponents. A starting point is to gain an understanding of factors that underlie the position taken by each of the parties involved. It is important to understand the basis of their power, which may derive from: discursive power - being able to define the situation and set norms, decision making power – ability to take decisions without deferring to others, legal power – based on rights established by international and national laws, economic power – controlling financial or other resources e.g. security, or influence – the ability to sway the behaviour and choices of others (the public or other parties).

Discuss the power base of EU and UK parties involved in Brexit negotiation.

The economy and trading conditions may be one source of power. The EU is the second largest economy in the world and accounts for 44% of UK export earnings. The UK GNI is the second largest in the EU and is larger than the combined GNI of 19 of the smallest EU Member States. The UK imports more goods from EU countries than it exports – a trade deficit of £67 billion. However, service industries, account for 83% of the UK economy, generating a trade surplus of £135 billion (excluding travel and transport), about half is generated by the EU. How does this affect the balance of power and interests?

There are other forms of power and interests involved. Public concern has focused on the idea that “most UK laws” are decided by the EU, though in practice only 13% of UK laws mention the EU. There is also concern that free movement of labour is undercutting UK jobs and wages and adding public sector costs, though studies suggest EU migrants contributed over £20bn to the UK economy. This can be linked to a general unease at globalisation and its impact on traditional manufacturing employment. Have politicians addressed these concerns?

In practice it is often important to distinguish between the position and power of the organisations represented in a negotiation and the personal position and power of the individuals in the room. Negotiators can be limited or empowered by instructions they receive and the strength and clarity of the coalitions supporting their position in the negotiation. Was this true of May and Tusk?

It is also essential to understand the factors that support the legitimacy of each party. These include: state legitimacy – the authority vested in a state institution to act on behalf of citizens, moral legitimacy – based on human rights and equity, democratic legitimacy – established through the election of representatives, (or in this case a referendum giving an alternative basis for democratic power) knowledge – the expertise derived from research or skills in providing treatment. Individuals will also build personal legitimacy, earning the trust and respect of others at the negotiation, though in some cases the reverse may happen. What was the basis of the legitimacy of May, Tusk and other MPs?
Lessons from Brexit Negotiations

The negotiation process

The process (based on Lister and Lee, (2013) “The process and practice of negotiation”, in Kickbusch, Lister et al. [eds] Textbook on Global Health Diplomacy. New York: Springer.) can be discerned in all negotiations. **Consider whether the following point were addressed during Brexit negotiations.**

Diagnosis and preparation is the most important phase; careful timing and selection of issues, identifying interested parties and their interests, creation of “coalitions of the willing”, defining a clear realistic position and aims, exploring options for agreement and undertaking research and advocacy to build a case and create the conditions in which parties are open to negotiation are essential. **Was this done?** Did Cameron or May identify key issues? Did May create a coalition of the willing?

The formula for agreement is crucial, it defines the scope and limits of agreement it is hoped to achieve, its legal form, aims and objectives, who will participate and how negotiations will be conducted. A “heads of agreement” may be negotiated, setting out the points of agreement on which detailed negotiation will take place (e.g. the Political Declaration). It may be possible to agree on general principles and to plot a path to an agreement to meet the interests and aims of all parties. **How was the formula for agreement negotiated for Brexit, why did failure to negotiate this disadvantage the UK?**

Detailed negotiation may involve participants setting out their opening positions or may use an initial draft with points at which disagreement must be resolved identified. Parties to the negotiation then propose amendments and address issues such as: how the outcome is to be monitored and what should happen in case of default from the agreement. The main agreement may be encouraged by “side room” agreements to overcome obstacles. **Did this happen?** **What was UK opening position Were there side room agreements to overcome issues such as the Irish Border?**

Timing is always an important issue in negotiations prepare for long nights and last-minute changes. And an initial agreement is often not the end of negotiation, it may be the start of another phase, which will involve continuing negotiation of the acceptance, interpretation and performance of the agreement. Timing can be a potent weapon in negotiation and ability to dictate the timing of meetings is crucial. **Does this help explain our nail-biting times?** **What happens next?** **Your guess is as good as mine!**
Lessons from Brexit Negotiations

In negotiating for win-win outcomes from international negotiations we can learn from experience, most of these tips are taken from William Ury, the world leader in negotiation skills (you can find talks by him at http://www.ted.com/talks/william_ury.html). This can help us reflect on lessons from Brexit.

Reframing the issue means setting the issue in a different policy context, helping people to address the issue in a different way. In what ways was Brexit framed in: economic, political, security, domestic and global contexts by the different parties involved?

“Crossing the golden bridge” refers to the importance of helping your opponent to overcome the barriers that face them in reaching a compromise agreement acceptable to others, to do this you need to accept and work with “where they are coming from” and talk them through the obstacles they face.

What attempts were made to encourage parties to cross the bridge by encouragement or coercion?

“Going to your balcony” means not getting sucked into arguments, keeping a clear perspective on the aims of the negotiation and discussing issues not personalities. If someone attacks you on a personal level don’t react, take the discussion back to underlying issues, hopefully it will make them look small.

Did the parties focus on the big picture or did the disputes become petty and personal?

In some negotiations it can be helpful to introduce an additional element so that everyone wins from the outcome. The story of 17 camels shows this see http://www.wussu.com/humour/camels.htm. In other cases there are elements that can be removed from negotiations to simplify agreement. Can you identify the extra camels in Brexit negotiations? Or factors that could be taken out of negotiations?

The single text method was used to develop the road map for peace in the Middle East, both sides started from hard-line positions and would not give way, so the American chair of negotiations started afresh with a single text both sides could take or leave. Will a single text emerge for Brexit?

Negotiations often involve coalitions of those in favour or opposed to particular outcomes. It is vital to maintain the strength of the coalitions, as although the leaders may have a clear position, their strength in negotiation may depend on maintaining support from the other coalition members and parties.

What went wrong in May’s attempts to build and maintain her coalition?

Advocating for a set of ideals or principles may make you feel good, but achieving progress towards action on issues requires an understand of the points of view and interests of other parties and to negotiate the best possible next step attainable. This is “the art of the possible” not “virtue signalling”. Negotiations often require compromise to reach a least-worst outcome and avoid the worst outcome.

Identify examples of virtue signalling and least-worst outcomes in the Brexit negotiations.
Lessons from Brexit Negotiations

William Ury favours “principled negotiations” based on creativity and reasoning to achieve win-win outcomes for international settlements. But others take lessons from commercial negotiations in which the power of the participants and their relative need for a deal is nearly always a factor. In practice lessons can be drawn from both principled negotiations and the use of power in commercial settings. There have been references to many different forms of power on both sides of Brexit negotiations. Can you identify the references to power in Brexit exchanges?

One of the clearest indications of power and need for agreement is the Best Alternative to a Negotiated Agreement (BATNA). This alternative may be disadvantageous to all but a party showing indifference to this outcome can give the illusion of greater negotiating power. In most situations this is not set out in detail but may be threatened as possible next step if agreement is not reached. In theory this is an important strategy for negotiations, but in an open democratic system it is difficult to maintain an illusion of indifference to such a strategy while public debate unpicks its perceived disadvantages. How has opposition to a “No Deal Brexit” reduced UK negotiating power?

Control of the message and language used to advocate for a negotiating position is also vital in complex public negotiations. This will be impossible unless the negotiating position is itself clear and shared throughout a coalition of those supporting an agreed outcome. Even those generally in support of one side may undermine the message by setting unrealistic expectations or may sour negotiations by castigating their opponents. While repetition provides reinforcement, messages also require substance. Discuss the language and message implicit in: “Brexit means Brexit”: “Crashing Out”: “May’s Deal”.

While there are lessons for leadership, discussed on the next page, there are also lessons for supporters. Any negotiation on behalf of others requires trust in the negotiators and good communication between leaders and supporters. Leaders need to show commitment to shared goals and fragmented supporters need to resolve their needs and preferences in order to coalesce around a realistic option. Negotiations nearly always involve compromise which supporters will only accept if they are part of the process. What errors were caused by a failure of those supporting Brexit to resolve their differences?

Support groups also need to reach out to communicate with the public whose views and interests they profess to represent. Currently it seems that many such groups have been more interested in communicating within their own silos than addressing public concerns or achieving consensus. One factor has been that groups often coalesce around a “pure ideal” of their aims. They choose leaders to reflect this, which makes it more difficult for them to accept compromise without detracting from their position within the group. In this case ambitions for political leadership may also be a factor in leave and remain groups.

Did groups supporting Brexit improve understanding of the issues and gain public support?
Lessons from Brexit Negotiations

Leading international negotiations

- An encompassing vision, seeing all perspectives
- Emotional intelligence and the ability to listen
- Shared leadership across different actors and countries
- Personal integrity and moral values to earn the trust of others

Leadership of diplomacy and negotiations may be described as the art of “meta leadership” (https://npli.sph.harvard.edu/meta-leadership-2/). This requires: a belief in the goals negotiated and an encompassing vision - understanding the perspectives that all the parties bring to an issue, but with a vision that transcends their differences. It requires emotional intelligence and the ability to listen to others, which is a much under-rated skill in a world obsessed with gesture politics and grandstanding leadership. Leaders need to be able to prompt others to take the lead, recognising their skills and strengths and giving them support and encouragement rather than competing with them. Underlying these skills, negotiation leaders need personal integrity and moral values that earn respect and trust.

Was meta leadership shown by May? Did May show belief in and a clear vision for Brexit?

Meta leadership combines and goes beyond elements of “servant leadership”, “leadership through constructive conversations” and “distributed leadership” (if you Google around these phrases you will find examples of the application of these ideas to political leadership). For me these values are best illustrated by a quotation from Nelson Mandela’s book “Long Walk to Freedom” (1995).

As a leader... I have always endeavoured to listen to what each and every person in a discussion had to say before venturing my own opinion. Oftentimes, my own opinion will simply represent a consensus of what I heard in the discussion. I always remember the axiom: a leader is like a shepherd. He stays behind the flock, letting the most nimble go out ahead, whereupon the others follow, not realizing that all along they are being directed from behind.

This quotation illustrates the importance of listening to others, summarizing – often framing issues in terms of underlying values and guiding the direction of others – all key attributes of diplomacy and skills in international negotiations.

While there has been a lot of emphasis upon the leadership qualities or lack of them shown by May, it is also apparent that the leadership shown by any political party or social group is a shared responsibility and a product of team work or the lack of it. Perhaps for this reason trust in politicians of all parties has dissipated.

What failures of leadership would you ascribe to groups supporting Leave or Remain in UK.
Lessons from Brexit Negotiations

Too many cooks spoil the Brexit

Negotiation of international agreements often draw on multiple “coalitions of the willing” and while it may seem advantageous to gain wide support for a general goal there is a danger that differences between support groups will result in an “own goal” due to conflicts between them.

Different groups supporting international agreements on topics such as climate change, sustainable development, human rights and other issues may differ in their radicalism and priorities. This can make it difficult to achieve any step forwards that involves compromise, which is always necessary to reach international agreements. For this reason it is apparent that negotiations within and between support groups are often at least as important as negotiation with those opposed to any agreement.

In the case of Brexit, failure to lead and manage conflicts amongst those supporting leaving the EU undermined negotiations and failure to compromise by those with the most extreme views resulted in weakening their position. Did too many cooks spoil the Brexit negotiations?

20 Questions for Brexit Negotiations

1. What key interests were at stake in the Brexit negotiations for the UK and EU?
2. How did trade affect the balance of power and interests?
3. Will World trade be easier outside the EU?
4. What political considerations underlay the interests of UK and EU?
5. How did contradictions between democratic processes undermine trust in UK?
6. Are EU democratic processes understood in UK?
7. What national and global goals were relevant?
8. Was there sufficient preparation by UK for the negotiations?
9. Was a UK coalition formed with clear objectives, was it maintained?
10. Was the formula for agreement well negotiated by the UK?
11. Were the interests, power base and legitimacy of the EU considered?
12. How were the debate and negotiations on Brexit framed by the EU and UK?
13. Were the interests of all parties considered, e.g. other Member States and Home Countries?
14. Was a focus on the bigger picture maintained or did debate degenerate into abuse?
15. Was May’s deal considered as a least-worst outcome?
16. Was “leaving with no deal” an effective BATNA?
17. How was this undermined, and how did this affect the power position of the UK?
18. Did supporters of Brexit propose a realistic alternative?
19. Was May trusted as a leader of the negotiations by a coalition of those supporting Brexit?
20. Was appropriate leadership shown?