

Cross Cultural Negotiation for U.S. Negotiators

Edited by Kristen Blankley



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Foreword

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“Cross-Cultural Negotiation” is a collaboration of efforts designed to synthesize ideas derived from multiple fields including, but not limited to, sociology, anthropology, law, and business. Drawing on the works of Jeanne Brett, Gary Weaver, Roger Fisher, Frank Sander, Kevin Avruch, Roy Lewicki, William Fox, Pat Chew, and others, this book seeks to combine existing ideas while offering fresh new perspectives. “Cross Cultural Negotiation” is a pioneer because it merges multiple fields of study in order to arm negotiators with a toolbox of ideas. Aimed at the U.S. negotiator, this book seeks to guide negotiators on the path to more successful cross-cultural negotiations.

The reader will find several themes while reading this book. The first is preparation. The beginning chapters of this book will alert the negotiator to important verbal and visual cues. Cross-cultural negotiations will likely present issues that are new to the negotiator; accounting for these differences will help the U.S. negotiator navigate smoothly through the negotiation. The second theme of this book is reciprocity. Once a negotiator is prepared to face potential differences in the cross-cultural setting, the negotiator will be better able to reciprocate with the counterpart. The U.S. negotiator is better able to understand what changes in style may be needed and how to seamlessly make those transitions.

The reader will discover through the third theme the importance of trust building in cross-cultural negotiations. The relationships being formed with cross-cultural counterparts are extremely fragile and this section offers tips allowing negotiators to better establish long-lasting trust. Fourth, the reader will find the theme of self-evaluation running throughout this work. This book focuses on people as individuals and suggests that a negotiator must first know himself in order to know his counterpart. By knowing himself, a negotiator is better equipped to address the next theme — reevaluation of the situation. Often in cross-cultural negotiations, unexpected issues will arise such as ethical dilemmas or language barriers. Being able to reevaluate the situation allows the negotiator to understand what has happened and what still needs to be accomplished during the negotiation. Finally, the authors suggest that a cross-cultural negotiator should keep an open mind and strive to be optimistic.

Cross-cultural negotiations present situations full of uncertainty and risk. The goal of this book is to furnish U.S. negotiators with a toolbox of ideas to use in cross-cultural negotiations. These suggestions are based on existing research and are offered as a guide to U.S. negotiators as they negotiate cross-culturally.

PLACEHOLDER

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PART ONE

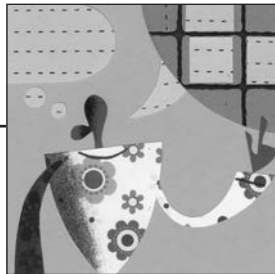
Introduction:
*Changing the Approach
When Negotiating Across Cultures*

This part of the book introduces the reader to the subject of cross-cultural negotiations. In introducing the issue, this part explains potential differences in the negotiation styles of counterparts from other cultures.

After discussing some of the most common negotiation styles found throughout the world, this part introduces ways in which U.S. negotiators can determine which styles are being employed by negotiating counterparts as well as equipping the negotiators with tools for dealing with those styles.

U.S. negotiators may find their training in interest-based, or collaborative, negotiation does not adequately prepare them for negotiating with others from different cultures. Those negotiating counterparts may be unfamiliar with concepts typically employed in interest-based bargaining.

Because this gap in negotiating styles exists, this part explains how a reflective negotiating style can be employed in almost any situation and how using this style could potentially lead to interest-based negotiation in some situations.



Chapter 1

*Tuning the Harmony
Between Negotiation and Culture*

Sara A. Stahley

A b s t r a c t

Culture is a complex spectrum consisting of ideas, thoughts, and feelings on one end and behaviors, values, and beliefs on the other. Global negotiations bring culture to the forefront because of the impact cultural relations have on negotiation.

U.S. negotiators will be prepared for different negotiation approaches and how to respond to these differences to ensure success in a negotiation.

This chapter provides tips on understanding and appreciating culture, emphasizes the importance of self reflection, and finally explores goal assessment in a negotiation and how culture, individualism, and global assessment combine to impact the negotiation.

I. Introduction

*“Culture is to negotiation what birds flying into engines are to flying airplanes . . . practical impediments.”*¹

Culture is better characterized as a spectrum rather than a term with one set definition. The spectrum is a mixture of ideas, thoughts, and feelings on one end and behaviors, values, and beliefs on the other.² To think of culture is to think of an individual. No two groups have an identical culture and each person within a group has an individual personal culture.³

As complex as culture is, studying and appreciating the concept will improve a negotiator’s effectiveness as the negotiator develops a realistic cultural empathy.⁴ A negotiator is able to place himself in the counterpart’s shoes because studying culture allows him to better understand the counterpart’s position. Developing the skills to become aware of one’s own culture and the counterpart’s culture is a cognitive and practical way to prepare for any negotiation.⁵ As Kevin Avruch of the Institute for Conflict Analysis and Resolution at George Mason University explains, “negotiation is about communication,” communication has a human element, and to be human is to possess culture.⁶

The focus of this chapter and this book is not only to provide a U.S. negotiator with cultural empathy but also to supply him with a toolbox of techniques on how to successfully approach cross-cultural negotiations. This broad focus encompasses information regarding likely negotiation approaches a U.S. negotiator will encounter when negotiating across cultures and further, ideas on how to respond to those differences while continuing to pursue the goal of the negotiation.

This chapter serves as an introduction to culture by stressing the importance of cultural appreciation and then by emphasizing the dangers of cultural stereotyping. The chapter also highlights the value of self-reflection and being aware of one’s own culture because one key to understanding culture is to concentrate on individuals. Finally, the chapter explores goal assessment in a negotiation and how culture, individualism, and goal assessment combine to impact a negotiation.

II. Appreciation of Culture

An American travels to China thoroughly prepared for a negotiation. He knows both businesses and the potential partnership inside and out. He wishes to establish a rapport and learns his counterpart has a daughter who is about to be married. He decides to present the daughter with a gift and chooses to give her a fine clock. The negotiation is ruined before it has even begun. Why?

The American knew the businesses, but he failed to learn about Chinese culture. Clocks are associated with death in China and they are an inappropriate gift. The American insulted the Chinese negotiator and the business relationship was subsequently terminated.⁷

Many problems can arise when a person negotiates without an appreciation of the differences across cultures. The example above illustrates how a negotiation can be doomed before it has even begun. Failing to recognize the importance of differences across the table can ruin relationships. The reason for failure is that people need to feel appreciated and that they have been acknowledged as a person. Ignoring culture may anger or hurt the other negotiator and therefore, trust cannot be established.⁸

Professor Gary Weaver of the School of International Service at American University⁹ designed the “Iceberg Analogy of Culture” to describe how cultures collide and the friction that results when a negotiator is not prepared for the collision.¹⁰ The iceberg analogy “allows us to identify aspects of all cultures...and consider what happens when people from different cultures come together.”¹¹ The largest part of the iceberg is the base, the portion that lies below the surface. This represents the internal culture into which one is born; the values are unconsciously developed by the surrounding environment. The base of the iceberg is difficult to change because these values have roots extending as deep as the roots of the Sequoia trees. These values are not seen on the surface and are often hard to reach; they are learned early and are taken for granted as being a basic part of who one is. Professor Weaver describes this as the primary culture, and “by understanding values, the base of the iceberg, we can understand behavior.”¹²

In contrast, the tip of the iceberg is the external culture that can be easily changed. Professor Weaver describes this as one's secondary culture. The behaviors learned are a result of the groups that one joins throughout life, such as the military. These groups allow human beings to add to their base of values, thus allowing humans to share behaviors and beliefs with someone who does not share their primary values. As an example, a U.S. Air Force pilot will share certain behaviors with a pilot from Jordan because of the similar training and education each has received. It is important to remember, however, that the secondary culture never trumps the primary culture because a person brings his primary culture into every situation he enters. It may be tempting to use the secondary culture as a way to say that certain people are the same, but "no two human beings belong to a secondary culture in the same way at the same time, so we are all unique."¹³

In order to appreciate the examples set forth in this chapter, analysis should flow through the levels of the iceberg. The clock represents a belief for the Chinese negotiator, but in order to understand what affect it will have on him, his values must be appreciated. Although the tip of the iceberg is significant, a counterpart will know that the negotiator is not from his culture and the counterpart will allow and expect a foreign negotiator to make mistakes. To minimize these types of potential missteps, a negotiator may be well served to strive to prepare well enough so as not to offend the counterpart's deepest held values. An empathic negotiator will step into his counterpart's shoes and this will open the door to negotiations. Preparation for the negotiation is key. Preparation includes being sensitive to differences around the world and doing one's best to be aware of what makes the other negotiator unique. A good negotiator is conscious of cultural differences at all times. Forgetting this, even for a moment, can destroy a successful negotiation.

III. Miscalculating Culture

A U.S. Air Force unit was deployed to Kosovo attempting to get the railroad in order for commerce to get back on track. The reason it was no longer in operation was because of disagreement between the Serbians who managed the operation and the Albanians who worked the trains. After a period of ethnic violence, the two groups refused to work with one another. The United States went in with an economic point of view; it was in the country's best interest for the railroad to run. The Serbian and Albanian held the point of view that working together was impossible because of the violence. After days of frustration and impasse, an American saw the Serbians and Albanians outside enjoying a cigarette break. The two sides were laughing and talking with one another! The American quickly went over and started a conversation. He asked why, since they had always been friends, they could talk together, but they couldn't work together? He was told that he just did not understand, the violence had torn the groups apart and to save face in their respective communities, the workers could not work together in public. It was not a matter of economic efficiency; it was rooted much more deeply. The Americans assumed that each side held the same values and they did not appreciate the differences between the cultures.

How was it resolved? By recognizing this cultural gap and separating the two cultures instead of grouping them together, the Americans helped the Serbians and the Albanians set up a system where the Serbians would operate the train in the Serbian area and then would stop the train as it approached an Albanian area and the Albanians would take over.¹⁴

Just as it is unwise to ignore culture, Professors Frank Sander of Harvard Law School and the late Jeffrey Z. Rubin of Tufts University suggest it is dangerous to inappropriately use cultural stereotypes to explain all cultural differences.¹⁵ Culture is constantly changing; there is no "single" culture.¹⁶ Every member of a group has a unique personality developed by that person's own individual experiences. Stereotyping a group means that a negotiator failed to appreciate the person with whom he was negotiating. Professors Sander and Rubin also advance the prospect that although it may seem easier to stereotype, the negotiation will be robbed of true success and the other negotiator will be robbed of his individuality.¹⁷ It is important to remember that "you need the other person if you are to reach your goals."¹⁸

Professor Weaver suggests that generalizing cultures is not necessarily harmful, as long as the negotiator knows that it is a generalization. Generalizations may be helpful to understand the basics of a culture, as long as one remembers that, as soon as the generalization is no longer applicable, it should be discarded. The danger lies in taking these generalizations one step further and engaging in stereotyping.

Stereotyping is simply not acceptable. The ramifications of stereotyping can severely cripple cross-cultural negotiations.¹⁹ Dr. Weaver proposes that forcing everyone to do one thing in every situation is just not feasible. Stereotypes are hard to abandon and total panic can ensue when something happens to defy the stereotype.²⁰ Stereotypes are often “false and misleading . . . and promote unrealistic expectations.”²¹

Stereotyping is just as harmful as disregarding culture entirely. The counterpart may become angered, trust may be sacrificed, and a relationship may not become established. A good negotiator is aware of cultural differences; negotiating across cultures is not a process of using one set of rules or tactics when dealing with counterparts from one country while using entirely different tactics for a counterpart from another country. Rather, it is recognizing that differences exist, being empathic to those differences and doing one’s best not to let those differences hinder the negotiation.²² “Culture is not reducible to behavior; to ‘know’ a culture is not to be able to predict each and every act of each and every member of a group.”²³ Stereotypes and the ramifications of stereotyping are discussed more fully in Chapter 6.

IV. Looking Inward to Look Outward – An Emotional Journey

“Know thyself” is an ancient Greek phrase applicable to cross-cultural negotiations because the first step to preparation is to understand who one is as a person. Professor Weaver suggests that it is necessary for a negotiator to examine his own culture to understand how he has been shaped to look at the world and solve problems.²⁴ As this chapter proposes, it is easier to understand why a counterpart is reacting the way he is if one has an understanding of the counterpart’s culture. Similarly, if a negotiator understands himself, not only will he be able to understand why he reacts how he does but also he will be able to “anticipate where misunderstandings and conflict will take place when we interact with those who are culturally different.”²⁵

Training negotiators to be prepared involves teaching them to open their eyes to themselves and the world.²⁶ If a negotiator learns to take responsibility and control over his own actions, he will gain control over the negotiation. This control will flow from eliminating questions as to how he will react; he has addressed himself and therefore he recognizes and avoids bringing in any stereotypes or other relationship barriers.²⁷

Points for negotiations to look inward include:

- How much knowledge do I have about the situation?
- How much experience do I bring?
- What personal attributes do I have that can make this negotiation a success?

In order to understand why a person is reacting in a certain way, it is important to be aware of personal reservations and inhibitions that person may have entering into the negotiation. Some of the situations a negotiator faces may be risky because he is entering unfamiliar territory. The negotiation may consist of groups, issues, and geographical areas that the negotiator has never yet addressed or encountered. A negotiator needs to be cognizant of his emotions and what part they will play. For example, nervousness as a result of these unfamiliar areas may cause one to lose sight of the goals of the negotiation. By first attempting to tackle the nervousness, a negotiator can use negative emotions as a tool in the negotiation because it will eliminate a factor that could have taken one by surprise.²⁸ Minimizing potentially harmful factors over which one can exert control will promote successful negotiations.²⁹

Another piece of understanding who one is as a negotiator is understanding what biases and predispositions that person brings to the table. It is important to remember that biases and predispositions are not always categorized as negative. For example, humans tend to make concessions for elderly people,

i.e., offering a seat in a crowded place, and men tend to show respect for women by holding open a door. These kind gestures are also predispositions that one needs to take into consideration before entering a negotiation.³⁰

There exist many unknown factors when entering into a negotiation; therefore, a negotiator will be more comfortable when dealing with those situations over which he has control. Assessing one's biases and predispositions is something the negotiator can control. By asking why one is reacting in a certain manner, a person becomes more aware of his own culture and this appreciation helps him understand what values and beliefs are most important to him.³¹ A negotiator needs to know how he will react to his counterpart in their initial meeting, if the counterpart says something the negotiator does not agree with, or if the counterpart does something to anger the negotiator.³² One's reactions to all of these situations could mean the difference between success and failure in a negotiation.

Every human carries biases and predispositions with him throughout life. These are learned traits and because they are learned, they can be altered. In order to teach a negotiator how to examine his own biases, ask him to consider the following points:

First, a negotiator needs to assess what biases and predispositions he holds.

- What do you immediately think about when you meet someone who is different than you?
- Are there any benefits to the biases that you hold?

Second, think about where your biases came from and how they developed.

- If you know where they originate, it will be easier to move on to the next step.

Third, think about how you can work to change your biases and predispositions.

Finally, you need to be aware that even after you have identified and worked to change your biases, they may resurface if you are provoked or if you let your guard down.

- Consider how you will react if someone who is different than you says or does something to anger you; will you revert back to your biases or will you be prepared enough to continue on the path to a successful negotiation.³³

By gaining confidence and an understanding of one's own culture, a negotiator can effectively appreciate his counterpart's culture. Culture misconceptions tend to arise because of both verbal and nonverbal communications.³⁴ In sum, a negotiator who understands how his own communications will be interpreted is more able to understand how to interpret his counterpart's communications.

V. Goal Assessment

Negotiation training that includes a segment on interest exploration will help negotiators be better prepared because a negotiator who determines exactly what his interests are will be able to prioritize and possibly create value by considering trade-offs.³⁵ It is important to be aware of what one is attempting to achieve by this particular negotiation because this will affect choices made during the negotiation. A goal assessment prepared before a negotiation is a useful tool to assist negotiators. In order to help prioritize, organizing a list of what is essential to accomplish in the negotiation and a list of items that could be included, but are not the main goals can help negotiators determine the best way to proceed. (See Chapter 10).³⁶

In the negotiation world, personal goals and organizational goals will not always be the same. (See Chapter 4).³⁷ Further, a study by Jeanne Brett and Tetsushi Okumura suggests that cross-cultural negotiators may possess different ideas regarding personal and organizational goals. Brett and Okumura hypothesize that some cultures tend to prioritize only goals of the organization for which he is negotiating, while other cultures value both personal and organizational goals.³⁸ A negotiator who self-reflects

will be able to recognize the schema with which he most identifies. He will then understand how the negotiation may play out by examining the list of goals and being aware of which goals are important personally and which goals are important to the organization may affect how the negotiation plays out. Brett and Okumura recommend considering these questions: what needs does one require to be satisfied for him to be effective in this negotiation and what needs does the organization require for this negotiation to be effective in the long run.³⁹

The goals that are most important personally will usually affect one's negotiation style. The reason for this is because one will generally use the negotiation style that will be most effective to accomplish what one wants. As will be discussed in Chapter 2, there are many styles and negotiation approaches from which a negotiator may choose.

It is also vital for a negotiator not to forget the bigger picture: the goals of the organization one represents. Generally, the sole reason the negotiator is in the negotiation situation is to satisfy his job duties. The issues to contemplate include whether a continuing relationship needs to be established, how important trust is to each side, how much information the organization wants the negotiator to share, how much information the organization needs the negotiator to glean, and what one's organization really needs to accomplish from this negotiation (see Chapters 5, 10, and 15). The goals that the organization must satisfy will also affect a negotiator's style.⁴⁰

A negotiator is usually expected to represent his organization first and himself second. As explained in Chapter 8, the goals of the organization combined with the negotiator's personal goals will define how much power the negotiator has.⁴¹ If the organization's goals and the negotiator's goals are aligned, the negotiator will be more comfortable with zealously negotiating because he will be able to accomplish all the goals at once. If tension exists between the goals, it is wise to stop and assess the priority of these conflicting goals and determine which style will best satisfy the most significant priorities.

One way to proceed is by utilizing checklists. Such checklists and bullet points are a useful way for a negotiator to assess whether his personal goals and organizational goals are being met. A negotiator may use the goal list he prepared prior to the negotiation and cross out each goal as it is met while making an effort to reach goals that have not been addressed.

VI. Toolbox

Culture is not a single "thing" that can be fully understood.⁴² Nevertheless, every human being possesses a unique culture, and when cultures collide, "there is often misunderstanding and conflict caused by these differences."⁴³ Therefore, culture needs to be studied and appreciated so that differences can be mitigated and negotiations can ensue. A negotiator who attempts to learn about his counterpart's culture will develop a long lasting relationship with a foundation of trust.

People vary across cultures. The dangers in using culture to stereotype and over-generalize the counterpart exist because stereotypes will offend the counterpart and destroy the negotiation. Just as the negotiator himself wishes to be respected, the negotiator should respect the person with whom he is negotiating; focusing on the individual will facilitate respect.

A negotiator needs to know who he is and how his world has shaped him before he can attempt to understand who his counterpart is. By understanding who he is and what he brings to the negotiation, a negotiator will improve the possibility of a successful negotiation. The prepared negotiator not only knows his strengths, but he has identified his weaknesses and has taken the steps to overcome them.

Finally, a good negotiator will assess both his goals and the goals of the organization he represents. The goals of each will affect the negotiator's style because style is the key to accomplishing what needs to be achieved. Tensions that are identified before the negotiation between personal goals and the goals of his organization will help the negotiator know his limits. A negotiator who has established checkpoints will be able to assess which goals have been accomplished and which goals still need to be addressed.

Endnotes

- ¹ KEVIN AVRUCH, *CULTURE & CONFLICT RESOLUTION* 43 (1998).
- ² See Jeswald W. Salacuse, *Ten Ways that Culture Affects Negotiating Style: Some Survey Results* *NEGOT. J.*, July 1998, at 221, 222.
- ³ Marshall K. Singer, *The Role of Culture and Perception in Communication*, in *CULTURE, COMMUNICATION AND CONFLICT: READINGS IN INTERCULTURAL RELATIONS*, 28, 30 (Gary Weaver ed., Pearson Press rev. 2000) (1994).
- ⁴ Lecture by Gary Weaver at the Air War College in Montgomery, Ala. (Apr. 6, 2006) (hereinafter Weaver lecture) (notes on file with author).
- ⁵ *Id.*
- ⁶ AVRUCH, *supra* note 1, at 40, 44.
- ⁷ Kathleen Kelley Reardon & Robert E. Spekman, *Starting Out Right: Negotiation Lessons for Domestic and Cross Cultural Business Alliances*, 37 *BUS. HORIZONS*, Jan.-Feb. 1994, at 71, 73.
- ⁸ For a detailed discussion of trust building in cross-cultural negotiation, see Chapter 5.
- ⁹ Dr. Weaver's publications and lectures on cross-cultural relations are extensive and this author had the pleasure of attending one of his presentations at the Air War College in Montgomery Alabama April 5-7, 2006.
- ¹⁰ Gary R. Weaver, *Contrasting and Comparing Cultures*, in *CULTURE, COMMUNICATION AND CONFLICT*, *supra* note 3, at 72, 72-74 (citation omitted).
- ¹¹ *Id.* at 73
- ¹² Weaver lecture, *supra* note 4; *see also* Weaver, *supra* note 10, at 73.
- ¹³ Weaver lecture, *supra* note 4; *see also* Weaver, *supra* note 10, at 73.
- ¹⁴ Student comment at the Air War College, April 6, 2006.
- ¹⁵ For additional information on this subject, see Jeffrey Z. Rubin and Frank E.A. Sander, *Culture, Negotiation, and the Eye of the Beholder*, 7 *NEGOT. J.* 249, 250 (1991).
- ¹⁶ ALAN S. RAU ET AL., *PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS* 906-10 (3d ed. 2002).
- ¹⁷ Jeffrey Z. Rubin & Frank E.A. Sander, *Culture, Negotiation, and the Eye of the Beholder*, in *THE CONFLICT AND CULTURE READER* 15, 15-16 (Pat K. Chew ed., 2001).
- ¹⁸ William Briggs, *Next for Communicators: Global Negotiation*, *COMM. WORLD*, Dec. 1998, at 12, 13.
- ¹⁹ For a detailed description of stereotypes that a counterpart may hold about Americans, see Chapter 6.
- ²⁰ Weaver lecture, *supra* note 4.
- ²¹ Gary R. Weaver, *Understanding and Coping with Cross-Cultural Adjustment Stress*, in *CULTURE, COMMUNICATION AND CONFLICT*, *supra* note 3, at 177, 191.
- ²² RAU, *supra* note 16 at 906-10.
- ²³ Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings: Problems and Prospects*, in *THE CONFLICT AND CULTURE READER*, *supra* note 17, at 7.
- ²⁴ Weaver lecture, *supra* note 4.
- ²⁵ Weaver, *supra* note 10, at 72.
- ²⁶ For more information on self-assessment, see Chapter 7.
- ²⁷ Weaver, *supra* note 21, at 184.

- ²⁸ See Jennifer M. George et al., *The Role of Affect in Cross-Cultural Negotiations*, 29 J. INT'L BUS. ST., 4th Q. 1998, 749, 753, 764.
- ²⁹ For additional information, see Jackie Mayfield et al., *How Location Impacts International Business Negotiations*, 19 ST. JOHN'S U. REV. BUS. (1998).
- ³⁰ Sondra Thiederman, *Toward Bias-Free Leadership: Your Association Wins When You Identify and Snuff Out Your Biases; Bias-Free Leadership, Guerrilla Bias*, 7 ASSOC. MGMT. July 2004, at 53.
- ³¹ Weaver lecture, *supra* note 4.
- ³² For a detailed description of stereotypes that counterparts may hold of Americans, how those stereotypes may anger a U.S. negotiator, and how a U.S. negotiator may wish to respond, see Chapter 6.
- ³³ Thiederman, *supra* note 30.
- ³⁴ See Chapters 11 and 12 for more information on verbal and nonverbal communications.
- ³⁵ Lecture by Linda Myers at the Air War College in Montgomery, Ala. (Apr. 5, 2006).
- ³⁶ For detailed information on setting the agenda, refer to Chapter 10.
- ³⁷ For more information on tension between self-interests and collective interests, see Chapter 4.
- ³⁸ Jeanne M. Brett & Tetsushi Okumura, *Inter- and Intracultural Negotiation: U.S. and Japanese Negotiators*, 4 ACAD. MGMT. J., Oct. 1998, at 495, 496.
- ³⁹ See *id.* at 496-97, 502-03, 506.
- ⁴⁰ *Id.*
- ⁴¹ For a discussion concerning the dynamic of power, see Chapter 8.
- ⁴² See Kevin Avruch, *Culture and Negotiation Pedagogy*, NEGOT. J., Oct. 2000, at 339, 340-41.
- ⁴³ Weaver, *supra* note 10, at 72.

Chapter 2

Varied Negotiation Approaches

Carrie Luria Cooper

A b s t r a c t

This chapter includes a discussion of varied negotiation approaches utilized in the United States and abroad. It also contains a negotiator's toolbox of behaviors tending to indicate the negotiation style of the counterpart. Use of these identifiers can help a negotiator know what to expect and plan how to respond.

I. Introduction

This chapter serves to help the U.S. negotiator to recognize the varied styles of negotiation that are most often used domestically and abroad. As noted in Chapter 1, the U.S. negotiator can be better prepared to negotiate with any counterpart if he is able to evaluate his idea of negotiation approaches as well as his basic values. Then, the U.S. negotiator needs to be able to think about and recognize other common negotiation approaches most often found outside the United States. Once a negotiator is able to recognize if his negotiating counterpart has a different approach, the negotiator can use that information as a clue into the values of the negotiating counterpart, and he can then decide how to best proceed with the negotiation.

II. Thinking About Negotiation Approaches

When a U.S. negotiator thinks about different types of negotiation, she usually thinks of competitive versus cooperative styles of negotiation.¹ The competitive negotiator is thought of as aggressive, adversarial, and as someone who negotiates by setting out positions.² The cooperative negotiator often uses principled or problem-solving techniques, sometimes called “interest-based negotiation.”³ The cooperative negotiator tries to expand the resources available and come up with new ideas to help all parties become satisfied. This latter technique is also called collaborative negotiation.⁴ A classic example of an interest-based negotiation is when two parties are deciding who will get or how to split the only available orange. The parties, through collaborative negotiation eventually learn that one person wants the peel while the other is interested in obtaining the seeds. Once this information is known, the parties can each have all of the peel and all of the seeds respectively instead of simply splitting the orange, which they may have done had they not explored each other’s interest in the orange.⁵

While interest-based negotiation may work in some situations, as will be detailed in Chapter 4, this type of negotiation style is not always the best approach. Although the ideas in interest-based negotiation encompass many positive features, the underlying principles are embedded in American notions of what is good and important. It reflects U.S. culture and places value on principles such as fairness, justifiability, equality, and predictability.⁶ If one is negotiating with a counterpart who does not share, or does not perceive to share, these underlying values or use these approaches, the interest-based approach may not be the best way to reach a favorable agreement.⁷

III. Presumptions Prevalent in U.S. Culture

Listed in this section are just a few presumptions prevalent in U.S. culture that may not be true in every other culture. A U.S. negotiator, during his own self-evaluation, should consider if he also holds these notions:

Time is money.⁸ People in the United States are often in a hurry and feel that faster is better.⁹ People want to be and want others to be “efficient,” believing that being efficient is being good. When a person is efficient, he can get more done. If one can find a way to consolidate tasks and do something more efficiently, then that is a better way to do just about anything from working to running errands to finding the quickest route from A to B.

Issues can be separated. If a negotiator’s checklist includes multiple items or issues, the negotiator and counterpart may be able to resolve some issues but not others. In other words, the issues are not necessarily interconnected. Negotiating counterparts can discuss and come to an agreement and conclusion on one or more issues regardless of if there is agreement on the others.¹⁰ Similarly, U.S. negotiators often like to discuss one issue at a time. For example, a negotiator may feel it appropriate to negotiate the issue of laborer wages with the workers even before the final plans of the project are available for the workers to review. This concept is further developed and evaluated in Chapter 10.

The individual’s rights and interests are often most prominent. Americans believe that each individual person is his own person and should be viewed and judged as an individual.¹¹ This ideal is embodied in the U.S. Constitution in the promise of equal protection for every individual citizen. As individuals, people are free to make their own choices (within the boundaries of the laws), but a person should not be penalized for making an unpopular decision. Further, in the United States, people often feel that a person who gets something done by himself is independent and smart, and those attributes are viewed as positive.¹²

Forthright disclosure equals honesty. In the U.S. people often appreciate being told information outright or straightforwardly.¹³ Many subscribe to the common phrase, “it’s not personal, it’s just business,” thus noting that those in the United States treat other differently depending on whether they encounter one another in a business or personal setting. The tendency for those in the United States to speak in a forthright manner stems from the notion that it is easier to fix a problem or address an issue if one is talking about it openly. To couch or mask information in complex expression can get in the way of efficient communication and leaves room for misinterpretation.

The negotiator at the table should have at least some autonomous authority to commit and make decisions. The idea is that the U.S. negotiator comes to the negotiating table ready to “negotiate.” Inherent in the term “negotiate” is the authority to make demands as well as concessions.¹⁴ This follows from the idea that parties can only reach an agreement if the people at the table can take such steps and progress towards that agreement.¹⁵

Impasse in negotiation is bad.¹⁶ U.S. negotiators are often adverse to impasse in negotiation because impasse means that the negotiation, and therefore the negotiator, failed. If a negotiator is sent to make an agreement and when no agreement is made, he may feel that he has failed at his task.

The American way is the best way. There is the cultural idea in the United States that the U.S. way is the best. Americans think that they have a large influence on other cultures. Thus, once people know how “we do it in the United States,” they will want to do it that way too.

Conclusion. A negotiator should think about himself after looking at this nonexhaustive list. A negotiator should ask: Do I think these things? Are there other American ideas that I have in addition to these? Do I expect others and particularly my negotiating counterpart to think this way as well?

After analyzing how one thinks, the negotiator may realize that a negotiating counterpart from another culture may not share these ideas and ideals. Thus, the negotiator from another culture may have a different approach to negotiation based on his own ideas and ideals that are inherent to him and his culture.

IV. Presumptions Prevalent in Other Cultures

Below is a non-exhaustive list of negotiation approaches that are found most often outside of the United States. These differing styles stem from the different ideas and ideals that people throughout the world hold as core values. Professor Jeanne Brett from Northwestern University identifies cultural values, norms, and ideologies as elements shaping a negotiator’s strategy.¹⁸ Specifically, culture will shape negotiation strategy because it helps define what the negotiator’s interests are and what negotiating behavior is acceptable.

Community based.¹⁹ The community-based negotiator negotiates using the interests of the community as his underlying motivator. Here, the word “community” means whatever constituency the negotiator represents. That is, “community” could mean a negotiator’s family, village, group, tribe, or state. Often the individual negotiates with the interests of stability and prosperity in the community in mind. Community acceptance and harmony are an important part of the negotiated agreement. For example, under a community-based approach, a farmer may not be willing to sell more than a certain portion of his crop to a military base such that there will be a shortage of crops in the community.

The underlying values in this context include the idea that the good of the community is intertwined with an individual’s desires.²⁰ Also, that preservation of the community and perhaps their way of life outweighs the desire for individual or economic gain.

Religion/world/moral based. The religious-based negotiator will only come to a negotiated agreement if such agreement harmonizes with that negotiator’s religious and moral beliefs.²¹ For example, a herdsman who believes that it is wrong to eat meat may not be willing to sell his flock for slaughter. These religious and/or moral principles may be at the forefront or lurk behind a party’s other interests. This idea of religion in negotiation is covered in depth in chapter 9 of this book.

Ritual. For some cultures, there is a ritual that surrounds a negotiation.²² An example of a negotiation ritual is haggling. In some cultures, if a person wants to do something as simple as buying a loaf of bread, that person must participate in the haggling ritual to come to an agreement. If the person does not participate in the haggling, then he will either pay too high of a price, or the two sides will not come to an

agreement. There are many negotiating rituals, and they are sometimes described as a dance in which the parties must participate in order to come to an agreement.²³

Other examples of rituals may not have such a direct effect on the negotiated outcome as much as it relates to common courtesy. A ritual in negotiation may be to drink tea or coffee or share a meal with the negotiating counterpart. These rituals may symbolize the act of having a relationship with one another, which may be one of the goals of the negotiating counterpart.

Full proposal. Some negotiators may feel that nothing is settled until everything is settled. They either may not want to separate issues from one another or may not want to commit to any issues without commitment on the whole proposal.²⁴ The negotiator may have to jump from topic to topic before settling on any or all issues.

Hierarchical. In some cultures and societies, social hierarchy affects a negotiation and its outcome.²⁵ In a hierarchical society, the negotiator with the higher position and more power may be more likely to dictate the outcome of the negotiation and its terms.²⁶ A negotiator from a hierarchical culture will likely spend time trying to evaluate which person at the negotiating table has the most power. The concept of power in negotiation is explored further in Chapter 8.

Saving Face. Some cultures put great importance on “saving face.”²⁷ A negotiator may not agree on an outcome that makes him ashamed or embarrassed.²⁸ The problem may not be in the terms of the agreement, but how it is framed or how the negotiator will appear in the community.

V. Elements of Negotiation Styles Contrasting with the Predominant U.S. Style

As this chapter has discussed, a U.S. negotiator may have some expectations of her negotiating counterpart based on what a U.S. person perceives to be the common negotiation approaches and procedures. However, one must keep an open mind as much as possible regarding what the negotiating counterpart is there to do and what she wants and expects to happen. Culture can play a large role in a negotiator’s approach, as shown in Charles M. Hampden-Turner and Fons Trompenaars’ *Building Cross-Cultural Competence*. This text describes six differing “cultural dimensions” through survey data taken of 46,000 managers from over forty countries.²⁹ Building on these findings, this chapter suggests ways in which a U.S. negotiator might identify a contrasting “cultural dimension” in her negotiating counterpart.

This section will examine some common non-U.S. negotiation approaches as contrasted with some common U.S. negotiation approaches. It will also give the negotiator a toolbox of identifiers that are associated with the contrasting negotiation approach. These identifiers, as well as the knowledge about the possibility of this type of negotiation and the differences in possible approaches will thus help the negotiator collect information which he can use to decide how to proceed and behave in the negotiation.

Autonomous authority vs. delegate. A negotiator with autonomous authority has decision-making and bargaining power whereas a delegate can only give and collect information. A U.S. negotiator is almost always given some authority to bargain and to commit to an acceptable agreement. It may be, though, that the negotiation counterpart is a delegate and does not have authority to make concessions, accept new ideas, or commit to a decision. The delegate can only collect information and take it back to those who do have such decision-making authority.³⁰

It would be helpful for a negotiator to know whether or not his negotiating counterpart has decision-making authority or is a delegate. But, a negotiator may not want to ask outright about the extent of the counterpart’s authority. In such circumstances, the negotiator may be better served looking for cues from the counterpart. Some of these signals include the use of the word “we” when the negotiator is alone and references to his superiors. Further, although the U.S. negotiator may not want to ask outright, he may want to ask interrogative questions about the counterpart’s position and background to get clues as to if he is in a decision-making role. Also, the negotiator can ask the counterpart to make any decision and gauge the counterpart’s reaction and response. The negotiator will often be able to figure out if the counterpart has decision-making authority or is a delegate by asking questions and listening. Once the negotiator knows the role of his counterpart, he can negotiate accordingly.

The element of time. Often, a negotiator from the U.S. feels that a negotiated agreement can be reached quickly, yet can still be a “good” agreement that is both fair and final.³¹ However, people in some other cultures may feel that spending time in a negotiation is an element of the ritual that cannot be foregone.³² Some feel that it is only with time that they can start to trust the other party. (See Chapter 4). Others may feel that a fast agreement is rushed and suspect. In some cultures, individuals feel that the commitment of time to a negotiation is important and that patience will be rewarded in the end. A negotiator would want to know if his counterpart is in the latter category and believes that an appropriate length of time is essential to the negotiation, thus denoting the counterpart is a “time-based” negotiator.

In order to figure out if a negotiation counterpart is time-based, a negotiator can use his knowledge of background about the culture or try to figure it out at the beginning of the negotiation. One might find that a time-based negotiating counterpart will not talk about the “meatier” issues of the negotiation right away, or even in the first meeting. Building on that, the counterpart may already have scheduled a second or a series of meetings. The counterpart may also ask a lot of related, peripheral, or unrelated questions before discussing the major topics. Figuring out if the negotiating counterpart is time-based is important because such a negotiator may put off or avoid issues if they are brought up too early in the negotiation.

Results vs. Method Based. A U.S. negotiator is often considered results based. That is, the outcome is generally the most important part of the negotiation. A person in the United States might judge how he did or be judged on how he did in the negotiation based on the negotiated outcome. Other cultures may feel that the method of the negotiation is just as important, or more important than the negotiated outcome.³³ For example, if the U.S. negotiator has a counterpart who will only haggle, although the U.S. negotiator may be offering a price the counterpart is willing to accept, the U.S. negotiator may still have to engage in the haggling “dance” and work towards that acceptable price before the parties will have an agreement. This may be true with any counterpart who feels that the negotiating ritual is just as or more important than the outcome reached.

Research about the commercial culture or negotiation styles of a culture should help the U.S. negotiator determine if the counterpart’s culture includes a negotiating ritual or method that the negotiator should know to expect. Some face-to-face indicators include the counterpart avoiding commitment for seemingly no reason or the counterpart wanting something to happen or to be done that is unrelated to the issues being negotiated. Perhaps it is a cultural ritual to have coffee or a meal while or before negotiating.³⁴ Further, a negotiator should be aware of extreme high and low offers as a sign that there is a certain negotiating process that needs to occur.³⁵

Individualism vs. Collectivism.³⁶ In the United States, as discussed earlier, there is much importance placed on the rights and the wants of the individual.³⁷ Further, as discussed, there are some cultures that place greater value on a group larger than the individual, whether it is the family, the tribe, the community, or the state.³⁸ Thus, it would be helpful for the U.S. negotiator to know what the underlying values of his counterpart are in order to best proceed in the negotiation.

Again, the negotiator should have a general idea about the culture of his negotiating counterpart and have an idea as to whether this matter will be an issue upon meeting his negotiation counterpart. Still, a community-based negotiator might signal these values through his conversation in the negotiation. The counterpart may speak in the plural or in the collective. He may inquire about the negotiator’s family or constituency. He may ask how the agreement would affect his community. Further, he may want to make sure that he saves face in the outcome so that he will not have shame in the community.

Unilateral vs. Compartmentalized Negotiators. Depending upon the situation, the U.S. negotiator may have unilateral authority. That is, the U.S. negotiator may have the authority to make all of the arrangements and determine all of the details necessary to reach an overarching agreement. The negotiating counterpart may also have this authority. Conversely, the U.S. negotiator (or his counterpart) may only have compartmentalized authority to negotiate one or more specific aspects of a larger negotiation.³⁹ Similar to the situation involving delegates, a negotiator would be well served to know the scope of his counterpart’s authority in order to best proceed.

The U.S. negotiator may have a hint the counterpart may engage in compartmentalized negotiating based on the counterpart's culture. Still, a negotiator can prepare himself to be able to figure out if the counterpart has compartmentalized authority by knowing the issues, listening, and asking questions. A negotiator can tune in to whether or not the counterpart is focusing on specific issues or is asking broad questions, but only giving answers about some narrow issue. Further, asking personal conversational questions of a negotiating counterpart and finding out more about his position can help identify if the counterpart only has compartmentalized authority. For further exploration of this topic, see Chapter 5.

Goal-based vs. Relationship-based.⁴⁰ As previously discussed, a U.S. negotiator is often goal-based and believes that there can exist a short-term, mutually acceptable agreement that does not include a promise of further dealings or protection for the other party. In some cultures, a negotiator may feel that in order to reach any agreement, there needs to be a long-term relationship in place. He may also feel that the terms of an agreement must reflect the idea that a long-term relationship is being pursued. A U.S. negotiator would benefit from knowing if their negotiating counterpart is relationship-based rather than goal-based, so that they can better negotiate.

The relationship-based counterpart will often ask extensive personal questions about the negotiator and try to establish a relationship. A negotiator may find himself being invited to participate in social events and recreational activities. The relationship-based counterpart will probably talk about the future: future dealings, long-term agreements, and future plans in general. Further, the expectation that there will be multiple meetings can be a cue that the counterpart may want to take time to get to know a negotiator and build a relationship and establish trust before entering into an agreement.

Verbal vs. Non-Verbal and Straight Forward vs. Issue Avoiders. It is common practice in the United States to try to explain oneself as much as possible and be as clear as possible in a negotiation situation so that the best possible solution can be created.⁴¹ This would include the idea of an interest-based negotiation in which the negotiating parties are trying to explain their interests so that they can explore new ideas and new options. However, some cultures may not be so forthcoming simply because it is not custom or because they do not want to share certain information. Similarly, a negotiating counterpart may communicate non-verbally or speak in more delicate terms if he feels that it is impolite to be so straightforward.⁴²

A negotiator may wish to keep his eyes open for non-verbal cues and be aware of the context of what is being said.⁴³ This may be important especially in cases in which there is a language barrier and a translator is used. For example, in some cultures, the type of food served at a meal may reflect the negotiator's feelings. Fine food may signify respect and cooperativeness, while humble food may reflect ill will or friction. Even with verbal communication, a negotiator may benefit from paying attention to broad or vague statements that suggest that something is being veiled either to withhold information or because the counterpart feels that they cannot say something forthrightly because it is undesirable or rude.⁴⁴

VI. Conclusion

Being aware that the negotiating counterpart may not share certain core values may affect the U.S. negotiator's approach. A negotiator will be well-served to self-evaluate and be open-minded as to the different approaches his counterpart may use.

Preparation is key. Familiarity with both the culture of the negotiating counterpart and the possible types of negotiation approaches will help the negotiator decipher his counterpart's negotiation approach. Figuring out a negotiating counterpart's approach is knowledge that the negotiator can use to his advantage. Once he can identify the aspects of a counterpart's negotiation approach, the negotiator can use that insight to consider the core values of the counterpart. Chapter 3 continues with reciprocation techniques for the various negotiation approaches discussed in this chapter.

Chapter 2 Toolbox

Self-Evaluation—

- My basic values make me think that certain things are good, bad, important, or unimportant.
- My values may be different than my counterpart's.

Be Prepared—

- Have an idea of what kinds of negotiating styles are commonly used in your negotiating counterpart's country/culture.

Endnotes

- ¹ MARGOT TAYLOR, *NEGOTIATION* 15-22 (Oxford University Press 2003); see also ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 1-81 (Bruce Patton ed., Houghton Mifflin 1991)(1981).
- ² TAYLOR, *supra* note 1, at 18-19.
- ³ FISHER & URY, *supra* note 1, at 15-94. *The Getting to YES* “interest-based” negotiation method consists of four parts: 1) Separate the People from the Problem; 2) Focus on Interests and not Positions; 3) Invent Options for Mutual Gain; and 4) Insist on Using Objective Criteria.
- ⁴ TAYLOR, *supra* note 1, at 20-21.
- ⁵ Brad Spangler, *Integrative or Interest-Based Bargaining* (June 2003), at http://www.beyondintractability.org/essay/interest-based_bargaining/?nid=1283 (last visited July 8, 2006).
- ⁶ See Cecilia Albin, *Justice, Fairness and Negotiation: Theory and Reality*, in *INTERNATIONAL NEGOTIATION: ACTORS, STRUCTURE/PROCESS, VALUES* 290 (Peter Berton et al. eds., 1999).
- ⁷ Tarja Vayrynen, *CULTURE AND INTERNATIONAL CONFLICT RESOLUTION: A CRITICAL ANALYSIS OF THE WORKS OF JOHN BURTON* 5 (2001) (“In sum, the studies which emphasize the role of language, culture and identity in international conflict resolution demonstrate that conflicts do not arise only from differences in interests. Rather conflicts are over meaning, over the social construction and management of meaning.”).
- ⁸ Guy Oliver Faure & Jeffrey Z. Rubin, *Introduction*, in *CULTURE AND NEGOTIATION: THE RESOLUTION OF WATER DISPUTES* 11 (Guy Oliver Faure & Jeffrey Z. Rubin eds., 1993).
- ⁹ Marita van Oldenborgh, *Court with Care*, *Int’l Bus.*, Apr. 1995, at 21.
- ¹⁰ See generally JAMES DAY HODGSON ET AL., *DOING BUSINESS WITH THE NEW JAPAN* (2000).
- ¹¹ USA Study Guide, *American Culture: US Culture Info*, at <http://www.usastudyguide.com/american-culture.htm> (last visited July 8, 2006).
- ¹² Howard Garner, *Learning, Chinese-Style*, in *CULTURE, COMMUNICATION AND CONFLICT: READINGS IN INTERCULTURAL RELATIONS* 309, 309-11 (Gary R. Weaver ed., 2d ed. 2000) (illustrating how U.S. parents try to teach their children independence and individual problem-solving ability).
- ¹³ HODGSON, *supra* note 10, at 28-29.
- ¹⁴ *Id.* at 27.
- ¹⁵ *Id.*
- ¹⁶ JOHN S. MURRAY ET AL., *PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS* 79 (1989).
- ¹⁷ WIKIPEDIA, *ARTS AND ENTERTAINMENT IN THE UNITED STATES*, at http://en.wikipedia.org/wiki/Arts_and_entertainment_in_the_United_States (last visited July 8, 2006); see also Interview by USINFO Webchat transcript with Richard Pells (Apr. 20, 2006), at <http://usinfo.state.gov/eur/Archive/2006/Apr/20-897097.html>.
- ¹⁸ JEANNE BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* 6-7 (2001).
- ¹⁹ *Id.* at 15-17; GEERT H. HOFSTEDE, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* 51 (Rev. ed. 1997); Jeanne M. Brett & Shirli Kopelman, *Cross-Cultural Perspectives on Cooperation in Social Dilemmas*, in *THE HANDBOOK OF NEGOTIATION AND CULTURE* 395, 396-97 (Michele J. Gelfand & Jeanne M. Brett eds., 2004) (citing GEERT H. HOFSTEDE, *CULTURE’S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES* (1980)); S.H. Schwartz, *Beyond Individualism/Collectivism: New Cultural Dimensions of Values*, in *INDIVIDUALISM AND COLLECTIVISM; THEORY, METHOD, AND APPLICATIONS* 85 (Uichol Kim et al. eds., 1994).
- ²⁰ See *supra* note 19.

- ²¹ See, e.g., Robert J. Miller, *Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling*, 25 Am. Indian L. Rev. 165, 189 (2000/2001).
- ²² Gerald R. Williams, *Negotiation as a Healing Process*, 1996 J. DISPUTE RESOL. 1, 28-29 (1999) (discussing how ritual can be an important part of negotiation in many cultures).
- ²³ Peter Berton, *Japanese, Chinese and Soviet/Russian Negotiators: An Analytical Framework*, in INTERNATIONAL NEGOTIATION: ACTORS, STRUCTURE/PROCESS, VALUES, *supra* note 6, at 91, 115.
- ²⁴ HODGSON, *supra* note 10, at 30.
- ²⁵ BRETT, *supra* note 18, at 98-103.
- ²⁶ See KEVIN AVRUCH, CULTURE AND CONFLICT RESOLUTION 39-50 (2004).
- ²⁷ David A. Victor, *Cross-Cultural Awareness*, in THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS: A COMPARISON OF CROSS-CULTURAL ISSUES AND SUCCESSFUL APPROACHES 15, 19-20 (James R. Silkenat & Jeffrey M. Aresty eds., 1994).
- ²⁸ *Id.*
- ²⁹ CHARLES M. HAMPDEN-TURNER & FONS TROMPENAARS, BUILDING CROSS-CULTURAL COMPETENCE: HOW TO CREATE WEALTH FROM CONFLICTING VALUES 11 (2000) (discussing six differing cultural dimensions categorized by nationality, including universalism/particularism, individualism/communitarianism, specificity/diffusion, achieved status/ascribed status, inner direction/outer direction, and sequential time/synchronous time).
- ³⁰ See Richard J. Erikson, *The Making of Executive Agreements by the United States Department of Defense: An Agenda for Progress*, 13 B.U. INT'L L.J. 45, 126-27 (1995).
- ³¹ HODGSON, *supra* note 10, at 28.
- ³² H. Lee Hetherington, *Negotiating Lessons from Iran: Synthesizing Langdell & Maccrater*, 44 CATH. U. L. REV. 675, 683-85 (1995).
- ³³ See RAYMOND COHEN, NEGOTIATING ACROSS CULTURES 83-106 (Rev. ed. 1997) (discussing various negotiation games).
- ³⁴ Williams, *supra* note 22.
- ³⁵ HODGSON, *supra* note 10, at 38.
- ³⁶ See *supra* note 19.
- ³⁷ H. R. Markus & S. Kitayama, *Culture and the Self: Implications for Cognition, Emotion, and Motivation*, 98 PSYCHOL. REV. 224-53 (1991).
- ³⁸ *Id.*
- ³⁹ HODGSON, *supra* note 10, at 40-41.
- ⁴⁰ For a general discussion of “high context” versus “low context” communicators, see EDWARD T. HALL, BEYOND CULTURE 105-116 (1976) and EDWARD T. HALL AND MILDRED REED HALL, UNDERSTANDING CULTURAL DIFFERENCES: GERMANS, FRENCH, AND AMERICANS 6-9 (1990).
- ⁴¹ HODGSON, *supra* note 10, at 28.
- ⁴² R. Pinkley, *Dimensions of Conflict Frame: Disputant Interpretations of Conflict*, 75 J. OF APPLIED PSYCHOL. 117-26 (1990); see HODGSON, *supra* note 10, at 38-43.
- ⁴³ See Edward T. Hall, *Learning the Arabs' Silent Language*, in CULTURE, COMMUNICATION AND CONFLICT, *supra* note 12, at 17; Albert Mehrabian, *Communication Without Words*, in CULTURE, COMMUNICATION AND CONFLICT, *supra* note 12, at 23.
- ⁴⁴ Berton, *supra* note 23, at 109-11.

Chapter 3

Tit for Tat in the Global Perspective

Scott Wang

A b s t r a c t

This chapter deals with the techniques best employed when faced with the negotiation approaches described in the previous chapter. Moreover, this chapter will not simply provide a list of techniques or approaches, but it also attempts to provide a basis of understanding why people in certain cultures act in ways a typical U.S. negotiator finds unfamiliar. This chapter will also provide a general overview of the benefits of reciprocal conduct in negotiations as well as caveats for its use in certain situations.

I. Introduction: What is Reciprocity and How Do We Use it?

According to prominent game theorist Russell Korobkin, the basic idea of reciprocity in negotiation is the concept of “tit for tat.”¹ Tit for tat is a simple concept. When two parties are faced with impasse the two parties can each begin to lower their asking prices until they reach a point of agreement. Tit for tat, however, also includes a deeper understanding of negotiations. One might reciprocate various behaviors or techniques used by a counterpart during the negotiations.² This chapter aims to teach a negotiator how to respond to the unfamiliar negotiation techniques described in the previous chapter and succeed in situations in which simple haggling cannot ensure success. These techniques will be generalized as “reciprocation” or “distributional bargaining.”

Why should a negotiator reciprocate? A detailed examination of the reasons to practice such negotiation behaviors will be given later in this book; however, the short and simple answer is because it works. Research has been done with both computer models and live negotiators using reciprocal and non-reciprocal methods; in most instances the reciprocal method “succeeded”³ relative to the non-reciprocal method. Even when a specific technique is not employed in a negotiation, the knowledge imparted from understanding why another negotiator would function in that way is invaluable.⁴

Reciprocity could be described as a simple list of techniques to be used when faced with an unfamiliar negotiation style.⁵ This definition, however, just scratches the surface of the word’s meaning. To be truly reciprocal, a negotiator must not only be prepared to act in a way that will best conform to the opposing negotiator’s style but also be able to respond properly and intelligently to the other negotiator’s needs and values.⁶ This chapter will suggest possible courses of action for the U.S. negotiator, and it also attempts to give insights and reasons as to why a person acts in a certain way, other than to attribute the counterpart’s action to “culture.”

The chapter consists of two parts. The first part will cover exactly what is meant when one is asked to reciprocate. The second part will contain an overview of the negotiation styles covered previously and suggestions as to how best to reciprocate in the context of these styles.

II. What is Reciprocity or How Not to do it Like Michael Keaton?

The movie *Gung Ho*⁷ contains a classic depiction of a culture clash in the business world and is a good illustration for understanding the concepts this chapter tries to teach. In this movie, a Japanese conglomerate comes to the United States in order to operate a failing automobile factory. Quickly, culture clashes erupt leading to some clear examples of what not to do when negotiating with a counterpart employing a different negotiation style.

In the movie, the Japanese executives are greeted at the airport with a ceremony that is meant to impress them with an American embrace of Japanese culture. The ceremony, however, fails as women dressed in poor imitations of kimonos and little kids running around in karate uniforms confuse surface observation with actual understanding. The Japanese delegation is not only bewildered but also confused by the hodgepodge of conflicting cultural norms represented in the spectacle.

Later in the movie, Keaton’s character enters negotiations by himself with all of the Japanese executives. What happened in the negotiation will be discussed later, but the negotiation begins to go awry because neither party clearly understands the goals of the negotiation. Ultimately, the relationship between the parties comes under serious jeopardy, not from lack of trying, but from lack of true understanding.

Only after both parties make an effort to understand the motivations of the other can there be true compromise, leading to the development of a successful relationship. This chapter’s goal is to ensure the negotiator’s most important task will be to properly react to the negotiating counterpart’s goals and actions. Certainly, surface perceptions and behaviors matter in the course of a negotiation.* However, it is also true that in successful negotiations, the parties understand their own and their counterpart’s motivations.⁸ A successful negotiator will understand why another negotiator acts in a certain way and how best to react in a manner that will benefit the negotiation as a whole.

* This author was once slapped in the face by a sales woman while haggling for the price of Jade in China. At one point in the negotiation, this author offered what he believed to be a reasonable price of 250 Chinese Yuan. Unbeknownst to him, this price had two significant meanings in China: 1) the author was calling the other person an idiot, or 2) the author was attempting to solicit a prostitute.

A. How Reciprocation Works

The problems facing a negotiator when trying to reach an agreement with someone from another culture are many fold. Not only are there communication problems but also there are behavioral differences that can lead to misunderstandings. These misunderstandings might affect the terms to be agreed upon or even confuse the parties as to what the negotiation actually encompasses. Often, this lack of understanding will lead to frustration.⁹ This frustration can lead to impasse or possibly worse, a poorly drafted agreement. In either event, the relationship between the two parties is often soured under such circumstances.¹⁰

Reciprocating behavior in order to help communication between parties often consists of an exploration of what the other party may be “over or under communicating.”¹¹ This type of communication can involve too much gesturing or improperly communicating information to the wrong parties. Understanding how the other party communicates will help in not only assisting the parties to maintain proper decorum but also in assisting the parties to retain information that should or should not be shared with the other parties at an improper time.¹² (See Chapter 11).

To be able to understand and respond to another’s negotiation style is also vital. As seen in the preceding chapter, sometimes another negotiator is not at the table to reach an agreement, but to nurture a relationship. In other cases, the pace of the talks or the negotiators themselves may appear to serve as a hindrance to an unprepared negotiator. Understanding the reasons for such behaviors, as well as the proper responses, not only helps to reduce animosity between parties but also helps ensure that both parties reach satisfactory conclusions to the negotiations.

Another important reason to reciprocate, especially when representing the United States, is because it may symbolize a gesture of politeness and a willingness to cooperate. Greeting someone in the native language or manner can immediately place a counterpart at ease. This is more important when considering that the majority of counterparts will be at a disadvantage based on the United States’ current global dominance. In these cases, it is always better for the party with greater bargaining power to show an ability to learn and accept the needs and practices of the counterpart. (See Chapter 8).

Finally, even if a negotiator does not use any of the techniques suggested in the second half of this chapter, simply understanding the reasoning behind some behaviors may help to alleviate the primary danger a Western negotiator faces in a cross-cultural negotiation—an expectation the Western negotiator will become easily aggravated.¹³ Some counterparts rely on or inadvertently cause the “emotional” Western negotiator aggravation to gain a strategic advantage. There are many stories of negotiators going to a country, becoming frustrated with either the communications they were receiving or the progress they were making before leaving in a hurry. The negotiator would then receive a last minute offer at the airport, an offer not to be refused if the Western negotiator hoped to reach an agreement at all.¹⁴

B. Times Not to Reciprocate

Although reciprocation is often considered an integral part of any cross-cultural negotiation, there are times when an act of reciprocation may not be appropriate. In this era of modern telecommunications and rapid globalization, sometimes the best method of reciprocation is simply to stick with what one knows best.¹⁵ Even when not acting reciprocally, a negotiator will be best served to respond to substantive demands with an understanding of why a demand is made and what significance such a demand may have outside the normal context of what a typical negotiator from the United States would consider during the negotiation.

Whether or not the negotiator should reciprocate will depend on the context of the discussions. Is the factory owner sitting opposite to a Harvard educated businessman or a local leader heavily influenced by the needs of the local community? Is gifting a clock to the daughter of the counterpart or potentially disrupting the neighborhood children a source of concern? Northwestern Professor Jeanne Brett has proscribed a posture of constantly acting in the way that the opposite party is expected to act culturally;¹⁶ however, Law Professor Daniel C.K. Chow from The Ohio State University Moritz College of Law has countered this point by noting the differences that are present between individual parties even within the same culture.¹⁷ Because of this, approaching each situation without any preconceived notions will help the negotiator best assess the progress and course of the negotiations. Some techniques that will be sug-

gested may insult a businessman who shares the same values as the Western negotiator, but a tribal leader may have concerns far outside the scope for which the U.S. negotiator is prepared.

How does the negotiator determine the proper time to act? The answer often lies in preparation. As will be stressed throughout this chapter and this book, thorough preparation is one of the best tools a person can have when entering a negotiation. Proper research will allow a negotiator to discover the counterpart's cultural history, concerns present within the counterpart's community, and other important background information. Unfortunately, the reality is that thorough preparation is often not possible.

A detailed cultural examination is certainly not a requirement for a successful negotiation. However, gaining an understanding in the basics of the counterpart's cultural history and possible motivations does alleviate many difficulties arising in the initial stages of a cross-cultural negotiation. Such understanding can also lead to building a relationship between the involved parties and provide for a smoother negotiation.

The next part of this chapter will discuss various individual styles that are practiced throughout the myriad of cultures in the world, yet the list is by no means exhaustive. When negotiating, it is best to keep an open mind for the unexpected; a new style of negotiating might need to be dissected or the counterpart may display a list of priorities with items far out of the realm of the negotiation. The key to dealing with the unexpected is to honestly and openly explore the needs of the other party, no matter how unexpected those needs may be.

III. Reciprocating When Negotiating With Non-Western Negotiators

A. Autonomous Authority/Delegated Authority

The U.S. negotiator may believe the parties at the table have the power to reach an agreement. Both participants, though they may be only the delegates of the true interested parties, appear to have the power to come to an agreement at that sitting. What happens then, when one party appears to never make a decision, or always puts an agreement off for another time?

The concept of the negotiator as a delegate, while prevalent in many cultures, is commonly thought to be a Chinese-style negotiation.¹⁸ In this situation, a delegate often comes to the negotiation table and makes the initial inquiries and demands while refusing to make any decisions pertaining to the actual agreement. In doing so, the delegate still asks the opposite party to make concessions and demands. Oftentimes, the delegates will respond to questions with questions and refuse to give a firm answer as to their position within the negotiation. Only later, typically at a dinner or other social event, does the party or parties with decision-making authority appear, usually making a very quick offer.¹⁹

Patience is paramount when negotiating with such delegates. A major conceptual advantage often gained by delegates because of the frustration exhibited by a counterpart ready and able to make binding decisions facing someone refusing to do so or, even worse, unable to do so.²⁰ Due to this frustration, the U.S. negotiator is likely to resort to such actions as giving final offers or making significant concessions in hopes of reaching an agreement.²¹

Autonomous Authority vs. Delegate

Toolbox Identifiers:

- Use of the word “we”
- The counterpart's unwillingness to make commitments or decisions, even small ones
- Look for cues regarding the counterpart's position

Reciprocation Techniques:

- Patience
- Don't make firm offers
- Don't reveal too much information

Limiting the amount of information given out during the early stages of a negotiation is also important when dealing with suspected delegates. The purposes for which delegates are used are often as information gatherers. They are asked to find the boundaries of a negotiation so that the person with actual authority need not spend much time at the negotiation table and can make a quick offer.²² By limiting the information that is offered before the true authority arrives allows both parties to be positioned at a more level playing field when dealing with each other.

B. The Elements of Time

In the Vietnam War Era and during the Paris Peace Accords negotiations, there was a common theme that helped to hamper the success of negotiations between the Vietnamese and Western parties. The Western negotiators would come to a city and make hotel reservations for a few weeks at most. The Vietnamese negotiators would come to a city, bring their children and families, and sometimes even buy houses in preparation for the negotiations.²³ As seen by these arrangements, the parties did not share a similar sense of time, and the resulting negotiations ended at impasse.²⁴

Preparation is paramount when the negotiator is potentially facing a counterpart that is less focused on deadlines than the U.S. negotiator. The primary danger is running out of time due to either self imposed deadlines or, in the case of the example above, running out of places to live.²⁵ Such a situation can lead to poorly reasoned offers in an attempt to come to a quick agreement. In the negotiation itself, it is important that the U.S. negotiator try not to propose deadlines or make any such deadlines known. These types of deadlines may be either unimportant to the counterpart or make the typical U.S. negotiator vulnerable to the “11th hour” proposal.²⁶

Other key tactics that might be used are to ensure that indirect questions being asked by the counterpart are reciprocated; oftentimes, non-urgent negotiators are also relationship-based negotiators. A negotiator may be best served to avoid focusing on the counterpart’s issue avoidance; rather, the negotiator could try to develop a relationship that would allow for a frank and clear discussion about the issues that are on the table.

Elements of time can also affect negotiations in another way. For example, South American negotiators have been known to arrive at a meeting several hours late.²⁷ Although there is usually no intent to insult or annoy the negotiator, the party arriving on time is often angered and enters the negotiations with a negative mindset. If this occurs, the chances of reaching a mutually-acceptable agreement are lessened. Preparation leading to an expectation of lateness can help soothe any adverse reactions a culturally diverse negotiator may have.

The Element of Time – Shorter vs. Longer Negotiation

Toolbox Identifiers:

- Multiple scheduled meetings
- Cues from accommodations scheduled
- Avoidance or assertion of issues in initial meetings

Reciprocation Techniques:

- Don’t propose deadlines or timelines
- Reciprocate unrelated or personal questions
- Try to avoid external time constraints

C. Results vs. Method Based Negotiations

Individuals in some cultures place greater emphasis on the process of bargaining rather than the end result of the negotiations. For example, in an Arab country, a U.S. negotiator offers to buy bread for ten dollars, and the counterpart makes an outlandish counteroffer of thirty dollars. Eventually, the parties agree on a price of twenty dollars, but only after incremental concessions made by each side. If the U.S. negotiator had originally proposed to his counterpart an offer of twenty dollars and stuck with this price, the deal would have never taken place. This is the haggle, a process relatively uncommon in the United States, but a part of life in many places throughout the world.

When faced with a counterpart wanting and needing to haggle, having a clear picture of where the end-point of the negotiation should be is key. Once the U.S. negotiator understands where the negotiation should end, the negotiator can offer a point to begin the negotiation and incrementally change with the goal in mind. In simple purchase transactions, the seller almost always has the advantage. Theoretically, there is no upper limit at which to start the sell price, but there is a lower limit, i.e. \$0.00, at which to set the purchase price. Regardless, the key is to “go with the flow,” paying attention to how the negotiation is proceeding and responding to larger or small concessions appropriately in order to reach the goal already in mind.

A modern and global example of the method-based negotiation style was exhibited when the United States attempted to negotiate for staging areas when preparing for the invasion of Afghanistan. During negotiations for these areas with Pakistan and Turkey, the United States not only gave too much information on the importance of these places but also disclosed the maximum concessions they were willing to make in order to obtain these areas.²⁸ Unfortunately, although such disclosures may be typical of a straight forward “get it all on the table” style of negotiation, the other groups simply did not accept the offers as maximums. Instead, the negotiations became pained and the Secretary of State at the time, Colin Powell, was placed in a difficult situation when trying to secure these staging areas.²⁹

Results vs. Method-Based Negotiation

Toolbox Identifiers:

- Extreme opening offer and use of incremental bargaining
- Evaluate if the counterpart shows more concern for procedure or the issues

Reciprocation Techniques:

- Know your endpoint
- Start high or low and monitor progression
- Go with the flow

D. Individualist vs. Collectivist

As noted in the previous chapter, people in some cultures place greater weight on the needs of the community than people in other cultures. In Bengal, for example, a poor woman becomes impregnated by a rich man belonging to a different faith. The community outcry is quick, and the woman’s community demanded reparation when the man refused to marry the woman.³⁰ In the ensuing negotiations, the man’s family offers the woman’s family more than adequate financial compensation; however, the woman’s family refuses. The woman’s family preferred to seek a criminal “trial,” but ultimately the parties employed the help of a mediator, who fined the young man and ordered reparations.³¹

Often, the U.S. negotiator will be faced with a counterpart that, appearing and acting autonomously, must bow to the needs of the community. In these situations it is important to let the opposing negotiator express all the concerns that may be facing him, instead of only the concerns discussed at the negotiating table. In fact, the U.S. negotiator may wish to ask about the counterpart’s community’s needs and concerns. In many cases, helping to satisfy the needs of the community with a small gesture may lead to a better agreement.

Presenting a willingness to discuss a person’s own community’s needs may also be beneficial for the negotiation. By showing the counterpart how the negotiator’s community will be affected by the negotiations at hand, the U.S. negotiator is able to relate by showing a similar degree of respect for the community. For example, there are cultures in the world, such as the African Bushmen, where the acknowledgement of individual concerns is often absent. This concept applies even when framing issues to a tribesman who may be negotiating for something that would only affect himself. Even in this situation, the tribesman will speak in a manner signifying the needs for the entire community.³² In these situations, expressions of self may be alien to the counterpart, and this lack of understanding does not promote the type of result for which the negotiator hoped.

Individualist vs. Collectivist

Toolbox Identifiers for Collectivism:

- Speaking in the collective
- Questions about your constituency
- Concern for where something is going/ coming from
- Saving face

Reciprocation Techniques:

- Ask about the needs of the community
- Consider the effects of a negotiated agreement
- Consider the full agreement

Finally, it is also important to keep in mind how the resulting agreement could affect the community. Depending on the particular negotiation, the U.S. negotiator may be well served to discuss such an effect based either on the agreement as a whole or as particular issues. Maximizing or minimizing these cumulative and tertiary effects can be vital.

E. Unilateral vs. Compartmentalized

If the U.S. negotiator believes his counterparts are compartmentalized negotiators responsible for only small slivers of the negotiation, the negotiator may be best served by limiting the information revealed to the different negotiators. Often, the compartmentalized negotiators have an advantage when facing a unilateral negotiator because the unilateral negotiator may inadvertently disclose too much information, not recognizing the counterpart is only focused on a small part of the agreement.³³ Such compartmentalized negotiators often do not focus on time deadlines, and they may insist on dealing over the course of multiple scheduled meetings.

When faced with such a style, defining the exact boundaries of the specific negotiation with the counterpart is vital. Such boundaries help to limit the amount of information that he should reveal at that instant. Typically such behavior is better suited for “zero sum” negotiators because collaborative negotiators may find it difficult to reach an optimal agreement when not being able to consider all the points as a whole in the agreement.³⁴ If this is the case, it may be proper to ask for a counterpart with more authority to negotiate a total agreement. This is especially true when the negotiation style presented also combines with the delegated authority style covered previously.

Unilateral vs. Compartmentalized

Toolbox Identifiers:

- Inquire about your counterpart’s position or authority
- Listen for focused conversation
- Counterpart asks broad questions but gives answers or details on one or few subjects

Reciprocation Techniques:

- Don’t volunteer information
- Set boundaries for that specific negotiation
- Ask for a person with more authority

F. Goal vs. Relationship-Based Negotiation

As noted in the previous chapter, negotiators in different cultures place different amounts of emphasis on building a relationship with the parties to a negotiation. Up until the late 1990’s China did not have a universal contract law similar to the Uniform Commercial Code of the United States.³⁵ Why did Chinese law contain such a glaring omission of what is a vital piece of law in the United States? The simple answer is that some Chinese have a different concept of what constitutes a contract than an American does. For some Chinese, it is understood that once an agreement is reached, it is generally an understanding by the

parties to start a relationship.³⁶ To this day, a large part of the accusations that the Chinese are simply in business to con Americans out of investment money is a result of the lack of mutual understanding that occurs when two parties sign a contract.³⁷

In these types of negotiations, the personal relationship between the parties is more important than any agreement that may be reached. The U.S. negotiator's first priority in this type of negotiation is to understand the goal of the relationship. To meet such ends, it is important to build a rapport with the counterpart and try to join in social outings or other activities that may be proposed.

It is also important that the U.S. negotiator not be afraid to ask questions of the counterpart. The counterpart may have unspoken issues with either the negotiator or the party the negotiator represents.³⁸ Indeed, the counterpart may not directly state his disagreement with a particular issue, but he may not agree with the U.S. negotiator's proposal. Instead, the counterpart might make remarks or offer points that are not related to the issue at hand and may be seen as a crumb trail to the larger issues.³⁹ Following these breadcrumbs and resolving any issues that lay at the end of the path can certainly help to form a better relationship between the parties. The key is building a trusting relationship, and this does not happen when there are unspoken issues remaining in the background.

Resolving personal issues is even more important when, as covered in other portions of this book, animosity exists toward Americans in general. When there are deep-seated emotions involving the parties, emotional outbursts may occur. Instead of trying to avoid these outbursts, a negotiator might try to understand them and resolve them. It must be remembered that in the end, the counterpart is a person who wants to benefit from the relationship offered or hopes that the community will benefit from it. Sometimes, the only thing standing in the way of starting a lasting relationship is letting the counterpart get preexisting issues off his proverbial chest.

Goal vs. Relationship-Based Negotiation

Toolbox Identifiers for Relationship-Based:

- Counterpart wants to do social activities
- Counterpart asks personal questions
- Counterpart wants to meet multiple times
- Counterpart talks about the future
- Focus on relationship goals

Reciprocation Techniques:

- Build a rapport
- Don't be afraid to ask questions
- Anger is not necessarily bad

G. Verbal vs. Non-Verbal, Straight Forward vs. Issue Avoidance, Singular vs. Collective

As promised, this discussion returns to the movie *Gung Ho*. In *Gung Ho*, there is a scene in which Michael Keaton's character enters into an employment negotiation with several Japanese executives. Throughout the scene there are a number of less-than-subtle behaviors that are exhibited and categorically ignored by Keaton.

The first behavior is the body language exhibited by the parties. The executives sit and stay in positions that can be described as very closed, while Keaton is extremely open and makes extremely large gestures throughout the scene. Secondly, the Japanese executives mask their true desires for Keaton's employment by stating a variety of conditions meant to imply the true aim of the contract. Keaton, instead, directly states what he understands the contract to mean. Finally, during the negotiation, he asks the executives, "Is a frog's ass water tight?" The response is formulated only after discussion by all the executives and is stated in a way that gives no absolute answer.

Though the previous example is meant to be comedic, it can be understood that examples such as this are also frequently found in practice and frequently hurt negotiations because of misunderstanding. Improper gestures may be considered offensive, issues may not be discussed in a way that lets both parties understand what is truly being negotiated, and collectivist behavior may serve to frustrate individualist Western negotiators.

The obvious solution as to the above problem concerning body language is simple, i.e., avoid excess movements.⁴⁰ It is usually recommended for a negotiator to try to find a comfortable position from which to sit or otherwise participate and to stay in that position. Traditional methods of communication such as pointing, giving a “thumbs up,” or even nodding all have vastly different meanings depending on the listener.⁴¹ Although the counterpart may excuse an inadvertent, insulting gesture, it is still in the typical U.S. negotiator’s best interest to keep non-verbal communication to a minimum.

To reciprocate indirect communication is much more difficult. When dealing with such an indirect negotiation style, simple communication may not be enough to establish a true meeting of the minds. Paying attention to statements or suggestions that may not be relevant to the issue at hand might help to ensure a closer understanding of what the counterpart desires. However, demanding an explicit statement may be inappropriate. Such behavior can lead to the counterpart feeling uncomfortable or even threatened. Instead, as in a relationship-based negotiation, it may be better to respond with questions in order to help develop what is being suggested.

Collectivism is also a style that can be extremely unfamiliar to a typical U.S. negotiator. The collective nature of the group, and the fact that the negotiator must deal with the group as a whole, is something that must be recognized. Patience is also needed in these negotiations. Instead of instant personal decisions, the typical U.S. negotiator may encounter a counterpart who answers the negotiator’s questions with additional questions or statements that are not firm. In any event, if progress is made during the negotiations, the U.S. negotiator should accept this progress without worrying about not meeting self-imposed goals.

Verbal vs. Nonverbal and Straight Forward vs. Issue Avoidance

Toolbox Identifiers:

- Look as well as listen
- Politeness may be covering for something the counterpart is not willing to say outright
- Evaluate intra-party communications for cues

Reciprocation Techniques:

- Be careful of physicality
- Speak in general overtones
- Leave points open

IV. Conclusion

The varied goals and techniques of negotiation can be vastly different across cultures. The previous examination of a few major negotiation styles is by no means complete nor will the suggested techniques offered to deal with the styles be a “cure all” that will work in all situations. Instead, the running theme of this chapter is one of understanding, preparation, and willingness to explore. Each negotiation starts at a point at which both parties wish to achieve something positive, and the main question is: “What is considered positive?” In order to best function and achieve a party’s goals for a negotiation, the international negotiator must be willing to accept that the traditional, U.S. style may not be the best for the situation. Furthermore, adapting to another style may not only lead to better communication but also to insight as to exactly what issues are more or less valuable to other parties.

Endnotes

- ¹ RUSSELL KOROBKIN, NEGOTIATION THEORY AND STRATEGY 184-95 (2002).
- ² For a look at different views on reciprocity as well as when to use them, see Robert S. Adler & Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 Harv. Negot. L. Rev. 1, 5 (2000); Mary-Lynne Fisher & Arnold I. Siegel, *Evaluating Negotiation Behavior and Results: Can We Identify What We Say We Know?*, 36 CATH. U. L. REV. 395, 396 (1987); Valerie A. Sanchez, *Back to the Future of ADR: Negotiating Justice and Human Needs*, 18 OHIO ST. J. ON DISP. RESOL. 669 (2003).
- ³ See generally ROBERT AXELROD, THE COMPLEXITY OF COOPERATION: AGENT-BASED MODELS OF COMPETITION AND COLLABORATION (1997) (examining computer programs comparing the results of “tit for tat” simulated negotiations and other types of negotiation styles).
- ⁴ See Daniel C.K. Chow, *Culture Matters: Book Review of Negotiating Globally: How to Negotiate Deals, Resolve Disputes, and Make Decisions Across Cultural Borders*, 18 OHIO ST. J. ON DISP. RESOL. 1003 (2004).
- ⁵ KOROBKIN, *supra* note 1; DEAN G. PRUITT, NEGOTIATION BEHAVIOR 7 (1981).
- ⁶ Jeanne Brett & Shirli Kopelman, *Cross-Cultural Perspectives on Cooperation in Social Dilemmas*, in THE HANDBOOK OF NEGOTIATION AND CULTURE 395, 400 (Michelle J. Gelfand & Jeanne M. Brett eds., 2004).
- ⁷ GUNG HO! (Paramount Pictures 1986).
- ⁸ ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 40-43 (Bruce Patton ed., Houghton Mifflin 2d ed. 1991) (1981).
- ⁹ RAYMOND COHEN, NEGOTIATION ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY 64-67, 145-47 (1991).
- ¹⁰ JEANNE M. BRETT, NEGOTIATING GLOBALLY : HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES 148-49 (2001).
- ¹¹ For an in depth discussion on the role of various types of communication see DONALD W. HENDON ET AL., CROSS-CULTURAL BUSINESS NEGOTIATIONS 43-60, 61-76 (1997).
- ¹² *Id.*
- ¹³ See Michael W. Morris & Michele J. Gelfand, *Cultural Differences and Cognitive Dynamics: Expanding the Cognitive Perspective on Negotiation*, in THE HANDBOOK OF NEGOTIATION AND CULTURE, *supra* note 6, at 45, 51-53.
- ¹⁴ EDWARD BRUNET & CHARLES B. CRAVER, ALTERNATIVE DISPUTE RESOLUTION: THE ADVOCATE’S PERSPECTIVE 139-40 (2d ed. 2001).
- ¹⁵ Chow, *supra* note 4, at 1009-10.
- ¹⁶ BRETT, *supra* note 10, at 205-09.
- ¹⁷ Chow, *supra* note 4, at 1009-10.
- ¹⁸ Franklin L. Lavin, *Negotiating with the Chinese: Or How Not to Kowtow*, FOREIGN AFFAIRS, July/Aug. 1994, available at <http://www.foreignaffairs.org/19940701facomment5122/franklin-l-lavin/negotiating-with-the-chinese-or-how-not-to-kowtow.html> (last visited July 10, 2006).
- ¹⁹ Bee Chen Goh, *Sino-Western Negotiating Styles*, 7 CANTERBURY L. REV. 82, 83-84 (1998).
- ²⁰ Morris & Gelfand, *supra* note 13, at 246.
- ²¹ See generally *id.*

- ²² The author had personal experience dealing with negotiations involving delegates when he was involved with negotiations between Fuxin Mine Prefecture and Guyan Sinco, Inc.
- ²³ Cf. ANG CHEN GUAN, ENDING THE VIETNAM WAR: THE VIETNAMESE COMMUNIST'S PERSPECTIVE 42-43, 48-49 (2004).
- ²⁴ COHEN, *supra* note 9, at 145-50..
- ²⁵ Bruce Kahn, *Applying the Principles and Strategies of Asian Martial Arts to the Art of Negotiation*, 58 ALB. L. REV. 223, 235-36 (1994).
- ²⁶ See DON R. MCCREARY, JAPANESE-U.S. BUSINESS NEGOTIATIONS: A CROSS-CULTURAL STUDY 67-71 (1986); see also *id.* at 25-27.
- ²⁷ Julie Barker, *International Mediation - A Better Alternative for the Resolution of Commercial Disputes: Guidelines for a U.S. Negotiator Involved in an International Commercial Mediation with Mexicans*, 19 LOY. L.A. INT'L & COMP. L. REV. 1, 34 (1996).
- ²⁸ Morris & Gelfand, *supra* note 13.
- ²⁹ *Id.*
- ³⁰ See MADARIPUR LEGAL AID ASSOCIATION, NABIN AND NASIMA: A CLASH OF HINDU AND MUSLIM COMMUNITIES IN CONSTRUCTIVE CONFLICT MANAGEMENT: ASIAN-PACIFIC CASES 76-81 (Fred E. Jandt & Paul B. Pedersen eds., 1996).
- ³¹ *Id.*
- ³² William L. Ury, *Conflict Resolution among the Bushmen: Lessons in Dispute Systems Design*, 11 NEGOT. J. 379, 379-89 (1995).
- ³³ See generally M. Ulric Killion, *China's Foreign Currency Regime: The Kagan Thesis and Legalification of the WTO Agreement*, 14 MINN. J. GLOBAL TRADE 43, 70-73 (2004).
- ³⁴ See generally *id.*
- ³⁵ James C. Hitchingham, *Recent Development: Stepping Up to the Needs of the International Market Place: An Analysis of the 1999 "Uniform" Contract Law of the People's Republic of China*, 1 ASIAN-PAC. L. & POL'Y J. 8 (2000)
- ³⁶ Xiaowen Qiu, *Enforcing Arbitral Awards Involving Foreign Parties: A Comparison of the United States and China*, 11 AM. REV. INT'L ARB. 607, 609 (200).
- ³⁷ Randall Peerenboom, *The Evolving Regulatory Framework for Enforcement of Arbitral Awards in the People's Republic of China*, 1 ASIAN-PAC. L. & POL'Y J. 1, 12 (2000).
- ³⁸ See Raymond Cohen, *Negotiating Across Cultures*, in TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT 469, 473 (Chester A. Crocker et al. eds., 2001) (noting that negotiators from some cultures subscribe to the theory of "not to say no, just never to say yes").
- ³⁹ See BRETT, *supra* note 10, at 10 (noting the verbal message is "not always direct").
- ⁴⁰ Jeanne M. Brett, *Culture and Negotiation*, 35 INT'L J. PSYCHOL. 97, 101 (2000).
- ⁴¹ *Id.*

PLACEHOLDER

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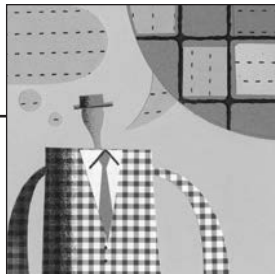
PART TWO

General Tools for Cross-Cultural Negotiators

Now that U.S. negotiators are armed with the knowledge of the types of negotiating styles found throughout the world, this part seeks to give U.S. negotiators practical tools for dealing with a wide variety of situations.

This part begins with a discussion of how to integrate interest-based negotiation techniques, even while reciprocating the bargaining styles of the negotiating counterpart. It then emphasizes the importance of trust, and equips the U.S. negotiators with tools on how and when to use trust-building to further a negotiation.

This part continues by addressing issues such as stereotyping and holding assumptions. Specifically, this part will alert U.S. negotiators to stereotypes that exist worldwide about the United States and its people, and this part will challenge U.S. negotiators to be aware of cross-cultural differences within the negotiation process. Next, this part will discuss issues of power and authority and the differences between these two concepts. Finally, this part examines ethical issues that may arise in cross-cultural negotiations.



Effectively Using Interest-Based Negotiation in the Cross-Cultural Context

Steven Robert Roach

A b s t r a c t

This chapter will explore interests in negotiation and what happens when an interest-based approach does not uncover obvious common interests. It will also discuss the possibility that the counterpart may not understand interests, or may not be negotiating based on interests. It will address the problem of assumptions and the need for a negotiator to challenge his basic ideals and those of his counterpart. This chapter will present a framework that a negotiator can use to incorporate interests into almost any negotiation, and it will discuss the possibility of non-agreement.

Using an interest-based approach to negotiation is a choice that a negotiator makes and even if a negotiator cannot use all of the elements of interest-based negotiation, he can use the recommended preparation for effective interest-based negotiation to his advantage in almost any negotiation situation, even if it requires reciprocating a distributional bargaining technique.

I. Introduction

Chapter 2 explored an interest-based, problem solving, or principled approach to negotiation and noted that while it makes sense from an academic perspective, it does not always work from a practitioner's standpoint.¹ Representatives from the U.S. military have noted that while interest-based negotiation is useful, it is not always effective in the cross-cultural context. Within a particular negotiation, obvious shared interests may not exist or the negotiating counterpart may be puzzled by a U.S. negotiator using an interest-based approach. Even if a negotiator could shift the negotiation to an interest-based negotiation, this approach may not best serve the end-goals of the negotiation. At times, the most important technique is to "speak the other person's language" and use a negotiation technique with which the negotiating counterpart is comfortable.² Indeed, there exist times when changing styles and attempting to introduce an interest-based model of negotiation may beget more distrust than simply reciprocating the counterpart's negotiation style.

This chapter will explore interests in negotiation and what happens when an interest-based approach does not uncover obvious common interests. In addition, this chapter will also explore the possibility that the other side may not understand "interests" in the same manner as a U.S. negotiator. This chapter will present a framework that a negotiator can use to incorporate interests into almost any negotiation. It will address the problem of assumptions and the need for a negotiator to challenge basic interests to better identify the interests of himself and his negotiating counterpart. It will then conclude by discussing the possibility of non-agreement. Using an interest-based approach in a negotiation is a choice that a negotiator makes. What this chapter represents is the notion that even if a negotiator cannot use all of the elements of interest-based negotiation, a negotiator can use the preparation recommended for effective interest-based negotiation to his advantage in almost any negotiation situation, even if it requires reciprocating a distributional, or a "tit for tat" style, bargaining technique.

II. Some Limitations of Interest-Based Negotiating

As noted in Chapter 2, some commentators simply do not believe in the effectiveness of interest-based negotiation in the cross-cultural setting. This chapter will not debate the issue but will instead draw from the values in the preparation involved in interest-based negotiation that can be applied in all negotiations. Kevin Avruch of the Institute for Conflict Analysis and Resolution at George Mason University contends that the entire field of conflict resolution literature in the United States, including interest-based negotiation, is "culturally situated within a North American, male, white, and middle-class world."³ His fear is that in using a purely interest-based approach, and by "suppressing the cultural dimension, [a negotiator may] run the risk of losing at the same time a way to get at the asymmetries of power politics in intercultural negotiations in the real world."⁴ Literature on interest-based negotiation suffers by oversimplifying some of the most troublesome problems in negotiation, such as those arising in the cross-cultural context.⁵ This is the case because the literature on interest-based negotiation often carries with it the latent assumption that the negotiating parties share a similar value system.⁶

Often, major obstacles are presented when the parties to a negotiation do not recognize the issues at stake or recognize the negotiation process itself in the same way. For example, Professor Raymond Cohen from the Hebrew University of Jerusalem suggests that during the Cold War, the Soviets viewed negotiation primarily as a power tool and not as a way to resolve conflict on the basis of shared interests.⁷ As such, a negotiator employing solely an interest-based approach would likely have been frustrated. This frustration would be amplified in light of the fact that opposing sides to a negotiation rarely immediately trust one another. With all of these factors weighing against the parties, the likelihood of arriving either at impasse with an agreement based on misunderstanding increases.⁸ However, preparing for interest-based negotiation can help a negotiator meet the challenges present when he is confronted with situations where using a purely interest-based approach may be ineffective.

III. Problems in Distributional Bargaining

Interest-based negotiation emphasizes problem-solving and creating mutual gains. A negotiator using the interest-based model may become baffled when confronted with a counterpart who insists on distributional bargaining, or haggling.⁹ Haggling involves a "win-lose" situation and espouses the viewpoint that "one for me is minus one for you." Indeed, in distributional negotiations, a demand from one party

requires a concession from the other.¹⁰ This style is common in marketplaces and bazaars, but it is not uncommon to encounter haggling in other circumstances.¹¹

A. Haggling: An Example

The author of this chapter encountered haggling when shopping for souvenirs in the local bazaars in Egypt. The bargaining was not different in principle from the haggling that would occur at a dealer's table at an American coin convention (another area in which this author has some experience). Professor Howard Raiffa of Harvard University described the process as follows: "[T]wo disputants bargain over a price; one wants the price to be high, whereas the other wants it low. One wants to maximize the agreed-upon price, the other to minimize it."¹² The hallmark for distributional bargaining is that the negotiation concerns one issue: price. However, what made haggling in Egypt different from haggling at a coin convention was that the merchant in the Egyptian bazaar changed the currency from U.S. Dollars, to Euros, to Egyptian Pounds, and to the fictitious Nubian Pound during the course of a single negotiation in an effort to confuse this author. In switching this variable (the currency), a tourist is likely to agree to several prices in the course of a negotiation only to have the currency changed. While haggling is centered on one issue (price), there are other sub-issues (such as currency) that may still influence distributional negotiations.

Interest-based approaches favor the negotiator's role as a helper who identifies opportunities for joint gain and operates within a framework of full disclosure. However, as University of Michigan Law Professor James White notes, "[A]nyone who would maximize his potential as a negotiator must occasionally do things that would cause others to classify him as a 'trickster,' whether he so classifies himself or not."¹³ The role of negotiator as helper, however, does not require him to turn a blind eye to the possibility that the other side may be operating in a realm of limited disclosure.

B. Effective Haggling with Interest-Based Preparation

The key to designing a successful negotiation, when confronted with a counterpart who is negotiating within a distributional framework, is to first identify the negotiator's approach. Professor G. Richard Shell from the Wharton School of Business at the University of Pennsylvania contends "that negotiations fall generally into one of four categories based on two variables: the perceived conflict over stakes ('stakes conflict') and the perceived importance of any future relationship between the parties ('relationship concerns')."¹⁴ Depending on these two variables, identifying if a negotiating counterpart is using a distributional approach may be important if the negotiator decides to utilize a reciprocal approach under the specific circumstances of the negotiation. One is reminded of the traditional saying: "don't spend time banging on a wall trying to transform it into a door." In other words, a negotiator will be well served to refrain from trying to force a one-size-fits-all interest-based approach to a negotiation during which the other side insists on using distributional bargaining. However, integrating elements of interest-based negotiation into this context may be effective.

Howard Raiffa's checklist for negotiators focuses on both preparation and paying special attention to the negotiating conventions in each context. For example, a negotiator may wish to consider the following types of questions: "[I]s it customary to withhold unfavorable information? What number of iterations in the negotiation dance is respectable or customary? Can negotiations be done in stages?"¹⁵ In cultures in which distributional bargaining is typical, a negotiator may tend to state his position rather than an interest, but this does not mean that the negotiator has no interests. At times, the better approach may be to reciprocate a distributional negotiation style at the expense of an interest-based approach because sometimes, as noted in Chapter 3, it is important to negotiate in a manner with which the negotiating counterpart is comfortable. Distributional issues are amenable to joint problem solving by recognizing the negotiator's own interests and researching the culture and personal history of the counterpart to reveal his interests. The negotiator may have to examine elements of distributional bargaining, such as price stopping points, and internally reframe these points as interests. When confronted with distributional negotiation, it is possible to reciprocate the bargaining style, while still using the interest-based preparation, if not the actual technique.

IV: A Framework to Meet Interests

G. Richard Shell has created a framework for a negotiator to use when presented with different negotiation styles, such when a U.S. negotiator trained in interest-based negotiation is faced with a negotiator who uses a distributional bargaining method.¹⁶ Shell contends that a successful negotiator has the ability to *see* the world from the counterpart's point of view. He suggests that a successful negotiator questions how it may be in the negotiating counterpart's interest to help him achieve his goals.¹⁷ Shell proposes a four-step method that is set within a framework of shared interests that a negotiator can use to identify, and then meet the other side's interests:

- 1: Negotiators should identify the relevant decision makers on the negotiating counterpart's side.
- 2: Negotiators should search for common ground.
- 3: Negotiators should try to identify interests that may interfere with agreement.
- 4: Negotiators should search for low-cost options that advance their own goals while addressing the other party's interests.¹⁸

Shell advocates using this four-step framework within the context of interest-based negotiation. However, his steps are applicable to a wide range of agreements, and in creating them, Shell considered the possibility of differences in negotiation and conflict styles. These four steps do not require both sides to negotiate based on interests. In fact, a U.S. negotiator should find that this framework aids in a distributional negotiation because it does not assume that there are shared interests and does not require the other side to reciprocate a certain style. This formula allows a negotiator to be adaptable and, for most purposes, to mirror the negotiation style of the counterpart. By keeping these factors in mind when confronted with a distributional negotiation, a negotiator can effectively negotiate and still reciprocate an aggressive approach if needed. The framework serves not as a recipe, but as another step in preparation that can aid a negotiator when he is forced to reciprocate distributional bargaining.

V. The Concern of Erroneous Assumptions

Each side in a negotiation has multiple interests, such as preserving relationships and reputation, demonstrating competence, remaining consistent, minimizing transaction costs, and getting a fair and adequate result.¹⁹ The most powerful interests are basic human needs, such as security, economic well-being, a sense of belonging, recognition, and control over a person's own life.²⁰ As fundamental as these seem to the U.S. negotiator, they can be deceptively easy to overlook, and may not be the same across all cultures. What is fundamental to a U.S. negotiator may conflict with the interests of the negotiating counterpart because of religion, custom, or other factors. (See Chapter 9).

Assumptions provide easy categorical labels for academic work and as a teaching tool. But they are flawed because as generalizations, they are not individualized to each unique player in every unique negotiation. Under a classic interest-based approach, "the basic problem in a negotiation lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns, and fears."²¹ While in every negotiation there are some shared and conflicting interests, taking a fresh approach that examines the underlying assumptions behind interests may uncover the existence of mutual or complementary interests that will make agreement more probable.

For example, two commonly held assumptions that a U.S. negotiator may hold are: 1) peace is desirable and war is not; and 2) peace is the normal condition and war is an abnormality. However, terrorist attacks in Northern Ireland and the Middle East over the past several decades "show a clear and recurring pattern, where violence is coincided to interfere with major events in the peace process."²² For these individuals who choose to kill themselves and others to prevent peace, the assumption that peace is desirable fails. Taking a critical view that seeks to identify the assumptions that lie behind assumed interests can aid the negotiator in identifying interests that may assist in reaching a negotiated agreement.

A. Challenging Basic Interests

In assessing whether the negotiating counterpart shares or should share the negotiator's value system, a useful technique is to ask a series of questions challenging the negotiator into looking beyond the obvious and using these new insights as a starting point for gathering information.²³ Value systems are not universal and the assumptions that a negotiator brings to the table as a result of his experiences may be challenged in a particular negotiation. The value system of a terrorist provides an extreme example of a counterpart with a different set of basic values. "The very human willingness of individual terrorists to seek security and rewards while avoiding punishment" may not be applicable to terrorists with extremist ideologies.²⁴ Academic work on rational models of terrorist negotiations is currently incomplete because it has focused on a lack of shared interests²⁵ while "ignoring other possibilities, such as problems of communication or lack of discipline."²⁶ For a terrorist, his self-concept, base of support, and experience may lie in a different arena than the negotiator and when substantive concessions are made, the terrorists "are likely to believe that they result from the pressure applied by terrorism."²⁷ Using a purely interest-based approach that favors concessions would not lead to optimal results with most terrorist groups.

Addressing interests is most useful when the negotiation counterpart is willing to entertain an interest-based approach. When the counterpart is cooperative, communicating interests between both sides increases the chances that the interests at stake will be met. A negotiator can make his own interests come alive through specificity, while remaining conscious of the counterpart's interests as being part of the problem that needs to be solved.²⁸ However, a purely interest-based framework works under the assumption that the counterpart will be open to interest-based negotiation and is dependent on the counterpart finding it culturally appropriate to talk about interests. In some cultures, it may be considered insulting to ask about interests. If a negotiator cannot ask about his counterpart's interests without offending him, then how can a negotiator know what intelligence needs to be gathered to uncover a party's interest? In this situation, preparation and information gathering can greatly aid the negotiator in his quest to anticipate his counterpart's negotiating interests.²⁹ By researching a party's potential basic interests, a negotiator can better uncover shared interest that can provide a basis for interest-based negotiation.

B. Identifying Self-Interests

A negotiator cannot know when to say "yes" and when to say "no" without first understanding what it is that he is trying to achieve.³⁰ Self-interests are important to identify because there is a risk of getting emotionally entangled in the subject of the dispute—or in the smallest of details—and losing track of the ultimate goals of the negotiation. A representative for an organization may become intensely entangled with the situation and need an outside perspective in order to detach himself from the conflict and generate a new rational viewpoint. Identifying interests at the start of the negotiation provides a basis from which a negotiator can balance between self- and organizational interests.

After a negotiator identifies his self-interests, he is better equipped to acknowledge that the counterpart may also be grappling with identity issues.³¹ G. Richard Shell argues that negotiators should set the most optimistic, yet justifiable goals possible, and that the wise negotiator would commit himself to his goals by writing them down and speaking to others about them.³² Shell reports that "research on setting goals discloses a simple but powerful fact: The more specific your vision of what you want and the more committed you are to that vision, the more likely you are to obtain it."³³ By knowing his self-interests, a negotiator can better meet the expectations that the negotiating counterpart will present in a negotiation and can craft more effective and creative solutions.

C. Exploring the Interests of a Negotiating Counterpart

A negotiating counterpart has his own set of interests.³⁴ For a negotiator to motivate his opponent, it is necessary that he adopt strategies and techniques that appeal to his opponent's self- and organizational interests. This is useful even in absence of the negotiating counterpart's acceptance of interest-based negotiation. Early in the negotiation is the best time to begin probing for matters that are important to the counterpart.³⁵ But, a negotiator will be well served to be aware that the other side is an individual, negotiating as a human, as well as an agent, negotiating for an organization. These multiple roles are framed by deeper national and cultural roots. The resolution of deeply rooted conflicts requires recogni-

tion that not only are negotiable material interests at stake but also non-negotiable basic human needs.³⁶ These basic needs, such as identity and scarcity, are unalterable, their satisfaction is imperative, and inability to satisfy these needs lies at the root of many conflicts.³⁷ Individuals will pursue these basic needs at the expense of others, and if these needs are not being met, a party to the negotiation may act as if he has nothing to lose. This sense of “nothing to lose” can frustrate any negotiation, and it can be avoided through a careful inventory of the basic interests of each party, including of one’s self as both an individual and as an agent.

Different goals and standards between the agent and his principal may create conflicting pulls, just as there is a tension between the military as an organization and the individuals who serve the military and their country.³⁸ No matter how hard a party tries to unify with the organization, each individual has an agenda, incentives, and constraints of his own and of his sponsoring organization. Within a single negotiation, there exist not only negotiations between individuals but also within individuals and members of a negotiation team. While participants are negotiating horizontally with the other side, they may also be engaging in vertical negotiation with the members of their team and their respective decision makers.³⁹

Increasing the number of interests involved expands the complexity of the negotiation, but interest-based literature suggests that it “can also enhance the probability of a successful outcome to the negotiations since the number of combinations of favorable outcomes for each of the actors to consider is increased.”⁴⁰ Perhaps this assessment is too optimistic. For example, between 1996 and 1997, Israel and the Palestinian Authority were locked in a dispute over Israel’s pullout from Hebron on the West Bank. “U.S. mediators were able to expand the issue set from a narrow focus on territory to one that encompassed additional issues, such as security arrangements and access to holy places, so that it was possible for both parties to see benefit and thereby move toward an eventual agreement.”⁴¹ However, Israel reoccupied Hebron in September 2000, thus casting doubt on the success of the technique of broadening the issues in the negotiation. The peace in Hebron was short lived. The agreement was only temporary.

Without at least an awareness of the multiple tensions on both sides, individuals may find themselves in less control of the situation and less able to craft effective, lasting agreements. Complex sets of values are instilled both within the individual and in the organization that the individual represents and between self-interests and collective interests. These values help form interests that can be anticipated through thoughtful questioning and thorough research.

VI: The Possibility of No Agreement

As former United States Supreme Court Justice Oliver Wendell Holmes once said, “deepseated preferences cannot be argued about—you cannot argue a man into liking a glass of beer.”⁴² A person can determine that his position is right, whether because of favorable facts, the law, or simply because of his own personal convictions and sense of fair play.⁴³ When a person holds such deep-rooted commitments, “he will generally defend them to the bitter end, accepting non-agreement rather than compromise.”⁴⁴ It is important for a negotiator to identify this type of stance early in the negotiation. A negotiator usually cannot change people, and when dealing with an individual who holds deeply held principles, to attack the counterpart’s principals undermines the very foundation of that person’s moral fiber.⁴⁵ Researching the interests that form a negotiating counterpart’s principles may help a negotiator reach agreement and better prepare for and anticipate the possibility of no agreement. An agreement is not the best option for every negotiation, and a study of interests helps a negotiator better identify what negotiations are suitable for agreement.

For example, President George W. Bush’s refusal to negotiate with the Taliban illustrates how a study of interests can aid a negotiator in identifying when a situation may not be amenable to a negotiated agreement. “The paramount U.S. interest in this context was to protect American lives both within the U.S. and abroad, as well as to prevent and deter future terrorist attacks.”⁴⁶ The Taliban’s interests were “in surviving and remaining in power, and in so doing, in sustaining the fundamentalist Islamic character of Afghan society.”⁴⁷ Ultimately, by weighing the interests along with the probability of a satisfying negotiated outcome and other costs associated with negotiating, the United States has justified its refusal to negotiate with the Taliban.⁴⁸ An interest-based approach presuming both sides desire peace and harmony fails when weighed against the legitimacy that such a negotiation would impart upon a regime the

United States had not previously recognized.⁴⁹ A study of interests shows that a negotiation would likely fail because of the Taliban's "interest in maintaining its role as a fundamentalist enclave in the Islamic world, it could not be seen as abandoning bin Laden and al-Qaeda to the infidels."⁵⁰ When principles replace interests, a negotiator must carefully weigh whether negotiation is even a viable option.⁵¹

VII: Conclusion

There are challenges in cross-cultural negotiations that a purely interest-based approach may fail to address. As such, preparation to uncover and analyze the interests of both one's self and the negotiating counterpart, as both representatives and individuals, can help a U.S. negotiator meet some of the challenges involved with cross-cultural negotiation. Challenging the assumptions that lie behind basic interests can allow a negotiator to prepare for a negotiation and prepare for both agreement, and the possibility of non-agreement.

In every negotiation there is likely to be some issue, however small, that may be characterized as a shared interest. The key to finding these shared interests is preparation and evaluation of the individual negotiation with careful consideration of the interests that underlie the positions taken by all sides in the negotiation. Using an interest-based approach to negotiation is a choice that a negotiator makes, and a negotiator can use the preparation recommended for effective interest-based negotiation to his advantage in almost any negotiation situation, even if it requires reciprocating a distributional bargaining technique.

Endnotes

¹ Perhaps the leading text on the subject of interest-based negotiation is ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 22-29 (Bruce Patton ed., Houghton Mifflin 1991) (1981). The book's thesis is:

Behind opposed positions lie shared and compatible interests, as well as conflicting ones. We tend to assume that because the other side's positions are opposed to ours, their interests must also be opposed. If we have an interest in defending ourselves, then they must want to attack us. If we have an interest in minimizing the rent, then their interest must be to maximize it. In many negotiations, however, a close examination of the underlying interests will reveal the existence of many more interests that are shared or compatible than ones that are opposed.

Id. at 43. For a good summary of interests see MICHAEL WATKINS & SUSAN ROSEGRANT, *BREAKTHROUGH INTERNATIONAL NEGOTIATION: HOW GREAT NEGOTIATORS TRANSFORMED THE WORLD'S TOUGHEST POST-COLD WAR CONFLICTS* 22 (2001); see also Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 758 (1984).

² The author thanks Dean Nancy Rogers, The Ohio State University, Moritz College of Law, for her thoughtful comments on revisions of this chapter.

³ KEVIN AVRUCH, *CULTURE AND CONFLICT RESOLUTION* 78 (1998). Avruch agrees that Fisher and Ury's theory works in certain spheres, and the book's popularity serves as evidence of its message resonating. However, Avruch argues that their theory "corresponds deeply to the idealized Anglo middle-class model of what negotiation looks like." *Id.* at 79 (emphasis in original).

⁴ *Id.* at 80; see generally Kevin Avruch, *Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators*, 9 HARV. NEGOT. L. REV. 391 (2004) (discussing context and culture with regards to intercultural negotiation in humanitarian negotiations).

⁵ James J. White, *The Pros and Cons of "Getting to YES,"* 34 J. LEGAL EDUC. 115 (1984). White comments that *Getting to YES* is "frequently naïve, occasionally self-righteous, but often helpful." *Id.* at 115.

⁶ *Getting to YES* is still popular even twenty-five years after the publication of its first edition in 1981. Over 2,000,000 copies are in print and as of April 10, 2006, the second edition sits at #225 on the sales ranking list at www.amazon.com.

⁷ RAYMOND COHEN, *NEGOTIATING ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY* 13 (1991). The Soviet's view has been characterized as a "preoccupation with authority, avoidance of risk, [and an] imperative need to assert control." *Id.*

⁸ Guy-Olivier Faure, *International Negotiation: The Cultural Dimension*, in *INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES* 392, 410 (Victor A. Kremenyuk ed., 2d. ed. 2002).

⁹ For further discussion on conflict style see generally Roderick W. Gilkey & Leonard Greenhalgh, *The Role of Personality in Successful Negotiating*, 2 NEGOT. J. 245 (1986); Robert H. Mnookin et al., *The Tension Between Empathy and Assertiveness*, 12 NEGOT. J. 217 (1996).

¹⁰ White, *supra* note 5, at 116.

¹¹ For examples of tactical advantages that a negotiator can employ when using a competitive strategy, see Michael Meltsner & Philip Schrag, *Negotiating Tactics for Legal Services Lawyers*, 7 CLEARINGHOUSE REV. 259, 260 (1973). The authors note that "this list of tactics is not intended to endorse the propriety of every one of them, but there can be no doubt of their efficacy in appropriate situations." *Id.* Suggestions such as *know the facts thoroughly* and *make your adversary feel good* are appropriate for any negotiation.

¹² HOWARD RAIFFA, *THE ART AND SCIENCE OF NEGOTIATION* 33 (Harvard Univ. Press 1982).

¹³ White, *supra* note 5, at 119. White also critiques Fisher and Ury for giving “no concession to the idea that certain forms of behavior may be acceptable within certain regional or ethnic groups. . . . There is no recognition that the setting, participants, or substance may impose a set of rules. Rather a whole host of things labeled ‘dirty tricks,’ . . . ‘deliberate deception, psychological warfare, and positional pressure’” are out of bounds. *Id.* at 118.

¹⁴ Chris Guthrie, *Review Essay: Using Bargaining for Advantage in Law School Negotiation Courses: Bargaining for Advantage: Negotiation Strategies for Reasonable People*. By G. Richard Shell, 16 OHIO ST. J. ON DISP. RESOL. 219, 225-26 (2000) (citing G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE 8 (1999)). Guthrie organizes the four categories which combine the conflict over stakes and concerns as follows:

(1) “Tacit Coordination”—intersection over which one proceeds first characterized by both low stakes conflict and low relationship concerns (*e.g.*, a “negotiation” between two drivers at a four-way stop); (2) “Transactions”—characterized by high stakes conflict and low relationship concerns (*e.g.*, purchase and sale of a home); (3) “Relationships”—characterized by relatively low stakes conflict and high relationship concerns (*e.g.*, working within a team); and (4) “Balanced Concerns”—characterized by both high stakes conflict and high relationship concerns (*e.g.*, negotiations over a joint venture or other business partnership).

Id. at 226.

¹⁵ RAIFFA, *supra* note 12, at 127.

¹⁶ SHELL, *supra* note 14 at, 77-85, *see also* Ronald J. Gilson & Robert H. Mnookin, *Foreword: Business Lawyers and Value Creation for Clients*, 74 OR. L. REV. 1, 8 (1995) (“Students in negotiation courses often erroneously believe that win-win negotiations somehow depend on finding similarities—common interests shared by both sides. In fact, it is characteristically *differences* in preferences, relative valuations, predictions about the future, and risk preferences that fuel value-creating opportunities.”).

¹⁷ SHELL, *supra* note 14, at 77-78.

¹⁸ *Id.*

¹⁹ WATKINS, *supra* note 1, at 23.

²⁰ ROGER FISHER & DANIEL SHAPIRO, BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE 28 (2005). The authors connect these human-needs with five core concerns: appreciation, affiliation, autonomy, status and role.

²¹ FISHER & URY, *supra* note 1, at 40.

²² Andrew Kydd & Barbara F. Walter, *Sabotaging the Peace: The Politics of Extremist Violence*, 56 INT’L ORG., 263, 263 (Spring 2002), *available at* http://muse.jhu.edu/journals/international_organization/v056/56.2kydd.pdf (last visited March 4, 2006). The authors note that the individuals responsible for these actions are aware of the consequences of their actions and that the bombings are successful in disrupting the peace process.

²³ JOEL EDELMAN & MARY BETH CRAIN, THE TAO OF NEGOTIATION 107 (1993). The authors suggest a self-analysis that asks a series of questions to challenge assumptions:

Maybe there’s something going on here that I don’t understand. I know what I want, and I have a view of what I think has happened already and what I want to happen now. What I know, I believe to be the truth. But maybe I don’t know everything that needs to be known. Maybe there are some other truths here too, in terms of facts, actual conduct and other people’s feelings, which may be different from my feelings.

Id.

²⁴ Richard E. Hayes, *Negotiations With Terrorists*, in INTERNATIONAL NEGOTIATION, *supra* note 8, at 416, 419. Hayes notes that terrorist groups seldom allow their senior members to participate in the riskiest operations, leaving decision making in the hands of relatively junior members. This corresponds with the first step of the G. Richard Shell framework that is described in the section of this chapter titled “A Framework to Meet Interests.”

²⁵ *Id.* at 421 (citing K. L. Oots, *Bargaining with Terrorists: Organizational Considerations*, in TERRORISM 3, 13 (1990)). Oots assumes that violence is a sign of negotiation failure and does not entertain it as a bargaining tactic that has implications of larger issues for later events.

²⁶ *Id.* at 421.

²⁷ *Id.* at 426.

²⁸ FISHER & URY, *supra* note 1, at 51. The authors suggest a framework of making interests come alive by acknowledging the other sides’ interests as part of the problem, putting the problem out before a negotiator answers, taking a forward-looking approach, being concrete but flexible, and ultimately being hard on the problem, but soft on the people.

²⁹ Regardless of whether the other side will negotiate on interests, effective information gathering can be used as a tool to anticipate and meet interests. A prudent negotiator may reframe the conflict or potential conflict as a research project, instead of a war.

³⁰ SHELL, *supra* note 14, at 21.

³¹ DOUGLAS STONE ET AL., *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 126 (1999).

³² SHELL, *supra* note 14, at 34-35.

³³ *Id.* at 24.

³⁴ STONE, *supra* note 31, at 126-27.

³⁵ JOHN ILICH, *THE ART AND SKILL OF SUCCESSFUL NEGOTIATION* 99 (1973).

³⁶ AVRUCH, *supra* note 3, at 80. However, the author argues that when dealing with basic human needs, satisfaction for one party increases the total availability to the other side. For example, when a negotiator provides security, there is an increased likelihood that both sides will feel more secure, making for more fruitful negotiations.

³⁷ AVRUCH, *supra* note 3, at 85-88 (citing JOHN W. BURTON, *RESOLVING DEEP-ROOTED CONFLICTS: A HANDBOOK* (1987)).

³⁸ See JEANNE M. BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURES* 172-76 (2001). When a negotiator is confronted with what seems to be an uneasy blend of self and collective interests, Brett suggests trying to shift the social identity of the counterpart from the self to the group coping with the dilemma by attempting to blend the counterpart’s self-identity with the social identity of the group that he represents. The premise is that it is easier to anticipate and research the interests of the group than the individual. She provides the example of OPEC, which seeks to alleviate member nations from common economic problems caused by low oil prices. Member nations have national self-identities. When the OPEC nations ignore their OPEC-regulated quotas, their self-identity is as a national and not a member of OPEC. However, when the nations are maintaining the quotas, their self-identity is squarely aligned with OPEC.

³⁹ MARK A. BOYER ET AL., *NEGOTIATING IN A COMPLEX WORLD: AN INTRODUCTION TO INTERNATIONAL NEGOTIATION* 41 (2d ed. 2005).

⁴⁰ *Id.* at 47.

⁴¹ *Id.* at 48.

⁴² TRENHOLME J. GRIFFIN & W. RUSSELL DAGGATT, *THE GLOBAL NEGOTIATOR: BUILDING STRONG BUSINESS RELATIONSHIPS ANYWHERE IN THE WORLD* 99 (1990).

⁴³ One is reminded of the quote by Sir Winston Churchill, “never, never, never, never—in nothing great or small, large or petty—never give in except to convictions of honour and good sense.” ILICH, *supra* note 35, at 129.

⁴⁴ *Id.* at 128-29.

⁴⁵ STONE, *supra* note 31, at 137.

⁴⁶ Robert H. Mnookin, *When Not to Negotiate: A Negotiation Imperialist Reflects on Appropriate Limits*, 74 U. COLO. L. REV. 1077, 1092 (2003).

⁴⁷ *Id.*

⁴⁸ *Id.* at 1096.

⁴⁹ *Id.* However, Mnookin contrasts the example involving the Taliban with the situation in North Korea, where the U.S. refusal to negotiate bilaterally is not justified, suggesting that “the President’s use of the rhetoric of ‘evil’ in characterizing the regime does not leave a lot of room for dialogue and negotiation.” *Id.* at 1105.

⁵⁰ *Id.* at 1092.

⁵¹ See Stephanie R. Nicolas, *Negotiating in the Shadow of Outlaws: A Problem Solving Paradigm for Unconventional Opponents*, 9 J. TRANSNAT’L L. & POL’Y 385 (2000). Nicolas contends that U.S. policy makers failed by focusing on differences instead of common interests and takes an interest-based approach to analyze the situation. Her analysis looks at the situation from the perspective of a U.S. negotiator and does not consider the entirely different value structure that underlies the Taliban’s positions, as well as presumes that to the Taliban, peace is desirable in the region.

*In Each Other We Trust:
The Importance of Relationship Building
in Cross-Cultural Negotiations*

Michael T. Lennane and Laura E. Weidner

A b s t r a c t

Trust is often seen as the single most important element of a good working relationship and is especially vital in the cross-cultural context.

Trust brings the parties to the negotiation table in the first place, and once they are there, trust increases the likelihood of open communication and information sharing, decreases the pervasiveness of coercive tactics, and helps advance the parties' interest so that a mutually beneficial resolution can be reached.

This chapter provides the cross-cultural negotiator with a qualitatively-based toolbox founded on concepts of longevity and intimacy that allow the negotiator to initially establish trust with his or her counterpart, as well as rebuild trust in situations where it has broken down.

I. Introduction

During the historic negotiation between Egypt's Anwar Sadat and Israel's Menachem Begin in 1978, Jimmy Carter, serving as facilitator of the discussions, used trust-building techniques on two separate occasions to avoid impasse.¹ When Sadat threatened to leave the summit after an unsatisfactory meeting, Carter spoke privately with Sadat and stressed how much his leaving “would damage one of [his] most precious possessions—his friendship and [their] mutual trust.”² Later on, after hearing Begin was extremely disappointed with the language about Jerusalem, Carter made a personal visit to Begin's cabin and engaged in behavior that helped erase cultural barriers and built trust between individuals. Carter took Begin photographs that he had requested for his grandchildren, and personalized them by writing each of Begin's grandchildren's names at the top. This exchange sparked conversations about family and the war that strengthened their relationship and reinvigorated the negotiations that led to the signing of the Camp David Accords.³

While that trust-building venture occurred at the macro level, trust is no less important in more commonplace situations and negotiations. In surveying the various interpersonal relations in a person's life, chances are that some relatively high degree of trust exists in most, if not all, of them. A hypothetical (yet fairly plausible and common) man, on any given day, for instance, trusts his spouse that she will be loving and faithful, his business partner that he will finish his assigned share of a project, his sixteen-year-old daughter that she will not break curfew, and his barber that he will follow directions and not have his way with the scissors. From the most treasured bonds with other individuals down to the more mundane, yet equally important, encounters, trust is the often-unwritten but vital glue holding relationships together. This is true in one's personal life and most certainly an accurate statement when considering relationships between negotiating parties in which there is typically less of an emotional attachment and a leap of faith is necessary to secure one's interests.

When identifying certain qualities that help parties in a negotiating relationship appropriately manage their differences and therefore prosper, Harvard scholars Roger Fisher and Scott Brown note that while rationality, understanding, communication, persuasion, and acceptance are important, “[t]rust is often seen as the single most important element of a good working relationship.”⁴ Many reasons exist for this. First, if initially there is no trust between the parties, chances are that they will never even come to the negotiation table. Without an opportunity to openly communicate and develop trust, the conflict will not disappear and may very well escalate.⁵ Conversely, if some level of trust is already present between the parties, the negotiation process has a basis for commencing and there is a greater likelihood that the parties' interests will be advanced. Mutual trust tends to increase information-sharing and decrease coercive tactics, which in turn has a positive impact on the effectiveness of the process and on joint benefits.⁶ Finally, even after a particular negotiation is over, research has shown that trust increases satisfaction with and motivation to implement any negotiated agreement that is reached.⁷

Most research indicates that trust is usually hard to establish in everyday relationships,⁸ more difficult across a negotiation table, and most complex in a cross-cultural negotiation setting. This is so because as opposed to the former two situations, there is seldom any actual or comparable prior relationship from which the negotiators can gauge the trustworthiness of the counterpart. The opposing negotiators frequently walk into the bargaining situation blind and, sometimes literally, from other sides of the world. Taking that into account, while relationships are arguably important to all negotiators, the U.S. negotiator should acknowledge that people in some cultures may expect to develop and emphasize close-knit associations before negotiations begin—even in the most routine of negotiations. Similarly, because “each culture's ‘collective programming’ results in different norms and values, the processes trustors use to decide whether and whom to trust may be heavily dependent upon a society's culture” and thus, it can be hard to bridge the trust gap.⁹

It is difficult to bridge that trust gap, but certainly not impossible. Air Force officers often must negotiate with individuals from highly divergent backgrounds for everything from everyday resources to more pressing, emotional matters in hostile situations in which distrust is rampant. In light of that reality, this chapter aims to arm the U.S. negotiator with a toolbox of tactics to increase trust between the negotiator and his counterpart so that open and reliable relationships are formed and more mutually beneficial

solutions are reached. This chapter will first provide a basic definition of trust, an overview of the generally agreed upon levels of trust, a distinction between trust and similar terms, and a brief description of the analytical studies that have been conducted on trust and culture. Next, a trust building model for cross-cultural negotiations based on the two of factors longevity and intimacy will be presented, followed by suggestions for restoring trust when it has broken down.

II. Trust Generally

A. What is Trust?

As with many words, “trust” is a multi-faceted term with no universal definition. New York University Professor Russell Hardin, who coined the prospect of trust being an encapsulated interest,¹⁰ remarks that:

[o]ne reason why trust is such a hard term even to define and why it may have so many apparent meanings in the vernacular ... is that it is not a primitive term ... Rather, it is essentially a reductive term, in the following sense: Trust is not a primitive, something that we just know by inspection, as the color blue might be a primitive ... Rather, it is reducible to other things that go into determining trust.¹¹

In that light, several different disciplines have investigated its depth and have drawn different conclusions as to what trust entails. While personality theorists believe trust is a belief held by an individual or an expectancy strongly correlated to one’s own psychosocial development and personality, sociologists and economists tend to focus on the trust that individuals hold in institutions and that institutions develop within and among each other.¹² Social psychologists’ work, on the other hand, revolves around interpersonal trust, making trust pivot on one’s expectations in the other human being involved, risks associated with acting on those expectations, and surrounding factors that may influence the relationship.¹³

1. Trust in the Cross-Cultural Negotiation Context

In terms of trust in interpersonal relationships, scholars generally agree that trust is a three-part equation in that “A trusts B to do X.”¹⁴ In the cross-cultural negotiation context, however, a better definition extends this concept, falling somewhere between personality theorists’ and social psychologists’ lines of thinking. Trust in cross-cultural negotiations is “having positive expectations about another’s motives and intentions toward us where potential risk is involved.”¹⁵ It is important to note that under this description, trust involves two key elements. First, in order to test and eventually trust a counterpart in a cross-cultural negotiation relationship, the negotiator must gamble to some extent and take some risks.¹⁶ Second, as trust is being formed, the trusting negotiator must constantly assess whether his counterpart’s intentions are good (encompassing behaviors such as honesty, truth, and a willingness to work together) or bad (encompassing behaviors such as indifference, selfishness, or outright cruelty), as revealed through the counterpart’s behavior.¹⁷

One additional, but essential, factor especially true in the cross-cultural context is that an initial trusting belief held by the trusting negotiator will not automatically turn into actual trust unless accompanying behavioral consequences are witnessed.¹⁸ In other words, only when the negotiating counterpart fulfills promises (most likely over a period of time) will the negotiator’s positive assessments ring true, risk be decreased, and well-founded trust across borders truly be solidified.

2. Trust vs. Distrust

Traditionally, trust was viewed as a unidimensional phenomenon, with trust at the “high” end of the spectrum and distrust or complete lack of trust at the “low” end of the same continuum.¹⁹ According to that hypothesis, one either trusts his negotiating counterpart or distrusts him. That position began to be whittled away when German sociologist Niklas Luhmann put forth the prospect that trust and distrust are functional equivalents.²⁰ After stressing that human relationships are multifaceted and multiplex and that balance seems to be temporary, American trust researchers Roy J. Lewicki, Daniel J. McAllister, and Robert J. Bies advanced the trust-distrust debate one significant step further and urged that trust and distrust are separate dimensions that can co-exist.²¹ Trust, under that framework, is confident positive expectations about a counterpart’s conduct, while distrust is confident negative expectations about a counterpart’s conduct.²²

This rejection of a unidimensional approach to trust makes sense in that when negotiating, a U.S. negotiator may trust a counterpart regarding the outcome of basic, administrative matters, while at the very same time distrust the same counterpart's motives. The distinction between trust and distrust, therefore, is important because in military negotiations in which both sentiments exist at the same time, distrust does not necessarily end the deal. The U.S. negotiator can still achieve his desired outcome if the distrust is rational and managed properly. Moreover, distrust can act as an important safeguard because it can cause the negotiator to be aware of his suspicions and not be taken advantage of by his counterpart.

B. Levels of Trust

Several factors appear to assist the overall development of trust in interpersonal relationships and therefore, negotiations. These factors include the following: some individuals simply have a personality predisposition to trusting others; peoples' cognitive, motivational, and moral orientations influence relationships; reputations and stereotypes can play a role in the absence of actual experience; and finally, actual experience with others impacts the amount of trust or distrust between parties.²³ Those bases for trust, in turn, mix and influence and ultimately give rise to one of three fairly standard levels of trust that aids in establishing and maintaining any sort of relationship together.

1. Calculus-Based Trust

The "lowest" level of trust is commonly referred to as "calculus-based trust."²⁴ Calculus-based trust is essentially a utilitarian analysis in which one person, such as a negotiating party, chooses to enter into or continue a negotiating relationship based on a calculation whose "value is determined by the outcomes resulting from creating and sustaining the relationship relative to the costs of maintaining or severing it."²⁵ The negotiator, in other words, continuously weighs the pros and cons and acts accordingly, continuing to build trust or when the scale tips towards one side or the other, determining there is not enough trust for the negotiation to continue. The negotiated Mutually Assured Destruction policy between the United States and the former Soviet Union is a macro-level and wisely concocted example of calculus-based trust in that under it, each party in its continuous calculations refrained from engaging in nuclear-missile-based aggression because it feared its own ultimate destruction.²⁶

Because this type of trust is typically based on only minimal knowledge of the other party, calculus-based trust can be easy to create and is likely to be found in new or task-oriented negotiating relationships, such as in most marketplace transactions. U.S. negotiators can take advantage of calculus-based trust because many cross-cultural negotiations concern these types of tasks and transactions.²⁷ Trust building even at this level may be trying, however, because information about one's prospective counterpart may be limited and individuals must still learn to suppress any cultural stereotypes held so that negative indices do not interfere with the negotiation process.

2. Knowledge-Based Trust

Next in the rising chain of interpersonal trust is "knowledge-based trust," which is reached in a negotiating relationship when a person has enough information about his counterpart to understand him and predict his behavior.²⁸ Knowledge-based trust can be based on several things, such as prior positive experiences with the counterpart whereby the two have become well acquainted and the subsequent level of risk decreases.²⁹ In Thailand, for example, buyers of rubber are in a position of possible distrust because the quality of rubber cannot be determined at the point of sale. Most buyers, however, overcome this problem by building knowledge-based trust with a particular seller and entering into long-term sales relationships with them.³⁰ The sellers are content with this result because they gain repeat customers and the buyers are even happier because through consistent interactions with the same seller, they learn to trust the seller as a person and the quality of the product.

Knowledge-based trust can also arise solely because the parties have common interests or have engaged in enough research about the member of the other culture that knowledge-based trust is simply warranted from the start.³¹ Though the latter may be difficult to establish in a cross-cultural negotiation setting, the former seems highly plausible because the existence of cultural differences does not necessarily mean the negotiating parties have mutually exclusive needs. Regardless, knowledge-based trust should always be a goal towards which the negotiator strives because reaching such a level results in several advantages. Knowledge-based trust can reduce the formalism necessary between the parties (thereby improving effi-

ciency of bargaining) and it can extend beyond the negotiation table to form a personal bond that improves overall conditions and future relations.

3. Identification-Based Trust

“Identification-based trust” is reached only when one identifies with his counterpart’s desires and intentions such that he can effectively act in his counterpart’s place.³² Although identification-based trust carries with it certain advantages,³³ it is the most difficult type of trust to establish and typically requires a highly intimate relationship developed over time, such as in a highly esteemed joint venture with shared values, mutual involvement in a serious crisis, or an incredibly long-functioning cooperation cycle between disputants. Other than joint work during a crisis, none of the other bases for identification-based trust are likely to be present in the majority of cross-cultural negotiation relationships. Moreover, although trust is generally an advantage in a negotiation setting, identification-based trust may simply be “too close for comfort,” especially in the military context, where confidentiality and security measures bar the possibility of sharing enough information for the counterpart to have the ability to take on the officer’s identity.

C. Culture and Trust

A body of research still in its infancy stages examines the interplay of culture and trust. However, this overview is merely given as a starting point because many of the studies discuss only *general dispositions* to trust and this chapter strongly discourages narrow or stereotypical thinking in regards to another culture’s tendency to trust. Regarding trust building *between* cultures, researchers have merely predicted “it is possible that the patterns of developing trust will hold when trustors and targets from different countries are congruent in their cultural milieu.”³⁴

Much of the “general disposition” empirical evidence focuses on the collectivist-individualistic differentiation of cultures discussed above in Chapters 2 and 3, in which individuals in community-based societies are thought to form their identities in relation to the entire group, whereas people in individualistic societies are thought to form their identities as individuals. Western intuition might lead individuals to assume that people within collectivist cultures are more inclined to trust others, but the majority of research reveals the exact opposite. For instance, a study conducted by Japanese behavioral scientist Toshio Yamagishi in 1988 investigating the tendency of American versus Japanese subjects to desert a group that contained a free rider found that Americans were much more likely than the Japanese to remain in the group, even when they knew that doing so would cause them to earn far less money.³⁵ A reason suggested for this seemingly mismatched phenomenon is that because individuals in collectivist cultures are used to having overall systems of mutual sanctioning that guarantee mutual cooperation, they may feel insecure in an environment lacking that structure and therefore, may be less trustworthy of others.³⁶

Little systematic evidence on other cultural dimensions exists, but preliminary correlations have been made. Thus far, research indicates the following types of cultural characteristics correlate with relatively high dispositions to trust: cultures that stress stability and consensus, cultures that are hierarchical (in which power is generally vertically aligned), and cultures that are fairly non-verbal and issue-avoiding.³⁷ This area of research, as indicated, is growing and should be included in cross-cultural negotiation training, but it should not be overly relied upon as a definite indicator of another culture’s ability to trust.

III. Toolbox for Building Trust in Cross-Cultural Negotiations

The concepts of calculus-based and knowledge-based trust play an integral role in the practical application of this chapter’s trust-building model. Trust between parties is not automatic, especially in the cross-cultural context.³⁸ Therefore, it is essential that a negotiator gauge his actions to create an appropriate level of confidence among the parties. The negotiator must also be aware that the amount of trust among the parties can vary.³⁹ Certain transactions may require more trust than others in order to reach a successful settlement. Reciprocal trust becomes an important issue to keep in mind, as a trusting negotiator may not be rewarded with similar behavior from the person across the table.

Many scholars have developed helpful suggestions⁴⁰ and intricate models for trust building⁴¹—some of which even take culture into account—but this chapter wishes to expand upon those models and provide a trust building framework that is qualitatively-based and easy to follow. The model proposed in this

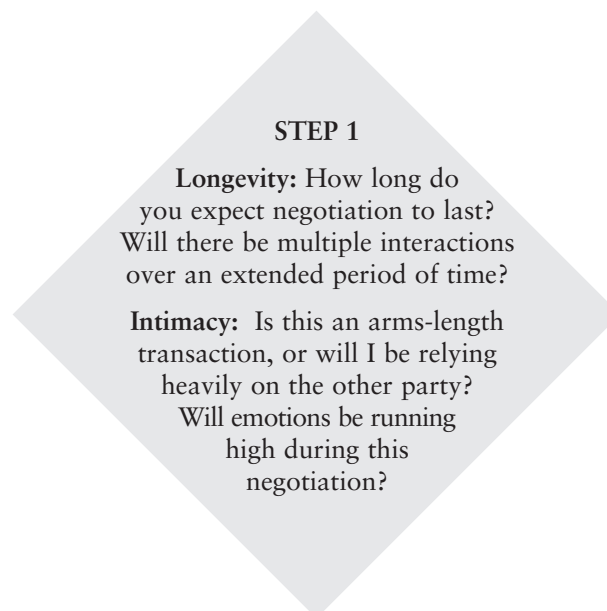
chapter, hereinafter referred to as the “Longevity-Intimacy Model,” provides the U.S. negotiator with a two-step process that will equip him with the tools necessary to increase trust and improve the relationship between the parties during a wide variety of cross-cultural negotiations.⁴²

A. Step 1: Evaluate Expected Longevity and Intimacy of the Interaction. Reassess as Needed and Alter Approach Accordingly.

The first step of the Longevity-Intimacy Model entails an analysis of the expected longevity and intimacy of the relationship. It is important to draw a distinction between the relationship of the parties and the number or length of the actual negotiation sessions. The anticipated duration and closeness of the *relationship* is analyzed in step one, not necessarily the length or intensity of the negotiation session. Parties may engage in a lasting relationship, or interact in a brief encounter. Negotiators should therefore use different tactics that are dependent on their expectations of a potential relationship. The ultimate goal of this model is to help the negotiator develop an appropriate amount of trust based on the anticipated or desired relationship with his counterpart.

For the purposes of this model, longevity is defined as the anticipated length in time that the relationship between the parties will last. Longevity is a crucial factor in any relationship, as the anticipated length of the relationship helps mold how the parties behave. In some situations, the parties will interact with each other on numerous occasions over a long period of time. Opportunities for strengthening a relationship are greater when the parties anticipate or experience such greater longevity.⁴³ On the other hand, an individual may have strong reasons to believe that the longevity of the negotiating relationship will be extremely short. In these situations, concrete trust building may not be necessary or even possible. An astute negotiator will evaluate how long he thinks the relationship will last by asking himself questions such as, “How long do I expect to do business with my counterpart?” and “Will I interact with my counterpart many times over a long period of time?”

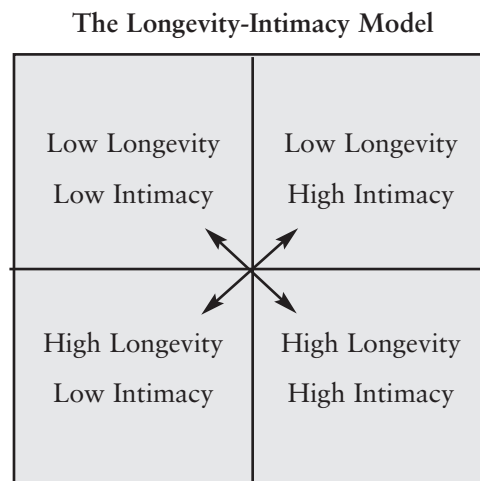
Intimacy of the relationship is equally important and can be defined as the expected interdependence and emotional capital that the parties bring to the table or that will likely be developed. The more the parties rely on each other, the greater the pressure to trust each other and work to increase any existing trust. In other words, as a relationship develops, the parties have more at stake. The result is an inherent reliance on the truthfulness and reliability of one’s counterpart.⁴⁴ The costs of deviating from a pattern of trust also increase. This serves as a check on the parties and forces them to continue using growth-oriented strategies. Therefore, it is essential that a negotiator assess the level of intimacy that he expects to encounter with the counterpart. Self-assessment questions such as “Is this an arms-length transaction, or will I be relying heavily on my counterpart?” and “Will emotions be running high during this negotiation?” will serve the negotiator well when determining the intensity of the relationship’s intimacy. The diagram below illustrates the analysis that a negotiator can undertake before proceeding to step two during a cross-cultural negotiation.



Longevity and intimacy are two important incentives for parties to develop greater trust in each other. A negotiator's assessment of these two factors can be completed at the onset of negotiations. However, it is also important that a negotiator reassess his position periodically during the negotiations. The level of trust in a relationship is dynamic, and trust can strengthen or weaken over time as the parties interact.⁴⁵ Therefore, reassessments are particularly important during the course of cross-cultural negotiations. Hypothetically, suppose an American negotiator in Iraq needs to contract for a one-month's supply of water from a local business owner. The negotiator might expect this to be an arms-length transaction over a relatively short period of time. However, during the course of the discussions, the negotiator learns that the businessman's son was accidentally killed by a stray U.S. missile. The businessman does not trust anyone with an American flag on his sleeve and is incensed at the negotiator even though the negotiator was not involved in his son's death.⁴⁶ As soon as this fact is learned, the negotiator must reassess the trust level necessary for a healthy bargaining relationship. The negotiator will quickly realize that although he still expects a short contractual duration, the level of intimacy has skyrocketed and that the Iraqi's emotional stake will be a determinative factor in whether the American negotiator will be able to acquire the necessary water supply. He must heed this evaluation and appropriately adjust his trust-building and subsequent negotiating tactics, as will be described in detail in step 2.

B. Step 2: Determine which Negotiation Strategy to Pursue Based on the Assessment performed in Step 1.

During step 1, the cross-cultural negotiator analyzes whether he anticipates (1) a high or low level of longevity and (2) a high or low level of intimacy. Such analysis will be most accurate if the negotiator keeps in mind that certain cultures may consider relationship building as the primary goal, rather than reaching consensus. Similarly, people in some cultures may find it is rude not to establish a relationship before engaging in subjective negotiation. Once the step 1 assessment is complete, the negotiator can move on to step 2, which provides a negotiating toolbox for each of the four possible combinations of longevity and intimacy: low longevity-low intimacy, low longevity-high intimacy, high longevity-low intimacy, and high longevity-high intimacy. The diagram seen below provides a visual rendering of the four categories. The arrows in the middle of the diagram represents the step one analysis.



1. Low Longevity-Low Intimacy

If the negotiator's assessment in step one reveals that he expects a short relationship for routine or mundane tasks, the low longevity-low intimacy toolbox is most appropriate in this situation. The guiding principle of the "low-low" toolbox is calculus-based trust. As previously discussed in this chapter, calculus-based trust typically exists during new or task-oriented relationships.⁴⁷ Therefore, a calculus-based strategy is ideal when the U.S. negotiator does not anticipate that the relationship with his counterpart will last very long or involve heavy reliance and emotional issues. As the calculus-based model dictates, the negotiator in this setting would be well served to assess the importance of creating and maintaining trust in his counterpart as compared to the costs of sustaining or ending the relationship.⁴⁸ The diagram below represents a summary of the low-low toolbox.

Low Longevity Low Intimacy

1. Attack the problem, not the person
2. Incorporate an integrative approach
3. Rely on objective criteria
4. Behave consistently
5. Possibly employ distributive tactics

The first tool for the “low-low” category is one common to interest-based negotiation—attack the problem, not the person.⁴⁹ Focusing energy on the issue at hand is appropriate in “low-low” cross-cultural negotiation situations because there is often neither the time nor the need to truly get to know the individual across the table. If the negotiator is uncomfortable trusting his counterpart to any degree, working to place trust in the negotiation process itself may help alleviate the negotiator’s concerns.⁵⁰ Placing trust in the negotiation process is called procedural trust. Procedural trust is helpful in the “low-low” situation because parties do not anticipate high longevity or intimacy and may therefore assume that the motives of the other are selfish.⁵¹ Parties can establish trust in the process by engaging in certain tactics, such as discussing who will attend the negotiations, shaping an agenda (see Chapter 10), and stressing confidentiality and agreement enforcement.⁵²

Most negotiators have two distinct interests during a negotiation: substantive and associational, i.e., an interest in the relationship itself.⁵³ A negotiator’s awareness of these separate interests along with his ability to keep them distinct is critical in attacking the problem, rather than the person. To accomplish this end, refraining from engaging in personal attacks is essential. Additionally, blaming the counterpart for the negotiator’s own problems is almost always counterproductive.⁵⁴ Conversely, the negotiator should keep in mind the difficulty in controlling or attempting to predict how the counterpart might react in a given situation. If the negotiator encounters an emotional outburst, it is important to refrain from responding in kind.⁵⁵ Looking at the situation from a cost-benefit perspective, permitting emotions to take over is simply worth the potential trouble such outburst may have in a “low-low” encounter. By the negotiator focusing on the procedure and the substantive problem, he can build the short-term interpersonal trust necessary to achieve a successful agreement.

The second tool in a “low-low” situation is to follow an integrative negotiations approach to the degree to which this is consistent with the counterpart’s negotiation approach. (See Chapter 4). Negotiators who follow an integrative strategy focus on the parties’ interests, not positions.⁵⁶ An example of a position is “I will only pay \$10,000 for that car;” whereas an example of an interest is “I cannot afford his asking price of \$15,000 for the car because I cannot afford to make a lump sum payment of that magnitude.” A person’s interest is what creates the position.⁵⁷ In “low-low” situations, discussing both parties’ interests and avoiding holding fast to positions allows the parties to build trust and develop creative solutions to the problem.⁵⁸ In the abovementioned example, the prospective car buyer cannot afford a lump sum payment. If he communicates that constraint to the seller, the parties have successfully moved beyond mere positions and may be able to complete the sale by formulating an installment plan of some kind.

The third tactic to use in a low longevity and low intimacy relationship is reliance on objective criteria.⁵⁹ This goes hand-in-hand with the idea of procedural trust. A “low-low” relationship will most likely lack pre-existing interpersonal trust between the parties because interpersonal trust tends to be achieved only through repeated interaction.⁶⁰ A negotiator will probably not accept a stranger’s assertions at face value, especially in the cross-cultural context. The negotiator must research objective criteria in advance of the negotiation. Objective criteria from independent sources carry the most legitimacy and are most effective in bridging the trust gap.⁶¹

The fourth and final “low-low” strategy is to behave consistently. This tactic strongly influences trust-building when the parties have not yet developed a relationship, as is the case in most “low-low,” calculus-based trust situations. By acting consistently, meeting deadlines, and following through on promises,

a negotiator increases calculus-based trust between the parties and can effectively accomplish his objectives while creating mutual gain for both parties.⁶²

There has been some criticism of integrative bargaining approaches (for more information on this criticism, see Chapter 4) and there *may* be a time in low longevity–low intimacy contexts during which distributive negotiating tactics are more appropriate than using integrative techniques. In a distributive bargaining approach, the negotiator is simply concerned with getting as large of a slice of the pie as possible. Expanding the pie, a phrase commonly used in integrative approaches, is not important. The perception of power and gaining an advantage over the counterpart are important in order to use these strategies.⁶³ Initially, one strategic move a negotiator can make is to outnumber his counterpart. The party with fewer representatives will tire more quickly and find it difficult to control the conversation.⁶⁴ Another powerful, yet risky, pre-negotiation tactic is for the negotiator to lock himself into a position early. Negotiators typically achieve this by publicly announcing a position and refusing to back away from it. The negotiating counterpart will then know the negotiator stands to lose face if he settles for something other than his publicly heralded demands.⁶⁵

During the negotiation, a distributive bargainer will compel the other person to make the first offer. The person who makes the first offer suffers the disadvantage of revealing his bargaining position.⁶⁶ If the negotiator is forced to make the first offer, an appropriate first demand is well above what the negotiator would hope to achieve. A distributive negotiator needs room to haggle, and a high initial offer will make subsequent proposals seem more reasonable.⁶⁷ Finally, once the negotiations conclude, it is wise for the negotiator to draft the agreement himself. Any items that are open to interpretation can therefore be written in the negotiator’s favor.⁶⁸

There are many other distributive bargaining tactics that can be employed in certain low longevity-low intimacy situations.⁶⁹ However, the overzealous use of power may cause irreparable problems (for more information on the role of power and authority in cross-cultural negotiations, see Chapter 8). It is therefore cautioned that distributive tactics are to be avoided at all costs if the negotiator anticipates that a relationship will evolve into something other than a low longevity-low intimacy association. Many distributive tactics are ethically dubious, overly stress competition, and destructive of any trust that has developed between the parties.⁷⁰ Competitive behavior can similarly generate hostile feelings and destroy any knowledge-based trust that has been or could be established.⁷¹

2. High Longevity-High Intimacy

If the opposing sides anticipate that a potential relationship will endure for quite some time and that the parties will need to rely on each other, implementing high longevity-high intimacy tactics would be wise. The high longevity-high intimacy toolbox is the complete opposite end of the spectrum from the “low–low” strategy. “High-high” tactics are supported solely on the principles of knowledge-based trust. As previously discussed in this chapter, knowledge-based trust is developed through an increasing familiarity of the other person’s habits, traits, attitudes, principles, and values.⁷² Situations involving high longevity and high intimacy include democracy/peace building initiatives and large-scale humanitarian crises. Because effective peace building necessitates the progressive rebuilding of relationships between the parties,⁷³ the “high-high” toolbox can play an integral role in solving some of the world’s most complex issues. A summary diagram of the “high-high” toolbox can be found below.

High Longevity High Intimacy

- | | |
|----------------------------------|-------------------------------------|
| 1. Get to know the other party | 6. Loosen the reigns |
| 2. Agree on common goal | 7. Focus on the future |
| 3. Use successive approximations | 8. Avoid competitive tactics |
| 4. Reciprocate a concession | 9. Appoint a neutral third party |
| 5. Use fair procedures | 10. Open the lines of communication |

In a “high-high” environment, getting to know the negotiating counterpart before starting serious negotiations can be highly beneficial. Prior to having discussions where a lot is at stake, the negotiator can help build trust by having a discussion with the other person when nothing is at stake.⁷⁴ Ideally, the topic of conversation would be an informal, friendly discussion of something other than issues to be covered during then negotiations.⁷⁵ Engaging in such small talk may fit well into the customs of other cultures as well as allow the negotiators to learn more about their counterparts’ personality, background, and ultimately—their interests. For example, as referenced in Chapter 1, as part of the U.S. peacekeeping forces in Kosovo, a U.S. Air Force officer was given the specific task of getting both Serbian and Albanian employees to resume work on the railroad. After failed efforts of convening the two groups for discussion, the U.S. officer joined the Serbian and Albanian workers outside for a casual smoke break and lighthearted conversation. After laying this friendly groundwork, the officer successfully facilitated a negotiation whereby the crews would switch as the trains moved through various work areas.⁷⁶ Engaging in informal conversation such as this before the negotiations begin isolates feelings of anxiety and mistrust and allows the negotiators to be more creative in problem-solving strategies, and sometimes—quite literally—permits the trains to, once again, run on time.⁷⁷

The second strategy under the “high-high” model is to agree on a common goal or shared vision.⁷⁸ Although the negotiating parties may have differences over the details of a proposal, it is very important they are all working towards the same, ultimate goal. For example, Apple Chief Executive Officer Steve Jobs was quoted as saying, “It’s okay to spend a lot of time arguing about which route to take to San Francisco when everyone wants to end up there, but a lot of time gets wasted in such arguments if one person wants to go to San Francisco and another secretly wants to go to San Diego.”⁷⁹ In order to avoid that problem, clearly stating desired goals, discussing those goals with the counterpart, and working towards a mutually acceptable conclusion as to how the shared vision will be accomplished will help move negotiations forward.

A negotiator is often hesitant to enter into the bargaining process with his counterpart in particularly delicate situations. Trust cannot be built, however, unless the parties actually begin the negotiations process.⁸⁰ To begin the process, each side needs reassurances from the other. Making this happen is the third tool in the “high-high” model, called successive approximations of commitment and reassurance.⁸¹ Trust can be built if the negotiators discuss issues in a way that begins at a low level of commitment and slowly increases desired assurances.⁸² By using this strategy, the negotiator can refrain from “showing his hand” too early and instead, incrementally build trust over the course of the negotiations and cautiously work toward a binding settlement.

Another helpful tactic in the “high-high” context is for the negotiator to reciprocate in kind when his counterpart makes a concession. Sociologist Alvin W. Gouldner found that reciprocation is culturally universal and that people who do not reciprocate are subject to disapproval from others.⁸³ In addition, game theory suggests that “when the negative effects on reputation of opportunistic behavior are strong enough, reciprocation of cooperative and trusting behavior becomes a dominant strategy.”⁸⁴ However, this tactic does not require a negotiator to concede a central or important point. Symbolism is important in any negotiation, and even a concession of nominal value may signal to the negotiator’s counterpart that he is willing to compromise in order to strengthen the negotiating relationship.

The fifth tool in the high longevity-high intimacy category is to use fair procedures. As previously discussed, the development of procedural trust can lead to the growth of interpersonal trust between the parties and research suggests parties are happier with the negotiated outcome if they believe the process is just.⁸⁵ One way to utilize this technique is to discuss possible fairness criteria with his counterpart and strive to use standards upon which all parties agree.⁸⁶ The sixth tool goes hand-in-hand with the concept of procedural fairness and reciprocation. This tool is the willingness to “loosen the reins” during settlement discussions, particularly when on the positive side of a power imbalance. One common stereotype of Americans is that they simply impose their own will on those who are not as powerful. Rather than falling prey to that stereotype, the negotiator may wish to include the counterpart in the decision-making process and allow his counterpart to have self-determination, if possible. This technique is particularly important in situations such as large-scale humanitarian crises in which any potential solution will greatly impact each negotiating side.

If negotiations get heated—which is likely to happen when dealing with long lasting cross-cultural conflict—the U.S. negotiator will be well served to maintain a focus on the future and on a shared vision.⁸⁷ It is easy for a negotiation to get bogged down in “finger pointing” and blaming others for past actions, but working to sustain the relationship will help maintain the trust that is already in place. To get past this type of impasse, the wise negotiator will draw attention to the time and effort that both parties have invested up to this point and stress that it would be a waste if the relationship were sacrificed. Parties are less likely to walk away from the table if they are aware or are reminded of all the “sweat capital” they have already invested in the relationship.

Oftentimes in “high-high” situations, parties will encounter trouble developing interpersonal trust. The inability to communicate directly is one stumbling block on the road to mutual trust. One way to solve this problem is to appoint a third-party neutral to serve as a “repository” of trust.⁸⁸ The third party can help facilitate communication between the parties, eventually leading the parties to be able to interact without requiring the neutral’s involvement. So long as all the parties trust the third party, they can rest assured that their interests will be protected and confidences will be maintained.⁸⁹ (See Chapter 14 for more information on third-party neutrals in the cross-cultural context).

Finally, when in a “high-high” relationship, working to keep the lines of communication open with the other person at all times, even away from the bargaining table will help the negotiator develop and maintain trust. The parties do not necessarily have to be friends in order to communicate effectively with each other. For example, the United States and the former Soviet Union maintained a crisis “hotline” for many years during the Cold War.⁹⁰ One way to maintain open lines of communication between the parties is to always consult each other before reaching a conclusion on an issue.⁹¹ Consulting with one’s counterpart does not mean that the negotiator has to give up authority on an issue. Rather, consulting simply means that the negotiator is asking the counterpart for his input on a decision that may very well materially affect both parties.⁹²

3. High Longevity-Low Intimacy

If a negotiator feels that a potential relationship will endure for an extensive period of time, yet the parties will not have to closely interact, then a high longevity-low intimacy strategy should be implemented. This toolbox is a hybrid based on the underlying theories of calculus- and knowledge-based trust. While this toolbox exhibits characteristics of both theories, it weighted more towards calculus-based strategies. A visual summary of the high longevity-low intimacy toolbox can be found below.

High Longevity Low Intimacy

1. Increase your own reliability
2. Increase the other party’s reliability
3. Consult, listen, and plan communications

Based on the toolbox seen above, reliability is crucial to relationships in this category. Parties may not have much of an emotional stake in these situations, but they are relying on each other for an extended period of time for fairly important services. An example of a high longevity-low intimacy situation would be the hypothetical water supplier mentioned earlier in the chapter. Suppose that the U.S. negotiator was looking to secure a water supplier for the military as long as they maintained a presence in Iraq. The longevity of the potential relationship is the foreseeable future, and water is a crucial resource in the hot desert. The relationship is based on a mundane supply chain resource, but if the water supplier is unreliable major problems can arise for military personnel.

The first tactic to improve the high longevity-low intimacy relationship is to increase one’s own reliability. There are at least four ways to accomplish this goal.⁹³ The first is to behave in a predictable way. As previously discussed under the “low-low” model, trust can be better developed when the parties behave consistently, meet stated deadlines, and follow through with stated goals.⁹⁴ When that is not pos-

sible, i.e., when the negotiator simply cannot predict his behavior or an unforeseen consequence arises, negotiator may instead rely on procedural predictability to increase party satisfaction.⁹⁵ For example, in the legal world, although a lawyer cannot always predict the outcome of his client's criminal case, the lawyer and his client rely on the objectively fair criminal process to produce a just outcome.⁹⁶

The second way for the negotiator to improve his reliability is to be clear. This is especially important in the cross-cultural setting. By carefully selecting the language used during a negotiation, a negotiator is less likely to be misunderstood.⁹⁷ If the negotiator does not intend to make a commitment, he should affirmatively say so.⁹⁸ For example, the negotiator should not potentially mislead his counterpart by saying, "Your diplomatic party will be safe here." Rather, the negotiator should rephrase his intentions in the following manner, "I cannot guarantee your party's safety. I do not expect any trouble, but in this hostile territory no one is completely safe."

The third tactic for the negotiator to improve his reliability is to take promises seriously. The more seriously the negotiator treats his own promises, the more seriously the other party will treat his commitments.⁹⁹ Limiting the number of commitments made to the other person is one way to decrease the likelihood of breaking such commitments and appearing untrustworthy.¹⁰⁰ Finally, the fourth way in which a negotiator can improve his reliability is to be honest. Using deceitful practices is not the proper way to develop trust.¹⁰¹ A negotiator in the high longevity-low intimacy context cannot afford to sacrifice the long-term relationship in order to achieve a short-term advantage, which is all the negotiator would get from being dishonest.¹⁰²

The second tool for a high longevity-low intimacy negotiator is to try and enhance the reliability of one's counterpart. It may seem difficult to make the other side more dependable, but the negotiator can influence the other party through his own actions. One way to do so is to refrain from relying too heavily on trust and reduce risks.¹⁰³ A negotiator cannot be expected to place blind trust in a party from another culture with whom he most likely has little or no prior relationship. The greater a party relies on this blind trust, the greater the chances that the trust will be misplaced.¹⁰⁴ Additionally, by reducing the risk involved, trust can more easily develop over time. As an example, a car dealer will usually ask to photocopy a customer's driver's license before the dealer allows the customer to take a new car out for a test drive. By doing so, the dealer is protecting his business in the event the customer decides to steal the car. The chances of the customer not returning the car are also minimized because the customer knows that the dealer has the customer's personal information. By working to reduce risk, the negotiator can improve the other party's reliability.

Second, a negotiator will be well served to trust his counterpart when that other party is deserving of trust. If a negotiator trusts the other party too little, the counterpart will likely become resentful and possibly consciously less reliable.¹⁰⁵ The tactful negotiator will explain why he doesn't trust the counterpart as much as the other person feels he deserves and from there, the negotiators can discuss the risks and work towards a way to solve the trust obstacle.¹⁰⁶ Third, it is acceptable for a negotiator to praise or blame his counterpart when appropriate. A party is likely to ignore or be enraged by negative criticism if that is all that is heard. Therefore, any negative feedback given must be fair and accurate.¹⁰⁷ Positive feedback is a great way to give credit where credit is due during the course of the negotiation. By making positive remarks specific and clear, the counterpart will know exactly what type of behavior the negotiator is praising.¹⁰⁸ By giving encouraging feedback, a negotiator also sends a signal across the table that he is not an inherently negative person. That way, when negative criticism is appropriate, one's counterpart will take notice and not just attribute it to the negotiator's poor outlook.¹⁰⁹

The fourth and final way in which a negotiator can improve his counterpart's reliability is by treating undependable behavior as a joint problem. This can be accomplished by maintaining a focus on the future and highlighting the parties' interest in developing their relationship.¹¹⁰ One reason for the counterpart's failure to live up to his promises might be because of unrealistic expectations placed on the counterpart. If this occurs, attacking the counterpart as being unreliable may be counterproductive. Rather, inquiring into the inherent problems that are causing the dependability issues is the better course of action. One way to accomplish this is to treat broken promises just like any other issue at the bargaining table.

The third tool under the high longevity-low intimacy model is to consult, listen, and plan communications with the bargaining counterpart. This is the exact same communication tactic used in the “high-high” toolbox. Please refer back to that section for more information.

4. Low Longevity-High Intimacy

The final set of tools is best used in a low longevity-high intimacy situation when the relationship is expected to be short, yet one or both of the parties have a high emotional stake or a lot to lose. This model is also a hybrid of both calculus- and knowledge-based theories, but it is weighted more favorably towards knowledge-based theories. The rationale behind this model is that trust and relationship building are crucial to resolve a short-term crisis. An example of a low longevity-high intimacy situation includes a disaster relief effort, much like the one after the tsunami violently struck Asia and Africa at the end of 2004. Aid workers might not be needed to be in the area for a long period of time, but emotions run high during that period and people are in need of immediate assistance. A summary diagram of the low longevity-high intimacy toolbox can be found below.

Low Longevity High Intimacy

1. Balance emotions with reason
2. Respect the other party
3. Step into other party's shoes
4. Communication is essential

The first tactic of the low longevity-high intimacy toolbox—regardless of whether the U.S. negotiator is in a position of stronger or weaker bargaining power—is to balance emotions with reason. In crisis situations, it is all too easy to allow emotions cloud rational judgment and decision-making.¹¹¹ Yet at the same time, if a negotiator ignores his counterpart's emotions, his motivation and understanding of the urgency of the problem may be impaired.¹¹² It is therefore essential that a negotiator find equilibrium between feeling and rationale. Because it is expected and acceptable in low longevity-high intimacy context that at least one negotiating party will experience tremendous emotion, the negotiator in the position of power may first wish to allow the party in the weaker bargaining situation to vent his frustration or anger.¹¹³ Likewise, the negotiator in the position of power will be well served to acknowledge the emotions that both parties have.¹¹⁴ Once the party with the weaker bargaining power feels as if his emotions have been addressed, the party with the greater power might wish to refrain from countering with an emotional tirade of his own.¹¹⁵ Rather, looking for the party's underlying interests and working together to solve any inherent problems will best help the parties to work together and accomplish their goals in the highly-charged situation. Reason should rule the day, and striving to reign in overly emotional responses will allow for more reasonable discussions.

The second strategy in the low longevity-high intimacy context that will allow the relationships to flourish is to respect one's counterpart as an individual.¹¹⁶ Again, regardless of being in a stronger or weaker position, the negotiation will proceed more smoothly if both parties avoid the temptation to stereotype and generalize each other. Pigeonholing one's counterpart is unfair and the individual on the receiving end will likely find such generalizations incredibly impolite. Stereotypes become entrenched in a negotiator's emotions and become very difficult—but not impossible—to change.¹¹⁷ As was previously discussed in the “high-high” model, meeting with one's counterpart on an informal basis before the negotiations begin may prevent the negotiators from using stereotypes. It is also important to treat the counterpart as an equal, especially when the counterpart is in a precarious situation.¹¹⁸ The last thing a person in dire straits needs is someone casting judgment and belittling them. Indeed, if the U.S. negotiator is the party in a weaker bargaining position, he would hope and expect to be treated in a fair manner.

A third low longevity-high intimacy tactic to be utilized especially when the U.S. negotiator is in a dominant position is to gain perspective by stepping into the shoes of the counterpart. While “stepping into

their shoes” may be an overused cliché, its use is appropriate in this context. In order to work with the counterpart in a highly reliant situation, the negotiator must be able to empathetically understand the counterpart’s problems.¹¹⁹ Inquiring as to the other party’s interests, perceptions, and values will help the negotiations proceed smoothly. What does the other party care about, and more fundamentally, why does the counterpart find these interests important? Asking questions such as these are helpful in gaining an alternative perspective on the negotiation in a low longevity – high intimacy relationship. Should the U.S. negotiator find himself in the weaker position, in order to urge the other party to see his perspective, he would be well served to affirmatively, yet politely, offer comments regarding how he feels, what he needs, and why certain elements are essential in his mind to any ultimate consensus. This helps to open his counterpart’s mind and pinpoint otherwise unclear objectives of the U.S. negotiator.

Finally, communication is also essential in the low longevity-high intimacy model. Here, the negotiators may be dealing with an unexpected crisis. Open, organized, and clear lines of communication are key to dealing with the crucial issues quickly and effectively.¹²⁰ In the cross-cultural venue, an interpreter may be an extremely helpful tool in these negotiations. Please refer to Chapter 12 for more information on the role of interpretation in cross-cultural negotiations.

C. Step 3: Rebuilding Trust

Trust-building is a tedious and fluid process. Sometimes, a negotiator’s trust-creating efforts may get derailed. Broken trust between the parties is a common occurrence, especially in high longevity relationships. The reason for this is simple—the longer a relationship lasts, the more opportunities the parties will have to act in a way harming the relationship. Trust is a delicate bond between negotiating counterparts, and as one commentator stated, “a single apparent betrayal of trust can lead to the entire relationship’s unraveling and the creation of active mistrust.”¹²¹

There are many ways in which negotiating counterparts can work to restore trust after an “unraveling.” Although rebuilding trust is described as the third step of the Longevity-Intimacy Model, this procedure is not mandatory. The Rebuilding Trust toolbox is best used in a situation in which the negotiator’s actions caused or may cause distrust. A diagram of this third step can be found below.

Rebuilding Trust

1. Stress importance of continuing the relationship
2. Let them vent
3. Explain behavior and ask for clarifying information
4. Don’t get defensive
5. Focus on the future

Stressing the importance of continuing the relationship is a useful tactic to repair distrust. As previously discussed, President Jimmy Carter used this tactic to facilitate the Camp David Accords. A helpful way to heal open wounds is to affirm the other person and let the counterpart know the relationship is valued and that a resolution is sought.¹²² Another helpful strategy is to let the other person vent. If the counterpart has interpreted one of the negotiator’s actions as a breach of trust, allowing the counterpart to express his feelings may be a good first step in restoring trust.¹²³ The ability for a wronged person to share his frustration is frequently an important part of the healing process.¹²⁴

Explaining why a particular course of action was taken, and apologizing if necessary is also a helpful tactic. Additionally, working towards finding the root causing of the negotiating counterpart’s anger can help the negotiation proceed. Finding this root cause can be accomplished by asking the other party to give clarifying information.¹²⁵ Clarifying information will help the negotiator understand which of his actions were responsible for the breakdown in trust. An apology may also be appropriate once the negotiator discovers to what his counterpart has taking offense. Accepting responsibility if the U.S. negotiator is in the wrong and offering an apology can help minimize the loss of trust between the parties.¹²⁶

Another tactic that works closely with clarifying information and offering an apology is to refrain from a defensive tone. Negotiators who become defensive fail to allow the healing process to occur. Human instinct tells a person to defend one's honor, but a successful negotiator will avoid this temptation.¹²⁷ After the counterpart has vented and provided clarifying information, the U.S. negotiator may wish to proceed by conveying his own personal views on the situation. It is acceptable for a negotiator to disagree with the counterpart's perspective, but trust rebuilding-efforts are greatly accelerated if the negotiator tells his counterpart that he understands the counterpart's perspective.¹²⁸ Conveying actual intentions is also vital.¹²⁹

The final tactic in the rebuilding trust toolbox is to focus on the future of the relationship. The parties should meet and brainstorm ways in which to avoid similar trust-destroying problems in the future.¹³⁰ There is a strong temptation for parties to distance themselves from one another after an actual or perceived violation of trust.¹³¹ The parties can avoid this distancing if they plan a future together, which may include collaborating on a future project or any other activity that creates interdependence between the parties.¹³²

IV. Conclusion

Trust is a vital component of all cross-cultural negotiating relationships. Because trust is an amorphous entity and constantly changing dynamic, it is essential that the U.S. negotiator always be aware of its presence or lack thereof and consistently re-strategize to build, maintain, or restore it. By applying a variety of the very situation-specific tactics provided in this chapter, the U.S. negotiator should be able to bridge the trust gap and establish an open, reliable connection with the other side so that mutually beneficial solutions may be reached.

Endnotes

¹ Eileen F. Babbitt, *Jimmy Carter: The Power of Moral Suasion in International Mediation*, in *WHEN TALK WORKS: PROFILES OF MEDIATORS* 375, 378-80 (Deborah M. Kolb & Assoc., eds., 1994).

² *Id.* at 379 (citing JIMMY CARTER, *KEEPING FAITH* 392 (1982)).

³ *Id.* at 379-80.

⁴ ROGER FISHER & SCOTT BROWN, *GETTING TOGETHER: BUILDING RELATIONSHIPS AS WE NEGOTIATE* 107 (1988); *see also id.* at 9-12. Fisher and Brown, when discussing trust in the negotiation context, state that in order to increase well-founded trust, each party should attempt to improve reliability of their own conduct, while also working to closely scrutinize and increase reliability of his counterpart. *Id.* at 108.

⁵ This seems to be the eternal dilemma: “The parties cannot enter into a peace [or conflict resolution] process without some degree of mutual trust, but they cannot build trust without entering into a peace process.” Herbert C. Kelman, *Building Trust Among Enemies: The Central Challenge for International Conflict Resolution*, 29 *INT’L J. INTERCULTURAL REL.* 639, 641 (2005).

⁶ Leonard Greenhalgh & Deborah I. Chapman, *Negotiator Relationships: Construct Measurement, and Demonstration of Their Impact on the Process and Outcomes of Negotiation*, 7 *GROUP DECISION & NEGOT.* 465, 481, 483 (1998). In that experiment, prior to negotiating a corporate acquisition scenario, each member of a dyad who was fairly familiar with his counterpart was given relationship assessment questionnaire. *Id.* at 476-79. The findings confirmed earlier studies that revealed coercive tactics tend to inhibit joint gain, while information sharing facilitates joint gain. *Id.* at 473 (citations omitted); *see also* Jeanne M. Brett et al., *Culture and Joint Gains in Negotiation*, 14 *NEGOT. J.* 61, 71-78 (1998) (noting that U.S. and Japanese negotiators—both of whom engaged in a great deal of information sharing—realized the highest joint gains of all the cultures tested). Information-sharing is assumedly based on some sort of trust that exists between the parties and Brett and her colleagues provide strategies to increase information sharing in the negotiation setting. *Id.* at 79-81.

⁷ Dale E. Zänd, *Trust and Managerial Problem Solving*, 17 *ADMIN. SCI. Q.* 229, 235-36 (1972). Compared with subjects placed in a low trust mental set, subjects and observers alike rated subjects in the high trust mental set as more satisfied with problem-solving efforts and as having a greater motivation to follow through on conclusions drawn during the negotiation. *Id.*

⁸ *See e.g.*, Gareth R. Jones & Jennifer M. George, *The Experience and Evolution of Trust: Implications for Cooperation and Teamwork*, 23 *ACAD. MGMT. REV.* 531, 531-32, 535-36 (1998). Jones and George explain the school of thought that believes interpersonal trust begins at a “zero” baseline. “At the beginning of a social encounter, each person does not simply assume that the other is trustworthy . . . [and] future trust will be determined by the content of the behavioral exchanges between the parties.” *Id.* *But see* D. Harrison McKnight et al., *Initial Trust Formation in New Organizational Relationships*, 23 *ACAD. MGMT. REV.* 473, 473 (1998) (discussing Berg’s and Kramer’s studies that revealed initial high levels of trust in new relationships). In Kramer’s study for example, researchers surveyed MBA students who had never met each other and found significant trust levels despite the lack of prior interaction. *Id.*

⁹ Patricia M. Doney et al., *Understanding the Influence of National Culture on the Development of Trust*, 23 *ACAD. MGMT. REV.* 601, 601 (1998).

¹⁰ Trust as an encapsulated interest basically means that because the trusted individual encapsulates the interest of the truster, the trusted has incentive to be trustworthy and follow through on his promise. RUSSELL HARDIN, *TRUST AND TRUSTWORTHINESS* 24 (2002). Even Hardin realizes, however, that trust as an encapsulated interest does not capture the entire picture of trust. Overall well-being (beyond mere interests) may play a strong role. *Id.* at 23.

¹¹ *Id.* at 56-57. Hardin points out that even now, many languages do not have a direct equivalent to the English term, “trust.” *Id.* at 57. In French, one simply states that “I have confidence in someone” or “I

have faith [or almost blind faith] in someone” and likewise in both Norwegian and in colloquial Egyptian Arabic, while there is a noun for trust, there is no corresponding verb. *Id.* at 57-58.

¹² Roy J. Lewicki & Carolyn Wiethoff, *Trust, Trust Development, and Trust Repair*, in THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE 86, 87 (Morton Deutsch & Peter T. Coleman eds., 2000) (citing Philip Worchel, *Trust and Distrust*, in THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS (William G. Austin & Stephen Worchel eds., 1979)).

¹³ *Id.*

¹⁴ HARDIN, *supra* note 10, at 9 (citations omitted). Context still plays a role in that equation, though. Hardin provides the example that while A may trust B to do X, he may not trust B to do X ten times. *Id.*

¹⁵ GARY T. FURLONG, THE CONFLICT RESOLUTION TOOLBOX: MODELS & MAPS FOR ANALYZING DIAGNOSING AND RESOLVING CONFLICT 128 (2005). Lewicki and Wiethoff previously adopted another definition of trust: “an individual’s belief in, and willingness to act on the basis of, the words, actions, and decisions of another.” Lewicki & Wiethoff, *supra* note 12, at 87 (citations omitted). Doney et al. took on the following similar meaning: “a willingness to rely on another party and to take action in circumstances where such action makes one vulnerable to the other party.” Doney et al., *supra* note 9, at 604.

¹⁶ FURLONG, *supra* note 15, at 128-29. Trust always involves taking risks because there is “always a possibility that those future anticipated actions will be harmful for us, or that our entrusting will be abused or taken advantage of, or that our effort to evoke trust will backfire and produce disdain instead of tightened bonds.” PIOTR SZTOMPKA, TRUST: A SOCIOLOGICAL THEORY 31 (1999); *see also id.* at 31-33 (identifying four levels of risk); *id.* at 33-38 (identifying the four presented levels as either prudent risks or imprudent risks).

¹⁷ FURLONG, *supra* note 15, at 129; *see also* SZTOMPKA, *supra* note 16, at 25-26 (noting that trust involves specific expectations). “Trust is based on an individual’s theory as to how another person will perform on some future occasion.” *Id.* at 25 (citing D. Good, *Individuals, Interpersonal Relations, and Trust*, in TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS 31, 33 (Diego Gambetta ed., 1988)).

¹⁸ Sabine T. Koeszegi, *Trust-Building Strategies in Inter-Organizational Negotiations*, 19 J. MANAGERIAL PSYCHOL. 640, 648 (2004).

¹⁹ Roy J. Lewicki et al., *Trust and Distrust: New Relationships and Realities*, 23 ACAD. MGMT. REV. 438, 440-41 (1998) (citations omitted). This vision tended to be so because little attention was paid to social context, relationships were seen as unidimensional constructs, and the ideal was for relationships to be balance and consistent. *Id.* at 441-42; *see also* HARDIN, *supra* note 10, at 89-112 (generally discussing distrust).

²⁰ Lewicki et al., *supra* note 19, at 444 (discussing NIKLAS LUHMANN, TRUST AND POWER (1979)). Luhman said that while both trust and distrust reduce social uncertainty, trust does so by permitting “undesirable conduct to be removed from consideration ... and by allowing desirable conduct to be viewed as certain,” whereas distrust allows undesirable conduct to be seen as likely or even definite. *Id.*

²¹ *Id.* at 439-40; *see also id.* at 445-47 (providing a model integrating trust and distrust, according to a high-low distinction). While acknowledging that their assertion needs future research to fully be supported, Lewicki et al. point to already existing empirical evidence revealing that positive and negative attitudes often do not simply lie on opposite ends of the same continuum, ambivalence is quite common, and that trust and distrust are separable. *Id.* at 447-50.

²² *Id.* at 439.

²³ Lewicki & Wiethoff, *supra* note 12, at 91-92 (citing studies by Julian Rotter and Morton Deutsch); *see also* Jean L. Johnson & John B. Cullen, *Trust in Cross-Cultural Relationships*, in THE BLACKWELL HANDBOOK OF CROSS-CULTURAL MANAGEMENT 335, 339-41 (Martin J. Gannon & Karen L. Newman eds., 2002) (discussing the difference between general and situational trust bases). Johnson and Cullen

make a distinction in that general trust bases (dispositions, cost-benefit analyses, and institutions) apply to a variety of exchanges and relationships, while situational trust bases (cost-benefit analyses, experience, and reputation) relate to only a particular exchange. *Id.*

²⁴ Debra L. Shapiro, Blair H. Sheppard, and Lisa Cheraskin helped establish the three tiers of trust when describing the sorts of trust prevalent in business relationship-building. *see generally* Debra L. Shapiro et al., *Business on a Handshake*, 8 NEGOT. J. 365 (1992). They named their “first” trust level as “deterrence-based trust,” but Lewicki and Bunker changed that terminology to “calculus-based trust” because they viewed it grounded in “not only in the fear of punishment for violating the trust but also in the rewards to be derived from preserving it.” Lewicki & Wiethoff, *supra* note 12, at 88 (citation omitted).

²⁵ *Id.*; *see also* Roy J. Lewicki & Barbara Benedict Bunker, *Developing and Maintaining Trust in Work Relationships*, in TRUST IN ORGANIZATIONS: FRONTIERS OF THEORY AND RESEARCH 114, 114-39 (Roderick M. Kramer & Tom R. Tyler eds., 1996).

²⁶ Shapiro et al., *supra* note 24, at 366-67. Similarly, legal settlement agreements and court judgments often invoke calculus-based trust to ensure compliance; the court tends to trust that the penalized party will follow through on a payment provision because the party is aware that failure to comply could result in severe penalties, such as relinquishment of assets or property. LAURIE S. COLTRI, CONFLICT DIAGNOSIS AND ALTERNATIVE DISPUTE RESOLUTION 179 (2004).

²⁷ *Id.* at 180; *see* Lewicki & Wiethoff, *supra* note 12, at 88-89; *see also* John Child, *Trust—The Fundamental Bond in Global Collaboration*, 29 ORGANIZATIONAL DYNAMICS 274, 279-80 (2001).

²⁸ LEIGH THOMPSON, THE MIND AND HEART OF THE NEGOTIATOR 120 (2d ed. 2001).

²⁹ In this sort of situation, the negotiator over time has come to learn about his counterpart’s habits, traits, attitudes, principles, and values. COLTRI, *supra* note 26, at 181; *see id.* at 184 (noting that the information need not be on the intimate level to constitute knowledge-based trust and that rather, knowledge-based trust can be based on information gathered solely in a business-like course of dealing); *see also* Child, *supra* note 27, at 280-81.

³⁰ THOMPSON, *supra* note 28, at 120 (citations omitted).

³¹ COLTRI, *supra* note 26, at 184.

³² Lewicki & Wiethoff, *supra* note 12, at 89 (calling this process “second-order learning” because the individual learns the other’s needs and wants and even places the same importance on those as his counterpart does); *see also* Child, *supra* note 27, at 281 (stating that this trust “arises between people who share a common identity”).

³³ Identification-based trust, because each party can think, act, and respond like the other, breaks down the need for any sort of formality and overt communication. COLTRI, *supra* note 26, at 182-83; *see also* Lewicki & Wiethoff, *supra* note 12, at 90.

³⁴ Doney et al., *supra* note 9, at 616. Doney and her colleagues give an example of how differences in culture can bring trust building to a drastic halt. If a salesperson “toots his own horn” during a negotiation in a collectivist culture, his community-based counterpart who sees no glory in individual accomplishment may choose simply not to trust him. *Id.* at 617.

³⁵ *See generally* Toshio Yamagishi, *Exit from the Group as an Individualistic Solution to the Public Good Problem in the United States and Japan*, 24 J. EXP. SOC. PSYCHOL. 530 (1988). For additional resources, *see* Nahoko Hayashi et al., *Reciprocity, Trust, and the Sense of Control*, 11 RATIONALITY & SOC. 27, 41 (1999) (confirming that Americans, on average, have a higher level of general trust than the Japanese); Toshio Yamagishi, *The Provision of a Sanctioning System in the United States and Japan*, 51 SOC. PSYCHOL. Q. 265 (1988); *see also* Yong-Hak Kim & Jaesok Son, *Trust, Cooperation and Social Risk*, 38 KOREAN J. 131 (1998) (reporting similar findings for Koreans and Americans).

³⁶ Toshio Yamagishi et al., *Uncertainty, Trust, and Commitment Formation in the United States and Japan*, 104 AM. J. SOC. 165, 168-69 (1998); *see also id.* at 189 (pointing out that once the variables of degree of social uncertainty and level of general trust are controlled for, Americans and the Japanese showed no differences in their tendencies to voluntarily form committed relationships).

³⁷ Johnson & Cullen, *supra* note 23, at 353-54.

³⁸ *Id.* at 336

³⁹ *Id.*

⁴⁰ *See, e.g.*, THOMPSON, *supra* note 28, at 121-130; *see also* Kelman, *supra* note 5, at 643-49 (offering suggestions for trust building between enemies in the international conflict resolution arena).

⁴¹ *See, e.g.*, Lewicki & Wiethoff, *supra* note 12, at 96-99 (explaining a model that places relationships in one of sixteen categories based on high or low, calculus- or identification-based trust or distrust and then providing strategies for increasing or managing each); *see generally* Doney et al., *supra* note 9 (explaining a framework that describes five cognitive trust building processes to be used in the business context); Johnson & Cullen, *supra* note 23 (laying the foundation for an integrative model of trust that takes national culture, general and situational bases for trust, and manifestations of trust into account).

⁴² A variation of this concept was introduced in Chapter 4. Chapter 4 suggests determining the “stakes conflict,” or the intensity of the stakes at issue, and the “relationship concerns,” or the expected future dealings among the parties. Once these variables have been identified, a negotiator will likely be in a position in which he can evaluate the proper negotiating approach for the situation.

⁴³ Johnson & Cullen, *supra* note 23, at 341.

⁴⁴ *Id.* at 342.

⁴⁵ *Id.* at 341.

⁴⁶ Hypothetical courtesy of Dean Nancy H. Rogers, The Ohio State University Michael E. Moritz College of Law.

⁴⁷ *Supra* note 27.

⁴⁸ *Supra* note 24.

⁴⁹ *See* ROGER FISHER & WILLIAM URY, *Getting to YES: Negotiating Agreement Without Giving In* 17-39 (Bruce Patton ed., 2d ed. 1991) (1981).

⁵⁰ FURLONG, *supra* note 15, at 143. The cross-cultural negotiator should view trust not just as a characteristic of individuals, groups, or organizations (and therefore of traits), but should move towards seeing trust as a characteristic of relationships (and therefore of process). Jenai Wu & David Laws, *Trust and Other-Anxiety in Negotiations: Dynamics Across Boundaries of Self and Culture*, 19 NEGOT. J. 329, 358 (2003).

⁵¹ FURLONG, *supra* note 15, at 144.

⁵² *Id.* at 146.

⁵³ FISHER & URY, *supra* note 49, at 19-20.

⁵⁴ *Id.* at 25. Even when blaming is justified, it is usually counterproductive and often stirs up intense anger. *Id.* In addition to not casting blame on one’s counterpart, Fisher and Ury offer other perspective-taking tips that could be useful in “low-low” situations such as putting oneself in the other party’s shoes and openly communicating each other’s perceptions. *Id.* at 23-26.

⁵⁵ *Id.* at 31-32.

⁵⁶ *Id.* at 40-55. The most direct route to learn a counterpart’s interests is to ask, “why?.” *Id.* at 44. If the other party forbids U.S. Air Force officers from engaging in religious activities on their base, for instance, to get beyond their position, the negotiating officer should ask why that is important.

⁵⁷ *Id.* at 41.

⁵⁸ *Id.*

⁵⁹ *Id.* at 81-94. Bringing outside standards of fairness into a negotiation will likely produce wise and balanced agreements. *Id.* at 83. Although difficult to determine “fair” standards or procedures in a cross-cultural setting, some scholars urge that it is possible to bridge the gap. See e.g., Kwok Leung & Kwok-Kit Tong, *Justice Across Cultures: A Three-Stage Model for Intercultural Negotiation*, in *THE HANDBOOK OF NEGOTIATION AND CULTURE* 313 (Michele J. Gelfand & Jeanne Brett eds., 2004) (proposing a model that takes justice rules, justice criteria, and justice practices into account so that individuals from different cultures may come to agreement on what exactly “justice” is).

⁶⁰ FURLONG, *supra* note 15, at 143.

⁶¹ FISHER & URY, *supra* note 49, at 85.

⁶² Lewicki & Wiethoff, *supra* note 12, at 96.

⁶³ Michael Meltsner & Philip G. Schrag, *Negotiation in Public Interest Advocacy: Materials for Clinical Legal Education*, in *NEGOTIATION, PROCESSES FOR PROBLEM SOLVING*, 155 (Carrie J. Menkel-Meadow et al. eds., 2006). The authors note that a negotiator might not always be in a position of power, and therefore it would be difficult to implement these tactics. *Id.* The authors do not necessarily advocate the use of the techniques that they describe. However, knowledge of these tactics is important in order to defend against them. *Id.*

⁶⁴ *Id.* at 156. There are pitfalls, however. A delegation that is outnumbered may feel cornered and too insecure to negotiate. The authors suggest that the negotiator somehow justify the presence of any additional representatives.

⁶⁵ *Id.* The authors caution that this tactic is extremely dangerous and should be used with great discretion and care.

⁶⁶ *Id.* at 156-57.

⁶⁷ *Id.* at 157. A negotiator must not make an initial demand that is too unreasonable, as his counterpart may take that as a signal that the negotiator is not bargaining in good faith. *Id.*

⁶⁸ *Id.* at 158-59.

⁶⁹ *Id.* at 155-59.

⁷⁰ COLTRI, *supra* note 26, at 185.

⁷¹ *Id.*

⁷² *Supra* note 27 and accompanying text.

⁷³ Tony Cucolo, *Grunt Diplomacy: In the Beginning There Were Only Soldiers*, in *PARAMETERS* 110 (1999).

⁷⁴ Wu & Laws, *supra* note 50, at 359.

⁷⁵ *Id.*

⁷⁶ See Sarah A. Stahley, *Tuning the Harmony Between Negotiation and Culture*, *supra* Chapter 1.

⁷⁷ Wu & Laws, *supra* note 49, at 359.

⁷⁸ A military unit in a battle condition is a perfect example of a high-high circumstance in which a common goal yields high morale, attachment to the group, responsibility toward other soldiers, and eventual success. SZTOMPKA, *supra* note 16, at 65. Common goals, though more difficult, can also be achieved through hard work and open communication in cross-cultural negotiations.

⁷⁹ THOMPSON, *supra* note 28, at 123 (citations omitted).

⁸⁰ Kelman, *supra* note 5, at 644.

⁸¹ *Id.* The Oslo talks, which ended in the successful Israeli-Palestinian agreement of 1993, are an example of successive approximations; there, the parties engaged in a non-committal exploration of possible options, which lowered perceived risk and led to development of creative ideas and strong mutual trust. *Id.* at 645.

⁸² *Id.*

⁸³ Koeszegi, *supra* note 18, at 649-50 (citing A.W. Gouldner, *The Norm of Reciprocity: A Preliminary Statement*, 25 AM. SOC. REV. 161 (1960)); *see also* D.W. Larson, *Exchange and Reciprocity in International Negotiations*, 3 INT'L NEGOTIATION 121 (1998); Russell J. Leng, *Reciprocity in Recurring Crises*, 3 INT'L NEGOTIATION 197 (1998).

⁸⁴ Koeszegi, *supra* note 18, at 649 (citations omitted).

⁸⁵ THOMPSON, *supra* note 28, at 125.

⁸⁶ *Id.* at 124; *see also* notes 56-59 and accompanying text.

⁸⁷ *Id.* at 125.

⁸⁸ Kelman, *supra* note 5, at 645; *see also* Peter J. Carnevale et al., *Adaptive Third Parties in the Cultural Milieu*, in THE HANDBOOK OF NEGOTIATION AND CULTURE, *supra* note 59, at 280.

⁸⁹ Kelman, *supra* note 5, at 645-46.

⁹⁰ FISHER & BROWN, *supra* note 4, at 85.

⁹¹ *Id.* at 92.

⁹² *Id.*

⁹³ *Id.* at 109-14.

⁹⁴ Lewicki & Wiethoff, *supra* note 12, at 96.

⁹⁵ FISHER & BROWN, *supra* note 4, at 112.

⁹⁶ *Id.*

⁹⁷ *Id.* at 112.

⁹⁸ *Id.* at 112-13.

⁹⁹ *Id.* at 113.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Fisher and Brown clarify that while being honest does not require full disclosure, the negotiating parties should communicate upfront with each other about which areas of the negotiation should and should not be fully disclosed as the relationship develops. *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 120.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 121.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 121-22.

¹¹¹ *Id.* at 44. For example, testimony of White House officials suggests that President Reagan’s extreme emotion and sympathy for the hostages in Lebanon blurred the line between right and wrong and affected his decision to ship arms to Iran, contradicting an established embargo and his own policy. *Id.* at 45. Moreover, in cross-cultural negotiations, the negotiator must remember “different cultures experience different emotions with different behavioral implications.” Rajesh Kumar, *Culture and Emotions in Intercultural Negotiations: An Overview*, in THE HANDBOOK OF NEGOTIATION AND CULTURE, *supra* note 59, at 95, 98-99; *see also id.* at 99-105 (discussing cultural influences on experienced emotions and influences on behavior and negotiated outcomes). Kumar also provides possible moderators including enhanced expectations of differences and decreased task complexity. *Id.* at 105-07.

¹¹² FISHER & BROWN, *supra* note 4, at 46. Permitting a reasonable amount of emotion into a negotiation helps with perspective-taking, communication, persuasion, and ultimate resolution of the conflict. *Id.* at 47.

¹¹³ FISHER & URY, *supra* note 49, at 31.

¹¹⁴ FISHER & BROWN, *supra* note 4, at 54-59; *see also* FISHER & URY, *supra* note 48, at 30. Acknowledging a negotiating counterpart’s vulnerable situation rather than blaming them or brushing their feelings off as unreasonable is a helpful tactic.

¹¹⁵ FISHER & BROWN, *supra* note 4, at 50-54. Taking control of the potentially volatile circumstance and doing what needs to be done to get the negotiation back on track—whether it be deep breathing or calling a break—will help the negotiation continue.

¹¹⁶ FISHER & BROWN, *supra* note 4, at 154.

¹¹⁷ *Id.* at 156.

¹¹⁸ *Id.* at 160.

¹¹⁹ FISHER & URY, *supra* note 49, at 23; *see also* FISHER & BROWN, *supra* note 4, at 77-78. In essence, the U.S. negotiator should attempt to learn his counterpart’s story, i.e., what has happened and the chain of events that lead to the current predicament.

¹²⁰ *See* FISHER & BROWN, *supra* note 4, at 91-106 (offering more specific strategies for improving communication in order to improve the negotiating relationship).

¹²¹ COLTRI, *supra* note 26, at 185.

¹²² THOMPSON, *supra* note 28, at 133.

¹²² *Id.* at 134.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 133-34. Apologizing does not necessarily mean endorsing the “victim’s” version of events. A trust violating negotiator should apologize in a way that takes ownership for his actions. In other words, the negotiator should only identify his actions as being hurtful to the victim.

¹²⁷ *Id.* at 134.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 135.

¹³¹ *Id.*

¹³² *Id.*

*The View from Abroad:
How the International Community
Perceives Americans*

Ronald R. Petroff & Leslie E. Siegel

A b s t r a c t

This chapter provides U.S. negotiators with insight into the world of stereotyping and misperceptions, focusing primarily on where stereotypes originate, how they originate, and the potential damage that they may cause in the cross-cultural negotiation setting.

This chapter seeks to familiarize negotiators with common misperceptions about the United States on which some members of the international community rely, including general misperceptions of Americans, as well as more particularized stereotypes of specific U.S. groups, such as stereotypes based upon gender, race, and socioeconomic status. After supplying background, this chapter concludes with a toolbox for U.S. negotiators to help them identify and correct erroneous impressions that their counterparts may have of the United States and its people.

I. Introduction

When U.S. negotiators look across the table at their negotiation counterparts, they may need to be able to discern what those foreign counterparts are thinking and feeling—not just about the negotiation at hand and the U.S. negotiators present, but also about the United States as a whole. Indeed, just as U.S. negotiators may have preconceived notions about other cultures, their counterparts also may rely on assumptions and stereotypes about the United States that they may have heard, seen, read, or even experienced in the past. Problems arise when foreign negotiators take these negative stereotypes and ascribe them to the U.S. representatives with whom they are negotiating. Erroneous assumptions may jeopardize the negotiation in the following critical ways:

- First, they may impede communication between negotiators. For instance, a foreign negotiator with negative impressions of Americans may be unwilling to speak freely with a U.S. negotiator, thereby hampering communication;
- Second, mistaken assumptions may hinder progress. For example, if a negotiator from another country wrongly assumes that a U.S. negotiator is boorish and rude or purely self-interested based upon existing stereotypes, that foreign negotiator may be reluctant to make concessions;
- Third, such assumptions may increase the potential for inadvertent insults and injury to present and future relationships;
- Fourth, erroneous assumptions may lead to unsatisfactory agreements. For example, a negotiating counterpart may be unwilling to accept a particular agreement for fear of being taken advantage of by what the counterpart incorrectly assumes is a “cunning” U.S. negotiator, even though that agreement is mutually beneficial;
- Finally, these assumptions may lead to an impasse and thus result in no agreement at all. This might occur, for instance, when a negotiating counterpart with negative impressions of the United States repeatedly and overtly demonstrates his disdain for a U.S. negotiator. The U.S. negotiator understandably may become angry and frustrated with the counterpart and may decide to walk away from the negotiating table rather than enduring prolonged and ill-directed abuse.

See Chapter 5 for further information on trust building.

Given the power of misperceptions and stereotypes to complicate or destroy negotiations and inter-party relationships, U.S. negotiators may want to take great pains to familiarize themselves with common misperceptions of the United States, as well as with ways to correct or “debunk” these misperceptions. This chapter seeks to provide negotiators with the tools necessary to identify and dispel mistaken assumptions about the U.S. and its people in order to prevent such assumptions from interfering with cross-cultural negotiations.

This chapter begins with a brief look at the psychology behind stereotypes in order to familiarize negotiators both with the mental processes at work when people stereotype and with the dangers associated with relying on assumptions about other cultures. Turning next to the origins of U.S. stereotypes, this chapter examines three primary ways in which the international community develops its assumptions about the United States: (1) the media, (2) U.S. products exported abroad, and (3) history and politics. The chapter then moves to a discussion of general stereotypes that some people in other nations may hold of the United States, followed by an analysis of more specific, group-oriented stereotypes on which some members of the international community may rely when they encounter Americans. Finally, the chapter concludes with a toolbox of suggestions as to how U.S. negotiators may identify and correct any mistaken impressions of them that their negotiating counterparts may have.

II. Perceptions, Stereotypes, and Images

Heaven is where...

the police are British,
the cooks are French,
the mechanics are German,
the lovers are Italian,
and it's all organized by the Swiss.

Hell is where...

the police are German,
the cooks are British,
the mechanics are French,
the lovers are Swiss,
and it's all organized by the Italians.¹

This joke offers a grossly exaggerated glimpse into the world of stereotyping, classifying various European nations based on widely known generalizations about the culture within these countries. Yet stereotypes are no laughing matter. In fact, reliance on sweeping statements about a particular culture can have a dramatic and detrimental impact on cross-cultural negotiations. Just as U.S. negotiators may possess preconceived notions of their negotiation counterparts and of their counterparts' culture,² negotiators from other countries—many of whom may lack first-hand experience with the United States—may rely on commonly held beliefs and assumptions about the United States and its people. When such beliefs and assumptions are erroneous, U.S. negotiators may want to work to correct these misperceptions, or else they run the risk of negotiation breakdown.

Before turning to specific and commonly held stereotypes of the United States and its people, this section provides a definition of “stereotype,” as well as a brief explanation of the psychology behind stereotyping to gain a better understanding of how people come to depend on assumptions about others.

A. Definition of Stereotype

Since Walter Lippmann first coined the term “stereotype” in 1922,³ social scientists have carried out more than five thousand empirical studies on stereotypes, their origins, and their effects.⁴ At their most basic level, stereotypes are qualities or characteristics that are “perceived to be associated” with a particular group of people.⁵ Stereotypes have three basic components: (1) a group of people is identified by a particular characteristic, such as gender, religion, or race, thereby differentiating that group from others, then (2) additional traits that may apply to some members of that group are ascribed to the entire group, such as a determination that women are emotional, and (3) if a member of that group is encountered, the stereotypical trait is assigned to that member on the basis of membership within the group.⁶ Under this example, all female negotiators would be stereotyped as emotional.

B. How Stereotypes Are Employed in Everyday Life

Social psychologists have proposed a number of theories as to how people go about employing stereotypes.⁷ At present, the most widely accepted theory is the social cognition approach.

1. Cognitive Approach to Stereotypes:

People are constantly being bombarded by images, smells, sounds, and other social and environmental stimuli. To help with perception, people categorize objects and images into groups based on past experiences with and knowledge of similar objects and images.⁸ Proponents of the cognitive approach argue that stereotypes spring from the need to simplify and categorize the innumerable stimuli that people encounter on a daily basis.⁹ For example, when two people meet, they immediately and unconsciously draw instant conclusions and make quick classifications about each other based upon the behavior exhibited.¹⁰ Jumping to such conclusions could cause serious misunderstandings and may create significant obstacles to reaching a negotiated agreement.

a. Why Stereotype?

A significant body of research has developed in the quest to determine why people stereotype others. Among the chief explanations for stereotyping are convenience and attainment of psychological benefits.

i. Convenience

Lumping individuals together and assuming that all members of a certain group have the same traits provides a perceptual shortcut, freeing people from having to make extensive evaluations of everyone they encounter.¹¹ Although stereotyping may promote cognitive efficiency, convenience has its costs. By relying on stereotypes, people may draw sweeping, unsubstantiated and erroneous conclusions, and they may not bother to learn about the qualities that make each individual unique.¹²

ii. Psychological Benefits

In order to feel better about themselves and the groups to which they belong (their “ingroup”), people may assign stereotypical attributes to outsiders (the “outgroup”).¹³ This ultimately leads individuals to exhibit a bias in favor of the groups to which they are members, resulting in an “us” versus “them” mentality.¹⁴ Additionally, research has shown that when people pit their ingroup against outgroups, they tend to form negative impressions of the outgroup, thereby increasing the risk of prejudice, discrimination, or bias against,¹⁵ as well as fighting and hostility toward, outgroups.¹⁶

b. The Dangers of Stereotyping in the Negotiation Context

In social settings, blind reliance on stereotypes may lead to awkward interactions, perpetuation of prejudicial thinking, competition, and discrimination. In the negotiation context, stereotyping may have catastrophic consequences. Subscribing to stereotypes without attempting to determine whether such assumptions are well-founded may lead to ill will between the parties, may stymie progress, or may even result in a complete communication breakdown. Just as U.S. negotiators may hold preconceived and potentially mistaken views of their negotiation counterparts,¹⁷ members of the international community may bring negative impressions and stereotypes of the U.S. to the negotiation table.

While the rest of this book is focused on helping U.S. negotiators move beyond any assumptions that they may have of other people and cultures in order to facilitate cross-cultural negotiations, this chapter seeks to provide U.S. negotiators with the necessary tools to determine and deal with the negative stereotypes that their negotiating counterparts may have of the United States and its people. It is critical for U.S. negotiators to be able to identify, address, and alter these stereotypes to prevent unwarranted, anti-American sentiment from derailing the negotiation process.¹⁸ The next section provides an overview of common misperceptions of the United States and its people in order to help U.S. negotiators debunk these negative views.

III. International Perceptions of Americans

A. Where and How Misperceptions of the U.S. Originate

“Do you have a gun?”

“Do you live in a mansion?”

“Do you know Jennifer Aniston?”

These were the questions that teenage students posed to one of this chapter’s authors during the year she spent teaching in Singapore.¹⁹ Most students—even those who had visited the United States—believed that U.S. citizens were incredibly violent, extremely wealthy, and deeply in-tune with and preoccupied by celebrity culture. All were shocked to learn that the author had neither a gun nor a mansion, nor any connection whatsoever to the cast of the popular television show *Friends*. How did these students come to rely on these assumptions about the United States? This section explores the genesis of international misperceptions of the United States, focusing on three primary sources of information from which other cultures have formed impressions of the U.S. people: (1) the media, (2) American products and marketing, and (3) politics and history.

1. The Media

Whether watching a favorite sitcom from the living room couch or going to see the latest release at the local cinema, or whether doing so in the United States or Italy or Thailand, chances are likely that U.S. corporations are responsible for producing the TV show or movie being viewed. Indeed, the ten most powerful U.S. media conglomerates, which include corporations such as AOL Time Warner, Viacom, and Disney, make more than \$167 billion per year selling their entertainment products in international markets. This amount represents over half of all monies generated by mass media throughout the world.²⁰

In a fiercely competitive global market, media powerhouses must court and keep their audiences engaged. To maintain ratings and profits, these corporations turn to entertainment programming that attracts the largest pool of viewers, programming that presents grossly exaggerated images of life in the United States in the form of sex, violence, vulgarity, and crime.²¹ People who live in the U.S. may realize that “America, for average Americans, is neither as glamorous nor as rich nor as unequal nor as violent as it is portrayed by film and on the air,”²² but people who have never set foot in the United States may not recognize the distortions and may believe the images to be accurate representations of U.S. society.

News reports originating in the United States exported abroad paint no less sensationalistic of a picture than do American television shows and movies; the stories leading newscasts typically feature sex, violence, and crime.²³ With no first-hand knowledge of the United States, people in other countries turn to these compelling yet misleading media-produced images, ultimately concluding that these pervasive pictures must accurately reflect life in America.²⁴ The more that people watch television, the more closely their views of reality tracks to the skewed, distorted “reality” portrayed on their television sets.²⁵

2. American Products and Marketing

A related and additional driving force behind international perceptions of the United States is the influx of American-made products into foreign markets. Some consider the sale of U.S. products abroad itself as an attempt by the United States to infiltrate the culture of other countries and to impose U.S. values upon those cultures.²⁶ They believe that the U.S. government and U.S. businesses conspire to force cultural changes in an imperialistic exercise to gain worldwide economic dominance over other nations.²⁷

Perhaps no products have come to represent the “threat” of what some see as U.S. cultural imperialism more than Coca-Cola and McDonald’s. In fact, the arrival of Coke in Italy brought with it lawsuits against the U.S. manufacturer, as well as Communist party-led campaigns decrying the beverage as containing dangerous levels of caffeine or poison.²⁸ When McDonald’s arrived in Rome, thousands of Italians gathered to protest the “degradation” and Americanization of their capital city.²⁹ In France, meantime, government leaders fretted about being “coca-colonized” in the 1950s,³⁰ and at least one protestor vandalized a new McDonald’s outlet in 1999, rejecting the restaurant as “represent[ing] anonymous globalization with little relevance to real food.”³¹

Perceived U.S. efforts to alter or overrun foreign nations’ cultural values may spark resentment or animosity toward the U.S. people, and that disdain for the United States translates into overwhelmingly negative attitudes about the United States that may be passed down from generation to generation.³²

3. History and Politics as Shaping International Perceptions

I have sometimes thought to sail
To America the free
To that Freedom Stable where
All the boors live equally.
But I fear a land where men
Chew tobacco in platoons,
There’s no king among the pins,
And they spit without spittoons.

—Heinrich Heine, 1851³³

The United States has had its critics since the birth of the nation. Volumes upon volumes have been written about the impact of U.S. history and politics on the United States' image abroad. This section briefly discusses a few of the more recent historical events and political decisions that may have caused negative perceptions of the United States.³⁴

During the Cold War Era, for example, some Europeans viewed the United States' ascendancy to a dominant economic and cultural force in the mid-twentieth century as a threat to their own positions of power.³⁵ Additionally, some nations castigated the United States for its foreign policies, including U.S. support for Latin American dictators, as well as for the United States' domestic turmoil over issues such as civil rights and McCarthyism.³⁶ One commentator postulates that anti-American sentiment at this time may have been fueled by other countries' "ignorance, jealousy, class or partisan interest, ideology, and conflicting goals."³⁷

a. The War in Iraq

After September 11, 2001, people from around the world voiced their support for the United States as it declared war on terror and mourned the loss of thousands of its citizens. Others, however, exhibited considerably less sympathy for the United States in the wake of the terrorist attacks on the World Trade Center and the Pentagon. When asked in a public opinion poll whether they agreed or disagreed with the statement that U.S. foreign policy was a "major cause of the attacks," more than half of the international respondents surveyed answered in the affirmative.³⁸ More than two-thirds agreed with the statement that it was "good that Americans now know what it's like to be vulnerable."³⁹

The war in Iraq elicits strong sentiments—both positive and negative—from various parts of the world. Nations such as Great Britain, Canada, and Mexico have stood behind the United States, supporting its war efforts.⁴⁰ Those opposed to the war, however, have viewed it as another example of the United States flexing its military muscle⁴¹ and ignoring the opinions of those nations that have opposed the war.⁴² In the Middle East, approval of the United States in the wake of the war plummeted. An editorial in an Egyptian newspaper called upon the world to "fight America and kill Americans," while a Gallup poll released in February 2002 showed that thirty-six percent of Kuwaitis believed that "the September 11 attacks were justifiable."⁴³ Sixty-four percent of Saudis, sixty-three percent of Iranians, and forty-one percent of Moroccans reported having a "negative impression" of the United States.⁴⁴ In a poll from May 2003, ninety-nine percent of Jordanians claimed to have a somewhat unfavorable or very unfavorable opinion of the United States.⁴⁵ Some Europeans also voiced their disdain for U.S. military action in Iraq. Former German Chancellor Gerhard Schroeder's justice minister went as far as to compare George W. Bush to Adolf Hitler.⁴⁶ Although such hateful statements are undoubtedly difficult for Americans to hear, U.S. negotiators may need to be aware that these sentiments exist, and that they may be confronted at the negotiation table by someone who subscribes to these troubling viewpoints.

b. U.S. Relationships with Other Nations

A brief note about U.S. foreign policy is warranted. The relationship between the United States and a particular country may significantly impact that country's perceptions of America. Citizens of countries that enjoy close ties to the United States may have positive feelings about the United States, whereas tension or disagreement between the United States and a particular nation can result in less favorable impressions of the United States, its government, and its people.⁴⁷

B. Examples of Common (General) International Perceptions of Americans

Before diving into a discussion of the negative stereotypes that some foreign nations have of the United States, it is worth pausing to remember that many members of the international community have nothing but respect for and positive feelings about the United States and its people. Nevertheless, U.S. negotiators may want to be prepared to face counterparts who may have misperceptions of the United States and who may therefore harbor resentment toward Americans. To effectively confront and correct mistaken impressions, U.S. negotiators may want to be able to identify common stereotypes of Americans. This section presents some of the more widely known stereotypes, though the list is by no means exhaustive.

1. Perceptions of U.S. People as “Ugly Americans”

The “ugly American” image is that of a loud, obnoxious, rude, and ill-mannered person who offers an opinion about everything, despite allegedly knowing nothing about anything. In the political context, the “ugly American” refers to the imperialistic individual who has little regard for the values of others nations.⁴⁸ In the negotiation setting, a negotiation counterpart might expect the U.S. negotiator to be pushy, boisterous, and domineering, even if the U.S. negotiator displays none of these traits, because these characteristics fit the U.S. stereotype with which some counterparts may be familiar. Rather than reinforcing these stereotypes by exhibiting these behaviors, a U.S. negotiator instead may want to consider refraining from them.

2. Perceptions of the United States as a Country for Sex, Drugs, and Rock and Roll

The “sex, drugs, and rock and roll” image may be attributable, at least in part, to U.S. television programs and films, which are broadcast and shown overseas and often feature sensationalized depictions of American life. Indeed, in a study of perceptions of Americans involving teenagers from twelve countries, researchers found that their young respondents believed Americans generally to be “quite violent” and American women to be “sexually immoral.”⁴⁹ This could create obstacles in the negotiation context, particularly if the U.S. negotiator is a woman.⁵⁰ Thus, the U.S. negotiator may wish to determine whether a counterpart adheres to these media-driven stereotypes. If such stereotypes serve as the basis for a counterpart’s opinions of Americans, then the U.S. negotiator may need to spend time debunking them. Suggestions regarding how to debunk erroneous stereotypes are discussed in Part V of this chapter.

3. Perceptions of the “Uncle Sam” Image

Although in many contexts Uncle Sam is simply the quintessential pictorial image of the United States, in at least one country, the Uncle Sam image has become synonymous with cunning and is so employed in political cartoons originating in that nation’s newspapers.⁵¹ The U.S. negotiator may want to be cognizant of the fact that building trust, which was discussed in Chapter 5, may be required in order to shatter this stereotype.

4. Perceptions of U.S. Celebrity Culture

The U.S. celebrity culture sparks admiration in some. For instance, youth in several countries have taken a keen interest in U.S. movies, TV shows, and the celebrities featured in them. The teens have also adopted U.S. fashion and hairstyles, and they delight in U.S. pop culture.⁵² On the other hand, the prevalence of the star culture may lead others to assume that celebrities and public figures are representatives of the “average” American. For instance, participants in one study reported that the most recognizable Americans were Bill Clinton, George W. Bush, Michael Jackson, John F. Kennedy, Andre Agassi, and Abraham Lincoln. Thus, the misperception may exist that all Americans are glamorous, athletic, and wealthy. A negotiating counterpart may assume that U.S. negotiators are all of these things, or are at least preoccupied by them. By focusing on commonalities, such as the importance of family, or by sharing stories and answering questions about life in the United States, U.S. negotiators may be able to convey a more accurate picture of the “average” American.

5. Perceptions of U.S. Wealth and Materialism

Undoubtedly influenced by glamorous images of celebrities, some people believe that all Americans are rich and materialistic, perhaps at the expense of traditional values.⁵³ U.S. negotiators may want to reassure negotiating counterparts that values are important and that increasing U.S. affluence is not necessarily among the objectives when U.S. negotiators conduct talks with their foreign counterparts. Additionally, U.S. negotiators may want to be prepared for counterparts to assume that U.S. negotiators are wealthy. Although explicit discussions of personal finances are likely inappropriate, U.S. negotiators may want to avoid perpetuating this stereotype. Thus, when engaged in personal discussions, negotiators may want to refrain from frequent references to money, and from discussions of luxury items purchased, such as cars and expensive trips.

6. Perceptions of the United States as the Police Force, Protector, or Aggressor

As the war in Iraq moves into its third year, some members of the international community have criticized the United States and its military and political decisions.⁵⁴ Some believe that the war is another example of the United States casting itself in the role of “global police force”—a role that reinforces misperceptions of the United States as self-interested and incompetent.⁵⁵ Critics also assert that the United States is ethnocentric. The United States attempts, they allege, to push American culture and values on other nations that do not have the power to resist.

Additionally, some see U.S. foreign policy as inconsistent. They argue that the United States only intervenes in international conflicts when doing so benefits the U.S. politically or economically. What some of these nations fail to recognize is that the United States has consistently come to the military and economic aid of countries in need. As one commentator noted in his discussions of international perceptions of the United States:

The United States, by most objective measures, has been a good world citizen for a very long time. It has helped rid the world of a long list of brutal regimes and dictators, and it has provided both protection and many kinds of financial and other assistance to other nations. However, there does not seem to be an historical “balance sheet” of such international behavior, by which people in other countries weigh past contributions of the United States against their current grievances.⁵⁶

Although it may be difficult, if not impossible, for a U.S. negotiating team to change its counterparts’ misperceptions of U.S. foreign policy, awareness that such negative impressions exist may help U.S. negotiators put a counterpart’s views of the United States in context. Contextualizing these viewpoints may help negotiators to prepare emotionally for potential insults and may enable negotiators to anticipate which issues may prove problematic should they arise during the negotiation.

In addition to general stereotypes of the United States as a whole, some people in other countries rely on erroneous assumptions about particular groups of U.S. citizens. The next section first discusses these more specific stereotypes, including misperceptions related to gender, race, and socioeconomic status and then concludes with insightful anecdotes from U.S. Military personnel.

IV. International Perceptions of Defined U.S. Groups⁵⁷

A. The Gender Divide Epitomized in a Cross-Cultural Negotiation Setting

One of the most obvious differences between foreign negotiators and their U.S. counterparts is epitomized by the international perception of the fast-talking, head-strong, and in-your-face U.S. female negotiator. Traditionally, international perceptions of all female negotiators have been that they generally act emotionally, with concern for others, and passively, whereas male negotiators act assertively, independently, and rationally.⁵⁸ This distinction is particularly apparent among non-U.S. female negotiators and is often manifested in settings such as the workplace and at home.⁵⁹ In fact, research demonstrates U.S. and non-U.S. women are both much less likely than men to use negotiation to get what they want.⁶⁰ This is significant because although “negotiation has always been an important workplace skill, it has long been thought to be the province of men”—namely, it has been considered a competitive arena in which women are innately less capable.⁶¹

This notion, however, has begun to change in recent years according to a 2003 study by authors Linda Babcock and Sara Laschever. Rather than a battle between adversaries, negotiation has largely become seen as a “collaborative process aimed at finding the best solutions for everyone involved.”⁶² This transformation not only provides for a less combative negotiation process but also has produced superior agreements as well.⁶³

Because many stereotypically masculine traits, however, are still valued at the bargaining table, non-U.S. male negotiators nonetheless may hold implicit assumptions about how to succeed in a negotiation. Simply put, the general mindset of many non-U.S. male negotiators, particularly those in Western Europe and parts of Asia, is one of subtle gamesmanship. These traditional notions of success may fuel non-American male negotiators’ perceptions of the quality of a negotiation counterpart. Non-U.S. males,

therefore, may be immediately taken aback by U.S. female negotiators, whom they see as manifesting traits of aggressiveness and domination.⁶⁴ In fact, one study found some people “react negatively to women behaving in competitive ways, making [the entire] negotiation . . . less effective.”⁶⁵

Moreover, the innate female propensity to “tend to befriend” adversaries could be seen as soft and backhanded by some non-U.S. negotiators.⁶⁶ Although unwarranted, a true double standard exists with respect to the gender divide in some cross-cultural negotiation settings. While it is completely acceptable, although probably not appreciated, for a U.S. male negotiator to be vociferous at the negotiating table, such behavior by a U.S. female could cause alienation and distrust.

Such a dynamic is quite surprising given the fact that, at an early age, girls are usually better at conflict resolution than boys.⁶⁷ According to several studies conducted on early childhood development and the sex difference within the context of conflict resolution, girls were found to be much more effective conflict managers than boys.⁶⁸ Whereas boys tended to use threats and physical violence to settle disputes, girls used sensitivity, emotion, and compassion.⁶⁹

Ironically, in a cross-cultural negotiation setting, the traditional male traits of aggressiveness and antagonism are actually preferable to, and nicely compliment, the foreign perceptions of female U.S. negotiators attempting to master the same. Although it may seem counterintuitive and non-American, within the context of cross-cultural negotiations, remaining loyal to traditional gender stereotypes may not be such an abhorrent strategy. In fact, doing so might improve the viability of the entire process and produce the most joint gains.⁷⁰ With respect to gender in cross-cultural negotiation settings, the old adage rings true: “know your audience.”

B. Racial and Religious Overtones in Cross-Cultural Negotiation Processes⁷¹

Another obvious difference between foreign negotiators and their U.S. counterparts is epitomized by international perceptions of African-Americans, Hispanic-Americans, and Asian-Americans. According to a sociological study conducted by author F. James Davis, America’s internal race problems are seen from abroad as a symptom of a much larger problem, namely the markings of a dysfunctional social structure.⁷² The United States’ volatile and controversial racial and religious history greatly contributes to the gradual growth of foreign misperceptions of U.S. racial and religious minority groups.⁷³ As such, myriad misperceptions exist not only about the various racial minorities comprising the American demography, but misperceptions also exist about Jews, Christians, and Muslims living in the United States.

Although it may be difficult to characterize accurately any national or cultural approach to negotiation, generalizations are frequently drawn. These generalizations are “helpful to the extent that the reader remembers that they are only guides, not recipes. Any generalization holds true or not depending on many contextual factors including time, setting, situation, stakes, history between the parties, nature of the issue, individual preferences, interpersonal dynamics and mood.”⁷⁴ Despite the many contextual factors that contribute to stereotypes, often different people are grouped simply by skin color and religion. This is especially true when analyzing foreign misperceptions of American racial and religious minorities.

Rather than delving into the specific histories behind any of these stereotypes or giving examples as to how each misperception of a particular U.S. minority group, be it racial or religious, affects cross-cultural negotiations, perhaps it is more beneficial just to acknowledge that these misperceptions and stereotypes exist and explain how to debunk them. A successful negotiator will always try to separate the group from the conflict, as well as the opposing negotiator from the group. Doing so may allow for a negotiation session to focus on joint gains rather than on distrust or deep-rooted cynicism, and it may keep a counterpart with negative impressions of the U.S. as a whole from imputing those negative sentiments to the individual U.S. negotiator across the table. Perhaps the single most difficult task for cross-cultural negotiators is to acknowledge their own subliminal misperceptions and overcome them. To the extent these issues overlap with issues of trust, review Chapter 5 for trust-building techniques.

C. Individualistic Capitalists vs. Socialistic Collectivists

Perceptions of a negotiator's economic status and belief system are significant in cross-cultural negotiations dealing with business transactions. Non-U.S. negotiators may hold specific views of the American industrial machine, capitalism, and the "look out for number one" mentality many foreign negotiators associate with U.S. negotiators. Cross-cultural psychologists study behavior using two distinguishable approaches in order to develop universally accepted cultural models of human interaction.⁷⁵ In order to analyze how these nuanced distinctions between economic values affect the negotiation process, a negotiator's culture may be analyzed from an "etic" approach which employs "knowledge structures from the point of view of an objective outsider," as opposed to an "emic" approach, which is "describ[ing] these structures from the perspective of a cultural insider."⁷⁶ Therefore, in order to best predict how culture affects the way people negotiate, it may first be analyzed through this "etic" framework.

A common starting point for an "etic" analysis,⁷⁷ according to researchers Kwok Leung and Michael Morris, is to "decompose culture into a set of dimensions and use these dimensions to explain a variety of cultural differences." In her article, *Culture and Joint Gains in Negotiation*, Jeanne M. Brett adopts exactly such an approach and subsequently creates a list of four cultural dimensions that are related to negotiation processes. One of the four cultural dimensions identified by Brett is the difference between individualistic and collectivist cultures. Consequently, studying culture from the perspective of these four dimensions will most likely provide a negotiator with the tools with which to predict how inherent cultural characteristics affect the way individuals negotiate.⁷⁸

An important dimension for the purposes of studying the effect that socio-economic status has on a negotiation is the distinction between individualist and collectivist cultures. These cultural dimensions refer to the tendency of a culture to place a stronger emphasis on one's own personal interests and goals, or alternatively, on the interests and goals of one's ingroup members.⁷⁹ From a negotiating perspective, whether a culture is individualistic or collectivistic, significantly impacts the amount and "extent to which information is shared."⁸⁰ As such, many non-U.S. citizens may view the United States as the epitome of an individualist society and assume every negotiator's goals are aimed at achieving the maximum economic value.

Similarly, whether a particular negotiator subscribes to a capitalistic or socialistic economic structure has enormous impact on negotiation stereotypes. Many Europeans see "[a]t the root of inequality in the American city is the capitalist mode of production," while some people from eastern European countries come from a tradition of a socialist economics.⁸¹ In fact, this distinction between innate economic mindsets may provide for varying degrees of difficulties among negotiating counterparts. These theoretical barriers, if left unnoticed or unaddressed, may be an early sign of impasse.⁸² After all, it was in response to the "blatant inequities of nineteenth-century laissez-faire capitalism in Europe that socialism emerged as an alternative way of organizing production and distributing its output."⁸³

D. Anecdotes of Foreign Misperceptions of the U.S. Armed Forces

There is a dearth of scholarly works dealing with foreign perceptions of the U.S. Armed Forces. Even so, survey or interview data would not necessarily provide the most accurate and representative snapshot of such a far-reaching and volatile inquiry.⁸⁴ Therefore, one of the best methods to ascertain general non-U.S. perceptions of the U.S. Armed Forces is by hearing the personal stories of senior officers and non-commissioned officers.

United States Army First Lieutenant Tom Silberman is a linguist specializing in Hebrew and Arabic. First Lieutenant Silberman was stationed in Israel, Morocco, Egypt, and Jordan during his decade-long enlistment in the Army. During that time, 1LT Silberman encountered varying degrees of antagonism and misperceptions about the U.S. military. Specifically, one example comes to mind about his second day overseas.⁸⁵

An elderly Iraqi gentleman hesitantly approached 1LT Silberman in Cairo and the two men struck up a conversation. 1LT Silberman was quickly taken back by the old man's paralyzing fear that "the Americans were coming." When Silberman curiously inquired further about the man's fear, the Iraqi man voiced his concerns in Arabic that "the Americans were going to fly into Egypt on saucers with lasers and incinerate everyone in Cairo." 1LT Silberman tried to allay the old man's fears, but to no avail.⁸⁶

Similarly, Silberman encountered another gentleman in a Moroccan marketplace who, upon learning that Silberman was from Texas, immediately flung his hands up in the air as if he had two six-shooters in imaginary holsters on the sides of both of his legs. While these two anecdotes may seem trite and somewhat cute, 1LT Silberman quickly began noticing the significant and far-reaching effect that these inaccurate foreign perceptions were having upon the success rate of his various missions. In general, as 1LT Silberman became increasingly aware of this growing hostility and distrust with which he was met at the negotiation table, he became quite uncomfortable with the prospect of negotiating with his counterparts.⁸⁷

Moreover, 1LT Silberman became attentive to the other more nuanced stereotypes that non-Americans possessed of the U.S. armed forces. For example, from an Arab perspective, according to 1LT Silberman, electricity and sewage are incredibly important services. When there is disruption of these services due to the American presence, an enormous amount of tension arises. Because the U.S. military is sometimes viewed as calculating and devious through foreign eyes, many Arabs assume that the American armed services are omniscient as well as omnipotent and expect that any infrastructural problem will be repaired within twenty-four hours. When such repairs are not undertaken, many Arabs, according to 1LT Silberman's accounts, become enraged, seeing the delay as a symbol of corruption.⁸⁸ Needless to say, the preconceived notions that foreign negotiators bring with them to the negotiating table regarding the U.S. military have a substantial effect on the likelihood of an agreement.

Many other members of the Armed Forces echoed 1LT Silberman's sentiments.⁸⁹ Perhaps most notably, all of these servicemen pointed to the military fatigues as the most influential outcome-determinative aspect associated with misperceptions. When the troops have donned full military apparel, the institutional stigma of the armed forces as disorganized, inefficient, and arrogant was immediately attached to the person. In essence, the clichéd and hackneyed phrase of "perception is reality" has never rung truer than within the context of foreign perceptions of the American military.

Although there are very few empirically-based social science research articles dealing with foreign perceptions of America's armed forces, anecdotal evidence suggests that in some parts of the world, the U.S. military was, at least initially, received with some skepticism and distrust.⁹⁰ U.S. negotiators may want to be cognizant of this macro-level skepticism that most foreign negotiators bring with them to the table. Only by first becoming aware of a foreign negotiator's inherent suspicion of the U.S. armed services can progress truly be made by way of debunking these misperceptions. The next section offers specific suggestions for U.S. negotiators to try to implement when tasked with a cross-cultural negotiation.

V. Toolbox for Students: How to Debunk Misperceptions: R.E.A.D.

Now that the negotiator has obtained a better understanding of how and where stereotypes originate, as well as what common misperceptions the international community may have of the United States and its people, this section provides suggestions as to how the negotiator may properly identify and debunk misperceptions that a counterpart possesses. Although the task of pinpointing and addressing erroneous assumptions may seem daunting, all that a prudent negotiator needs to remember is to always **R.E.A.D.** (Research, Enquire, Assess, and Debunk).

A. Research

Cross-cultural negotiators can make use of this chapter's insights by relying on the following research-based recommendations that have resulted from the preceding analysis.⁹¹

(1) Mastering and truly respecting the culture and history of every player at the table could be essential starting points from which to proceed in cross-cultural negotiations. Thus, it may benefit U.S. negotiators to learn everything they possibly can about their counterparts, their counterparts' culture, the history and politics of their counterparts' homeland, and the commonly held perceptions about Americans in their counterparts' country.

(2) The "effects of culture on domestic politics present a tremendous barrier to successful negotiations"—a barrier that all participating negotiators may wish to work diligently to overcome. Not only is studying a culture's history and customs a prerequisite to beginning a negotiation session, but greater awareness of any opposing political constraints also may be key.

(3) Rising above the obstacles that domestic politics creates for agreement in intra- and interethnic disputes may require “a broader form of cooperative confidence building.” Formal negotiations may be improved by “constant informal coordination between the two sides on the cultural and domestic political resonance of their actions.”

(4) Finally, to aid U.S. negotiators, this chapter provides some suggestions about how to research in preparation for cross-cultural negotiations. These suggestions, deemed “Research Missions,” are summarized below in *Table 6.1*. The table also presents some of the benefits of conducting pre-negotiation research, as well as possible dangers inherent in failing to do so.

Table 6.1

Research Mission	Point Person	Time Frame	Benefit(s) of Mission Completion	Danger(s) of Mission Failure
Compile comprehensive list of research tools (databases, internet sources, books, articles, etc.) ⁹²	Designated Resource Manager (DRM)*	Pre-negotiation; ASAP	<ul style="list-style-type: none"> • Efficiency • Accessibility • Thoroughness 	<ul style="list-style-type: none"> • Insufficient research • Disorganization • Wasted time and resources • Duplicative tasks
Identify and organize resources relevant to specific negotiation	DRM	Pre-negotiation	<ul style="list-style-type: none"> • Centralization of resources • Preservation of negotiation-specific resources 	<ul style="list-style-type: none"> • Disorganization • Omission of key resources • Inefficiency
Research counterpart’s nation, including culture, religion, politics, history, relationship with U.S., opinions of U.S.	Negotiating team	Pre-negotiation	<ul style="list-style-type: none"> • Awareness of stereotypes of U.S. • Anticipation of sensitive subjects • Ability to craft counterpart-specific negotiation strategy 	<ul style="list-style-type: none"> • Break down in communication • Inadvertent insults • Strained relations • Slow progress • Impasse/no agreement
Debrief post-negotiation: What information was helpful, unhelpful, or lacking	Negotiators, DRM	Post-negotiation	<ul style="list-style-type: none"> • Improving research process • Augmenting resources with first-hand knowledge • Preserving resources for future negotiators 	<ul style="list-style-type: none"> • Research holes go unreported • Future negotiators plagued by same problems

* Officers may want to consider creating a “designated resource manager” (DRM) position. The DRM would be tasked with supplying all U.S. negotiating teams in a particular unit with the materials necessary to complete pre-negotiation research. Having a DRM would greatly increase preparation efficiency by centralizing the process, and by creating a point person for all research matters. For an in-depth treatment of preparing for cross-cultural negotiations, see Chapters 3 & 4.

B. Enquire

In order to determine how a counterpart feels about the United States, its people, and the U.S. negotiators at the table, American negotiators may wish to ask questions and listen carefully to any implicit or explicit indications of their counterparts' perceptions.

Open-ended, tactful questions about the counterparts' prior contact and experiences with the United States, either negotiation-related or otherwise, may be useful. Asking such questions helps negotiators to determine how a counterpart obtains information about the U.S. If, for instance, the counterpart has had no previous firsthand interaction with Americans and receives information from television news reports, U.S. negotiators may want to consider the potential media-driven stereotypes upon which the counterpart may mistakenly rely. The use of non-intrusive questions also demonstrates U.S. negotiators' interest in their counterpart. Flexibility and open-mindedness also may be important factors in facilitating a discussion.

- If a counterpart seems to subscribe to negative stereotypes, it may be best to avoid getting angry or frustrated. Consider taking a break to regain composure if necessary.
- If a counterpart's preconceived notions are impeding progress, be willing to change the negotiation strategy if warranted. For instance, if a counterpart believes that all women are overly aggressive and emotional and is therefore projecting these qualities on a female U.S. negotiator at the table, the female U.S. negotiator may want:
 1. to find common ground with the counterpart (e.g., family or interests) that will allow the counterpart to see the U.S. negotiator as a person, not just as a woman.
 2. to acknowledge the counterpart's discomfort with the U.S. negotiator or the negotiator's style, and inquire about alleviating any of this uneasiness.
 3. to ask the counterpart, if perhaps, a negotiator from a different, disinterested nation would be more preferable.
 4. to ask the counterpart, if all else fails, if the counterpart would be more comfortable with another U.S. negotiator. If the counterpart says yes, consider letting another U.S. negotiator take the lead or suspending talks (if practicable) until another U.S. negotiator may be substituted.
- If, for example, a counterpart seems particularly sensitive regarding certain issues being negotiated, a negotiator may wish:
 1. to ask the counterpart if there is anything specific to the particular issue in question that the U.S. negotiator does not understand or appreciate.
 2. to postpone discussion of that issue until agreement has been reached on other matters. The trust building and sense of accomplishment associated with progress may help the counterpart to overcome feelings of hesitation.

C. Assess

Once negotiators have attempted to glean the impressions that a counterpart has of the United States, they may want to assess those assumptions in substance and degree, and then determine how to address these assumptions.

(1) After determining commonly held views of Americans in a counterpart's culture, a negotiator may want to look for cues—both verbal and non-verbal—that the counterpart actually subscribes to such views.⁹³

(2) Negotiators may also want to determine how deeply-held the counterpart's misperceptions are of a particular culture both by sensing overt negativity, as well as by sensing a counterpart's unwillingness to be open to alternative opinions about the United States.

(3) Negotiators may wish to avoid ascribing a set of beliefs to a particular counterpart based solely on that counterpart's culture. In other words, negotiators may want to avoid making assumptions about a counterpart's assumptions. Once negotiators have assessed the impressions that a counterpart actually possesses of the United States and its people, negotiators may then want to consider developing their negotiation strategy accordingly.

- If a counterpart appears to subscribe to negative U.S. stereotypes, but the counterpart's views are potentially malleable, the U.S. negotiator may want to spend some time trying to break down those stereotypes:
 - For example, if a counterpart adheres to the "ugly American" stereotype, the U.S. negotiator may want to refrain from reinforcing this belief.
 - It may be important to recognize that a counterpart's distrust of and negative sentiments about Americans generally need not translate into distrust of and disdain for every single U.S. individual. Focusing on trust-building between negotiators may help a counterpart separate the U.S. negotiator from any ill-feelings that the counterpart may have about the United States as a whole. (see Chapter 5 for more on trust building).
 - Similarly, if a counterpart likely believes that all Americans are materialistic, a stereotype discussed above, the U.S. negotiator may consider avoiding ostentatious displays of wealth.
 - If a counterpart has concerns about U.S. military presence in the counterpart's region, the U.S. negotiator may wish to focus on common goals, rather than on the United States' unilateral aims.⁹⁴
- If a counterpart seems firmly committed to a particular negative stereotype of the United States and its people, more significant measures may be required to preserve the negotiation:
 - If a counterpart seems unfailingly convinced that the U.S. negotiator fits a particular negative stereotype, the U.S. negotiator may want to consider explicitly expressing concern about the counterpart's impressions and the impact of those impressions on progress. The U.S. negotiator may wish to ask the counterpart whether anything may be done to move past these negative impressions.
 - If possible, the U.S. negotiator may also wish to postpone the negotiation until another counterpart with more positive views of the United States is available.
 - If, for instance, a counterpart has a hopelessly negative impression of American women to the point that having a female negotiator present will block progress, perhaps, serious consideration should be given to sending a male negotiator.

D. Debunk Misperceptions

The final step in attempting to address and correct misimpressions of the United States involves techniques for debunking those mistaken viewpoints. Among the methods that a negotiator may want to explore:

- Allowing U.S. negotiators to exhibit openness in discussing their own backgrounds, as well as their prior experiences with their counterparts' culture. This gives the counterpart an opportunity to reciprocate, which could produce important clues as to how the counterpart views the United States and its people. This also helps the counterpart see U.S. negotiators as individuals and not members of an outgroup.
- Once negotiators have identified a counterpart's misperceptions of the United States, prudent negotiators may try to engage their counterparts in a dialogue about those misperceptions. Depending on the counterpart's willingness, such discussions may be more productive if conducted in a social setting, such as over dinner or a drink, if appropriate. If the counterpart responds well to direct questions and overt messages, a prudent negotiator may want to consider explicit inquiries as to the specifics of a counterpart's particular views of the United States. If the negotiator believes that overt references to a counterpart's mistaken assumptions would prove insulting to the counterpart, then the negotiator may want to employ less direct debunking strategies.
 - For example, when confronted by a counterpart who believes that all Americans are self-interested and materialistic, the negotiator may want to focus on instances in which the United States provided aid and support to other nations.
- No matter how trivial, outlandish, or absurd a counterpart's impressions of the U.S. and its people may seem, the U.S. negotiator may want to avoid dismissing them. Dismissing, rather than addressing, misperceptions may be seen by a counterpart as a personal slight and therefore could strain future relations.
- Tact and cultural awareness may also be important skills for U.S. negotiators to possess. Greater sensitivity by all negotiators may help counterparts from different nations work together to identify and address any sensitive subjects that might hamper progress.

VI. Conclusion

Although there are countless factors that influence the overall effectiveness of a cross-cultural negotiation, the impact of misperceptions is likely among the most important dynamics at play. Once U.S. negotiators learn to recognize the stereotypes they hold, as well to identify and debunk the misperceptions that their counterparts' hold of them, U.S. negotiators can then begin the study of specific negotiation approaches. Before that analysis commences, however, U.S. negotiators may also want to learn how to manage assumptions that may arise during the course of cross-cultural negotiations. The next chapter provides a framework for managing those assumptions.

Endnotes

- ¹ SOCIAL COGNITION: KEY READINGS IN SOCIAL PSYCHOLOGY 421, 421 (David L. Hamilton ed., 2005) [hereinafter Social Cognition].
- ² For a detailed discussion about and suggestions as to how U.S. negotiators can overcome misperceptions and stereotypes that they have of other cultures, see Chapter 1.
- ³ WALTER LIPPMANN, PUBLIC OPINION 79-82 (1922). Lippmann viewed stereotypes as “the pictures in our heads,” *id.* at 3, which is what he titled the first chapter of his seminal book on the issue. *Id.*
- ⁴ DAVID J. SCHNEIDER, THE PSYCHOLOGY OF STEREOTYPING 14 (2004).
- ⁵ *Id.* at 24. Social scientists have defined “stereotype” in a number of ways over the years. For a list containing a variety of definitions, see *id.* at 16-17.
- ⁶ PERRY R. HINTON, STEREOTYPES, COGNITION AND CULTURE 7-8 (2000).
- ⁷ Among the prominent theories of stereotype formation is the cultural theory, which postulates that universally known assumptions about cultures’ characteristics govern our thoughts about people from those cultures. Schneider, *supra* note 4, at 322.
- ⁸ See Jerome S. Bruner, *On Perceptual Readiness*, in SOCIAL COGNITION, *supra* note 1, at 108, 109-10; Bernd Wittenbrink et al., *Structural Properties of Stereotypic Knowledge and Their Influences on the Construal of Social Situations*, in SOCIAL COGNITION, *supra* note 1, at 130, 130.
- ⁹ See Russell Spears et al., Introduction: *The Social Psychology of Stereotyping and Group Life*, in THE SOCIAL PSYCHOLOGY OF STEREOTYPING AND GROUP LIFE 1, 3 (Russell Spears et al., eds., 1997).
- ¹⁰ See Ap Dijksterhuis & Ad van Knippenberg, *The Relation Between Perception and Behavior, or How to Win a Game of Trivial Pursuit*, in SOCIAL COGNITION, *supra* note 1, at 266, 267.
- ¹¹ SOCIAL COGNITION, *supra* note 1, at 422.
- ¹² *Id.* at 422-23.
- ¹³ HANS-WERNER BIERHOFF, PERSON PERCEPTION AND ATTRIBUTION 133 (1989).
- ¹⁴ Researchers call the process by which people create ingroups and outgroups the social identity theory. The theory involves two steps. First, an individual divides the world into social categories. This is the “us” versus “them” mentality. Second, the individual views the “ingroup as superior to the outgroup,” thereby justifying bias in favor of the group to which an individual belongs. Phyllis Anastasio et al., *Categorization, Recategorization and Common Ingroup Identity*, in THE SOCIAL PSYCHOLOGY OF STEREOTYPING AND GROUP LIFE, *supra* note 9, at 236, 237. For more information on social identity theory, see generally SOCIAL IDENTITY AND INTERGROUP RELATIONS (Henri Tajfel ed., 1982).
- ¹⁵ Anastasio, *supra* note 14, at 238; see also Richard Y. Bourhis et al., *Interdependence, Social Identity and Discrimination*, in THE SOCIAL PSYCHOLOGY OF STEREOTYPING AND GROUP LIFE, *supra* note 9, at 273, 276.
- ¹⁶ SCHNEIDER, *supra* note 4, at 230.
- ¹⁷ For a complete treatment of how U.S. negotiators can work to overcome their own biases and learn to separate stereotypes of particular cultures from the people setting across from them at the negotiation table, see Chapter 1.
- ¹⁸ “Anti-Americanism” has been defined by one scholar as “straightforward opposition, ranging from distaste to animus, to the cultural and political values of the United States . . . it is often the product of rage based on resentment and envy—reaction against American political power, American economic and technological success, and, peculiarly, American idealism.” STEPHEN HASELER, THE VARIETIES OF ANTI-AMERICANISM: REFLEX AND RESPONSE 6 (1985) (emphasis removed).
- ¹⁹ The author spent the 1996-97 school year teaching at Ngee Ann Polytechnic, a Singaporean technical college, in the mass communication department.

²⁰ MELVIN L. DEFLEUR & MARGARET H. DEFLEUR, LEARNING TO HATE AMERICANS: HOW U.S. MEDIA SHAPE NEGATIVE ATTITUDES AMONG TEENAGERS IN TWELVE COUNTRIES 23 (2003).

²¹ *Id.* at 92.

²² HASELER, *supra* note 18, at 12.

²³ DEFLEUR & DEFLEUR, *supra* note 20, at 22.

²⁴ U.S. Marine Corps Corporal and Platoon Sergeant Jeffrey Mussman, who spent two seven-month tours of duty in Iraq working closely with Iraqi police to set up a police academy in the Syrian border town of Al Qaim, noted that U.S. media portrayals of Americans had a significant impact on how Iraqis viewed the U.S. and its people:

Something that was always interesting for us was the extent to which the Iraqis had formulated their ideas about Americans from movies and quite a few of them were surprised to learn that [Americans] don't always get along, that there are poor people in the United States, not everyone is super rich and lives in a suburban house [B]ecause they didn't have any other source of information, [Iraqis] would just treat movies and other entertainment products as reliable information.

Interview with Corporal Jeffrey Mussman, Corporal and Platoon Sergeant, U.S. Marine Corps Reserves, in Columbus, OH (Mar. 31, 2006).

²⁵ Richard Jackson Harris & Joseph Andrew Karafa, *A Cultivation Theory Perspective of Worldwide National Impressions of the United States*, in IMAGES OF THE U.S. AROUND THE WORLD: A MULTICULTURAL PERSPECTIVE 3, 4-5 (Yahya R. Kamalipour ed., 1999) [hereinafter IMAGES OF THE U.S. AROUND THE WORLD]. The notion that watching television significantly influences how people view the world is known as cultivation theory. For more on this theory, *see id.*

²⁶ DEFLEUR & DEFLEUR, *supra* note 20, at 30.

²⁷ *Id.* But *see* Jane Stokes, *Anglo-American Attitudes: Affirmations and Refutations of "Americanicity" in British Television Advertising*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 147, 155 (concluding that although American images are employed in advertising on British television, Britain is not necessarily being Americanized by such images).

²⁸ BARRY RUBIN & JUDITH COLP RUBIN, HATING AMERICA: A HISTORY 145 (2004).

²⁹ *Id.* at 195.

³⁰ *Id.* at 146.

³¹ *Id.* at 195.

³² DEFLEUR & DEFLEUR, *supra* note 20, at 31.

³³ RUBIN, *supra* note 28, at 36. Heine, a nineteenth century German romantic poet who never visited the United States, subscribed to the stereotype of U.S. citizens as motivated solely by avarice and money, concluding that "[w]orldly utility is their true religion and money is their God, their once all-powerful God." *Id.* at 29.

³⁴ For an in depth historical analysis of U.S. politics and history from colonial times to the present and how it has affected international opinions of the United States, *see generally id.* at 29-43.

³⁵ RUBIN, *supra* note 28, at 126.

³⁶ *Id.* at 127.

³⁷ *Id.* at 128.

³⁸ *Id.* at 203.

³⁹ *Id.* Moreover, a year after the attacks, a German official wrote a book entitled *The CIA and September 11*, which suggested that, in carrying out a conservative plot to take over the world, U.S. and Israeli intelligence were behind the World Trade Center attacks, and the airplanes that crashed into the towers were "mere distraction[s]." The book became a bestseller. *Id.* at 205.

⁴⁰ *A Nation Challenged; Excerpts from the President's Remarks on the War on Terrorism*, N.Y. TIMES, OCT. 12, 2001, at B4.

⁴¹ Jean-Yves Haine, *Power Without Restraint? Back to Realities*, in SHIFT OR RIFT: ASSESSING US-EU RELATIONS AFTER IRAQ 105 (Gustav Lindstrom ed., 2003) [hereinafter Shift or Rift]. Haine views the “war on terror” as “the Bush administration’s answer to the trauma of 11 September.” *Id.* at 107.

⁴² RUBIN, *supra* note 28, at 209; *see also* Stanley Hoffmann, *The Crisis in Transatlantic Relations*, in SHIFT OR RIFT, *supra* note 41, at 13, 14-15. Public opinion polls conducted in European countries have shown significant drops in support for the United States. From November 2002 to May 2003, as the tension between the United States and Iraq escalated, public support for the United States fell from eighty to fifty percent in Poland, from seventy to thirty percent in Italy, and bottomed out in Spain at fourteen percent. Nicole Gnesotto, *EU, US: Visions of the World, Visions of the Other*, in SHIFT OR RIFT, *supra* note 42, at 21, 38.

⁴³ RUBIN, *supra* note 28, at 180-81.

⁴⁴ *Id.* at 181.

⁴⁵ *Id.* at 181.

⁴⁶ *Id.* at 210.

⁴⁷ Examples of this abound. *See, e.g.*, Dina Iordanova, *Political Resentment versus Cultural Submission: The Duality of U.S. Representations in Bulgarian Media*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 71, 72 (exploring the impact of U.S. foreign policy on U.S.-Bulgarian relations); Jae-Kyoung Lee, *From Savior to Villain: Redefining America in South Korea*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 55, 55 (discussing anti-American sentiment resulting from U.S. foreign policy in South Korea); Kuldip R. Rampal, *Image of the U.S. Foreign Policy toward India among Indian Media and Policy Makers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 37, 37 (examining Indian perceptions of U.S. foreign policy); Laid Zaghلامي, *Mass Media and the U.S. Image: An Algerian Perspective*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 103, 103 (providing an analysis of Algerian media reports about U.S. foreign policy).

⁴⁸ *See, e.g.*, Ayseli Usluata, *U.S. Image Reflected Through Cartoons in Turkish Newspapers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 87, 93-94 (analyzing portrayals of Americans in Turkish newspaper cartoons).

⁴⁹ The study involved 1313 teens between the ages of fourteen and nineteen from Argentina, China, Bahrain, Italy, Lebanon, Mexico, Nigeria, Pakistan, Saudi Arabia, South Korea, Spain, and Taiwan. For a closer look at the findings, *see generally* DEFLEUR & DEFLEUR, *supra* note 20, at 53 .

⁵⁰ Misperceptions of women in negotiations are discussed in Part IV.A *infra*.

⁵¹ Usluata, *supra* note 48, at 92.

⁵² *See, e.g.*, Zaghلامي, *supra* note 47, at 109; *see also* Udita Das, *What Does America Symbolize to the Urban, Educated Youth in India?*, in IMAGES OF THE U.S. AROUND THE WORLD *supra* note 25, at 209, 218-19 (providing a list of the most popular soap operas, movies, U.S. products, and celebrities among Indian teens); *see generally* Ersu Ding, *Imperfect Paradise: The Image of the U.S. on Chinese TV*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 221, 223-26 (analyzing a Chinese television program that presents a distorted picture of life in the U.S.).

⁵³ Respondents to DeFleur’s study overwhelmingly agreed with the statement that “Americans are very materialistic.” DEFLEUR & DEFLEUR, *supra* note 20, at 53. Additionally, in a study of Greek high school students, participants overestimated Americans’ ability to own a luxury car, though they correctly estimated the median U.S. income. Interestingly, the more U.S. television shows that a student watched, the wealthier the student perceived Americans to be. Thimios Zaharopoulos, *Television Viewing and the Perception of the United States by Greek Teenagers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 279, 286, 290.

⁵⁴ For more on the U.S. policy regarding Iraq, as well as the international community's reaction to it, see Mel Gurtov, *American Crusades: Unilateralism, Past and Present*, in CONFRONTING THE BUSH DOCTRINE: CRITICAL VIEWS FROM THE ASIA-PACIFIC 18-22 (Mel Gurtov & Peter Van Ness eds., 2005).

⁵⁵ Dina Iordanova, *Political Resentment versus Cultural Submission: The Duality of U.S. Representations in Bulgarian Media*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 71, 72.

⁵⁶ DEFLEUR & DEFLEUR, *supra* note 20, at 29.

⁵⁷ It is important to note that although a wealth of information exists regarding domestic perceptions of defined U.S. groups, a dearth of published research exists within the specific context of these same perceptions in cross cultural settings. Nevertheless, the U.S.-based research provides critical insight into perceptions of these groups—perceptions that likely may be extended to the international negotiating context.

⁵⁸ Kay Deaux. & Brenda Major, *Putting Gender Into Context: An Interactive Model of Gender Related Behavior*, 94 PSYCHOL. REV. 369-389 (1987).

⁵⁹ LINDA BABCOCK & SARA LASCHEVER, WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE 7-9 (2003).

⁶⁰ *Id.* at ix.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ L. Kray & L. Thompson, *Gender Stereotypes and Negotiation Performance: An Examination of Theory and Research*, in RESEARCH IN ORGANIZATIONAL BEHAVIOR: AN ANNUAL SERIES OF ANALYTICAL ESSAYS AND CRITICAL REVIEWS 103, 104 (Barry M. Staw. & Roderick M. Kramer eds., 2005).

⁶⁵ BABCOCK & LASCHEVER, *supra* note 59, at ix.

⁶⁶ *Id.* at 161.

⁶⁷ Osterman et al., *Sex Differences in Styles of Conflict Resolution: A Developmental and Cross-Cultural Study with Data From Finland, Israel, Italy, and Poland*, in CULTURAL VARIATION IN CONFLICT RESOLUTION 186 (Douglas P. Fry & Kaj Bjorkqvist eds., 1997).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ For a compelling anecdote of the Iraqi people's insistence on maintaining traditional gender roles see *The United States Center for Law and Military Operations, Legal Lessons Learned from Afghanistan and Iraq*, Volume II, at 26, May 2, 2003 – June 30, 2004, which states in pertinent part:

As the occupying power, the Coalition possessed significant power and influence within Iraq. Despite this great power and influence, it was vital not to overreach and seek to impose Western values and beliefs upon a society not built upon the same traditions. Civil affairs officers are trained to be sensitive to local values and beliefs and yet errors still happen under the well intentioned desire to "make things better."

Such an occasion occurred in Najaf in September 2003 when the military governor proposed to appoint a woman judge to the bench. Saddam Hussein had appointed a handful of women judges during his rule, who served primarily in Baghdad and were responsible for adjudicating inheritance and other family matters that would not put them in direct control over a man and his rights. However, even Saddam's initiative to place women on the bench had been received in a lukewarm fashion by the Iraqis and it had not been expanded.

Despite numerous indications that such a proposition was not welcomed by the locals in Najaf, the CPA and the military governor for that Province sought to swear a woman judge onto the bench in the holiest city to Shiite Muslims in September 2003.

The attempt was met by a boisterous protest outside the swearing-in ceremony that threatened to result in violence until the last-minute cancellation of the ceremony and her appointment to the bench. While well intentioned and apparently built upon the belief that the Coalition was seeking greater equality for women, this ceremony alienated the local population and was potentially destabilizing. Fortunately, the military governor realized that he was about to open a Pandora's box in his province by seeking to impose Western values of gender and political equality for women upon a society that had embraced a concept of a male dominated society for over a thousand years. The battalion commander made the prudent decision to abandon the initiative where the risk was much greater than the potential payoff. The lesson learned is to always remain sensitive when seeking to apply U.S. concepts of equality and justice to a foreign culture.

⁷¹ A frequent theme in early American racial literature is captured in this poem by Langston Hughes in 1970:

My old man's white old man
 And my old mother's black.
 If ever I cursed my white old man,
 I take my curses back.

If ever I cursed my old black mother
 And wished she were in hell,
 I'm sorry for that evil wish
 And now I wish her well.

My old man died in a fine big house.
 My ma died in a shack.
 I wonder where I'm gonna die,
 Being neither white nor black?

See F. James Davis, WHO IS BLACK? ONE NATION'S DEFINITION 135 (1991)

⁷² See, e.g., *id.* at 160-87.

⁷³ *Id.*

⁷⁴ Michelle LeBaron, *Cultural-Based Negotiation Styles* (July 2003), at http://www.beyondintractability.org/essay/culture_negotiation/.

⁷⁵ *Id.*

⁷⁶ Kwok Leung & Michael W. Morris, *Justice Through the Lens of Culture and Ethnicity*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 343, 348 (Joseph Sanders & V. Lee Hamilton eds., 2001).

⁷⁷ For purposes of analyzing socio-economic classes within the context of cross-cultural negotiations, only the "etic" approach will be discussed. For further insight into the "emic" approach, see *id.*

⁷⁸ The only dimension discussed in this chapter is the Individualist versus Collectivist dimension. The other three dimensions are Power Distance, High versus Low Context, and Monochronicity versus Polychronicity. These dimensions are discussed by Jeanne M. Brett in her article, "Culture and joint Gains in Negotiation." see Jeanne M. Brett, et al., *Culture and Joint Gains in Negotiation*, 14 NEGOT. J. 63, 63-64 (1983).

⁷⁹ *Id.* at 63

⁸⁰ *Id.*

⁸¹ DAVID M. SMITH, GEOGRAPHY AND SOCIAL JUSTICE 189 (1994).

⁸² CULTURAL VARIATION IN CONFLICT RESOLUTION 3 (Douglas P Fry. & Kaj Bjorkqvist eds., 1997).

⁸³ *Id.*

⁸⁴ *Id.* at 4.

⁸⁵ Interview with Army Linguist 1LT. Thomas J. Silberman, in Columbus, OH (Mar. 14, 2006).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ According to 1LT Silberman, the slightest appearance of foreign corruption created a sense of hysteria among the Arab people because of the pervasiveness of corruption in many middle-eastern governments.

⁸⁹ See transcript compiled by co-author Carly Hammond of Interview with Peter Faerber, Marine Infantry Company Commander and AH-1W helicopter pilot, in Columbus, OH (Feb. 13, 2006):

It varied from place to place. In Bahrain you could tell when you were getting into parts of town where they didn't appreciate having you around. Mostly though, all of the countries we went to were fairly welcoming to us. I think this mostly had to do with the dollars in the wallets though, more than any sense of being genuinely happy to see us ... Prices floated up for goods and services on a daily basis right up until the day our ship pulled out of port.

See also transcript interview compiled by co-author Carly Hammond of Interview with SPC Jordan Gibson C co.612th EN BNJ taken via telephone conference (Feb. 8, 2006):

As far as other civilians perceiving our presence, that is wish washy...In Iraq it could go either way. Most of the people enjoy having you there. They wave and smile at you all the time. The kids run out to the street for candy and some will try to give you gifts. However, a couple bad ones ruin it for the whole bunch leaving you not knowing who to trust. [For example,] the same guy that gave you [a] gift might go lay a bomb that evening along the road. [As a result of this mutual distrust, I once] ate a meal . . . sitting in a group circle with a bunch of Iraqi [guys, and] I was very worried about eating their food before they did.

⁹⁰ In other parts of the world, however, the opposite is true, namely, the military fatigues signify the United States' assistance in a particular matter.

⁹¹ Tamara Cofman Wittes, *Conclusion: Culture as an Intervening Variable*, in HOW ISRAELIS AND PALESTINIANS NEGOTIATE: CROSS-CULTURAL ANALYSIS OF THE OSLO PEACE PROCESS 133, 144-47 (Tamara Cofman Wittes ed., 2005).

⁹² For some helpful web-based resources on countries around the world and their cultures, see, e.g., *Countries of the World*, INFOPLEASE, Apr. 28, 2006, at <http://www.infoplease.com/countries.html>; *The World Factbook*, CIA, Apr. 28, 2006, <http://www.cia.gov/cia/publications/factbook/>; *Country Reports.org*, Apr. 28, 2006, at <http://www.countryreports.org/>.

⁹³ For a more detailed examination of verbal and non-verbal cues in the cross-cultural negotiation context, see Chapter 11.

⁹⁴ U.S. Marine Corporal Jeffrey Mussman, who spent several months training Iraqi police cadets, recognized the importance of framing issues as joint gains in order to avoid reinforcing the stereotype of the U.S. as an aggressor nation—a stereotype to which he says many young Iraqis subscribed.

One of the most important things was that we would appeal to our common interest in having the Iraqis have their own country. I was not shy as I was teaching classes on democracy and why these cadets are going to risk their lives for it. I would say, "Who here doesn't like that the United States in Iraq?" Everyone would look around and get really nervous, and I would raise my hand, and say, "Seriously who wants Iraq to have its own country again?" When I could really frame their success and our joint success as this goal, and say, "Whether you like it or not, we're here until you guys can do this. You here in front of me are the future of Iraq; you're the ones who are going to get the

Americans out of Iraq the right way, making it a better place for your kids” ... it was really stirring, having like one hundred guys in front of me getting charged up about getting their country back. We had to be careful to say you’re taking your country back from lawlessness in order to get the Americans out. That’s the way to do it...That was a real motivator.

Interview with Corporal Jeffrey Mussman, Corporal and Platoon Sergeant, U.S. Marine Corps Reserves, in Columbus, OH (Mar. 31, 2006).

Managing Assumptions About the Negotiation Process

Vinay Reddy

A b s t r a c t

Building upon earlier chapters, this chapter introduces a framework to manage assumptions about the dispute resolution process that may arise during cross-cultural negotiations. The first part of the framework, the self-assessment element, evaluates the sources of specific U.S.-based dispute resolution assumptions, such as neutrality, legal enforcement, and time, and offers comparative questions to uncover a negotiating counterpart's divergent assumptions. The second part of the framework, the informed negotiating element, applies comparative questioning to actual cross-cultural negotiations. Together, self-assessment and informed negotiating can prepare U.S. negotiators with the capacity to manage the strengths and limits of cultural assumptions that arise during cross-cultural negotiations.

I. Introduction: Why the Need to Manage Assumptions During Cross-Cultural Negotiations?

“If you know the enemy and know yourself,” Sun Tzu advises in *The Art of War*, “you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.”¹

While Sun Tzu’s advice was originally directed at military strategists thousands of years ago, civilization has evolved to apply his concepts to human interactions ranging from business transactions to diplomacy.² Indeed, by replacing “enemy” with “negotiating counterpart” and “battle” with “negotiation,” the basic premise of interest-based negotiation is revealed.³ Such a basic premise implicitly suggests a negotiator’s dual responsibility of self-assessment and informed decision-making. Furthermore, such a basic premise suggests that an effective negotiating strategy invariably assumes key characteristics of the dispute to satisfy that dual responsibility.

During cross-cultural negotiations, however, such a basic premise is challenged because culture itself is an amorphous concept that contests a negotiator’s assumptions about negotiation, including the process of negotiation.⁴ As a result, U.S.-based negotiation training literature faces an emerging problem: recognizing how cultural values challenge foundational assumptions about negotiation.

In response to this challenge, this chapter suggests an analytical and prospective framework that manages the tension between a negotiator’s governing assumptions on negotiation and a negotiating counterpart’s countervailing cultural values. Building upon concepts generated throughout this book, this chapter first identifies the sources and limitations of assumptions underlying U.S.-based theories about dispute resolution. The chapter then translates the recognition of governing assumptions into a strategy to identify a negotiating counterpart’s assumptions. This suggestive framework, which is neither comprehensive nor dismissive of governing assumptions, attempts to supplement negotiation-training literature with strategies that lead to timely preparation and confident cross-cultural negotiating.⁵ The chapter’s purpose, therefore, is to develop a negotiation skill set that heightens self-assessment of foundational assumptions and enables informed decision-making during cross-cultural negotiations, thus further applying Sun Tzu’s prescient advice to interest-based, cross-cultural negotiations.

II. Background on the Challenge of Culture and Assumptions

The tension between a person’s governing assumptions on negotiation and a negotiating counterpart’s countervailing cultural values is ripe for more research and exposition as human interactions increasingly occur across boundaries. To be sure, evolving research and writing in the field of dispute resolution⁶ has recognized that culture influences negotiation processes and outcomes. For example, Professor Frank Sander, a distinguished Harvard Law School professor and co-author of the leading textbook on alternative dispute resolution processes, suggests the most significant influence of culture occurs even before the negotiation begins.⁷ Professors Roger Fisher and William Ury, authors of foundational literature on interest-based negotiation, recognize how cultural differences require adjustment of negotiating strategies.⁸ Focusing on U.S.-based legal processes, Harvard Law Professor Robert H. Mnookin discusses assumptions underlying the legal culture and provides an analytical framework to re-characterize limiting assumptions during legal negotiations.⁹ Furthermore, U.S. governmental departments and agencies have also addressed the issue of culture and dispute resolution processes. For example, the United States Agency for International Development (USAID) has published an overview of dispute resolution processes with suggestions and international case studies exploring the importation of dispute resolution processes in countries with countervailing cultural values.¹⁰

Despite these and other scholarly acknowledgments of culture’s influence on negotiation processes and outcomes, *culture* still creates definitional and practical challenges during cross-cultural negotiations.¹¹ While this chapter does not focus on articulating a working definition of *culture*,¹² it supports the position that culture does affect negotiation processes and outcomes.¹³ The practical challenge created by culture is managing the tension between underlying assumptions about dispute resolution and general cultural values during cross-cultural negotiations.¹⁴ By focusing on this practical challenge, this chapter attempts to develop a negotiation skill set beyond mere identification of surface descriptions or uninformed stereotypes.¹⁵ This development of a negotiation skill, therefore, must also examine the danger of

over reliance on assumptions.¹⁶ Thus, recognition of culture's influence on negotiation must translate into a workable, analytical framework managing underlying assumptions that teachers and students can utilize before and during cross-cultural negotiations.

III. A Toolbox for Managing Assumptions: A Framework of Self-Assessment and Informed Negotiating

A negotiating strategy that emphasizes self-assessment and informed decision-making can better situate U.S. negotiators for difficult cross-cultural negotiations that challenge governing assumptions about dispute resolution. This chapter's suggested analytical and prospective framework attempts to develop a negotiating skill set through a two-part framework emphasizing self-assessment and informed negotiating.

The first part of the framework, self-assessment, focuses on self-evaluation and preparation. This element evaluates the sources of specific U.S.-based dispute resolution assumptions and offers comparative and prospective questions to uncover a negotiating counterpart's assumptions about dispute resolution. The collective questions raised in the self-assessment element can translate into informed negotiating during cross-cultural negotiations. Thus, the second part of the framework, informed negotiating, analyzes comparative questions that could be addressed during cross-cultural negotiations. Together, self-assessment and informed negotiating constitute an analytical and prospective framework to prepare U.S. negotiators for cross-cultural negotiations.

IV. Part 1- Self-Assessment Leads to Preparation and Comparative Questioning

Interest-based negotiation posits that by uncovering a person's own interests, a negotiator can also uncover the interests of his negotiating counterpart.¹⁷ Similarly, an assessment of assumptions that shape U.S.-based approaches to dispute resolution can uncover divergent assumptions that shape cross-cultural negotiations. After assessing the sources of specific U.S. assumptions about dispute resolution processes, this chapter's framework prospectively examines comparative questions to uncover varying assumptions that may arise in cross-cultural negotiations. Thus, the objective of self-assessment is to be both preparatory and comparative, thereby better situating a U.S. negotiator to manage assumptions arising in cross-cultural negotiations.

Before reviewing any available briefing material, a U.S. negotiator's initial step towards self-assessment is to identify specific U.S.-based dispute resolution assumptions that are shaped by broader historical, legal, and social values. This inquiry can uncover divergent assumptions and illustrate the lack of universal acceptance of underlying assumptions. By comparing divergent assumptions, prospective and comparative questioning can uncover assumptions identifiable with a negotiating counterpart.

A. Specific U.S.-based Assumptions about Dispute Resolution Shaped by Broader Historical, Legal, and Social Assumptions

U.S.-based assumptions about dispute resolution are largely derived from perceptions of fairness and justice.¹⁸ For example, the centrality of neutrality, enforcement of agreements through a functioning legal system, and the concept of time are all derived from a sense of procedural justice. Collectively, these specific assumptions are formed by broader historical, legal, and social assumptions.¹⁹ By reconciling these specific and broad assumptions with comparative analysis, a U.S. negotiator can recognize the strengths and limits of U.S.-based assumptions, and consequently, identify assumptions that govern a negotiating counterpart's negotiation behavior.

The following description of specific assumptions on neutrality, legal enforcement, and time, which are shaped by broader assumptions concerning the role of stable government processes and acceptance of conflict, is not comprehensive. Instead, the descriptions consist of a brief overview of a few U.S.-based assumptions on dispute resolution that introduces a foundation for negotiation skill sets that will be enhanced with further negotiation experience.

1. Specific U.S.-based Assumptions on Neutrality, Legal Enforcement, and Time

The U.S. adversarial legal system defines the role of the intervener.²⁰ In U.S. adjudicatory processes, a judge is the exemplar of neutrality and impartiality. Judicial codes of conduct and a layperson's view of a judge are derived from the image of a stoic, impartial, black robe ensuring a citizen's right to due

process. Not surprisingly, then, a judge's neutrality transcends to the neutrality of interveners in other dispute settlement process of the U.S. legal system.²¹ In U.S. mediation, for example, neutrality is an essential component. Mediation training emphasizes the importance of neutrality, using the words "mediator" and "neutral" interchangeably.²² Indeed, a mediator self-identifies as a neutral within moments of commencing mediation.²³ Similarly, U.S.-based arbitrations require arbitrator neutrality. While arbitration varies in form, one element is consistent with adjudication: the existence of a neutral intervener making binding decisions.²⁴

The emphasis on neutrality in U.S.-based dispute resolution is supported by enforcement mechanisms derived from a functioning, independent judiciary or other proscribed legal entity. For example, enforcement of court-annexed mediation is the responsibility of the governing court. In negotiation and arbitration proceedings, parties agree on the method of enforcement, which is supported by a stable, functioning legal system. In international dispute settlement processes, countries may seek enforcement through proscribed legal entities established through the United Nations, regional court systems, or other agreed means.²⁵ Chapter 13 on multi-party cross-cultural negotiations further details the source of normative values governing this important assumption. Enforcement mechanisms ensured through an independent judiciary enable the effectiveness of dispute resolution processes. Similar to the emphasis of neutrality, the concept of time further illustrates an important assumption of U.S.-based dispute resolution processes.

An important assumption about the concept of time underlines U.S.-based assumptions on the centrality of neutrality and legal enforcement. Chapter 2, which describes various approaches to negotiation, and Chapter 5 on building trust further discuss a U.S.-based focus on linear timing versus the cyclical timing concepts prevalent in other cultures. The late Jeffrey Z. Rubin, an expert in international negotiation and former director of the Program on Negotiation at Harvard University, described the assumption of negotiation in temporal contexts and suggested the expansion of a negotiation's temporal spectrum from pre- to post-negotiation processes.²⁶ The phases of U.S.-based adjudicatory conflicts, ranging from pre-trial discovery to appeals, adhere to specific rules of time that shape the resolution process. This adherence to linear-based timing permeates through U.S.-based dispute resolution processes.

Together, assumptions on dispute resolution elements such as neutrality, legal enforcement, and time shape U.S. assumptions of dispute resolution. As other chapters indicate, varying assumptions about other elements of U.S.-based dispute resolution processes require introspection into the efficacy of importing U.S.-based assumptions into cross-cultural negotiations. Such a prospective inquiry could be better examined after identifying the source of specific U.S.-based assumptions on dispute resolution: the broader U.S. assumptions shaped by U.S. historical, legal, and social values and assumptions.

2. Broader Historical, Legal, and Social Assumptions: Concept of Peace, Acceptability of Conflict, and Stable Political Processes

Specific U.S.-based assumptions about dispute resolution are derived from broader democratic principles that shape its political and economic status in the world. Broader democratic principles shaping the role of the U.S. include, but are not limited to, assumptions about the concept of peace, acceptability of conflict, and stable political processes. These assumptions, when compared with the assumptions held by people in other countries, indicate a lack of universal acceptance of assumptions worldwide. A negotiating skill set that reconciles the dissonance between U.S.-based assumptions about dispute resolution and countervailing cultural assumptions encourages self-assessment. Such a negotiation skill set can be shaped by comparatively questioning one's governing assumptions with a negotiating counterpart's assumptions.

For example, the concept of peace from a U.S. perspective is desirable and the ultimate goal of democratic society.²⁷ However, non-dominant countries may view peace as the status quo and seek conflict as an objective to disrupt that status quo.²⁸ The rule of law may also have diverging assumptions depending on the culture of the negotiating counterpart.²⁹ Similarly, the acceptability of conflict as a means for revolution or struggle for reform has divergent acceptance between the U.S. and other countries.³⁰ The U.S. model views political stability and economic prosperity as democratic ideals enshrined in the Constitution.³¹ Conversely, the populous of other countries may see conflict as a legitimate need to reach desired reform.³²

The divergence between assumptions can be understood by comparing the concepts of settlement and resolution.³³ In the United States these terms are used interchangeably.³⁴ In other cultures, a distinction is made between settlement, which merely implies finding a way to an agreement, and resolution, which implies a deeper meaning that relies on changing underlying attitudes and behaviors.³⁵

Due to varying perceptions of justice, a changing world order, and conflicting social and legal values, there is a lack of universal acceptance of U.S.-based assumptions.³⁶ Chapter 9 further explains divergent ethical values, often formed by ancient cultural, spiritual and customary values, which are often incorporated in dispute resolution process of other countries. Additionally, cultural behavior can be explained by the convergence of language, conflict, and behavior, as described in Chapter 12, concerning interpreters and communication.³⁷ These divergent assumptions reflect cultural notions of fairness and justice unfamiliar and inconsistent with widely held U.S.-based assumptions. The following toolbox of questions can facilitate identification of underlying U.S.-based assumptions about the process of dispute resolution:

Table 7.1: Toolbox of Questions for Self-Assessment of Assumptions

Self-Assessment Step 1-

- *Preparatory:* Before receiving any briefing, assess U.S.-based assumptions about dispute settlement:
 - Identify specific U.S. assumptions about dispute resolution, such as:
 - Neutrality
 - Enforcement through legal system
 - Concept of time
 - Third party intervention
 - Other U.S.-based assumptions of dispute resolution
 - Identify broader historical, legal, and social sources of specific assumptions, such as:
 - Notions of justice
 - Peace as desirable
 - Acceptability of conflict
 - Stability of political processes
 - Other broad sources of U.S.-based assumptions
 - Begin to identify possible sources of variance, leading to comparative questioning described in Step 2, discussed below.

By assessing the strengths and limits of cultural assumptions, U.S. negotiators may be better prepared to make informed decisions when engaging in cross-cultural negotiations. The transition from self-assessment to informed-negotiating is assisted by comparative questioning that identifies possible sources of assumptions governing a negotiating counterpart's strategy.

B. From Self-Assessment to Prospective and Comparative Questioning

The first step suggests the strength and limits of U.S.-based assumptions can be managed once contextualized by varying assumptions. The next step of the self-assessment stage, prospective and comparative questioning, attempts to identify possible sources of a negotiating counterpart's assumptions. The objective of comparative questioning is to reconcile varying cultural assumptions and better prepare U.S. negotiators to manage the strengths and limits of negotiating assumptions, as well as to identify potential culture-related negotiation barriers more efficiently.

Prospective and comparative questioning can be contextualized once briefing material is received and other independent research is commenced. The objective of such preparation is to prepare U.S. negotiators for cross-cultural negotiations by identifying potential assumptions of a negotiating counterpart. One organizing scheme is identifying a structure beyond the surface facts presented in a briefing book. For example, through comparative and prospective questioning, a U.S. negotiator can become cognizant of how a negotiating counterpart may hold different assumptions about neutrality, legal enforcement, the rule of law, time, and other conflict management elements compared to general U.S.-based assumptions.

A toolbox of questions can assist with this prospective and comparative portion of the self-assessment element. The purpose here, of course, is not to be exhaustive. Instead, it corresponds with READ procedure described in Chapter 6 and provides a prospective framework for U.S. negotiators to think about issues beyond well-defined U.S.-based assumptions. This comparative component suggests broad questions that uncover the historical, legal, and social sources of narrow assumptions about dispute resolution identified in the first step of self-assessment. The suggested questions are not exhaustive; instead it corresponds with comparative dispute resolution literature and toolbox questions described in other chapters of this book.³⁸

Table 7.2: Self-Assessment Step 2: Toolbox of Prospective and Comparative Questions to Uncover Broader Historical, Legal, and Social Assumptions

<p>Political Questions:</p> <p>Could broader questions about political issues help uncover assumptions that may arise in cross-cultural negotiations?</p> <ul style="list-style-type: none"> • What is the traditional method of dispute settlement? Is it through legal system, village intervention, or violence? • How does the governmental system (i.e., democratic) shape dispute settlement? • Is there tension between the collapse of an old government and formation of a new one or fractured between disputing factions?³⁹ 	<p>Economic Questions:</p> <p>How could economic questions help uncover another country’s assumptions of dispute resolution?</p> <ul style="list-style-type: none"> • What is the distribution of wealth between classes? How does the gap shape power in the community? • Is there a tension between class wealth and religious identification? • How do economic realities shape dispute settlement processes?
<p>Social Questions:</p> <p>Do social questions uncover other sources of assumptions?</p> <ul style="list-style-type: none"> • What is the traditional social pattern or hierarchy? What is the cause of shifting social patterns? • Have shifts in family structure influenced assumptions about traditional family structure? Has it created a disconnect among groups, including the working population, older workers, or younger workers? • Is there a conflict between traditional religious influences and rising western influences? 	<p>Internal State Dynamics:</p> <p>What role has internal state conflict played in shaping assumptions?</p> <ul style="list-style-type: none"> • Is there is disconnect between religion and secularism? • Is there a confused cultural identity, a conflict between regional identity and national identity? • What voice do disadvantaged groups, such as women, and religious minorities have in dispute settlement processes?

Such prospective and comparative questioning can develop the broader framework needed to prepare for cross-cultural negotiations. Indeed, by recognizing assumptions that could constitute roadblocks during cross-cultural negotiations, a U.S. negotiator can better use the skills explained in other chapters of this book. For example, Chapter 6 on stereotypes examines questioning social and internal state dynamics within the culture of the negotiating counterpart. Chapter 9 on ethics also considers elements of political, economic, social, and internal questions. The process outlined in this chapter should help identify underlying assumptions that can uncover potential value sources, and importantly, can identify preparatory tactics needed to uncover such assumptions. The second stage of the framework, the informed negotiating element, suggests how to apply self-assessment of assumptions to cross-cultural negotiations.

V. Part 2- Informed Negotiating: Managing Assumptions During Cross-Cultural Negotiations

The second element of this chapter's framework is to translate the self-assessment of assumptions into informed negotiating. Specifically, informed negotiating is the result of thorough preparation and engagement of comparative questioning of a negotiating counterpart's possible assumptions. After identifying the strengths and limits of assumptions that might influence a cross-cultural negotiation, an informed negotiator can better prepare for barriers that may inhibit a successful cross-cultural negotiation.

A toolbox of questions can assist with informed decision-making. Similar to the toolbox questions for self-assessment, the list included is not exhaustive. Rather, the objective is to suggest questions an informed negotiator can address when faced with hidden assumptions that may inhibit a successful cross-cultural negotiation.

Toolbox Questions for an Informed Negotiator

Prior to negotiation:

- What preparatory tactics are needed to uncover further assumptions?
 - Questions from Chapter 4 on trust, such as need for social time or field inquiries

Other sources of Preparation: Toolboxes from:

- Chapter 9: Ethical considerations
- Chapter 6: Stereotypes
- Chapter 4: Interest-based negotiations

During Negotiation

- Are there underlying assumptions that constitute barriers during negotiation? Suggested questions include:
 - Are there varying assumptions about settlement versus resolution?
 - How divergent are concepts such as time and acceptability of conflict, etc.?

The objective of the toolbox is to maintain the analytical and comparative questioning that characterizes self-assessment. Consistent with the objective of the book and this chapter, the informed negotiator seeks to manage the strengths and limits of assumptions that may potentially inhibit a successful cross-cultural negotiation. Because culture is a difficult variable to anticipate, the capacity to assess cultural dynamics can be enhanced by continued observation of the underlying assumptions that traditionally complicate cross-cultural negotiations.

VI. The Danger of Relying on Comparative Assumptions

Of course, any discussion on assumptions must come with the warning of the danger of over-relying on assumptions. The danger in relying on assumptions is oversimplifying and ignoring the inherent complexity of a culture, thereby unnecessarily categorizing people into groups inconsistent with cultural values. While assumptions invariably are made, and must be made, the danger of over-generalizing a negotiation counterpart's interests or positions can inhibit a successful negotiation and potentially cause long-term relationship problems. The objective of this chapter's framework, therefore, is to minimize the danger of over-reliance on certain assumptions, and instead, to create a broad framework to manage both the strengths and limits of cultural assumptions.

VII. Conclusion

An analytical and prospective framework that supplements the strength of well-established assumptions with the capacity to manage its limitations can better prepare U.S. negotiators for cross-cultural negotiations. Self-assessment and informed negotiating are elements of a capacity to manage divergent assumptions about dispute resolution. An important corollary to such introspection and informed negotiating is understanding the ethical considerations that cross-cultural negotiations present, an issues addressed in the next chapter.

Endnotes

¹ SUN TZU, *THE ART OF WAR*, 17 (Dallas Galvin ed., Lionel Giles trans., 2003).

² *Id.* at 219-21.

³ *See generally*, ROGER FISCHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2d ed., Penguin Books 1991) (1981).

⁴ The scope of this chapter does not attempt to define “culture,” but rather uses recognized theory by Kevin Avruch as a conceptual model. Professor Avruch is an anthropologist who has written extensively on culture and conflict. *See generally*, KEVIN AVRUCH, *CULTURE AND CONFLICT RESOLUTION* (1998); *See also* Kevin Avruch, *Culture and Negotiation Pedagogy*, *NEGOT. J.* Oct. 2000, at 339; *See also generally* ALAN S. RAU ET AL., *PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS* 906-10 (3d ed., 2002) (discussing a lack of a universal definition of “culture”).

⁵ *See* Chapter 4 of this book examining the limits of interest-based negotiation in cross-cultural negotiations.

⁶ For the sake of continuity and clarity, “dispute resolution” will be used to mean conflict management and prevention, unless otherwise noted.

⁷ Jeffrey Rubin & Frank Sander, *Culture, Negotiation, and the Eye of the Beholder*, 7 *NEGOT. J.* 249 (1991).

⁸ FISHER & URY, *supra* note 2, at 166-68.

⁹ ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 167-77, 178-224 (2000).

¹⁰ Center for Democracy and Governance, Bureau for Global Programs, Field Support, and Research, U.S. Agency for International Development, *Alternative Dispute Resolution Practitioners’ Guide* (March 1998), at http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacb895.pdf (last visited July 6, 2006).

¹¹ *See* Avruch, *Culture and Negotiation Pedagogy*, *supra* note 4.

¹² *Id.*

¹³ As noted throughout this book, culture will likely play a part in every cross-cultural negotiation. Even if the counterpart is engaging in competitive bargaining and negotiating in a predictable manner, culture may still influence the negotiations as a whole.

¹⁴ For literature describing methodologies dealing with cross-cultures challenges, such as developing an “etic” or external view of culture, see Kwok Leung and Michael W. Morris, *Justice Through the Lens of Culture and Ethnicity*, in *HANDBOOK OF JUSTICE RESEARCH IN LAW* 348-49 (Joseph Sanders & V. Lee Hamilton eds., 2001), and JESWALD W. SALACUSE, *MAKING GLOBAL DEALS*, 58-70 (1991). For a discussion of internal views of culture and negotiation, see Guy Olivier Faure, *Negotiation: The Chinese Concept*, *NEGOT. J.*, Apr. 1998, at 137.

¹⁵ Daniel C.K. Chow, *Culture Matters*, 18 *OHIO ST. J. ON DISP. RES.* 1003, 1006-10 (2003).

¹⁶ James K. Sebenius, *Caveats for Cross-Border Negotiators*, *NEGOT. J.*, APR. 2002, AT 121.

¹⁷ FISHER & URY, *supra* note 2; *See also* MNOOKIN, *supra* note 9.

¹⁸ Joseph Sanders & V. Lee Hamilton, *Justice and Legal Institutions*, in *HANDBOOK OF JUSTICE RESEARCH IN LAW* 3-11 (Joseph Sanders & V. Lee Hamilton eds., 2001).

¹⁹ *Id.*

²⁰ *See also*, FRANK E.A. SANDER ET AL., *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* (Stephen B. Goldberg ed., 4th ed., 2003).

²¹ *Id.*

²² *Id* at 111-17.

²³ *Id.*

²⁴ *Id* at 209-15, 292-94.

²⁵ J.G. MERRILLS, INTERNATIONAL DISPUTE SETTLEMENT 1-26 (3d ed., 1998); *see generally*, MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW (2003).

²⁶ Jeffrey Z. Rubin, *Some Wise and Mistaken Assumptions About Conflict Negotiation*, 45, no. 2 J. SOC. ISSUES 195 (1989).

²⁷ PAUL SALEM, CONFLICT RESOLUTION IN THE ARAB WORLD: SELECTED ESSAYS (1997).

²⁸ *Id.*

²⁹ *See* Pat K. Chew, *The Rule of Law: China's Skepticism and the Rule of People*, 20 OHIO ST. J. ON DISP. RESOL. 43, 43-67 (2005).

³⁰ SALEM, *supra* note 28.

³¹ *Id.*

³² *Id.*

³³ Rubin, *supra* note 27, at 195-209.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Madaripur Legal Aid Association, *Nabin & Nasima: A Clash of Hindu and Muslim Communities*, in CONSTRUCTIVE CONFLICT MANAGEMENT: ASIA-PACIFIC CASES 76-81 (Fred E. Jandt & Paul B. Pederson eds., 1996).

³⁷ John Paul Lederach, *Of Nets, Nails, and Problems: The Folk Language of Conflict Resolution in a Central American Setting*, in CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES 165-86 (Kevin Avruch et al. eds., 1991).

³⁸ SALEM, *supra* note 28 (utilizing a framework of macro-level questions to better understand dispute resolution processes). Chapter 6 on stereotypes and Chapter 9 on ethical values also recommend utilizing similar prospective questioning.

Chapter 8

Power and Authority

Tamara D. Johnson

A b s t r a c t

This chapter focuses on the dynamic of power and its effects on perceptions and actual outcomes of negotiation in a cross-cultural context.

The chapter will give an overview of various power structures and the relationship between the negotiating counterpart and the principal authority.

It will offer insight into the ways that perceptions of power can influence the actions, reactions, and willingness of parties to negotiate.

I. Introduction

[T]he bargaining resources of the Arab oil producers have surprised the Western world . . . Saudi Arabia, Kuwait, and Libya are hardly “powers” in the conventional sense. Yet their ability to use the distribution of their raw materials as a source of bargaining influence has been remarkable. They forced significant changes in the foreign policies of the Western powers and Japan in a short period of time. Indeed, they may have begun a change in the way of life of some Western nations. In contrast to Taiwan and South Korea, whose ultimate hold over the United States government has been the destruction that they would experience if they were not supported, the Arab nations are not strong because of their weakness. Rather they are strong in spite of their weakness on most conventional indicators. Their small populations, modest economies, and limited military strength mean they are vulnerable to foreign attack. Yet they have valuable mineral resources that they can use to influence the actions of others.¹

“Power trumps everything (including culture).”²

This statement by Kevin Avruch of the Institute for Conflict Analysis and Resolution at George Mason University, while somewhat extreme, is a testament to the importance of power dynamics in the negotiation process. Negotiation is the meeting of minds and resources in an effort to influence, persuade, and ultimately gain, through agreement, some advantage. The examples in the above passage give a glimpse into the different dimensions of power and how they factor into the negotiated outcomes between the parties involved. In these situations, the element of power is more than relevant to the preferred resolution; it is integral. This chapter highlights the important role that power plays in multi-cultural negotiations and how parties can use the power that they possess to obtain the results they desire.

II. What is Power?

Dozens of definitions of power exist in the context of negotiations,³ and they vary from culture to culture.⁴ However, most definitions converge on several common themes. One of most prevalent of these themes is that power is perceived, i.e., a negotiator’s relative power is based on how strong or weak she thinks her position is before and during the negotiations compared to how strong a counterpart perceives that position to be. Conversely, the perception of how strong a counterpart is compared to how strong that counterpart believes he is can come into play to help shape the negotiations.⁵ Power is also based on the capabilities of the people involved and their use of resources.⁶ If a counterpart has the ability to influence the other because he is capable of performing a needed service or providing sought-after resources, that person gains power by virtue of owning such possessions. Because the negotiator desires to obtain these possessions, the counterpart has a substantial amount of leverage with which to bargain for desired outcomes.

Another element of power is that it is situational.⁷ There are times when a “stronger” party, who seemingly has more power through its military, its economic status, its affiliations, or its possession of resources may not be able to exercise its “preponderant power”⁸ because the circumstances have shifted in favor of its counterpart. Consider the example of the United States’ negotiations with North Vietnam during the Paris Peace Agreements.⁹ The United States was the nuclear power, which, at the time, was the ultimate intimidator. However, despite having this resource, the United States did not achieve an advantage in the negotiations.¹⁰ The use of nuclear power was highly contested because of the potential effects such use might have on the former Soviet Union’s position in the conflict. The capability to use this weapon against an enemy was only a powerful negotiating tool if that enemy, North Vietnam in this situation, believed that the possessor would in fact use it to accomplish the goals they were seeking through negotiations. Interestingly, North Vietnam did not believe the United States would actually use nuclear weapons or even long-range bombers on the battlefield. In fact, the U.S. threat to use such weapons had the unintended effect of hardening the resolve of North Vietnam, making it less flexible in negotiating with the United States. Indeed, the “United States was effectively stripped of its nuclear capability at the Paris negotiations —its credibility was hopelessly compromised—and the gap in power between the United States and North Vietnam was thereby narrowed dramatically.”¹¹

Another common component of power is that it involves action by one person to influence movement by another.¹² Whether the goal is to simply gain an asset, to build a relationship, or to prevent some event from taking place, the parties come to the bargaining table in an effort to negotiate a favorable outcome for their side at the expense of the other side, although this expense does not have to be detrimental.

Simply put, power is the ability of one party to get what is desired from the dispute.¹³ The remainder of this chapter focuses on how these elements of power impact the interaction of the actors involved in a cross-cultural negotiation and, ultimately, the chance for resolution through the negotiations.

III. Power Structures

The definition of power can also vary from society to society, and from culture to culture.¹⁴ Each culture has a different philosophy or ideal of what power is, how it is obtained or lost, and how it becomes vested in an individual. Often these philosophies are derived directly from the organization of society. For instance, individualistic, democratic societies champion the concepts of uniqueness, personal autonomy, and freedom.¹⁵ In a democratic society, power is divided and specified; it is not centrally located.¹⁶ Instead, different aspects of power are delegated to different bodies or individuals. Checks and balances rein in power, meaning that entities of power are held accountable to each other and to the population at large. In an effort to ensure that the system runs efficiently and effectively, the distribution of power is highly organized and the authority of the “power-holder” is outlined and understood.

The concept of power is significantly different in collectivist societies. People within these societies believe power should originate and be controlled from one source.¹⁷ Autocracy models collectivism at its core. Power in an autocratic society is possessed by a central authority with little to no division or delegation of responsibilities.¹⁸ All ideas and their implementation flow from this supreme authority, and such authority is rarely held accountable for exercises of power.

Different cultures also find power through different means. People within egalitarian cultures, such as those in the United States, tend to view power in terms of information and through perceptions of the alternatives to a negotiation.¹⁹ In *Getting to YES*, Roger Fisher and William Ury rely heavily on these ideas.²⁰ The authors write that individuals in cultures valuing information view such information as a way to gain an advantage over a counterpart.²¹ If a person has information regarding the other person’s position, situation, and resources, the negotiator can more easily plan a negotiation strategy. Knowing the counterpart’s interests can mean the difference between a favorable resolution and no resolution at all. Similarly, knowing a counterpart’s best alternative to a negotiated agreement (BATNA) can help the U.S. negotiator determine if the counterpart is willing to accept the negotiator’s offer.

Those in hierarchical cultures, such as those found in many Middle Eastern countries, in contrast to the view proposed by Fisher and Ury, tend to view power in terms of status (i.e., rank, age, history) and influence.²² During negotiations, status is often dependent on the actual players at the table. In hierarchical cultures, higher-ranking officials may be sent to negotiate important matters, such as arms or peace agreements, while lower-ranking individuals would be considered appropriate negotiators for smaller disputes, such as the temporary attainment of resources or the purchase of nominal items. Additionally, a negotiator’s willingness to reach an agreement can sometimes hinge on his counterpart’s rank within the culture’s hierarchy. For example, a higher-ranking negotiator may feel insulted to sit at the negotiation table with a low-ranking official.

The perception of power is framed by an assessment of what is important and relevant in the negotiations as determined by that culture. These two examples provide only a few of the ways culture defines power, but they offer insight into how the definitions of this dynamic can significantly impact the course of negotiations.

IV. Authority

In the context of negotiations, authority is simply the extent to which an individual can negotiate to resolve the issue.²³ Authority is the power to bargain and commit to a settlement. In some situations, the individual who sits down at the table to negotiate is the person who possesses all the power. This concept was first introduced in Chapter 2, within the context of determining if the negotiation counterpart is a delegate rather than a person with settlement authority. In most cases, the authority of the negotiator is limited: the counterpart may only have the power to negotiate specific topics or particular objectives. A counterpart may also have limited authority if he is only permitted to negotiate up to a certain point in the process. On rare occasions, the counterpart will have no authority at all and is there merely to act as an informant to those who do have authority. Further, the authority vested in the negotiators

can stem from many sources, such as status in the party, expertise on a subject matter, or by proximity to the dispute.

A. The Principal and the Agent

Usually, an agency relationship governs the authority that a negotiator may possess, with the negotiator acting as the agent. Authority is conferred upon this agent by the principal in order to complete the job. The agent is given power to act on behalf of a principal, or the party for whose benefit the negotiation is taking place. The agent is subject to the principal's control and, therefore, must keep the principal's objectives in the forefront of his mind when negotiating.

Often in cross-cultural negotiations, the principal is not readily identifiable.²⁴ The principal need not be a particular country, culture, or faction. Indeed, the principal may be a broader conglomeration of interested parties, such as when the negotiations' goal is peace between feuding tribes.²⁵ Further, a principal can be a particular sector within a larger entity. For example, the United States Air Force is a sector of the U.S. military which, in turn, is a sector of the U.S. government. This example also highlights a situation involving multiple principals, a common occurrence in international negotiations. Some agents work for two or more factions who do not necessarily share the same goals. Other times, the principal may be a private entity, such as a company, an organization, or a group of families. Knowing whether the counterpart is a principal or an agent will help a negotiator understand not only who the counterpart is but also what factors will come into play during the negotiations. This recognition could be an integral part in aiding a negotiator in determining the best approach to reaching a resolution.

B. Extent of Authority

To what extent a principal will bestow authority on an agent to act on his behalf is a major concern for negotiators. Negotiators might be wary to discuss certain topics if they know that their counterpart is not authorized to finalize a negotiation. In some cultures, typically hierarchical ones, there are several levels of authority through which a proposed agreement must travel in order to reach a resolution.²⁶ If a counterpart does not have power to reach a negotiated agreement, other arrangements will need to be made for the resolution of the issues. A counterpart's repeated deference to the principal, however, may lead to impasse, and preparing for such a situation would be wise.

Cultures espouse different beliefs as to who can make important decisions for the collective. Sometimes, a counterpart who continually defers to his principal acts as a screener to eliminate all but the most important issues before the ultimate authority joins the discussion. Under circumstances in which the authority of representatives is disparate, further negotiations might be necessary even when the details seem finite because new issues may arise when the additional actors arrive at the bargaining table.

C. Common Problems of Authority

When an agent is negotiating with counterparts whose system of authority is unlike his own, several problems can arise. One, mentioned above, is a counterpart's lack of authority to commit its principal to an agreement. Another problem is overlap, or when the agent is working for more than one principal and must seek approval of these divergent different groups before an agreement can be reached.²⁷ When multiple principals are present, delay and confusion may arise. In the worst-case scenario, a counterpart could be negotiating for groups with competing or conflicting interests. At this point, a negotiator might consider deciding which one, if any, of these factions is the most desirable negotiating partner.

Another problem related to a counterpart's deference to various levels of authority is the negotiator not knowing with whom he is speaking at what time.²⁸ Sometimes an agent who does not have binding authority will remain the spokesperson in subsequent meetings until the central authority has vested the power to commit upon that agent. In other cultures, the agents might change as the negotiation travels through the rungs of command. This means that a negotiator could be confronted with a new and different set of attitudes and negotiating styles as each agent is replaced. If the duration of negotiations is lengthy, incumbency could become another problem. Agents could be demoted, promoted, or simply fall out of the picture during the course of reaching an agreement. Negotiators should be prepared for the possibility of change and plan accordingly. (See Chapter 15 for more information on dealing with changes in negotiators).

Toolbox: Dealing with Common Problems of Authority and Agency in Cross-Cultural Negotiations

1. Assess counterpart's level of authority

Negotiators fare better when they are able to determine whether their counterpart has the authority to commit to the proposed agreement ahead of time. If the counterpart's authority is not possible to ascertain through preliminary talks and if a negotiator is unsure of the relative power of his counterpart, the negotiator can try to assess a counterpart's authority through observation and questions. If the counterpart will not discuss details of the agreement or will not give a definite approval or dismissal of a proposition, these are indicators that the person does not have the authority. If he continues to refer to future meetings when the terms of the agreement can be determined, a negotiator may assume the agreement is contingent upon some other factor, whether it be deference to a higher-ranking authority or the occurrence of some event. In any case, the negotiator should remain calm and patient while stressing the importance of an outcome.

2. Request to negotiate with a counterpart of like authority

If the negotiator is confronted with a counterpart he suspects does not have authority to commit to a proposed agreement, the negotiator can request such authority be present at the next meeting. Proposing that both sides bring in someone of higher rank to oversee and finalize the negotiations might make the counterpart feel more comfortable with the request. By not directly addressing his lack of authority, stressing the need to finalize plans, and by bringing in someone who he will perceive having more authority, the counterpart and his superiors might be more willing to send in an agent with the appropriate authority to reach a resolution.

3. Express willingness and ability to commit

Letting a counterpart know the negotiator's principal would like to come to a resolution quickly might help a counterpart understand the negotiator's willingness and ability to finalize the details and resolve the issue as soon as possible.

4. Delay commitment until authority level is matched

If negotiating with a counterpart who has the power to commit is not possible during the initial talks, the negotiator could delay his commitment to an agreement or express a willingness to commit when both sides have a negotiator present with proper authority. This could stall negotiations, but the counterpart will know the extent to which the negotiations can and will go before impasse or delay.

5. Be prepared for delays

Not every system of authority is the same. Delay and deference may be a normal part of a culture's negotiation process and often is not meant to discourage, agitate, or confuse the opposing negotiator. By doing research on negotiation styles, negotiators may be better prepared for potential delay. However, if time is of the essence, the negotiator might fare better by explaining what is at stake and how much a delay can negatively impact the possibility of resolution.

V. Perceptions of Power

"Power is a perception. It can be based on a party's alternatives, or it can be based on a party's status. Because power is perceptual, my view of your power and your view of your power may be quite different."²⁹

A. Assessing the Weaker and Stronger Parties

In a negotiation there is often said to be a stronger party and a weaker party.³⁰ As discussed above, who is stronger and who is weaker depends on the perceptions of those involved about their own power and the power of their counterpart. Power is an assessment or judgment of how badly the party needs the negotiation to be resolved in his favor. In general, the person who needs a resolution the most is the weak-

er party because he has less leverage to walk away and more incentive to negotiate. Studies indicate that the stronger party is able to translate “power into winning behaviors in the early stages” of a negotiation.³¹ A strong party will assert strength and make the counterpart aware of his superior position.³² Many of these studies conclude that the weaker party is “left to recoup losses on the details,” gaining any and all favorable terms in an effort to gain some advantageous outcome to the dispute.³³ If the weaker party chooses to “fight,” he must “adopt tactics that work to equalize power by borrowing power from the stronger target, from the conflict, from the context, from the negotiation process, and from external parties and sources” surrounding the negotiation.³⁴

B. Traditional Theories of Perceptions of Power

The Camp David Accord negotiations between Egypt and Israel provide an example of how perceptions of strength or weakness can determine whether negotiations even take place. In the 1970s, Egypt and Israel were not on equal footing in terms of power. “The Egyptian army had been defeated, and its economy was crippled; the Israeli army, meanwhile, had been newly equipped, and Israel could count” on the United States for backing.³⁵ However, when Egypt’s support from other Arabian countries began to mount, the government, despite its apparent lack of strength on its own, felt it had significant leverage to contend at the negotiation table. The Egyptians assessed their own power, but more importantly they looked through the eyes of their counterpart and tried to determine Israel’s perception of them. In the end, Egypt’s confidence that the Israelis perceived the threat of allied involvement gave it the confidence needed to embark on negotiations.³⁶

Among the most widely accepted theories of perceptions of power in U.S. negotiations are as follows:

“Perceptions of equal power among negotiators tend to result” in a more effective negotiation outcomes than outcomes when the perception is of unequal power.³⁷

“Under conditions of perceived power inequality among negotiators, the party with high power tends to behave exploitatively, whereas the less powerful party tends to behave submissively” or leave the negotiation.³⁸

“The smaller the perceived difference in negotiators’ power, the more effective their negotiations are likely to be” with respect to reaching an agreement.³⁹

“If the parties perceive themselves to be of equal power and [share] cooperative motivational orientation, the more effectively they are likely to function” in their efforts to reach an agreement; “if the parties perceive themselves to be of equal power and they share a competitive motivational orientation, the less” likely they are to function effectively and the chances of an agreement decrease.⁴⁰

In recognizing that these theories often hold true, negotiators will be well served to find a way to use the perception of strength to their advantage and to alter a perception of weakness. The stronger negotiator might instinctively lord power over a weaker counterpart, but in doing so he runs the risk of the weaker party leaving the negotiations altogether. The weaker negotiator might automatically feel the need to compensate through false bravado, or worse, through unethical practices making the party appear to be more powerful than he really is. This effort to prevent “loss of face” might have the effect of ending the negotiations altogether. Often this situation is called the “Toughness Dilemma”: If the negotiator is viewed as “tough,” he is likely to either negotiate a highly favorable agreement or run his counterpart away from the table through intimidation tactics. On the other hand, a negotiator viewed as “weak” will likely enter an agreement, but the agreement may not be favorable to him.⁴¹ In order to avoid the pitfalls of this situation, negotiators should assess whether a balance of powers in the negotiation is necessary based on what is at stake. If a balance of power would be beneficial, it might be advantageous for a negotiator to try and create balance in the negotiations while still working to use his relative position to the advantage of his party.

Toolbox- Balance of Power

Strategies to use when power discrepancies are having a negative effect on the outcome of the negotiations:

How to Take Advantage of High Power

Assess the importance of reaching an agreement

Before beginning a negotiation, negotiators who have perceived that they have power over the other party might want to assess how important this particular negotiation is in attaining goals. If the negotiator has several comparable alternatives and getting the “best” outcome is the major concern, capitalizing on power might be preferable. If the negotiator must reach an agreement and has few or no alternatives to the present agreement, the use of less competitive methods of negotiation might be best.

Establish willingness and desire to reach resolution

Negotiators can let their counterparts know that despite differences in relative bargaining power, they would like to reach an agreement that would be beneficial to both sides. This could result in working with a counterpart who is more willing to negotiate and actively participate in reaching a mutually advantageous outcome.

Highlight comparable alternatives

Letting a counterpart know that there are viable alternatives to the present negotiation could serve to move the negotiation along faster and easier.

Use facts and expertise⁴²

Disclosing the facts will help the parties uncover options they have in coming to an agreement and also expose the strengths and weaknesses of their positions. This could have the effect of highlighting both parties’ alternatives. This tactic, however, works best when all parties understand and appreciate interest-based negotiation.

Acknowledge successes and support

Negotiators who have had success in similar negotiations or who have the support of surrounding or local factions may want to remind their counterparts of these accomplishments to encourage settlement and give hope that a resolution can be reached.

Be aware that “pulling rank” or “flexing muscle” may increase the chances of non-agreement

Intimidating a counterpart by playing a strong position or constantly referring to force may end negotiations altogether. If the stronger party has relatively good alternatives to the present negotiation, emphasizing advantages in power may be the best strategy. In either case, often the stronger party will not have to remind anyone of its great position to bargain.

How to Overcome Disadvantages in Power

Strengthen the starting position⁴³

A weaker party can recoup some bargaining losses by knowing ahead of time the strengths and weaknesses all parties involved, as well as any elements and factors that might effect the negotiation.

Use facts and expertise (see above)

Paint a picture to persuade

Giving the stronger party a picture of the effects of a negotiation or lack thereof might be a powerful tool in helping a weaker party gain favorable terms. Using personal stories and giving individual opinions might be the persuasive edge that a weaker party needs to equalize the footing between the parties.

Avoid Attacking

Weaker parties commonly go on the defensive when sensing their position is being criticized. However, “fighting fire with fire” is rarely the best option. Attacking a stronger party could only serve to put that party on the offensive, exposing further weaknesses of the weaker party.

Anticipate “power plays” and formulate a “best response”

Stronger parties often gloat so weaker parties should expect bullying and, in return, respond thoughtfully in an effort to combat pushiness and protect interests.

Expect reciprocity

Just because a party is stronger does not mean that it can take without offering anything of value. When a weaker party concedes or proposes something of value, he should expect the counterpart to reciprocate. Reciprocating concessions sets a standard for fairness and gives the parties an opportunity to build trust. (See Chapter 3 for more on reciprocity and Chapter 5 for additional information on trust building).

How to Create Balance

Reciprocate

Concessions and proposals of value should be offered and accepted on both sides.⁴⁴

Remember “veto power”⁴⁵

No matter who the stronger party is, an agreement cannot be reached unless both parties consent. Therefore, the ability to veto an agreement creates power in all parties and helps them gain perspective on the importance of reaching a mutually beneficial solution.

Explore options together

If the negotiators are following an integrative bargaining approach, formulating mutually beneficial solutions could help to alleviate the apprehensions of weaker parties and could help shift the power balance to a more comfortable and workable level.

Create an environment of acceptance and trust

React in proportion⁴⁶

When faced with a potential power play or display of resistance, a party should only acknowledge the element if it has a substantial effect on the negotiations. However, if a counterpart is acting in a way that could be potentially disastrous, reacting in a way to control damage is appropriate and advisable.

Endnotes

- ¹ CHARLES LOCKHART, BARGAINING IN INTERNATIONAL CONFLICTS 95-96 (1979).
- ² KEVIN AVRUCH, CULTURE AND CONFLICT RESOLUTION 48 (2001).
- ³ See JEANNE M. BRETT, NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES 59 (2001); DONALD G. GIFFORD, LEGAL NEGOTIATION: THEORY AND APPLICATION 36 (1989); I. William Zartman, The Structure of Negotiation [hereinafter The Structure of Negotiation], in INTERNATIONAL NEGOTIATION ANALYSIS: APPROACHES AND ISSUES 71, 72-76 (Victor A. Kremenyuk ed., 2d ed. 2002); I. William Zartman & Jeffrey Rubin, *The Study of Power and the Practice of Negotiation* [hereinafter The Study of Power and Practice], in POWER AND NEGOTIATION 3, 15-20 (I. William Zartman & Jeffrey Z. Rubin eds., 2000).
- ⁴ See RAYMOND COHEN, NEGOTIATING ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY 95 (1991).
- ⁵ See The Study of Power and Practice, *supra* note 3, at 15-20.
- ⁶ See The Structure of Negotiation, *supra* note 3, at 72-76.
- ⁷ BRIGID STARKEY ET AL., NEGOTIATING A COMPLEX WORLD: AN INTRODUCTION TO INTERNATIONAL NEGOTIATION 43 (2d ed., 2005).
- ⁸ *Id.* at 43, 45.
- ⁹ *Id.*
- ¹⁰ *Id.* at 45.
- ¹¹ *Id.*
- ¹² The Structure of Negotiation, *supra* note 3, at 75.
- ¹³ See BRETT, *supra* note 3 at 47.
- ¹⁴ See COHEN, *supra* note 4.
- ¹⁵ *Id.*
- ¹⁶ WIKIPEDIA, FORM OF GOVERNMENT, at http://en.wikipedia.org/wiki/Forms_of_government (last visited June 22, 2006).
- ¹⁷ COHEN, *supra* note 4, at 96.
- ¹⁸ Form of Government, *supra* note 16.
- ¹⁹ BRETT, *supra* note 3, at 100-01.
- ²⁰ ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 22-29 (Bruce Patton ed., Houghton Mifflin 2d ed. 1991)(1981).
- ²¹ *Id.*; See also GARY P. FERRARO, THE CULTURAL DIMENSION OF INTERNATIONAL BUSINESS 124 (3d ed. 1998).
- ²² BRETT, *supra* note 3, at 17-20.
- ²³ COHEN, *supra* note 4, at 96.
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Id.* at 101-02.
- ²⁷ COHEN, *supra* note 4, at 100-01.
- ²⁸ *Id.* at 101.
- ²⁹ BRETT, *supra* note 3, at 59.

³⁰ *Id.*

³¹ The Structure of Negotiation, *supra* note 3, at 76; *See generally* I. William Zartman and Jeffrey Z. Rubin, *Symmetry and Asymmetry in Negotiation* [hereinafter *Symmetry and Asymmetry*], in *POWER AND NEGOTIATION* 275 (I. William Zartman & Jeffrey Z. Rubin eds., 2000) (concluding that in the case studies presented stronger parties typically “attempt to dominate the exchange with their less powerful counterparts”).

³² The Structure of Negotiation, *supra* note 3, at 74-75.

³³ *Id.* at 76.

³⁴ *Id.*; *See also* *Symmetry and Asymmetry*, *supra* note 31 at 277 (stating that a lesson learned through case studies was that it was more effective when “weaker parties respond[ed] not by acting submissively, but by adopting appropriate counter-strategies of their own.”).

³⁵ Joel Peters, moderator, *Asymmetric Negotiations (I): The Middle East Peace Process*, at www.passia.Org/seminars/97/Diplomacy/3.htm (last viewed June 23, 2006).

³⁶ *Id.*

³⁷ *See* The Study of Power and Practice, *supra* note 3, at 15.

³⁸ *Id.* at 16.

³⁹ *Id.* at 17.

⁴⁰ *Id.* at 18.

⁴¹ The Structure of Negotiation, *supra* note 3, at 74.

⁴² Willem F.G. Mastenbroek, *Development of Negotiating Skills*, in *INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES* 443, 446 (Victor A. Kremenyuk ed., 2d ed. 2002).

⁴³ *Id.* at 446.

⁴⁴ *See* MICHAEL WATKINS & SUSAN ROSEGRANT, *BREAKTHROUGH INTERNATIONAL NEGOTIATION: HOW GREAT NEGOTIATORS TRANSFORMED THE WORLD’S TOUGHEST POST-COLD WAR CONFLICTS*. 224 (2001).

⁴⁵ The Structure of Negotiation, *supra* note 3, at 75.

⁴⁶ *See* Mastenbroek, *supra* note 42, at 446.

Ethics in Cross-Cultural Negotiations

Carly A. Hammond & Sarah C. McCarty

A b s t r a c t

Situations that test a negotiator's ethics, such as corruption, bribery, human rights violations, and puffing, may frequently arise in cross-cultural settings.

These situations may arise because different cultures have different ethical standards by which they make decisions and determine negotiating positions and solutions. Legal and religious customs are the predominant customs affecting an individual's ethics. The most effective method for the negotiator to ensure that he does not enter into an unethical situation is to prepare by establishing his own ethical bottom line, determining the negotiating counterpart's ethical standards, and then being acutely aware of and responding to ethical differences throughout the negotiation.

I. Introduction

An executive and experienced negotiator from a major U.S. multi-national oil company has been instructed to strike a deal with the Kazakhstani government to enter the Kazakhstani oil and gas industry. The negotiator is contacted by a U.S. attorney who is an advisor to the president of Kazakhstan and is informed that the only way to enter the market is to deposit a large sum of money into a Swiss bank account. Some Americans may consider this to be a far-reaching illustration of corruption. However, several well-known multinational oil companies reportedly found themselves in a similar situation when attempting to enter the Kazakhstani market.¹ James Giffen, an American “counselor to the president” of Kazakhstan, appeared to be a credible consultant in the oil industry, yet he was indicted and is standing trial in a New York court for funneling \$80 million that was allegedly paid by these oil companies to top officials of Kazakhstan.² A reader from the United States may assume that the actions of the attorney, oil companies, and Kazakhstani government were inherently unethical. However, such a view may not be shared by the Kazakhstani people who may expect this type of corruption after years under the communist system, in which social networks were more important than legal processes and no predominant religion condemned bribery.³ Whether each party considers this transaction to be ethical may depend on a variety of customs and philosophical groundings.

A centuries old debate has ensued as to whether ethics are absolute or relative to individuals, cultures, and societies.⁴ The philosophers Plato and Kant held the absolutist view that truth was “fixed and certain” and the meaning of truth “does not vary from time to time or from place to place.”⁵ Modern terminology coins Plato’s view as “ethical imperialism,” which directs individuals to apply the same ethical standards everywhere.⁶ Contrarily, the philosopher Protagoras argued the theory of cultural relativism, which alleges that man creates his own meaning of truth based on his own perceptions of the world, so that “no culture’s ethics are better than any other’s; therefore, there are no international rights and wrongs.”⁷ Others argue that there is a middle ground where some ethics are absolute regardless of situation and culture. These theorists believe that principles such as the Golden Rule (“Do unto others, as you would have them do unto you”) are absolute, while maintaining “context matters when deciding what is right and what is wrong.”⁸

While both sides of the debate are recognized as valid, it is more practical to focus on cultural relativism for purposes of cross-cultural negotiation. The first reason for focusing on cultural relativism is that documentation and anecdotal evidence show that ethical standards vary because of different customs, specifically legal and religious customs. The second and more practical reason is that when entering a cross-cultural negotiation, the assumption that a culture’s ethics differ encourages preparation by a negotiator.

It may seem more natural for a U.S. negotiator to hold an ethical imperialist view and use her moral compass or the ethical guidelines of the organization that she represents to guide her negotiation practices. However, in order to better understand the negotiating counterpart and avoid attributing false motives to him, it is necessary to understand his ethical standards. In addition, understanding ethical standards allows the negotiator to avoid any or all of the following: being surprised when negotiations are surpassing boundaries that she thought were inherently established; being pushed past personal, legal, or organizational ethics; pushing the counterpart past his personal, legal, or organizational ethics; and arguing defensively due to a misunderstanding based on ethical differences.

This chapter is designed to assist the reader in understanding that contemplating ethical differences is useful before entering cross-cultural negotiations. Part II analyzes specific situations in which negotiators commonly confront ethical differences, such as puffing or making exaggerations, good faith disclosures, corruption, human rights violations, and differing standards for those within or outside of the negotiating counterpart’s culture. Part III examines why ethics vary by analyzing the legal and religious customs that affect how a person’s ethics are formed and carried out. Finally, Part IV provides practical tools that will allow a negotiator to effectively navigate through a negotiation in which she is presented with ethical dilemmas.

II. Specific Situations Dealing With Ethics in Cross-Cultural Negotiations

While a multitude of issues could be present in negotiations, certain ethical situations arise more commonly than others. Corruption and potential human rights violations can be obvious dilemmas, while there are others that are not as easily identifiable. For example, the standards that a negotiating counterpart uses with those of his own culture may not be the same standards used in a cross-cultural negotiation. This section discusses these situations.

A. Identifying Ethical Dilemmas in Negotiation

While some situations easily present themselves as ethical dilemmas, a U.S. negotiator may find that certain acts that he views as ethical are problematic for the negotiating counterpart. In other words, the U.S. negotiator's ethical bottom line may differ significantly from the counterpart's bottom line, depending on personal values and cultural characteristics.

"Is it ethically impermissible for the seller to tell buyer: 'our fittings are the best in the world'? Probably not," says William F. Fox, a law professor at Catholic University.⁹ U.S. negotiators often participate in the act of puffing, which may also be characterized as a "little white lie." "This type of behavior...is age-old business conduct," according to Fox, and is generally not condemned in the United States.¹⁰ In fact, lawyers in this country acting as negotiators are only discouraged from making false statements of material fact or law.¹¹ Certain statements are ordinarily not taken as statements of material fact, such as estimates of price or reservation prices.¹²

Puffing may be accepted in other parts of the world, as well. According to one study, thirty-three percent of executives of Korean companies exaggerate and manipulate accounting records, demonstrating that there is a "tendency to accept white lies as a normal business practice."¹³ Despite these illustrations, acceptance of misrepresentations may not be respectable or permissible in all countries.

Consider the following example. A buyer states his appreciation for certain goods by stating, "I am happy to have found this crate that will hold fifty pounds." The seller knows that the crate will only hold twenty pounds but does not reveal this to the buyer. Is this unethical? The answer may depend on where this transaction occurred. In the United States, it is unclear whether there would be civil liability for the seller's silence if there is no duty to disclose and the buyer cannot show justifiable reliance.¹⁴ Because of the state of the law within the United States, some have characterized the U.S. negotiating rule as "be silent and be safe."¹⁵ Indeed, the Model Rules for Professional Conduct for lawyers rejected absolute truth in negotiations upon adoption of Model Rule 4.1, which requires only disclosure of material facts.¹⁶ While this rule only applies to lawyers, it demonstrates the ethical standards regarding disclosures and omissions to which U.S. negotiators are accustomed.

By contrast, if the above transaction had occurred in Italy, the seller's actions would create civil liability for fraud because Italian law requires good faith disclosures in all dealings, including negotiations.¹⁷ German law also requires good faith disclosures, under the premise that such openness will create trust between the parties and reduce future conflicts.¹⁸ When U.S. negotiators set their own ethical bottom line, it will be useful for them to understand that other cultures may have stricter ethical standards in certain situations.

B. Differing Standards for Those Within and Those Outside of a Culture

Many have wondered how so many could support Nazi Germany's Holocaust efforts during World War II. One explanation is that the targets of these atrocities, who were members of the same society, were not considered part of the same culture, but instead were considered an out-group.¹⁹ This is based on the theory that people do not extend their ethics beyond certain boundaries and are more likely to apply their ethics and justice concerns only to those that are similarly situated to and connected to themselves, who are referred to as the in-group.²⁰ The out-group is "often categorized as socially undesirable, and dehumanized, delegitimized, and excluded from moral considerations."²¹

This may pose a serious problem for negotiators. Even after determining what ethical standards a negotiating counterpart is likely to hold, a negotiator may be surprised to find that this is not the standard that applies because the negotiator is not a member of the counterpart's in-group. For example, it is

believed that the Chinese determine the proper application of justice based on someone's status as an insider or outsider.²² The goal of justice with Chinese in-group members is disintegration-avoidance and harmony, whereas equity is the primary factor in determining justice for an outsider.²³ These differences in standards may also be seen in situations of corruption and potential human rights violations, as discussed below.

C. Corruption

After a Swiss company purchased a Korean business in an unusually smooth deal, the Korean seller gave the buyer a white envelope containing 300,000 won, the equivalent of \$400 at the time. A similar exchange occurred when the negotiations began. The negotiator for the Swiss company was left to wonder if this was a gift that he could accept or a bribe that should be returned.²⁴ "Corruption is the use or abuse of public office for private gain" and includes behavior such as bribery, theft, misappropriation, and nepotism, according to Philip M. Nichols, a professor of legal studies at the Wharton School of the University of Pennsylvania.²⁵ While the U.S. legal system and general moral tenor of the nation have declared corruption to be unethical and intolerable, other cultures do not find it as deplorable and see it as a necessary method of doing business.

One reason that corruption persists is because the salaries of bureaucrats in some nations are so low that they accept bribes as a "form of remuneration."²⁶ This comports with the theory that corruption is an economic problem rather than solely a moral problem, and it will not be resolved until economic woes are of lesser concern.²⁷

Another reason that corruption is commonplace in many governments is self-perpetuation. Presumably, all governments would be better if they did not engage in corrupt activities.²⁸ However, there is the assumption that not everyone will forego corrupt activities, giving a defector a competitive advantage. Therefore, everyone participates in corruption in order to prevent being left behind. Essentially, this practice encourages governments and government officials to "choose between cooperating in hopes of accruing the greatest benefit or defecting as a defensive measure."²⁹

A final reason that corruption persists is simply because some cultures do not consider it unethical. Koreans believe that the outsider's view of corruption as unethical in their country is due to a "Western misperception of a Confucian society based not on law but on human relations."³⁰ They also believe that Confucian culture "emphasizes human interrelatedness and reflects upon what is required to relate properly to others and a keen awareness of what others do for one and what one should do in return."³¹ This helps explain why some believe that bribery is more acceptable in Korea than in the U.S.

It is helpful for U.S. negotiators to consider not only their ethical bottom line when faced with corruption, but also their legal bottom line. U.S. law and laws in other countries are based on the belief that corruption results in harm to nations. It is believed that "positive change and economic growth cannot occur in endemically corrupt polities."³² Nichols argues that corruption leads to lower rates of economic growth, distorted bureaucratic decision-making, and it "corrodes social institutions and undermines support for reform."³³ Another assumption that serves as a basis for U.S. laws against corruption is that corruption undermines political stability and signals that there is a problem with the law or legal system.³⁴ Awareness of these laws can help the U.S. negotiator better assess her ethical bottom line.

1. United States Foreign Corrupt Practices Act

U.S. law regarding corruption creates a legal bottom line that may not be disregarded by U.S. negotiators. The Foreign Corrupt Practices Act (FCPA) places constraints on the giving of gratuities to foreign officials in order to obtain business.³⁵ This Act criminalizes bribery by any individual or business entity within the territory of the United States or any U.S. individual outside the United States.³⁶ Payments that are legal in the country in which they were made or payments that are considered "reasonable and bona fide expenditures" are not prohibited under the FCPA.³⁷

In 1998, the FCPA was amended to comply with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), which was formulated by the Organization for Economic Cooperation and Development.³⁸ The OECD Convention is an agreement signed by 31 countries that heightened the standard for criminal and civil punishment of bribery. It added

to the FCPA the rule that one may not “offer, promise or give any undue pecuniary or other advantage to a foreign public official” in order to obtain or retain business or other “improper advantage.”³⁹ The FCPA establishes an affirmative legal bottom line for any U.S. negotiator that cannot be crossed without criminal and civil penalties.

2. Local Corruption Laws

Being aware of local laws regulating corruption – both where the negotiation is taking place and where a substantial portion of the subject of the negotiation has occurred or will occur – is important for U.S. negotiators. Korean law has outlawed bribery for many years, and a new Anti-Corruption Act was enacted in 2001.⁴⁰ However, Craig P. Ehrlich, an assistant professor of law at Babson College, and Dae Seob Kang, a Korean law professor, report that Korea is ranked among the top fifty most corrupt countries according to the Transparency International Corruptions Perception Index.⁴¹ The extent to which governments enforce anti-corruption laws is the determining factor. Despite the enactment of laws by the Korean government that facially demonstrates an opposition to corruption, many believe that “laws cannot change a culture,” so corruption continues to exist.⁴² Other countries are stricter in their enforcement of anti-corruption laws, perhaps because the laws are more aligned with their cultures and ethics.⁴³ Regardless of how strictly enforced anti-corruption laws are in other countries, a U.S. negotiator is obligated to abide by the host country’s laws in order to avoid prosecution or civil suit under the FCPA.

While certain practices are clearly corrupt and unethical, there is a vast gray area that leaves U.S. negotiators to determine if an act should be undertaken or not. This “moral free space” is where “there are no tight prescriptions for a [negotiator’s] behavior.”⁴⁴ The most difficult situation for a U.S. negotiator may be determining what actually constitutes corruption or bribery. Giving a government official a holiday gift could be considered a bribe if it is given to obtain an action by the government official. However, it may not be considered a bribe if the gift is given simply to create goodwill with the official. This is a fine distinction that is useful for the negotiator to consider. Whether something constitutes a corrupt practice may depend on the intent of the giver, as well as the value of the item or service given.⁴⁵ The larger the value, the more likely the payment will be considered a bribe, rather than a gift or social courtesy.⁴⁶

3. Additional Corruption Concerns

An even grayer area may be determining what is a “grease payment” as opposed to a bribe. U.S. law, under the FCPA, permits grease payments, which are payments used to “expedite or to secure the performance of a routine governmental action.”⁴⁷ This is distinguished from bribes which are payments to “award new business or to continue business with a particular party.”⁴⁸ Distinguishing between bribes and grease payments is difficult for many U.S. negotiators.

A second practice that is rarely addressed and is not criminalized under the U.S. FCPA is the bribery of private individuals rather than public officials.⁴⁹ Such a practice could be considered by some to be corruption, in the sense that extraneous amounts are being paid into the private sector to gain favorable business deals. In general, it is important for a U.S. negotiator to be aware of whether corruption is practiced in the negotiating counterpart’s culture, and what ethical and legal bottom line he will not cross.

D. Potential Human Rights Violations

The Levi Strauss Company found itself in a situation in the early 1990s in which two of its Bangladeshi suppliers were employing children under the age of 14, a practice tolerated in Bangladesh but forbidden by Levi Strauss’ corporate principles.⁵⁰ Faced with bad publicity and consumer backlash, Levi Strauss needed to resolve the problem through negotiation with the local supplier. By understanding that the local supplier did not see this practice as unethical, Levi was able to develop a creative solution that allowed the children to attend school, receive wages from the supplier, and then be offered jobs when they were 14, while Levi would pay for the children’s tuition, books, and uniforms. “That arrangement allowed Levi Strauss to uphold its principles and provide long term benefits to its host country.”⁵¹

U.S. negotiators frequently encounter differing ethical standards for working conditions in other countries. Two theories attempt to explain the differences in these ethical standards. First, the “conflict of relative development” theory states that ethical standards conflict because of the countries’ different levels of economic development. This requires a negotiator to ask, “Would the practice be acceptable at home

if my country were in a similar stage of economic development?”⁵² Even if the answer to this question is yes, the negotiator does not have to lower her standards; however, such awareness may help the negotiator to understand why a lower standard is acceptable in that country. Using this approach, Levi Strauss may have determined that when the United States was a developing country, it was not unethical or unlawful to use child labor. Second, the “conflict of cultural tradition” theory suggests that “strongly held religious and cultural beliefs” influence ethics, thereby influencing what working conditions are acceptable in that culture.⁵³ By considering the relative development of the country and the cultural tradition, a negotiator will be able to determine the motivations behind an unfair labor practice and how he wishes to participate in or counteract such conditions.

III. Customs Affecting Ethics

Cultures are comprised of a variety of customs that make the culture unique. Legal and religious customs have been the most influential in creating ethical standards. Moreover, legal and religious customs are often interrelated. For instance, Muslims believe that there is an interconnecting role between religion and the legal system and that the government is not an autonomous entity, but rather that God is the ultimate authority.⁵⁴ This interrelated nature of customs creates ethical standards that are unique to each culture and decision-maker. “The ethical basis of a particular decision . . . may be [based on] a combination of many such factors.”⁵⁵ This section considers how legal and religious customs have shaped ethics and how ethics have shaped legal and religious customs.

A. Legal Customs

The legal framework that a negotiator’s culture embraces will influence her ethical standards. This legal framework depends on the degree to which the country adheres to the rule of law, the government’s and the individual’s perceptions of justice, and the current and historical legal system. While a legal framework can influence a negotiator’s ethics, it is likely that ethics were also used to establish the legal system.

1. Purpose of the Law

Former United States Supreme Court Justice Oliver Wendell Holmes stated that “law is the witness and external deposit of our moral life.”⁵⁶ If Holmes’s statement is true, then one central purpose of legal systems is to reflect our ethical standards. When a U.S. manager of a multinational U.S.-based corporation working in China caught a Chinese worker committing petty theft, she reported the worker to the police as was required by her American corporation’s internal rules.⁵⁷ She was later dismayed to find that the worker had been executed for this petty theft. The legal punishment for stealing in China was based on the ethic that stealing is inherently wrong and should be punished to the fullest extent of the law.⁵⁸ Had the U.S. manager known the intensity of the Chinese ethic against stealing, she could have set forth an alternative disciplinary process that complied with her idea of an ethical resolution to the problem.

The Dou Donggo people of Indonesia demonstrate how legal systems reflect cultural and ethical assumptions. According to Peter Just, a professor of anthropology at Williams College, the Dou Donggo believe that people are not good at heart and “do evil three-fourths of the time.”⁵⁹ Therefore, their legal system is developed to ensure “continuous monitoring” and “fairly constant control.”⁶⁰ In addition, public praise and criticism are the most common forms of social sanctions, so public shame is an integral part of their legal establishment.⁶¹ The Dou Donggo illustrate how “a legal system will to a large extent reflect and support underlying cultural assumptions concerning the nature of human nature, of the individual, of social behavior, and of the social order itself, all of which have a moral valence.”⁶²

The purpose of the law will also depend on the importance a culture places on the rule of law, which is, in turn, determined by a culture’s values. The rule of law places emphasis on a formal legal system. Cultures following the rule of law value order, predictability, and transparency.⁶³ The rule of the people offers a different approach by emphasizing cultural norms and moral standards to guide behavior, rather than a formalistic legal structure. Cultures engaged in the rule of the people place a higher value on personal relationships and “moral imperatives [that] have ancient roots and so would be the most widely accepted and authoritative.”⁶⁵ A U.S. negotiator who is accustomed to the U.S. rule of law may face difficulty when negotiating in a culture that accepts the rule of the people.

For instance, the Chinese follow moral guidance and cultural norms over the rigid formality of laws.⁶⁵ After New Balance, the Boston-based shoe company, hired a Taiwanese distributor in China, shoes identical to those of New Balance began appearing in markets around the world at a discount.⁶⁶ New Balance was dismayed to find that intellectual property protection in China is based on the ethic of providing for the greater communal good, rather than strict laws protecting inventor rights. This clash between the rule of law and the rule of the people is illustrative of how values create legal systems, which vary from culture to culture. In response, more countries are establishing more comprehensive laws due to the increased pressure of globalization. Even though all countries have explicit laws, the rule of the people will still dominate when there is a clash between the law and the cultural norm in countries that have traditionally followed the rule of the people.⁶⁷

The value that a country places on the rule of law may also determine how specific the language in a contract should be, or even whether there should be a contract at all. Vagueness in a contract tends to be troublesome to U.S. negotiators because the contract may refer to principles such as fairness, fair dealing, and good faith without providing meaning for those words.⁶⁸ However, the negotiating counterpart may be more focused on the main objectives of the agreement, rather than the specific details of the agreement.⁶⁹ Determining what ethics underlie a country's legal system is useful in deciding on a strategy for a successful negotiation outcome.

2. Perceptions of Justice

Justice is a concept that is inherently based on ethics, and therefore one culture's view of what is just is not the same as another's view.⁷⁰ However, there is support for the belief that there is some level of shared principles of justice, which are characterized by commentators such as Kwok Leung, a professor of business management at City University of Hong Kong, and Kwok-Kit Tong, a former research fellow at City University of Hong Kong, as "justice rules."⁷¹ For example, Leung and Tong suggest that being a considerate supervisor is seen as ethical across nearly all cultures, and is therefore a justice rule.⁷² There is general agreement that the role of a supervisor is to instruct and manage the employees, which may include consideration of an employee's personal problems.

By contrast, if the supervisor discusses an employee's personal problems with other employees, the ethical perception of this action differs depending on the culture. Some commentators refer to this non-uniform approach to carrying out the justice rules as "justice criteria."⁷³ Leung and Tong state that Japanese and Hong Kong Chinese would view such disclosures as an ethical and considerate action based on concern for the individual and his role in the group.⁷⁴ Individuals in the United States or Great Britain instead may view this action as unethical and inconsiderate, preferring to keep personal matters relatively private.⁷⁵

The method in which one actually practices the justice rules and criteria is most dependent on cultural ethics and has even less universal support. For example, nearly all cultures would agree that an outright misrepresentation is a lie; however, defining exactly what constitutes a lie will vary significantly.⁷⁶ U.S. negotiators may become frustrated by the like-mindedness of principles in light of the divergence of actions in implementing those principles.

Understanding the goals of justice in a culture can help the U.S. negotiator determine the reasoning behind a negotiating counterpart's positions and tactics. The Dou Donggo, discussed above, respect the value of strong relationships within society more than individual rights.⁷⁷ These values have caused the object of their legal system to be reconciliation of relationships, rather than punishment or retribution. Societies tend to have different goals for justice, depending on their cultural and ethical backgrounds.⁷⁸ The Dou Donggo ethic of restoring relationships comports with the idea of restorative justice, which provides that restoring damaged relationships equates to justice.⁷⁹ Other cultures place a higher value on punishment and on vindicating the value of the victim, which is seen in the form of retributive justice.⁸⁰ Distributive justice is based on the value that one places on allocation of resources and which resources are deemed worthy contributions.⁸¹ A final form of justice is the concept of procedural justice, which values the process of the justice system over the outcome because the process contributes to the individual's feelings of control, inclusion in society, and fairness.⁸²

A conflict between a nephew of Chinese descent with Western views, a Chinese uncle with traditional Chinese ethics, and an Irish friend of the uncle illustrates these differing concepts of justice.⁸³ The nephew took advantage of the uncle's generosity and created unrest in the family by not returning money that he had borrowed from the uncle. The Chinese family wished to avoid litigation and pursue their goal of family harmony, yet the Irish friend pushed the family to sue the nephew. As litigation drew near, the uncle decided to visit the nephew and seek reparation. This act resolved the conflict and the litigation was not pursued. The Irish friend later regretted pushing the Chinese family into such an uncomfortable situation in pursuit of his own view of justice, which was more distributive and retributive. If the Irish friend had considered the differences in values between his culture and the Chinese, he would have encouraged the face-to-face reconciliation earlier.

3. Current and Historical Legal System

A country's current legal system, as well as its past legal systems, can shape a negotiator's ethics. The Polish community in Chicago has noticed differences in perceptions of ethics between Polish-Americans and recent Polish immigrants.⁸⁴ According to one account, Polish-Americans believe that the immigrants have no work ethic, no initiative to find work, and an expectation of receiving handouts.⁸⁵ The differences are attributed to the immigrants' upbringing in Polish communism and the Polish-Americans' upbringing in American capitalism.⁸⁶ Although Poland is no longer a communist country, the lasting effects of the communist regime may have shaped the ethics of its current society. Thus, the role of the government in the daily life of an individual may determine the ethical standards and expectations of that individual.

B. Religious Customs

Religion often plays an important role in the formation of a culture, including its ethics, and thus becomes part of a negotiator's background and approach to conflict. This is demonstrated by a story about the late U.S. Secretary of State John Foster Dulles:

During one of the recurrent conflicts between Israel and its Arab neighbors, he invited an Israeli and a Syrian representative – the first a Jew, the second a Muslim – to have a private heart-to-heart conversation with him. When they met, the secretary of state warmly shook hands with each of them, then smiled and asked, “Why can't we all sit down together and work this thing out like Christian gentlemen?”⁸⁷

As Harvey Cox, a professor at Harvard Divinity School, notes, although the story is likely fictitious, it does illustrate two important considerations regarding religion and conflict resolution. First, many people believe that religious traditions may be useful in resolving conflicts. Second, when people think about religion as a resource in conflict resolution, most think exclusively of their own faith, if only because they are ignorant of other possibilities.⁸⁸ The goal of this section is to acquaint the U.S. negotiator with various religious considerations that might be important to the counterpart and thus have an impact on that person's ethics.

1. Religion's Role in Shaping a Negotiator's Approach to Conflict

Religion may influence a person's approach to conflict in many ways. Followers of Buddhism abide by its “ineradicable ethos – a unique core of meanings and values that usually, but not always, mandates a reasonable, temperate, and balanced approach to conflict.”⁸⁹ Buddhism itself developed as a method for coping with religious conflicts. At a time when Hindu India was struggling with contradictory teachings, the Buddha promoted “critical tolerance” as a means to deal with such confusion. Cox proposes that there are two key components to critical tolerance: giving the benefit of the doubt to those with whom one disagrees even on essential issues, and empirically testing another's teachings or ideas by living them.⁹⁰ Thus, critical tolerance is not automatic acceptance of another's point of view, but rather a way to examine that point of view without prejudice using the basis of “inherent truth or value.”⁹¹ With this background, a Buddhist negotiator might be more likely to approach conflict resolution with an open mind, and more willing to listen to his counterpart's ideas, if only so that he can gain enough information in order to make an educated decision himself.

Similarly, followers of Hinduism resolve conflicts using the key concept of unity.⁹² The underlying insight, that conflict exists at the “level of perception, not of reality,” allows Hindus to approach conflict with the idea that the two sides, although they may seem contrary, are actually one and the same.⁹³ This is very different from the way that U.S. negotiators see conflict, since they are accustomed to thinking of conflict in terms of opposing forces.⁹⁴ Coming to the table with such a background, a Hindu negotiator might be more likely to be open-minded and to believe that the conflict will ultimately be resolved, because, on some level, it already has been. These are just a few of the ethical perspectives based on religion of which a U.S. negotiator might want to be aware before engaging in a cross-cultural negotiation, so that she is not caught off guard.

2. Religion’s Effect on Ethics through its Interaction with Law

Religion and law frequently interact with one another. In some countries, the government may be opposed to a particular religion and try to restrict or even ban it, while in other countries the government itself may be theologically-based. Examples of the latter are nations that embrace the Islamic legal system, called the Shari’ah; it is a code of conduct for all parts of life, both personal and commercial, meaning there is little distinction between the public and private facets of everyday existence.⁹⁵ Fox observes that the Shari’ah and the religious writings upon which it is based form a sort of codification of legal principles, but that “application of the principles themselves is almost always on a case-by-case basis with few individual decisions committed to writing. To analogize . . . to American law, the Shari’ah is something like a system based on the Uniform Commercial Code without reported court decisions construing the UCC’s individual provisions.”⁹⁶

Governments in Islamic countries often specifically insist upon incorporation of the Shari’ah into contracts.⁹⁷ This can impact negotiations in several ways. For instance, parts of the Shari’ah prohibit certain forms of charging interest on the lending of money, which may be a term of a contract. In addition, the Shari’ah advocates the obligation of good faith; however, it insists on a “literalist approach to the contract,” which may forbid “cancellation or revision of a contract on the basis of impossibility or frustration.”⁹⁸ Two of the sources of the Shari’ah, the Koran (the recitation of the word of God as spoken to the Prophet Muhammad) and the Sunna (the pronouncements of the Prophet Muhammad), reinforce these obligations by requiring Muslims to “abide by their promises and obligations,” and to extend the Shari’ah’s protections to both Muslims and non-Muslims.⁹⁹ Thus, a negotiating counterpart from a country ruled by an Islamic legal system will likely have a strong ethical preference toward carrying out the promises made in a contract, both by himself and by the U.S. negotiator. In contrast, the U.S. negotiator may find it acceptable to break a contract if she is prepared to reimburse her counterpart for the damages suffered. The U.S. negotiator might find it helpful to be familiar with such ethical considerations prior to a cross-cultural negotiation so that she is not surprised.

3. Historical Aspect of Religion’s Effect on Ethics

Professor of Anthropology at the University of California, Berkeley Laura Nader observes that throughout history Western social science theories have generally reflected the “belief that conflict is bad and in need of explanation, while its opposite” is good and needs no explanation.¹⁰¹ Examples might be “the need to explain war rather than peace,” or the need to respond to disputes rather than the absence of disputes.¹⁰¹ Such harmony models are prominent in the Christian faith and have led to the creation and use of conflict resolution procedures. In fact, Christian missionaries and colonial powers often used these harmony models to pacify the people they encountered and maintain autonomy over them. For instance, what Martin Chanock, a professor of law at La Trobe University, calls “missionary justice” abounded in Africa beginning in the 1860s. Missionaries were closely involved in the settling of local disputes according to a Victorian interpretation of the Bible and English procedures, which ironically often led to violent punishments.¹⁰² Some missionaries promulgated the Ten Commandments as the law of God, acting as peacemakers who handed down Christian judgment, while the colonial courts incorporated it into customary law. This customary law came to emphasize conciliation and compromise under the principles of Christian harmony ideology.¹⁰³ These harmony models and the conflict resolution procedures they established have had a lasting effect in many Christian cultures and former colonies and may shape what the counterpart deems ethical in negotiation situations.

In contrast, there may be situations in which the history behind a religious dispute is more powerful than the religions themselves. For instance, Jewish Israelis and Muslim Palestinians have been fighting a bloody battle over a piece of land since 1967. Yet both religions advocate ethical reciprocity, referred to in Christianity as the Golden Rule. Followers of both Judaism and Islam are meant to apply this ethic of reciprocity even to members of other faiths.¹⁰⁴ However, nearly forty years of fighting seems to have changed their priorities. It is likely that neither a Palestinian nor an Israeli would come to the negotiating table today with a mind to treating her counterpart as an equal. Thus, it might be useful for the U.S. negotiator to be aware not only of the various religions she may encounter but also of any important historical events affecting those religions, so that she can understand her counterpart's ethics in the proper context.

4. Other Considerations

The effect of religion on a person's ethics may depend on the extent to which it has infused the culture. A U.S. negotiator might want to be aware of how important a culture's religion is in daily life so that she knows how likely it is that the religion affects her counterpart's ethics. If the religion is practiced in name only, as some say of Roman Catholicism in Italy, then it may not have an important effect on the counterpart's ethics.¹⁰⁵ In contrast, before Westerners arrived in Hawaii there was no specific word for "religion" in the Hawaiian language. There had been no need to name it, because spirituality "permeated all aspects" of life.¹⁰⁶ In cases like these, religion is more likely to affect a counterpart's ethics.

There are some instances in which religion will be part of the subject matter of the dispute the negotiators are trying to resolve. One such case involved a land-use dispute in Hawaii, in which a geothermal energy development site was situated on the Kilauea volcano. Hawaiian activists protested because the volcano is thought to be the home of Pele, a Hawaiian goddess. Some Hawaiians believe that the "area of active volcanism" is actually Pele's body, and that any development or exploration "would remove her energy," which would threaten the future of ritual practices.¹⁰⁷ In cases like these, the U.S. negotiator may find it helpful to acquaint herself with the religion, so as to avoid offending her counterpart when they are discussing it.

Rarely will it be the case that all people of a country are of the same religion. Likewise, rarely will all people of the same religion practice their religion in the same manner. For example, in the 1980s in Chicago, recent Polish immigrants wanted to be able to go to confession before or during mass so as to be clean before receiving communion, and therefore were appalled that confession was only offered once a week and that the Polish-Americans who had grown up in the United States took communion without going to confession.¹⁰⁸ This example illustrates that there can be cultural differences even within a religion, meaning that the negotiator cannot rely only upon her knowledge of Catholicism and apply it equally to both groups. Thus, although it is helpful for a U.S. negotiator to try to acquaint herself with a culture's religion prior to a cross-cultural negotiation, it is better not to assume that her counterpart is a follower of that religion or that he applies its ethical principles in a certain way. Such assumptions may set the U.S. negotiator up to be surprised.

5. Conclusion

This section is not meant to be a comprehensive list of the various ways in which different religions may affect a counterpart's ethics. Rather, it is meant to put the U.S. negotiator in the correct frame of mind to enter a negotiation and not be surprised by those different ethics. These examples should help the U.S. negotiator to brainstorm various topics that she might research prior to entering the negotiation, and, more importantly, remind her to expect the unexpected.

IV. Practical Applications

Unlike trust, for example, which can be created, changed, or lost, (see Chapter 5 on trust-building), ethics are immutable in the context of a negotiation: they will remain in place long after the negotiation has ended. Thus, the U.S. negotiator can use this section as a set of tools to address ethical differences when they arise, but not to attempt to change a counterpart's ethics. There are two goals of this section: 1) to teach the U.S. negotiator how to prepare for a variety of ethical situations, so that he can avoid making ethical decisions on the spot, and 2) to teach the U.S. negotiator how to deal with ethical differences when they arise.

A. Preparation

This book emphasizes the importance of preparation before entering a cross-cultural negotiation. Such preparation involves researching the counterpart's ethical standards and the customs that may affect those standards. One method of research is partnering with foreign allies that are familiar with the counterpart's culture in order to get a firsthand account of ethical issues that may affect it (see Chapter 5 on trust-building and Chapter 12 on interpreters). In a situation in which the U.S. negotiator will be working with a particular interpreter for an extended period of time or in a number of negotiations, the interpreter may be willing to share valuable insights about her culture's ethical standards and the customs affecting them.

Another theme of this book is that it is not a good idea for the U.S. negotiator to rely so heavily on his preparation that he is caught off guard if something different happens. Instead, it is helpful to expect the unexpected. Regardless of the amount of preparation, it is unlikely that the U.S. negotiator will be able to fully explore the inner workings and nuances of the culture with whom he will negotiate. Thus, at the very least, the U.S. negotiator may want to do enough research so that he is not surprised when ethical differences arise, and so that he can make amends if he inadvertently offends his counterpart's ethics.

1. Self-Evaluation

The first step in preparation is self-evaluation. The U.S. negotiator can start by looking inward to examine his own religious and legal customs and understand how they shape his ethics. With this in mind, the U.S. negotiator may then establish his ethical bottom line, i.e., the ethical boundaries which he refuses to cross. This requires some thought, because there are a variety of situations in which the U.S. negotiator might find himself that would test his bottom line. For instance, would he be willing to accept a bribe if it would allow him to achieve his immediate goals? If it would strengthen an important relationship? If it would save a life? The U.S. negotiator might also want to be prepared for his counterpart to offer to take care of any necessary payments that will help achieve the desired result. In many countries, these small bribes to government officials are recognized as the only way to get anything accomplished. The U.S. negotiator may also wish to decide beforehand whether to comply with such second-hand bribes in order to achieve his goals.

Establishing a negotiator's own ethical bottom line is extremely important because it allows the U.S. negotiator to avoid having to make ethical decisions on the spot during a negotiation. If he already knows exactly where to draw the line, he can feel confident in adhering to that line. However, before he can move forward it is important for the U.S. negotiator to ensure that his ethical bottom line is aligned with both: 1) his organization's goals, and 2) his own country's laws, some of which may govern his conduct even when he is in another country. If his bottom line is not aligned with both, he may wish to revise it.

2. Evaluation of Counterpart

The second step of preparation is evaluation of the counterpart and the forces that are likely to have shaped his ethics. Some of these forces will be the legal and religious customs of his culture. The following is not an exhaustive list, but rather a starting point for the U.S. negotiator to brainstorm other possible considerations.

When the U.S. negotiator researches the legal customs of his counterpart's culture, he can start by determining what legal structure is in place. The type of legal system and the theory behind the legal system will likely have an impact on ethics. For example, the legal system may be more focused on local or national government and may be based on theories like communism or capitalism. Second, the U.S. negotiator can determine what type of justice, such as distributive, retributive, restorative, or procedural, is valued in the culture. A culture that emphasizes retributive justice, in which punishment equates to justice, will likely have different ethical standards than a culture that values restorative justice, in which restoration of damaged relationships equates to justice.

Third, a negotiator may determine whether specificity and comprehensiveness are valued in the culture. If the culture is based primarily on the rule of the people, as opposed to the rule of law, then carefully-drafted contracts may not be important to the counterpart. In addition, this will likely shape the counterpart's attitude toward full disclosure of even the most inconsequential facts. Finally, the U.S. negotia-

tor might consult the various corruption indices in order to ascertain the country's reputation regarding corruption. Such indices are produced by many organizations such as Transparency International, the U.S. Department of State, Price Waterhouse Coopers, and Goldman Sachs.

Having researched the counterpart's country's legal system, the U.S. negotiator may then look at the laws attendant to it, for two reasons: 1) they might govern both his and the counterpart's conduct during the negotiation, and 2) even if they do not officially govern conduct, they may impact the way that the counterpart approaches the negotiation. Thus, it may be useful to the U.S. negotiator to know about the country's laws regarding corruption, human rights violations, good faith disclosures, and any other topics relevant to the negotiation, and to determine how strictly the country enforces those laws. If, for example, laws against bribery exist in a country and are strictly enforced, they will certainly govern the counterpart's actions during the negotiation. Finally, if he is negotiating in a foreign country, the U.S. negotiator might wish to revisit – and, if necessary, revise – his ethical bottom line to ensure that it is aligned with the host country's laws.

When the U.S. negotiator researches the religious customs of his counterpart's culture, he might begin by determining what the predominant religion is and whether there are any other influential religions. Once this is established, he can determine whether there are any symbols, items, or gestures that are important in the religions, so that he can respect them and avoid offending his counterpart by criticizing or misusing them. For the same reason, he may also research the basic tenets of the religions. Finally, the U.S. negotiator can research how the government in question interacts with the religions because the ethics of a follower of a religion may change depending on whether the government welcomes, restricts, or bans that religion.

Throughout this process, it is important for the U.S. negotiator to remind himself not to make two assumptions: that all people of a country practice the same religion, and that all people of a religion have the same ethical standards. To make such assumptions would render the negotiator's preparation moot, because it would set him up to be surprised.

B. Strategies During Negotiation

At the very outset of a negotiation, the U.S. negotiator may try discussing ethical considerations with his counterpart and creating a mutual ethics contract. This approach would be more appropriate in a high-longevity relationship when the parties will be meeting regularly and bringing the same ethical considerations to the table each time.

Regardless of the type of relationship, there are several things that the U.S. negotiator might wish to keep in mind. First, flexibility is necessary to allow him to expect the unexpected and avoid being surprised or taken advantage of. Second, patience will demonstrate to the counterpart that he is willing to devote the necessary time and attention to the negotiations. Third, continuous re-examination of his assumptions about his counterpart's ethics is important because in some cases the preparation that the U.S. negotiator has done will be insufficient or incorrect. At these times the negotiator may want to be able to step back from the assumptions he has made about his counterpart's ethics, see if they agree with what is taking place, and then adjust accordingly. Finally, he may refer to Chapter 11 on exchanging information to learn about verbal and non-verbal cues, how he can use these cues to determine if his counterpart is attributing false motives to him, and how to correct the misperception if it exists.

If the negotiation reaches a standstill, the U.S. negotiator might first consider whether the standstill is due to ethical differences. If he determines that it is, he may want to explain his ethics and how they guide his negotiating tactics and goals. Having done this in good faith, he can then ask the counterpart to do the same. Thus, the U.S. negotiator will be able to see exactly where the ethical difference arises and be better equipped to handle it. At this point, the U.S. negotiator has several options. If the parties have previously agreed to a mutual ethics contract, he can review the pertinent language with his counterpart and remind him of his duties. If no mutual ethics contract has been previously reached, he can propose the idea as a means for going forward. Finally, even if the U.S. negotiator thinks that his counterpart is being unethical, he may not want to express this concern, as such a confrontation would be embarrassing for

the counterpart and likely damage or even end the relationship. Instead, the U.S. negotiator can take his time and subtly try to obtain more information about the situation that might explain the counterpart's behavior. It might be that the U.S. negotiator is attributing false motives to his counterpart, who is actually acting within his ethical boundaries.

V. Conclusions

Regardless of which culture they encounter, negotiators will be faced with situations in which their personal, legal, and organizational limits may be tested. Cross-cultural negotiations create a greater likelihood that such events will arise and that negotiators will encounter such dilemmas. It is suggested that negotiators "who are not prepared to grapple with moral ambiguity and tension should pack their bags and come home" because "values in tension are the rule rather than the exception."¹⁰⁹ However, with use of the practical applications suggested in Part IV and an understanding of what can affect ethics, negotiators are equipped to unpack their bags and face the values in tension with confidence that ethics will not be an impediment to successful negotiations.

Toolbox for Negotiators

Preparation Before Negotiation

- *Self-Evaluation*
 - Understand what religious and legal customs shape your own ethics.
 - Establish your own ethical bottom line.
 - Ensure that bottom line is aligned with the organization's goals, own country's laws, and host country's laws.
- *Evaluation of Counterpart's Ethics, as affected by:*
 - Legal Customs
 - What legal structure is in place?
 - What type of justice (distributive, retributive, restorative, procedural) does the culture value?
 - How important are specificity and comprehensiveness in the culture, especially in terms of written laws and contracts?
 - What is the country's reputation regarding corruption? (Consult various corruption indices, such as Transparency International and the U.S. Department of State.)
 - What are the country's laws regarding corruption, human rights violations and good faith disclosures?
 - How strictly are those laws enforced?
 - How likely are they to affect the counterpart's approach?
 - Ensure that your own ethical bottom line is aligned with those laws.
 - *Religious Customs*
 - What is the predominant religion?
 - What are other influential religions?
 - What symbols are important to the religion(s)?
 - What are the basic tenets of the religion(s)?
 - How does the government interact with the religion(s)?
 - Check your own assumptions:
 - Do not assume that all people of a country will practice the same religion.
 - Do not assume that all people of a religion will have the same ethical standards.
- **Strategies During Negotiation**
 - Create a mutual ethics contract with counterpart, if applicable and possible.
 - Be flexible.
 - Have patience and go slowly.
 - Continuously re-examine your own assumptions about counterpart's ethics.
 - Read verbal and non-verbal cues to determine if the counterpart is attributing false motives.
 - When negotiation reaches a standstill:
 - Consider whether the standstill is due to ethical differences
 - If it is:
 - Be able to explain your own ethics and how they guide tactics and goals.
 - Ask your counterpart to explain his ethics and how they guide tactics and goals.
 - If the counterpart seems to be acting unethically, even considering what you know about his culture:
 - Do not explicitly point out to the counterpart that you believe his actions are unethical.
 - Take time to ask follow up questions and obtain more information that might explain counterpart's behavior.

Endnotes

- ¹ Christopher Pala, *Bribery Case Hinges on National Security*, Wash. Times, Dec. 17, 2005, at A08.
- ² International Eurasian Institute for Economic and Political Research, *Voice of Democracy* (Kazakhstan 21st Century Foundation 2003), at http://iicas.org/libr_en/vd/libr_07_04_03_kp_0.htm (last visited July 8, 2006); Integrated Regional Information Networks, *Kazakhstan: Corruption Remains a Major Cause of Concern* (UN Office for the Coordination of Humanitarian Affairs 2004), available at http://www.irinnews.org/report.asp?ReportID=41311&SelectRegion=Central_Asia&SelectCountry=KAZAKHSTAN (last visited July 8, 2006).
- ³ See Philip M. Nichols, *The Fit between Changes to the International Corruption Regime and Indigenous Perceptions of Corruption in Kazakhstan*, 22 U. PA. J. INT'L ECON. L. 863,878-79, 908 (2001).
- ⁴ Ethics is used synonymously with morality and values. See WILLIAM F. FOX, JR., INTERNATIONAL COMMERCIAL AGREEMENTS: A PRIMER ON DRAFTING, NEGOTIATING AND RESOLVING DISPUTES 206 (3d ed. 1998).
- ⁵ Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1237-39 (1988).
- ⁶ Thomas Donaldson, *Values in Tension: Ethics Away From Home*, HARV. BUS. REV., Sept.-Oct. 1996, at 48, 49.
- ⁷ *Id.* at 48; Wangerin, *supra* note 5, at 1237, 1239.
- ⁸ Donaldson, *supra* note 6, at 52-53.
- ⁹ FOX, *supra* note 4, at 207.
- ¹⁰ *Id.*
- ¹¹ MODEL RULES OF PROF'L CONDUCT R. 4.1 (2004).
- ¹² MODEL RULES OF PROF'L CONDUCT R. 4.1 cmt. 2 (2004).
- ¹³ Craig P. Ehrlich & Dae Seob Kang, *Independence and Corruption in Korea*, 16 COLUM. J. ASIAN L. 1, 19 (2002).
- ¹⁴ Nicola W. Palmieri, *Good Faith Disclosures Required During Precontractual Negotiations*, 24 SETON HALL L. REV. 70, 120 (1993); STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES 80 (2003).
- ¹⁵ GOLDBERG, *supra* note 14, at 80.
- ¹⁶ FOX, *supra* note 4, at 210.
- ¹⁷ Palmieri, *supra* note 14, at 73.
- ¹⁸ *Id.* at 210-11.
- ¹⁹ Kwok Leung & Michael W. Morris, *Justice Through the Lens of Culture and Ethnicity*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 343, 350 (Joseph Sanders & V. Lee Hamilton eds., 2001).
- ²⁰ *Id.*, at 349.
- ²¹ *Id.* at 350.
- ²² *Id.* at 356.
- ²³ *Id.*
- ²⁴ Ehrlich & Kang, *supra* note 13, at 4.
- ²⁵ Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT'L L. REV. 1307, 1308 (2004); Nichols, *supra* note 3, at 867-68.

- ²⁶ Donaldson, *supra* note 6, at 58.
- ²⁷ Nichols, *supra* note 3, at 895.
- ²⁸ Nichols, *supra* note 25, at 1310.
- ²⁹ *Id.*
- ³⁰ Ehrlich & Kang, *supra* note 13, at 23.
- ³¹ *Id.*
- ³² Nichols, *supra* note 25, at 1311-20.
- ³³ *Id.*
- ³⁴ Barbara Crutchfield George et al., *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485, 492 (2000); Ehrlich & Kang, *supra* note 13, at 7.
- ³⁵ FOX, *supra* note 4, at 211.
- ³⁶ 15 U.S.C. § 78dd-3(a) (2006); see Oren Gleich & Ryan Woodward, *Twentieth Survey of White Collar Crime: Foreign Corrupt Practices Act*, 42 AM. CRIM. L. REV. 545, 545 (2005).
- ³⁷ Gleich & Woodward, *supra* note 36, at 557.
- ³⁸ George, *supra* note 34, at 485.
- ³⁹ *Id.* at 501.
- ⁴⁰ Ehrlich & Kang, *supra* note 13, at 3.
- ⁴¹ *Id.* at 12.
- ⁴² *Id.* at 5.
- ⁴³ See Ezekiel Solomon, *International Business Negotiations in Australia*, in THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS 63-78, 71 (James R. Silkenat & Jeffrey M. Aresty eds., 1994).
- ⁴⁴ Donaldson, *supra* note 6, at 56.
- ⁴⁵ Nichols, *supra* note 3, at 870-71.
- ⁴⁶ Ehrlich & Kang, *supra* note 13, at 5.
- ⁴⁷ Gleich & Woodward, *supra* note 36, at 558.
- ⁴⁸ *Id.*
- ⁴⁹ Nichols, *supra* note 3, at 868.
- ⁵⁰ Donaldson, *supra* note 6, at 62.
- ⁵¹ *Id.*
- ⁵² *Id.* at 58.
- ⁵³ *Id.*
- ⁵⁴ Oussama Arabi, *Constitutional Aspects of Conflict Resolution in Classical Islam*, in CONFLICT RESOLUTION IN THE ARAB WORLD: SELECTED ESSAYS 72-92 (Paul Salem ed., 1997).
- ⁵⁵ Steven R. Salbu, *Law and Conformity, Ethics and Conflict: The Trouble with Law-Based Conceptions of Ethics*, 68 IND. L.J. 101, 101 (1992).
- ⁵⁶ See Joseph Sanders & V. Lee Hamilton, *Justice and Legal Institutions*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 3-11, 4 (Joseph Sanders & V. Lee Hamilton eds., 2001).
- ⁵⁷ Donaldson, *supra* note 6, at 52.
- ⁵⁸ *See id.*

- ⁵⁹ Peter Just, *Conflict Resolution and Moral Community Among the Dou Donggo*, in CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES 107, 114-15 (Kevin Avruch et al. eds., 1991).
- ⁶⁰ *Id.* at 115.
- ⁶¹ *Id.*
- ⁶² *Id.* at 113.
- ⁶³ Pat K. Chew, *The Rule of Law: China's Skepticism and the Rule of People*, 20 OHIO ST. J. ON DISP. RESOL. 43 (2005).
- ⁶⁴ *Id.* at 50
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ See Ehrlich & Kang, *supra* note 13, at 7-8.
- ⁶⁸ Chew, *supra* note 63, at 58.
- ⁶⁹ Robert D. Gulbro & Paul Herbig, *Cultural Differences in International Negotiating*, 11 INT'L J. OF VALUE-BASED MGT. 265-73, 266 (1998).
- ⁷⁰ Leung & Morris, *supra* note 19, at 345.
- ⁷¹ Kwok Leung & Kwok-Kit Tong, *Justice Across Cultures: A Three-Stage Model for Intercultural Negotiation*, in THE HANDBOOK OF NEGOTIATION AND CULTURE 313-33 (Michele J. Gelfand & Jeanne M. Brett eds., 2004).
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Id.*
- ⁷⁵ *Id.*
- ⁷⁶ FOX, *supra* note 4, at 206.
- ⁷⁷ Just, *supra* note 59, at 116.
- ⁷⁸ See Sanders & Hamilton, *supra* note 56.
- ⁷⁹ Leung & Morris, *supra* note 19, at 351.
- ⁸⁰ Jean Hampton, *Correcting Harms versus Righting Wrongs: The Goal of Retribution*, 39 UCLA L. Rev. 1659 (1992).
- ⁸¹ Leung & Morris, *supra* note 19, at 351-52.
- ⁸² Sanders & Hamilton, *supra* note 56, at 7-8.
- ⁸³ This illustration is a shortened version of a situation described in *The Chinese Nephew*, in HOW PEOPLE NEGOTIATE: RESOLVING DISPUTES IN DIFFERENT CULTURES 93-104 (Guy Olivier Faure ed., 2003).
- ⁸⁴ Mary Patrice Erdmans, *Immigrants and Ethnics: Conflict and Identity in Chicago Polonia*, in THE CONFLICT AND CULTURE READER 169-75 (Pat K. Chew ed., 2001).
- ⁸⁵ *Id.*
- ⁸⁶ *Id.*
- ⁸⁷ Harvey Cox et al., *World Religions and Conflict Resolution*, in RELIGION, THE MISSING DIMENSION OF STATECRAFT 266, 266 (Douglas Johnston & Cynthia Sampson eds., 1994).
- ⁸⁸ *Id.* at 266.
- ⁸⁹ *Id.* at 273.

⁹⁰ *Id.* at 271-72.

⁹¹ *Id.* at 273.

⁹² *Id.* at 269.

⁹³ *Id.* at 270.

⁹⁴ *Id.*

⁹⁵ FOX, *supra* note 4, at 33.

⁹⁶ *Id.* at 34.

⁹⁷ *Id.* at 35.

⁹⁸ *Id.* at 34.

⁹⁹ *Id.*

¹⁰⁰ Laura Nader, *Harmony Models and the Construction of Law*, in CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES 41, 41 (Kevin Avruch et al. eds., 1991).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 46-47; *see also* MARTIN CHANOCK, LAW, CUSTOM, AND SOCIAL ORDER: THE COLONIAL EXPERIENCE IN MALAWI AND ZAMBIA 79-80 (1985).

¹⁰⁴ Religious Tolerance, *Shared Belief in the "Golden Rule": Ethics of Reciprocity*, at <http://www.religioustolerance.org/reciproc.htm> (last visited July 8, 2006) (citing Talmud, Shabbat 31a; Tobit 4:15; Number 13 of Iman "Al-Nawawi's Forty Hadiths"); *Muslims' Relationship with Non-Muslims: What Does Islam Say About the Way Muslims Should Treat Non-Muslims*, at http://www.spiritual.com.au/articles/religion/nonmuslim_ffares.htm (last visited July 8, 2006) (citing Hadith); *How Should Jews Treat Gentiles?*, at <http://elijahnet.net/How%20Should%20Jews%20Treat%20%23E64.html> (last visited July 8, 2006).

¹⁰⁵ "An estimated 87 percent of native-born citizens are nominally Roman Catholic, but only 20 percent regularly participate in worship services." Bureau of Democracy, Human Rights, and Labor, *Italy: International Religious Freedom Report 2005*, U.S. Department of State, at <http://www.state.gov/g/drl/rls/irf/2005/51560.htm> (last visited July 8, 2006).

¹⁰⁶ E. Victoria Shook & Leonard Ke'ala Kwan, *Ho'oponopono: Straightening Family Relationships in Hawaii*, in CONFLICT RESOLUTION: CROSS-CULTURAL PERSPECTIVES 214 (Kevin Avruch et al. eds., 1991).

¹⁰⁷ *Id.* at 214 (citing Edmunds, S., *Geothermal Energy Development in Hawai'i: A Decade of Conflict*, in UNIVERSITY OF HAWAII PROGRAM ON CONFLICT RESOLUTION WORKING PAPER SERIES 1987-4 (1987)).

¹⁰⁸ *See* Erdmans, *supra* note 83, at 172-73.

¹⁰⁹ Donaldson, *supra* note 6, at 56, 62.

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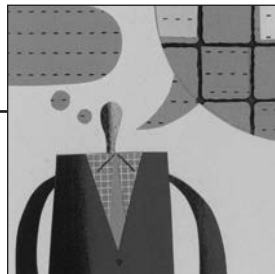
PART THREE

Specific Tools for Cross-Cultural Negotiation

Part Two of this book discussed and provided tools for U.S. negotiators concerning subjects touching almost every negotiation. This part continues to alert U.S. negotiators as to important issues; however, the issues in this part have a more specific application and they might not be present in every negotiation.

This part begins by examining the intricacies in setting an agenda in a cross-cultural negotiation, and it provides a toolbox on how to manage any difficulties encountered during this process. Next, this part examines indirect and non-verbal communication, and it provides tools on issues such as recognizing communication styles and proceeding via the written, rather than spoken, word.

Additionally, this part introduces issues relating to third parties that may be called into a cross-cultural negotiation, such as an interpreter or a mediator. Finally, this part explores issues arising during or after a negotiation, such as when there is a change in the negotiators or when a negotiated agreement has been breached.



*Collision Course:
Avoiding Clashes on Agenda in
Cross-Cultural Negotiations*

Elizabeth M. Worthing

A b s t r a c t

Agreeing on an agenda is the first step to a successful negotiation. While the process becomes inherently more complicated in cross-cultural negotiations, establishing an agenda can be an opportunity to establish a rapport between the parties and set a precedent for a good working relationship. Despite the vast cultural differences existing worldwide, a willingness to adjust not only prevents these differences from becoming insurmountable problems but also turns these differences into opportunities to work together.

Through learning about different approaches to negotiations, U.S. negotiators can avoid cross-cultural clashes about the agenda.

A well-prepared U.S.-based agenda can be adapted to serve as an excellent starting point for effectively negotiating in almost any setting.

On the other hand, using the agenda of a counterpart and reciprocating could establish a solid foundation on which to build an agreement and a lasting working relationship.

I. Introduction

An agenda is frequently the first agreement reached in a negotiation. An astute negotiator might use this opportunity to establish a rapport between the parties and set a precedent for a good working relationship. For the less astute negotiator, trying to set an agenda could end a negotiation before it even starts. Consider the following example:

The United States and another country, Proposia, would like to conduct a three-week joint exercise next fall in Proposia. About 500 military personnel would be involved from each nation. There is no “status of forces” agreement or any other existing agreement between these forces, necessitating a negotiation for a number of matters. Representatives from both forces meet to discuss these issues.

After the introductions have been completed, the U.S. negotiator begins by saying: “I have identified four distinct issues that need to be discussed. These include...” However, the Proposian counterpart interrupts at this point: “That will be unnecessary as we have prepared a full proposal: The U.S. personnel should observe Proposian domestic laws, should not attempt to convert any Proposians to their religious beliefs, and should avoid socialization with Proposian troops. Also, any problems that arise will be handled by Proposian courts.”

The U.S. negotiator is stunned by this full proposal, despite being willing to agree to parts of it. The U.S. negotiator again suggests discussing each issue individually as dictated by the agenda that the United States prepared. The Proposian counterpart insists that it is necessary to know the entire content of the agreement but that the U.S. negotiator is free to make a full proposal in response. The U.S. negotiator replies that doing so would be impossible.

The negotiators have reached an impasse before the negotiation has even substantially begun. If nothing changes, the parties will leave the negotiating table and both will suffer from not reaching an agreement. The tools outlined in this chapter, however, will equip a U.S. negotiator from avoiding impasse at this stage. A willingness to adjust may prevent these differences from becoming insurmountable problems. A U.S. negotiator can learn about different approaches to negotiations, including those identified in Chapters 2 and 3, and use that newly gained knowledge to avoid cross-cultural clashes about the agenda. Through examining the way that U.S. negotiators are trained to approach agendas and contrasting it against various cross-cultural approaches, it becomes possible to use a U.S.-based agenda as a starting point for effectively negotiating in almost any setting.

II. Prevalent U.S. Approach to Agendas

Most U.S. negotiators recognize the importance of preparing for a negotiation, but they do not always recognize the importance of the agenda. For many, the agenda is simply a list of issues that are jotted down at the end of doing research and preparing for the negotiation. The negotiator does not always consider the order in which he wishes to address the issues or how to handle changes to the agenda by the negotiating counterpart. Once an agenda is set in the U.S. negotiator’s mind, it is not easily changed. Tradition may account for this steadfastness. In the United States, organization tradition is an integral part of business, and therefore negotiation. Indeed, rules even exist on how to run meetings. *Robert’s Rules of Order*, the preeminent text on running a meeting, states that “[a]fter an agenda or program has been adopted by the assembly, no change can be made in it except by a two-thirds vote, a vote of a majority of the entire membership, or unanimous consent.”¹ This inflexibility can be a major roadblock to achieving negotiation goals.

Many U.S. negotiators focus on controlling the agenda as a way to establish dominance and as a way to set the tone of the negotiation. Practitioners’ guides commonly give advice on how to control the agenda.² A negotiator, according to these texts, is taught to begin “the negotiation the way you want to and assert control.”³ Often, the U.S. negotiator will try to be the first to present an agenda because he may believe he gains an advantage and control over the entire negotiation by controlling the agenda.

Under this approach, flexibility is not encouraged. In fact, it is sometimes discouraged: “If you want to be a problem solver, it means setting the style and keeping it set.”⁴ This type of domineering approach may be useful when negotiating with a U.S. counterpart, but in cross-cultural negotiations, a hardnosed approach to the agenda may overtake the objective of the negotiation: reaching a workable agreement.

III. Letting Go

If a U.S. negotiator is too focused on controlling the agenda, he may lose sight of the big picture. The end goal is not to control the agenda, but to get the job done and reach an agreement. Controlling the agenda is not always possible or necessary, and a good negotiator will be able to reach a favorable outcome in any event. Once a U.S. negotiator realizes that a clash could exist between the negotiator's and his counterpart's approach, he should consider reciprocity as an alternative to controlling the agenda.

Reciprocation, in this context, means attempting to adopt the negotiation approach of the counterpart as a means to help facilitate open communication and to get results. A negotiator may worry that reciprocating the approach of one's negotiating counterpart may be considered 'giving in' and that an advantage will be lost. However, as stressed throughout this book, reciprocity is an excellent way to establish a good working relationship during cross-cultural negotiations. As emphasized in Chapter 5, the earlier that this relationship begins and the parties learn to trust one another, the more likely it is that an agreement will be reached.

For U.S. negotiators who are set in their ways, it may be much easier to reciprocate a culturally different approach when discussing the agenda than when deciding substantive issues. 'Giving in' on the procedure puts the U.S. negotiator in the advantageous position of having already made concessions when discussing the substance of the negotiation. A U.S. negotiator can point to these procedural concessions as examples of willingness to cooperate and of how far he has already moved from the original conception of the agreement without ever having adjusted on substance. For this reason, it can be to a U.S. negotiator's advantage to let go of the idea of controlling the agenda and instead to reciprocate to the best of the negotiator's ability.

IV. Potential Clashes & How to Address Them

The following section contrasts some of the negotiation approaches first introduced in Chapters 2 and 3 of this book. As noted in those chapters, the list is not exhaustive. As Professor Jeanne Brett of Northwestern University explains, the nuances of culture can shape a negotiator's strategy and style.⁵ Cultures vary widely and it would be impossible to examine every cultures' approach to negotiation. However, the following sections address some of the different styles found outside of the United States.

While the U.S. approach to setting agendas is far from perfect, the preparation and careful thought that go into an agenda can still be useful. A U.S. agenda incorporates research and issue spotting, creating a wealth of raw information in one document. Once a U.S. negotiator is adept at identifying which negotiation approach is being used, the U.S.-based agenda can be used as a starting point in a variety of cross-cultural negotiations. By examining the potential clashing points between the U.S. approach and a variety of other negotiation approaches, one can see how the U.S.-based agenda can become a useful tool in a cross-cultural negotiation, no matter what negotiation approach is being employed.⁶

A. Community Based

The community-based negotiator is not only motivated by wanting to reach an agreement but also by wanting the final agreement to benefit the community at large. This motivation may contrast sharply if the U.S. negotiator's tendency is to be motivated by monetary and business concerns. In this situation, it is not that a U.S. negotiator is unconcerned about the effect an agreement may have on a community. It is simply that the agreement's effect on the community is not necessarily a "deal breaker."

Despite being somewhat unfamiliar to U.S. negotiators, the community-based negotiating counterpart's desire for public good can be used by a U.S. negotiator to benefit the negotiation. A U.S. negotiator could use the information contained in the U.S.-based starting point agenda to demonstrate a direct benefit to the negotiating counterpart's community. Another option would be to illustrate how *not* discussing the issues in the agenda would negatively affect the community in question. However, as discussed in Chapter 8, one should take care not to sound threatening when discussing possible negative effects.

If the U.S. negotiator is unable to identify a direct effect on the community from the negotiation, the U.S. negotiator can stress that the negotiation will maintain the status quo or that it will, at least, not negatively affect the community. If the U.S. negotiator is aware that the negotiation may negatively affect

the community, he should work with his community-based negotiation counterpart to ascertain what type of benefits the community needs, whether monetary or otherwise, and explore whether providing that benefit can be built into the agreement.

B. Ritual: Haggling

For some cultures there is a ritual, or procedure, that surrounds a negotiation. One common example of a negotiating ritual is haggling. While U.S. negotiators may associate haggling with marketplaces, it is commonly used in a variety of other negotiations. Even in the United States, it is not uncommon to run across haggling. In the United States, haggling is frequently called “positional bargaining.” A basic review of positional bargaining techniques may be beneficial to a U.S. negotiator before attempting to negotiate with a haggler.⁷ Chapter 3 discusses using a reciprocal approach in a variety of settings. Once familiar with positional bargaining techniques, the U.S. negotiator can use the previously prepared agenda to uncover the best starting position, how and when to move between positions, and what position not to go below. The U.S.-based agenda can also be used to justify positions and moving from established positions. Just as before, the U.S.-based agenda is a wealth of information that simply must be framed in a way that is reciprocal to a negotiation counterpart’s approach.

C. Full Proposal

As in the example in the introduction to this chapter, some cultures prefer to negotiate by presenting a full proposal, either initially or in response to their negotiating counterpart’s full proposal. As illustrated above, the clash between the full proposal approach and the U.S.-based agenda has a high probability of deadlock. Instead of insisting upon discussing issues separately, it may be beneficial for a U.S. negotiator to agree to reciprocate the full proposal approach.

A U.S. negotiator can easily use the previously prepared agenda to compose a full proposal. All of the information about what issues the proposal needs to include and approximate outcomes the U.S. negotiator would prefer for each issue is already included in the prepared agenda. The U.S. negotiator simply needs to synthesize the information included in the agenda into a full proposal for the agreement. This adjustment is especially effective if the negotiating counterpart has made the first full proposal. In that case the agenda can be used to help form a response to the initial proposal.

D. Hierarchical

In some cultures, social hierarchy may directly affect a negotiation and its outcome.⁸ This can become a problem if the U.S. negotiator and the negotiating counterpart are not considered to be of the same status. If the negotiating counterpart feels that he is of a higher status than the U.S. negotiator, he may attempt to dominate the negotiation and not make any movements towards a joint agreement. On the other hand, if the negotiating counterpart feels that he is of lower status than the U.S. negotiator, he may not wish to proceed with the negotiation for fear of being pressured into an unfavorable agreement.

If the negotiation is dictated by hierarchy and the U.S. negotiator’s counterpart is considered higher in the relevant hierarchy, the U.S. negotiator may wish to refer to a superior during the conversation. The U.S. negotiator may also indicate that the superior had direct contact with or influence on the agenda presented. Additionally, the negotiator may wish to ask the negotiating counterpart to proceed with this negotiating session, but to schedule future meetings with the proper U.S. equivalent.

If the U.S. negotiator’s counterpart is considered lower in the relevant hierarchy, the U.S. negotiator should be careful not to abuse the apparent power of the situation. When in this situation, the U.S. negotiator may be able to dictate the agenda; however, the astute negotiator will be careful not to push the negotiating counterpart into a “take my ball and go home” situation. If the U.S. negotiator gives clear justification for why certain items are included on the agenda, the counterpart may feel as if power has been equalized between the parties. For more information on the role of status in cross-cultural negotiations, please refer to Chapter 8.

E. Saving Face

In some cultures, the idea of saving face, i.e., avoiding shame or embarrassment, and not causing others to lose face is extremely important.⁹ This is particularly common in Eastern cultures. A negotiating counterpart may never actually say “no” or directly reject an issue, but that does not mean the counterpart agrees with the U.S. negotiator’s formulation of the issues. Therefore, a U.S. negotiator should tread lightly when proceeding with issues that his negotiating counterpart seems quiet or only lukewarm about discussing.

Similarly, the U.S. negotiator should avoid offending the counterpart when rejecting proposed issues for the agenda. A veiled rejection is usually highly effective when dealing with this type of negotiation approach. Such rejection can always be made more direct if the meaning has been lost on the counterpart. An interpreter, too, can be an invaluable resource for a U.S. negotiator attempting to address this type of delicate situation. For more advice on the effective use of an interpreter in cross-cultural negotiations, refer to Chapter 11.

V. Conclusion

Agreeing on an agenda is first step to a successful negotiation. While the process becomes inherently more complicated in the cross-cultural context, setting the agenda can still be an opportunity to establish a rapport between the parties and set a precedent for a good working relationship. Despite the cultural differences around the world, a willingness to adjust not only prevents these differences from becoming insurmountable problems but also turns these differences into opportunities to work together.

Through learning about different approaches to negotiations, U.S. negotiators can avoid cross-cultural clashes about the agenda. A well-prepared U.S.-based agenda can be adapted to serve as an excellent starting point for effectively negotiating in almost any setting. Through letting go of control over the agenda and instead reciprocating to the best of the negotiator’s ability, a U.S. negotiator can establish a solid foundation on which to build an agreement and lasting working relationship.

Toolbox for Negotiators:

Prepare:

- consider what issues you would like to discuss in the negotiation
- complete all applicable cultural research
 - look for clues about what negotiation approach may be used
- complete a U.S.-based agenda, keeping in mind that it will most likely serve as a starting point

Perceive:

- attempt to identify which negotiation approach your counterpart is utilizing
 - remember it may be helpful to allow the counterpart to speak first or make the first proposal in order to have more to observe
- if the negotiation approach is not immediately identifiable, note traits that you can reciprocate

Proceed:

- reciprocate your counterpart’s negotiation approach as much as possible

Endnotes

¹ RONR (10th ed.), p. 360, l. 24-27.

² THOMAS F. GUERNSEY, A PRACTICAL GUIDE TO NEGOTIATION 46-49 (1996); *see also* DONALD G. GIFFORD, LEGAL NEGOTIATION: THEORY AND APPLICATIONS 75-78 (1989).

³ GUERNSEY, *supra* note 2, at 47.

⁴ *Id.* at 48.

⁵ JEANNE M. BRETT, NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES 6-7 (2001).

⁶ A U.S. negotiator may sometimes find he is dealing with a negotiating counterpart of a different cultural background, but with a negotiating approach that is strikingly similar to the general U.S. approach. The U.S. negotiator should not feel as though he has to address cultural differences if his counterpart has made it clear that he is comfortable proceeding with the U.S. approach. While there may still be underlying cultural differences, a large number of foreign negotiators are being trained in styles similar to those being taught in the United States. If this is the case, the U.S. negotiator may wish to allow his counterpart to put those skills to the test; however, in this situation, it may serve the U.S. negotiator well to periodically assess whether or not the negotiation has maintained this U.S. approach or switched to a different bargaining approach.

⁷ Michael Meltsner & Philip G. Schrag, *Negotiating Tactics for Legal Services Lawyers*, 7 CLEARINGHOUSE REV. 259, 259-63 (1973). The tactics listed in this article are frequently cited as examples of what not to do for U.S. negotiators trained in the methods of alternative dispute resolution. Indeed, the authors of the article do not even advocate their use. *Id.* Although somewhat severe, many of the techniques discussed are useful if the negotiator is participating in a strictly positional, or haggling, negotiation.

⁸ BRETT, *supra* note 5, at 100-04.

⁹ *See* David A. Victor, *Cross-Cultural Awareness*, in THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS: A COMPARISON OF CROSS-CULTURAL ISSUES AND SUCCESSFUL APPROACHES 15, 50 (James R. Silkenat & Jeffrey M. Aresty eds., 1994).

Channels of Information Exchange: Indirect and Non-Verbal Communication

Elizabeth Stanfield

A b s t r a c t

Communicating information accurately and thoroughly is an essential goal of negotiation. The accuracy of information exchanged between negotiators of different cultures can be improved by focusing on the mode of communication, the non-verbal cues of the parties, and questions and issues.

This chapter contains guidelines to choose which type of communication suits which culture. It also includes information about media awareness.

I. Introduction

In his response to a question from an American wire-service correspondent about conditions under which the blockade might be ended, Stalin did not mention the reason given by the Soviets for imposing the blockade in the first place – the new West German currency. Dean Acheson, then U.S. Secretary of State, interpreted this as a signal that “Moscow was ready to raise the blockade for a price.” He therefore signaled back via a Washington press conference that the United States was prepared to negotiate but would prefer using a more private channel.¹

One of the most important pieces of cross-cultural negotiation is communication. Negotiations typically encompass an exchange of information, leading to proposals and culminating in a contract. Communicating information accurately and thoroughly is of primary importance to a negotiation, and communicating across different cultures can challenge the clarity of information presented in a number of ways. Among other difficulties, non-verbal information can be lost in the mode of communication and non-verbal communication can be misinterpreted.

Negotiators can communicate in a variety of ways. Large amounts of data can be sent electronically, and the parties may never need to meet face to face. Paper can be shipped anywhere in the world, and video-phones can add a human element to teleconferencing. However, this relative ease of communication can also have its drawbacks. For example, e-mail can lack tone, and teleconferencing can lack non-verbal cues.

The mode of communication and the way questions and issues are framed are both important. Requests for information or other questions in the negotiation process may be stated in the best way for a particular culture as a tactical way to increase the clarity of communication. Negotiators can also frame issues in the best way for disparate cultures and increase communication effectiveness by paying attention to the culture’s needs.

Along with verbal aspects of communication, non-verbal cues by the counterpart as well as the negotiator can influence a negotiation. These cues may distort the message if used unwittingly. Cues vary from culture to culture, but some general guidelines are available to make the communication between negotiating parties clearer.

Another interesting aspect of negotiation, particularly between different cultures, is the way a negotiated agreement can affect a society. The method of communication through which an agreement is reached can both affect the agreement itself and the way the society views the agreement. In today’s society, large international agreements and negotiations can have an impact larger than that on the parties themselves, depending on how the public perceives the agreement. The public’s perception, then, can then affect the negotiators.

II. Practical Issues of Communication

All negotiations require communication. When parties cannot meet face-to-face, they will have to communicate by other means, such as by speaking over the telephone, faxing, or mailing. Which mode of communication is best for which negotiation may depend on the counterpart’s culture.

A. Properties of Communication

Each method of communication has certain traits that make it suitable to use in certain negotiations. Communication can be immediate and simultaneous, such as phone conversations, or more removed, such as writing letters sent over e-mail or regular mail. Communication methods can also be either rich in detail or pared down to the essentials. Face-to-face conversation is considered high in detail because the parties experience both verbal and non-verbal cues that can help them interpret the message. E-mail conversations, conversely, have fewer accompanying cues.² Text-only conversations, such as e-mail or written communications, can have some detrimental effects. The information is pared down to the essentials, and the parties learn less about each other. Written communications, too, may be more informal, containing lies, curse words, and outbursts. Exchanging at least some information over more immediate methods, such as the telephone, can minimize these problems.³ Text-only communication can also have benefits. More information can be transmitted at one time, such as the content of spreadsheets or reports. Text communications also give the recipient time for each person to logically look at the information.

Similarly, parties who may react physically or emotionally to the presence of the other will have fewer cues on which to react. Finally, communicating in text can minimize anger or class differences.⁴

B. High-Context vs. Low-Context Cultures

The expression “low context” has many meanings. Low-context language assumes that the reader has no prior knowledge of the subject other than the content of the writing. A novice could read a low-context set of instructions and immediately follow them because all of the information is available in the instructions themselves.⁵ A cooking recipe is the quintessential example of a low-context message because the reader need not look any farther than the recipe to prepare the dish.

Low-context cultures are also characterized by a direct approach to communication, with emphasis on logic and clear arguments. Intention and meaning are “best expressed through explicit verbal messages.”⁶ These messages convey thoughts, feelings, and opinions clearly and directly. Cultures that laud individual effort and decisions use low-context language. The American culture is considered a low-context culture when dealing with others. Information and knowledge are generally rewarded more than relationships, which may frustrate members of a high-context culture.⁷

“High context” communication assumes the reader has prior knowledge of the subject matter discussed. A high-context set of instructions to build a motor, for example, might assume that the reader was a machinist and would not explain basic terms or would include diagrams with little accompanying text. If the reader did not have prior knowledge of the subject matter, he may or may not be able to understand the communication.⁸

High-context cultures have an indirect communication style and assume the listener will read between the lines to decode the true meaning of the message. Social norms, rules, and other contexts may also be part of the message. These cultures can be more formal and have a self-effacing style.⁹

In contrast to more individualistic cultures, high-context cultures may reward relationships more than individual effort. High-context cultures or groups are often tight-knit groups already having prior knowledge of a situation. Relationships may already exist in this group, and continued harmony is highly important. However, an outsider may feel lost, not knowing what is going on. A member of a low-context culture may wonder if all the information is being shared, or if he is being “kept in the dark.”¹⁰

C. Non-Verbal Communication

Culture dictates non-verbal communication practices to a high degree. Some gestures or symbols are known only within a particular subculture; some tones of voice are only used within a particular subculture. Therefore, knowing these specific symbols and tones of voice may be helpful to the negotiator.¹¹ Some guidelines on non-verbal communication, however, do exist.

People communicate non-verbally in many different ways. The faces people make can convey disgust, anger, or amusement. Gestures made with the hands or specific body postures can convey emotions, such as fatigue or frustration. Even though the voice is used to communicate information, the tone of the voice is a non-verbal cue, and can convey emotion. Non-verbal cues, however, can confuse negotiators of a different culture if the cultures have conflicting ideas of what these non-verbal cues mean. Breathiness, volume, and tempo of speech are just a few such non-verbal cues signifying different things to different cultures. To Americans, loud voices can mean anger or excitement. People in other cultures use loud voices as the default mode of polite conversation or as a way to express sincerity.

The face, too, can convey many things, particularly the gaze. Some cultures consider direct eye contact as an affront, and others view the same action as merely paying attention to what the speaker says. However, most strong emotions in the face seem universal, such as “happiness, surprise, contempt, disgust, fear, anger, and sadness.”¹²

Another notable non-verbal cue is the space between the people in the discussion. People in some Middle Eastern cultures, for example, tend to prefer to stand close to the person with whom they are talking. Others, such as Australians, may prefer to stand farther away.

Although watching for non-verbal cues is important, the non-verbal cues of the counterpart may not carry the same meanings as within the negotiator’s culture. Avoiding culture-specific non-verbal cues and

maintaining a low physical profile can help a negotiator keep from offending the counterpart. Equally important is explaining and asking about cues that might cause misunderstandings.

D. E-mail and Other Forms of Written Communication

E-mail messages, faxes, and other written forms of communication have the obvious disadvantage of not including non-verbal cues, such as tone. Text-based communications have other drawbacks and advantages. For instance, writings can be formal, with the full force of law. Negotiators in a high-context culture may prefer to reach a consensus before anything is written down. Conversely, people in a low-context culture may prefer written proposals be completed early to explain and specify the information.

E-mail and faxed communications are not considered as formal as other written communications. E-mail, in particular, can be viewed as private communications with no legal merit. Writers, communicating private matters, may inadvertently disclose damaging information. For example, former Federal Emergency Management Agency director Michael Brown sent many e-mail messages while dealing with Hurricane Katrina, and although he expected the messages to be private, he was subsequently questioned about them during a Congressional inquiry.¹³

Sending papers through the mail may be considered more formal than electronic communications. Those in cultures who prefer to reach consensus before writing a contract may not wish to communicate through paper due to the formalities attached to such a form. Conversely, people in cultures valuing information may prefer communicating in paper prior to reaching a negotiated contract.

E. Telephone and Other Verbal Communication

The biggest disadvantage with voice-only communication is the lack of non-verbal cues. Negotiators who rely heavily on non-verbal cues may prefer another communication method. Voice-only communications, too, are rarely recorded and often viewed as informal.

A less-obvious problem with telephone and other voice-only communication is static on the line and other technical difficulties. The counterpart may not understand every word said, especially when the cross-cultural negotiation already suffers from language barriers. In light of these difficulties, telephone communications may be misheard or misinterpreted.¹⁴

When choosing a method of communication, convenience and familiarity may be important factors for a negotiator to consider.¹⁵ Depending on where the parties are physically located, only certain means of communication may be available. Additionally, people in some cultures may not be technologically advanced enough to have video-conferencing or other highly technical means of communication. However, a negotiator can always supplement one method of communication with others to clarify the meaning of the information exchanged.

III. Societal Effects and the Mode of Communication

Negotiations do not always occur between two individuals. Sometimes, the actual parties are large corporations, countries, international organizations, or factions within a country.¹⁶ Such negotiations can have far-reaching effects, like a declaration of peace or war. Often, negotiations of this magnitude are carried out in the public eye. The media can inform both the negotiators and the public about the status of the negotiation.¹⁷ The negotiators, through leaks or press conferences, can inform the public, while the public, through opinion polls and independent reports, can influence the negotiations.¹⁸ The success or failure of a particular negotiation may depend on the public opinion, especially when the negotiation concerns matters of war and peace.¹⁹ Furthermore, the conclusion of the negotiation may be dependent on the participation of the community, such as when the public must ratify any agreement reached.²⁰

IV. Conclusion

Negotiators have many tools at their disposal. One tool is the way parties communicate with each other. Negotiators should strive for the greatest possible understanding between the parties and can use the mode of communication to help with this goal. The following toolbox is a non-exhaustive checklist of ideas negotiators can use when considering the issues discussed in this Chapter.

Checklist of Ideas

- *Fostering greater understanding:*
 - **Patience** – Especially when misunderstandings occur. Misunderstandings are particularly common in cross-cultural negotiation.
 - **Ask questions** – If a message is unclear, ask what the other person meant to communicate.
 - **Explain** – If the other person appears to have misunderstood you, explain why you believe there was a misunderstanding and what you meant by your communication.
 - **Do not assume** – Try not to assume what the other person meant or what the counterpart thought you meant.

Choosing Modes of Indirect Communication

- **Unavoidable** – Sometimes there is no way to communicate other than a couple of basic methods.
- **Supplement** – Supplement your chosen method of communication with other methods. For example, if the negotiation is carried out solely by e-mail, use the phone to supplement, when possible.
- **Determine whether the counterpart is from a low- or high-context culture** – What depth of knowledge do the parties share? Does the counterpart come from a culture that rewards individual efforts or are decisions reached in groups? Does the person value knowledge more than relationships? These questions can help the negotiator determine if the counterpart uses low- or high-context communication and which mode of communication will be most effective.
- **Determine the appropriate density of information.** After determining if the counterpart is from a low- or high-context culture, determine the proper density of the communication. Those in low- context cultures prefer a high density of information, while those in high-context cultures prefer a low density.
- **Formality** – People in high-context cultures prefer formality but less dense information, and they often prefer to reach a consensus before memorializing any agreement in writing. Those in low-context cultures prefer less formal methods of communication and high-density communications.

Dealing With Non-Verbal Cues

- **Observe** – Watch the non-verbal cues of the other person. Try to be aware of what messages such cues are conveying.
- **Refrain from using symbols** – Culture-specific symbols are easily misunderstood.
- **Be cautious when using non-verbal cues** – Try to refrain from using cues such as gestures, unless the observations of the culture indicate that these cues are used.
- **Research** – Research may uncover non-verbal cues, culture-specific symbols, and other cultural indicators.

Endnotes

- ¹ W. Phillips Davison, *News Media and International Negotiation*, 38 PUB. OPINION Q. 174, 180 (1974).
- ² Kathleen L. McGinn & Rachel Croson, *What do Communication Media Mean for Negotiators?*, in THE HANDBOOK OF NEGOTIATION AND CULTURE 334, 338 (Michele J. Gelfand & Jeanne M. Brett eds., 2004).
- ³ *Id.* at 339.
- ⁴ *Id.* at 357.
- ⁵ CYNTHIA GALLOIS & VICTOR J. CALLAN, COMMUNICATION AND CULTURE: A GUIDE FOR PRACTICE 44 (1997).
- ⁶ STELLA TING-TOOMEY, COMMUNICATING ACROSS CULTURES 100 (1999).
- ⁷ GALLOIS, *supra* note 5, at 48-49.
- ⁸ *Id.* at 45.
- ⁹ TING-TOOMEY, *supra* note 6, at 101.
- ¹⁰ GALLOIS, *supra* note 5, at 49.
- ¹¹ TING-TOOMEY, *supra* note 6, at 115.
- ¹² GALLOIS, *supra* note 5, at 57.
- ¹³ H.R. REP. NO. 109-396, Supplementary Report and Document Annex, Staff Rep. for Rep. Charles Melancon, *Hurricane Katrina Document Analysis: The E-Mails of Michael Brown* (2005).
- ¹⁴ Tae-Seop Lim, *Language and Verbal Communication Across Cultures*, in CROSS-CULTURAL AND INTERCULTURAL COMMUNICATION 53, 63-66 (William B. Gudykunst ed., 2003).
- ¹⁵ GALLOIS, *supra* note 5, at 85.
- ¹⁶ Richard Jackson, *Successful Negotiation in International Violent Conflict*, 37 J. OF PEACE RES. 323, 324 (2000).
- ¹⁷ Davison, *supra* note 1, at 182-83.
- ¹⁸ *Id.* at 183.
- ¹⁹ *Id.*
- ²⁰ Frederick S. Pearson, *Dimensions of Conflict Resolution in Ethnopolitical Disputes*, 38 J. PEACE RES. 275, 279 (2001).

*Using an Interpreter During Negotiations:
Ensuring that Everyone has the Chance
to Hear and Be Heard*

Cherish L. Cronmiller

A b s t r a c t

When interpretation services are necessary for a negotiation to proceed, the interpreter becomes a vital component of the negotiation process. Ensuring that the interpreter is competent and prepared for the negotiation increases the likelihood of success. Interpreters may offer some key cultural insights that might otherwise be missed by persons that do not speak the same language as negotiation counterparts. This chapter provides an overview of the types of interpretation, how to choose an interpreter, and best practices to consider when using the services of an interpreter.

I. Introduction

“There is no greater barrier to communication than the inability to use the same language.”¹

When parties do not speak the same language, trying to negotiate effectively becomes secondary to trying to understand each other. Having an interpreter or translator available allows parties to refocus on effective negotiation skills. There are, however, some key considerations when using an interpreter or translator, especially in a cross-cultural context. This chapter will cover the types of interpretation to consider, the qualifications of a skilled interpreter, and what best practices to employ during an interpreted negotiation.

II. Interpreting vs. Translating

“Interpreting” and “translating,” although often used interchangeably, are not synonymous terms. Interpretation refers to the “unrehearsed transmitting of a spoken or signed message from one language to another.”² Translation is “converting written text from one language into written text in another language.”³ Translators have access to various resources and reference materials to help them convert the text. Interpreters, however, must use a number of cognitive skills at once in a short time frame. In other words, interpreting is for the spoken word and translating is for the written word. But as the following example illustrates, both tasks can be equally valuable.

“¡Hombre, ni tengo diez kilos!” A Cuban man used this phrase “in response to a request for a loan and, given the dialect of the speaker and the context of the statement, they can properly be translated as ‘man, I don’t even have ten cents.’ Instead, the court interpreter mistakenly translated them as, ‘man, I don’t even have ten kilos.’” The quote was taken from a wire tape of a defendant’s telephone conversation. “The Spanish word ‘kilo’ can be translated into English as either ‘kilogram’ or ‘cent.’ Which word is the better translation depends on the dialect of the speaker and the context of the statement. First, the word ‘kilo’ is commonly used to mean ‘cent’ among Cuban speakers of Spanish such as the defendant. Next, the context of the situation clearly indicates that the speaker was using the word to mean ‘cent’ not ‘kilogram.’ . . . The discrepancy was discovered when a more experienced interpreter heard the original recording of the defendant’s statement. If the same error had occurred during an interpretation of the defendant’s testimony, rather than a translation of a tape recorded conversation, it probably never would have been discovered unless another interpreter was present.”⁴

This example also illustrates two other key issues discussed later in this chapter—that knowing a particular language is not enough if the translator is not familiar with the specifics of the regional dialect, and that having a system in place to supply a verification of the interpretation/translation can provide added peace of mind in the negotiation context.

Before discussing logistics, this chapter will outline the types of interpretation services available so that a person can effectively select what mode will best suit the given negotiation context.

A. Modes of Interpretation

The three most common modes of interpretation are: simultaneous, consecutive, and summary. During simultaneous interpretation, the message is interpreted continuously with a slight lag behind the speaker. Consecutive interpretation allows the message to be interpreted during the speaker’s pauses. Summary interpretation involves a speaker giving a message and the interpreter giving a paraphrase of the speaker’s message. Summary interpretation is disfavored in negotiations when each word and sentence the negotiator speaks can be vital to the overall message. As such, only simultaneous and consecutive interpretation will be discussed in greater detail.

1. Simultaneous

Having an interpreter, no matter what the mode of interpretation, slows the overall negotiation process. Between these two types of interpretation, simultaneous interpretation can speed up the interpreting process. However, the problem is that often two people are speaking at the same time, so unless interpretation equipment is available, such as headsets and small microphones, the constant speaking of both parties can be disruptive to everyone involved. Peacekeeping negotiations in the field often employ “chuchotage,” or “one-to-one direct translation where the interpreter ‘whispers’ the translation for up

to three persons.”⁵ This method, however, may need to be disclosed to the other negotiating parties to avoid the appearance of impropriety because a counterpart might be inclined to think that the interpreter is whispering secrets or information that should not be overheard.

Though this mode of interpretation speeds up the process, the interpreter must hear an entire sentence, or passage of sentences, in order to fully understand what is being communicated. In each language there are nuances that without knowing or anticipating the following words, an overall meaning could be lost. With such a potential problem in mind, the interpreter has to be able to make corrections as a person speaks and sometimes must anticipate what is going to be said in order to properly construct the interpretation in the other language. If time is a factor or interpretation equipment is available to reduce the possibility of disrupting the speaking party, then simultaneous interpretation is often the better mode to employ.

2. Consecutive

This mode may be preferential when accuracy is essential because the interpreter hears the whole message before interpreting. This type of interpretation is mentally taxing on an interpreter because it requires excellent memory skills of the interpreter or effective note-taking capabilities.⁶ Consecutive interpretation forces a speaker to insert pauses in the communication where pauses may not otherwise have existed in order to give the interpreter time to interpret the message. Of the two processes, consecutive takes substantially more time than simultaneous, but it may result in a more accurate interpretation.

In a simultaneous interpretation, a listening party can more accurately attempt to match what is being said with the counterpart's tone, inflection, facial movements and gestures. Likewise, as the listening party is hearing the interpretation he can also be communicating nonverbally with facial expressions and gestures. The speaking party may feel more confident that the listening party understands and may actually shorten the message with this added reassurance.

A negotiator would be well served by attempting to use both modes during training to see which mode feels more fluid to the interpreter. The training experience may also help a negotiator better assess when to employ a specific mode of interpretation. Equally important, when doing initial preparation with an interpreter, a negotiator might want to ask the interpreter which method she is most comfortable utilizing. The interpreter may only be trained in one mode of interpretation, in which case, the negotiator is left with no choice. Ideally, a negotiator would be able to select an interpreter based on her skill set, but sometimes interpreters are in short supply. Regardless, it is beneficial to understand what makes a qualified interpreter.

III. What Does it Mean to be Skilled? and Where to Find a Skilled Interpreter?

[T]he...interpreter must listen, comprehend, abstract the message from the words and word order of the message, store the ideas into memory, and then set about searching for conceptual and semantic matches to reconstruct the message in the other language, all this within the cultural and linguistic constraints and operating rules of that language. This takes place while the interpreter is listening for the next 'language chunk' to process while simultaneously monitoring his or her own output.⁷

Being an interpreter requires great mastery and skill in performing all the aforementioned tasks. As previously noted, an interpreter should know the applicable regional dialect. If she is not skilled in this area, acknowledging this deficiency is crucial and the interpreter will hopefully feel comfortable asking clarifying questions to the speaker. Further, the interpreter must be able to interpret at the same educational level as the speaker. Likewise, if the speaker will be using subject-specific terminology, it is important that the interpreter be knowledgeable in the pertinent subject. For example, if the speaker is associated with the military and the negotiation pertains to a specific combat mission or military equipment, then the interpreter may encounter terms she has never heard before. Such specifics can be addressed in the preparation with an interpreter, a topic that will be discussed in the next section.

Given the aforementioned skills, a qualified individual is more than merely bi- or multi-lingual. “[B]ilingualism does not qualify a person to interpret any more than the ability to type qualifies a person to be a stenographer.”⁸ Using a friend, neighbor, or even a local interpreter can jeopardize the effectiveness, accuracy and the impartiality of the negotiation due to emotional involvement by such a partic-

ipant. However, there may be situations in which having anyone who can somewhat interpret is better than having no interpretation at all. In such circumstances, knowing where to find potential interpreters can also be useful.

A. Where to Look

The following is a non-exhaustive list of places to consider seeking an interpreter: local courts, government agencies, hospitals, churches, community organizations, and foreign language departments in colleges and universities and private schools. The Army Field Manual: *Civil Affairs Tactics, Techniques, and Procedures*, offers insightful recommendations regarding the criteria to seek in potential interpreters. If the interpreter is local to the community, a negotiator may wish to recognize this person's loyalties. It may be necessary to withhold sensitive information from this person if a negotiator fears that the interpreter may misuse such information. Likewise, a negotiator might seek reassurances from the negotiating counterpart approving of the interpreter used. The negotiator may believe the interpreter to be competent and trustworthy, but the counterpart could know or think otherwise. Asking the counterpart if this interpreter is acceptable, through another interpreter, can easily address this issue.

In order to resolve the local dialect dilemma, a native speaker from the region might be best qualified. As a native, she will also be comfortable with accents and mannerisms exhibited by the speakers for whom she is interpreting. Similarly, a qualified and effective interpreter will be comfortable with the negotiator's primary language. Knowing the language that is being used to interpret is equally important if the person is interpreting from the local to the non-native speaking counterpart or interpreting from the non-native speaking counterpart to the local language. Although assessing a person's ability is difficult, a few techniques can be employed in order to better assess a person's interpretation skills.

B. Testing a Potential Interpreter

There are a few techniques that anyone can use to assess someone's language capabilities. One of the most frequently employed techniques is "back-translation."⁹ A person is asked to translate a text from one language to another and then after at least an hour, or sometimes a day or more, the person is asked to take the translated foreign text and translate it back to the original language. Then a comparison can be made between the original message and the back translation to see how closely the original message has been preserved.¹⁰ Such a test is good for written materials, but this technique could also be utilized by using a voice recording and playing back the interpreted message. For example, a negotiator would articulate a few sentences and the interpreter would interpret the sentences on a recording. The negotiator could wait a few days, or give the negotiator some other tasks, then later play back the recorded message and ask for the interpretation back into the original language to see how well the original message is preserved.

A similar tactic would be to utilize multiple interpreters, and each one could serve as a check for the others. This may also be a consideration for best practices because interpreting is mentally taxing and allowing the interpreters to rotate would keep them sharp mentally. There are a host of other considerations that can go a long way to ensuring a successfully interpreted negotiation that extends beyond the competency of the interpreter.

IV. During Negotiations: Best Practices

Like a well-crafted negotiation, there are similar skills that go into a successfully interpreted negotiation. Hopefully the negotiator will have time to prepare; as discussed in other chapters of this text, preparation can sometimes mean the difference between a successful outcome and a lost opportunity.

A. Preparation

As aforementioned, a negotiator may consider discussing the interpreter's preferred mode of interpreting and explaining which mode would better suit the needs of time and accuracy. The negotiator may want to know if and how the interpreter will be able to disclose and explain the counterpart's demeanor, tone, and mannerisms. The negotiator and interpreter can plan and decide what should be done if she encounters foul language and racial and ethnic slurs. Best practices will include the negotiator reviewing the negotiation process with the interpreter and explaining what the negotiation is about, how the nego-

tiator would like the discussion to proceed, what information will be important to ascertain, and what the negotiator is seeking as an ultimate goal.

The negotiator may want to inquire as to how much the interpreter knows about the culture, whether direct eye contact should be expected, or if it is acceptable to shake hands. Depending upon the environment, a negotiator may need to mentally prepare the interpreter for what she may encounter at the negotiation. The negotiator may want to let the interpreter know if there will be weapons in plain sight, if there is military action in the area, whether there are sick or injured persons in the area, or if sensitive subjects will be addressed, such as killings, rape, or torture. This way, the interpreter can feel mentally prepared so she can focus solely on interpreting and not trying to process extraneous matters in the environment.

If the negotiator uses a standard introduction to negotiations or has an introduction prepared, it would be best to let the interpreter see the introduction beforehand. The interpreter could translate the document and read it to the parties prior to the start of the negotiations. This would help to speed up the process and the negotiator can focus on using facial expressions and gestures while the interpreter is reading. At some point in the introduction, the negotiator could add a question that indicates the other person understands the interpreter. For example, “This is our interpreter, if you understand her, please nod your head up and down to indicate that you understand.”

Finally, the negotiator may ask the interpreter to assist him in learning a few words of the foreign language. As a soldier who returned from Iraq attested, knowing a few words of the native language goes a long way in demonstrating cultural sensitivity by indicating an “interest in the country and its culture.”¹¹ The returning soldier said, “When I would meet an Iraqi, they have such a strong sense of cultural pride that even though I spoke bad Arabic or even almost none ... it always set things off better, even when there was a translator, I would try to give a greeting in Arabic, even if I would do a very bad job of it.” He continued, “That, to them, with their really strong cultural pride ... was kind of a sign to them that I respected their cultural history. The significance of that cannot be overstated—it had almost a magical effect.”¹² Knowing a few words will assist in rapport building with counterparts, but the negotiator can also nurture the negotiator-interpreter relationship by building rapport with his interpreter.

B. Building Rapport with the Interpreter

If the negotiator has a good relationship with an interpreter, the negotiator may feel more comfortable with the interpreting process and in turn, will likely feel more comfortable with the overall negotiation. The Army Field Manual: *Civil Affairs Tactics, Techniques, and Procedures* addresses procedures to help to build a rapport with an interpreter. It states:

The interpreter is a vital link to the target audience. Without a cooperative, supportive interpreter, the negotiation could be in serious jeopardy. Mutual respect and understanding is essential to effective teamwork. [You] must establish rapport early in the relationship and maintain rapport throughout the joint effort. The difficulty of establishing rapport most of the time stems from lack of personal contact.¹³

The manual suggests that the negotiator find out about the interpreter by being genuine towards the interpreter and asking questions about her background, family, culture, and traditions.¹⁴ Knowing more about the interpreter may also help the negotiator understand a foreign culture, thus allowing the negotiation to draw upon culturally specific goals and values to help aid in the overall negotiation. During the negotiation there are a few additional practical matters the negotiator should keep in mind.

C. During the Negotiations

The negotiator can start by considering where each party is sitting and determining the most effective placement for the interpreter. The negotiator’s place may also depend on whether interpretation technology is available or if the interpreter is interpreting for all parties or just a portion thereof. It helps if the negotiator tries to keep the interpreter in a “neutral” position so that it does not appear as though the interpreter is on any “side” of the negotiation. In this way, the interpreter’s appearance may remain more credible to any involved party.

The typical negotiation skills addressed in other chapters should still be effective during an interpret-

ed negotiation. By directing all comments, instructions and questions to the parties, not to the interpreter, the negotiator affirms that the negotiation is coming from the negotiator, not the interpreter. Similarly, the negotiator should avoid using the third person (he, she, they). Instead, it is easier for the interpreter if the negotiator speaks as if she was directly speaking with the counterpart. This is a skill that can be easier said than done. When a person is not directly addressing a party, it can be easy to fall into third person terminology, but practicing these skills during a negotiator's training may help a negotiator better prepare.

Checking with the interpreter before using culturally specific non-verbal gestures will ensure that the meaning of the gesture will transfer appropriately across cultures. In order to make the interpreter's task less rigorous, the negotiator may wish to avoid puns, sports analogies, archaic language, legal terms, or religious terms (i.e., passages from the Bible) and any terms or comments that are too culturally specific. With that in mind, it helps to be patient with the interpreter; words or phrases that are culturally specific may not have an easy translation. If this is the case, the interpreter may need to ask clarifying questions to the negotiator.¹⁵ Again, if the negotiator and the interpreter have a positive relationship, the interpreter should feel more comfortable disclosing that she is having difficulty interpreting a specific term and perhaps an attempt at rephrasing could assist. Rephrasing by the negotiator will likely yield better results than allowing the interpreter to substitute her own interpretation.

If the interpreter is taking notes, the negotiator may want to be sure that the notes are not easily decipherable by anyone else if they contain confidential information.¹⁶ Likewise, the negotiator may want to make provisions to protect the interpreter and ensure her safety. It may be impossible for a negotiator to fully guarantee another person's safety, but to the degree he is able to make the interpreter feel safe and less vulnerable, the interpreter is able to dedicate energy towards interpreting and not worrying about her personal safety.

Finally, a good negotiator will be careful not to assume that any counterpart is wholly ignorant of English. As such, the negotiator would refrain from making "unofficial comments to the interpreter along the lines of 'Now don't interpret this, but...'"¹⁷ In addition to the counterpart deciphering what is being said, the negotiator could be placing the interpreter in an uncomfortable position. If the negotiator is seeking information beyond interpretation from the interpreter, then the negotiator is likely seeking a cultural guide.

D. Cultural Interpreters

Some interpreters go beyond the task of changing the meaning of words from one language to another. Victoria Edwards is a senior policy analyst with the Department of National Defense, Human Resources Military Policy and Planning, and she has written on the role of 'cultural interpreters':

When you are conducting negotiations, an interpreter can be one of your key assets. The intelligence, personality, and street smarts of an interpreter can be crucial in helping you convey your point across linguistic and cultural barriers. The interpreter is your local specialist in public relations. An interpreter can give you suggestions on the best way to proceed with a person from a different cultural background, and may notice nuances that would otherwise be overlooked.

During the discussions the bilingual, bicultural experts help navigate linguistic and cultural nuances. After all, interpreting is not a matter of substituting the words of one language with those of another - it is a skill of conveying messages, with their unspoken assumptions, presuppositions, and subtle emphasis.¹⁸

Edwards points out how much an interpreter can teach a negotiator and how much an interpreter contributes to the success of a negotiation. It is best not to undermine the role of the interpreter because without the interpreter, the counterpart may never understand the negotiator's message. Likewise, if not for the interpreter, the negotiator could not understand his counterpart. All of the work that a negotiator contributes to the process can be wasted if his crafted message is not conveyed; the negotiator cannot formulate tactics if he does not understand the counterpart. Employing the previously discussed techniques of thorough preparation and rapport-building will help the negotiator associate with the interpreter as a cultural guide.

E. A Final Consideration

Finally, there may be situations in which the best practice is to force a counterpart to speak in his non-fluent language (whether by choice or circumstance). In determining if this will be an advantageous tactic, scholar Peter V. DiVasto writes,

First, forcing a subject to wrestle with formulating thoughts in an unfamiliar language greatly reduces the opportunity for over-animated displays of emotion. Second, the mechanics of translating thoughts into English keeps the subject's mind working and thereby increases fatigue. Third, the continued use of English by negotiators sends a subliminal message to the subject that law enforcement is in control of the situation.¹⁹

However, by not negotiating in a counterpart's fluent language, the negotiator could lose the underlying message in the verbal exchange, and the counterpart may not be able to express everything he wanted to convey. The negotiator, then, will be well served to weigh whether the benefits afforded by forcing a counterpart to speak his non-native language are worth what is potentially lost in the exchange.

Questions to ask potential interpreters:

- Do you have any formal training as an interpreter?
- What form of interpretation have you most frequently used and are most comfortable with (simultaneous, consecutive, summary)?
- Do you speak any regional dialects?
- Are there certain situations in which you would feel uncomfortable (certain people, places, presence of weapons, etc.)?
- Have you interpreted in a negotiation context before?
- Can you translate written documents?

During Interpreted Exchanges:

- use short sentences
- use active voice
- look directly at the person(s) with whom you are communicating
- ask open-ended questions to gauge understanding
- summarize/paraphrase what the other party has said, even though it may take more time, to ensure clear communication (“So what I gather is that you want ___”)
- never interrupt the interpreter or speaker
- wait for the interpreter to finish communicating the entire message, take notes if it helps

Modes of Interpretation: Pros and Cons

<i>Mode</i>	<i>Pros</i>	<i>Cons</i>
Simultaneous	Takes less time	Parties tend to focus more on the interpreter
	Can gauge nonverbal responses as counterpart is hearing the message	The overlapping voices can be distracting
Consecutive	Greater accuracy	Mentally taxing on interpreter
	Allows for clarification; effective relay of message	Takes more time; Will have to insert pauses into dialogue

Endnotes

¹ Ileana Dominguez-Urban, *The Messenger as the Medium of Communication: The Use of Interpreters in Mediation*, 1997 J. DISP. RESOL. 1, 6-7 (1997).

² WILLIAM E. HEWITT, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS 11-13 (1995).

³ *Id.* at 33.

⁴ Michael B. Shulman, *No Hablo Ingles: Court Interpretation as a Major Obstacle to Fairness for Non-English Speaking Defendants*, 46 VAND. L. REV. 175, 176, n.1, n.3, n.5 (1993); see Alain L. Sanders, *Libertad and Justicia for All*, TIME, May 24, 1989, at 65; see also Glen Craney, *Language v. The Law*, 16 BARRISTER, Winter 1989-90, at 20, 22; Susan Garland, *Hispanic Court Cases: The Verdict is All in the Translation*, CHRISTIAN SCIENCE MONITOR, Dec. 7, 1981, at 23.

⁵ Victoria Edwards, *The Role of Communication in Peace and Relief Mission Negotiations*, TRANSLATION J. (2001), available at: <http://essay.studyarea.com/cgi-bin/newsearch.cgi?cs=&q=Camera&ch=http:%2F%2Fwww accurapid.com%2Fjournal%2F20interpr.htm&fm=off> (last visited July 9, 2006).

⁶ Dominguez-Urban, *supra* note 1, at 15.

⁷ ROSEANN DUENAS GONZALEZ ET AL., FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY AND PRACTICE 23 (1991).

⁸ Dominguez-Urban, *supra* note 1, at 18.

⁹ *Id.* at 27.

¹⁰ *Id.*

¹¹ Edwards, *supra* note 5..

¹² Interview by Leslie Siegel with CPL Jeff Mussman, in Columbus, OH (Mar. 31, 2006).

¹³ Department of the Army, CIVIL AFFAIRS TACTICS, TECHNIQUES, AND PROCEDURES APPENDIX F-12 (2003), available at <http://www.globalsecurity.org/military/library/policy/army/fm/3-05-401/appf.htm> (last visited July 9, 2006).

¹⁴ *Id.*

¹⁵ Shulman, *supra* note 4, at 175 n.10. For an example of the problems that an untranslatable word can cause for court interpreters, see the movie THE GODS MUST BE CRAZY (Twentieth Century Fox 1984), in which the defendant's language had no equivalent for the word "steal."

¹⁶ "In one case, a UN negotiator's journal containing the notes on several ongoing field negotiations between Bosnians and Serbs was confiscated at a checkpoint." Edwards, *supra* note 5.

¹⁷ Center for Army Lessons Learned, *How To Communicate Effectively Through Interpreters: A Guide for Leaders, News from the Front* (Nov-Dec. 2003), available at: http://www.au.af.mil/au/awc/awcgate/army/using_interpreters.htm (last visited July 9, 2006).

¹⁸ Edwards, *supra* note 5, at; see A.B. Featherston et al., *UNPROFOR: Some Observations from a Conflict Resolution Perspective*, in INTERNATIONAL PEACEKEEPING 179, 179-203 (Michael Pugh ed., Frank Cass Vol. 1 No. 2 1994).

¹⁹ Peter V. DiVasto, *Negotiating with Foreign Language-Speaking Subjects*, (June 1996) available at: <http://www.fbi.gov/publications/leb/1996/june963.txt> (last accessed July 9, 2006).

Cross-Cultural Negotiation in a Multi-Party Setting

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A b s t r a c t

Most scholarly research on international multiparty negotiations focuses on conflicts within and among nation-states where negotiations have occurred within the bounds of a previously established treaty or neutral arena, such as the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), or the United Nations. Such treaties and international organizations provide neutral negotiation ground rules on issues such as language spoken, moderator (if any), and basis for agreement (i.e. majority or consensus) to govern negotiations in the event a dispute arises. Because similar neutral structures and forums do not exist for non-nation-state negotiations in the international arena, the pre-negotiation process is both more complicated and more critical than most research in international multiparty negotiations has explored. This chapter serves to open a dialogue on some of the issues affecting non-state actors in multiparty cross-cultural negotiation, including: how to “find neutral” and the cross-cultural nuances of multiparty negotiation strategies.

I. Introduction

While there is a significant amount of literature on multilateral negotiations involving diplomatic international relations between nation-states,¹ scant research exists regarding multiparty cross-cultural negotiations. Many multilateral negotiations occur within the bounds of a previously established treaty or neutral arena, such as the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), or the United Nations.² Thus, the ground rules of the negotiation, such as language spoken, moderator (if any), basis for agreement (i.e., majority or consensus), etc. are pre-determined. Additionally, party representatives and their authority are generally known. However, information and research on multiparty cross-cultural negotiations in smaller settings is not readily available, if it is available at all. This chapter serves to open a dialogue on the issues affecting non-state actors in multiparty cross-cultural negotiation, including how to “find neutral” and the cross-cultural nuances of traditional multiparty negotiation tactics.

II. The Problem

As the previous chapters have noted, signals from a counterpart are easily confused or misinterpreted in cross-cultural negotiations, leading to further mistrust between the parties. However, with additional parties, the opportunities and chances for miscommunication are multiplied.³ With so many parties and interests, a negotiator may lose track of the other parties’ interests or whether concessions have been reciprocated.⁴

Furthermore, multiple cultural values and standards can make the choice of a particular settlement even more complicated. For example, when there is a range of possible settlement outcomes (i.e. more than one solution exists accommodating the overlapping and conflicting interests of the parties), each negotiator will use her own particular standard to provide the basis for her choice among options.⁵ Thus, different cultural and personal standards, which are independent of bargaining, affect the possibilities of settlement. Because such principles can serve as focal points for choosing a resolution, agreement is significantly more difficult when these principles diverge.⁶

Fen Osler Hampson, an expert in multilateral diplomacy, explains that these kinds of cultural or personal differences can influence each negotiator’s expectations regarding the “purpose and value of the negotiation process itself.”⁷ Hampson uses the example of the diverging party perceptions of the American-Soviet arms negotiations in the 1970’s: Americans were not satisfied with a negotiation if it did not conclude with a signed document (i.e., a contract).⁸ However, the Soviets were satisfied if the negotiations did not result in an agreement, as long as their interests were still promoted through the negotiation process.⁹

III. Gaining Perspective on the Problem

While negotiating with more than one other culture is a daunting task, a negotiator may find it helpful to approach the negotiation with the goal of reaching an agreement that embraces each party’s cultural differences, as opposed to in spite of them.¹⁰ A broader perspective on multicultural negotiations could help a negotiator maintain an open mind through the process. For example, literature in cross-cultural management suggests that successful multi-national corporations value cultural diversity at the bargaining table and the “potential contributions of cultural diversity to organizational performance.”¹¹ These multicultural organizations maintain the goals of full structural and informal cultural integration with the absence of prejudice and discrimination, minimization of inter-group conflict, and identification with the organization by members of minority cultures.¹² In the business world, embracing multiculturalism has resulted in enhanced creativity in the problem-solving process and increased creativity in the negotiated outcome.¹³

Once parties have accepted that they will not be able to impose their own culture upon another, they are more likely to listen to other offers being placed on the negotiation table. If ideas are suggested by individuals representing a variety of cultural constituencies, a final solution could be created which addresses the various needs of each of these constituents in a satisfactory manner. Thus, negotiators should be praised for reaching workable agreements incorporating multicultural solutions and outcomes, regardless of whether they fully promote the dominant culture’s ideals.

Research suggests parties to agreements devised in this manner have been more satisfied with the agreements, and the agreements tend to last longer than those in which a decision by the dominant culture is imposed upon individuals from other cultures.¹⁴ This increased satisfaction may be due to the fact that, because all parties participated in the solution to the problem, there is less animosity toward the decision and decision-makers than when a decision is imposed upon an ignored or non-participating group. Additionally, because the parties' various cultural considerations were discussed during the negotiation and incorporated into the agreement, it is less likely that the agreed-upon solution will conflict with other cultural or societal mores. Therefore, individuals who were not present during the negotiation, but whom the agreement may affect, are less likely to have cultural or societal conflicts with the solution if their concerns were represented and respected while the solution was being negotiated.

It is also important to note that organizational flexibility has been a necessary component to maintaining successful multicultural agreements in business settings.¹⁵ Following this example, negotiators should be encouraged to tailor each negotiation to the specific parties, cultures, constituencies, and issues involved in each negotiation rather than following a pre-conceived "cookie cutter" negotiation model or form agreement. Thus, for example, a negotiator should not expect the same negotiation approach and agreement reached in multiparty property disputes between Albanians and Serbians in the former Yugoslavia to succeed in property disputes between Sunnis and Shiites in Iraq.

IV. "Finding Neutral"

Once the negotiator is no longer viewing his role as dealing with a necessary evil, the next step is to consider the best strategy for achieving his goals without aggravating or exacerbating any tensions with or between the other parties. Generally, this strategy will involve maintaining a neutral stance towards the other parties. To create and maintain such neutrality and to avoid overcomplicating a multiparty cross-cultural negotiation, it is even more important to spend as much time as possible preparing for the negotiation. Factors such as who should be invited to negotiate, how the negotiation should be conducted, and the best location or locations for the negotiation to take place can have even more of an effect on the outcome of a multiparty negotiation than in a two-party cross-cultural setting. For ease of comprehension, these considerations can be divided into two general concepts: adding to increase settlement options and subtracting to minimize complexity.

A. Adding to Increase Settlement Options

Because multiparty cross-cultural negotiations are inherently complicated, it may seem counterintuitive to add anything to this already crowded negotiating table. However, in certain circumstances, additional negotiation sessions, locations, participants, or parties can increase the likelihood of settlement by building and maintaining trust among the parties, assisting the negotiators by managing the complexity of the negotiation, clarifying issues and interests, or by providing additional incentives for settlement.¹⁶ Some of these additive strategies, which can be used alone or in combination with others, are detailed below from least to most intrusive.

1. Use of Multiple Sessions/Locations

Because of the notion of "home-field advantage," or where a person is most comfortable on his own turf, it may be difficult to find a neutral location where all parties will feel equally comfortable and confident to negotiate.¹⁷ Therefore, it may appease the parties to offer multiple sessions held in various locations chosen by each party. Offering multiple settings for the negotiations also provides inherent breaks in the negotiation so that parties may relocate to the next setting – whether the next session is hours, days, or weeks later. These breaks can be used to reassess the negotiator's strategy or to regroup a negotiating team; they can also provide an opportunity for shuttle diplomacy or coalition building.

The 1993 Israel-Palestine Liberation Organization (PLO) agreement is an example of other advantages of using multiple locations (in this case, one public and one secret) to conduct negotiations: privacy and diversion. While the world media was focused on the meetings in Washington, key players to the agreement – Israel and the PLO – were able to meet in Oslo without the external pressure of international media scrutiny.

2. Negotiation Assistants

In cross-cultural, multiparty negotiations, the conversation may be difficult to follow due to language barriers, cultural nuances, multiple speakers, varying negotiation tactics, or a combination of all four of these factors. Due to this complexity, a negotiator may want to consider bringing an assistant or team to help him communicate, collect, and synthesize the cultural, substantive, and procedural information being shared in the negotiation. By using a team of negotiators or employing the help of a negotiation or cultural expert, a negotiator can better accomplish all of these tasks in the likely highly charged setting.

a. Additional Team Members

Even in the simplest negotiation, a good negotiator must multi-task: speak, listen, formulate a strategy and tactics, and develop questions to seek more information within a short period of time.¹⁸ In a multiparty negotiation, this is compounded by the inclusion of more participants to whom the negotiator must listen, formulate a strategy, and develop questions. In a cross-cultural multiparty setting, this complexity is further compounded by the myriad of things to consider raised in the previous chapters: perceiving individual or cultural nuances, assessing how one is being perceived, reading non-verbal cues, formulating the appropriate reciprocal approach, and other concerns.

Additionally, the negotiator must determine each party's priorities and interests regarding each issue being discussed. Because of diverging priorities and interests, parties can fall into varying roles depending upon the issue being discussed.¹⁹ To manage such complexity, cross-cultural business negotiators suggest using large negotiating teams to divide responsibilities during the negotiation.²⁰ One such division would be to assign each team member with one or more tasks, such as speaking, taking notes, assessing perceived cultural values and nuances, developing reciprocal approaches, overseeing the interpretation, and other tasks.

However, it may also be possible to assign each team member to one or more of the other parties to "manage" for the head negotiator. In this case, each "manager" would be responsible for all of the previously listed tasks, but only in relation to one or more parties. This approach may be particularly useful in a situation in which a particular team member is more familiar with a particular party (or parties) or a particular language or culture.

While team negotiating can effectively lessen the burden on a single negotiator during the negotiation session, it can also be inefficient. Large groups require internal coordination and consensus.²¹ Each task member or party manager must have an effective way of communicating with the team leader without disturbing the flow of information. Frequent breaks may be necessary to coordinate the team's next step in the negotiation process. Additionally, team negotiating can be cost-prohibitive, both in terms of finances and human resources. However, given the many benefits of dividing negotiating responsibilities and having multiple individuals with whom one can assess misperceptions and negotiation strategies, team negotiation may be beneficial in a multiparty, cross-cultural negotiation.

b. Negotiation Consultant

Another possibility to supplement the skills of a single negotiator or negotiating team is to employ a negotiation consultant. While this individual may not have the substantive knowledge to negotiate a settlement alone, the consultant may have prior experience, special skills or training, or experience working in or with a particular culture to which one or more of the other parties belong. One variation of a negotiation consultant is the cultural interpreter discussed above in Chapter 12. Depending upon the situation, the negotiation consultant could provide real-time advice to the lead negotiator in the negotiation, or he could share his insights and notes with the lead negotiator during break periods.

The expert could either remain "behind the scenes" for the negotiator to consult during breaks in the process, or he could be the agent of the lead negotiator. As an agent, the negotiation consultant retrieves information from the other parties to report back to the lead negotiator and would only make substantive negotiation moves upon the direction of the lead negotiator.²² The use of the expert as an agent also provides the negotiators with an opportunity to conduct further research or to gather further information regarding any issues that have arisen that may have caught the team unaware. In this sense, having an agent creates an inherent "buffer time zone" between the face-to-face information gathering in the negotiation and any final decision by the head negotiator.

3. Inviting More Parties to the Negotiation

Contrary to common perceptions that the more parties, the more opportunities for impasse,²³ inviting additional parties to the bargaining table can increase the likelihood of reaching agreement at times.²⁴ For example, from 1991 to 1993, representatives from Israel, Syria, Lebanon, Jordan, and the PLO engaged in a series of long, intense negotiations in Washington, D.C. under considerable public scrutiny.²⁵ Despite these efforts, it appeared that no progress was in sight to resolve the Arab-Israeli conflict.²⁶ However, in 1993 Israel and the PLO announced that they had reached an agreement on an interim accord over limited self-government for the Gaza Strip and Jericho.²⁷ Much to the world's surprise, this agreement did not come out of the publicly known negotiations in Washington.²⁸ Rather, the agreement was reached in secret negotiations in Oslo.²⁹ *In Pathways to Peace: The Multilateral Arab-Israeli Peace Talks*, Joel Peters, an Associate Research Fellow of the Middle East Programme at the Royal Institute of International Affairs in London, discusses how the multilateral negotiations in Washington allowed the Israel-PLO accord to happen.³⁰ In addition to providing a distraction for international media scrutinizing each detail discussed in the negotiation, the use of additional, regional actors provided more opportunity for joint gains in the region, which, in turn, allowed a settlement to occur. Thus, sometimes adding parties can help settlement occur.

Additional parties are frequently helpful in the context of internal conflicts (conflicts occurring within a locality, region, or state). The late I. William Zartman, a former professor of conflict resolution and international organization whose articles and books are frequently cited in international negotiation literature, argues that in the context of internal conflicts, negotiation, as opposed to winning a war or eliminating the opposition, is the best path for parties to take in order to resolve their differences.³¹ However, as Zartman notes, parties to internal conflicts are generally resistant to negotiations.³² In terms of power, internal conflicts are usually asymmetrical, complicating the dynamics of negotiation.³³ Thus, third parties, mediators in particular, can be used to realign power imbalances. However, mediation can also be an intrusion that is difficult to legitimate in an internal conflict because the use of a mediator could promote a perception of legitimacy to an insurgent group that the government would prefer to avoid.³⁴ In such a situation, perhaps the “mediation” can be termed a multiparty negotiation with an outside organization or entity (which may or may not have an interest in the negotiation) serving to facilitate an agreement by building trust, using neutral wording to rephrase issues, identifying alternative solutions, or testing adversaries' perspectives.

However, third parties can be useful even when the conflict is not internal. Parties to a negotiation who do not have a direct interest in the outcome of the dispute, whether their addition would make them the third, fifth, or tenth parties to the negotiation, are frequently called “third parties” in negotiation literature.³⁵ These third parties, whether they have an indirect interest in the settlement of the dispute or no interest at all, can help parties to assess their interests, choose representatives, identify appropriate parties to be present at the bargaining table, and monitor the implementation of agreements.

a. The Engagement of an Interested Third Party

Negotiators may wish to consider whether to invite a third party with a minor or indirect interest in the dispute (such as a desire that the dispute be settled regardless of how it ends) to play a facilitative role in the negotiation. Interested third parties can be particularly useful to ameliorate power imbalances by providing power or an additional voice to a minority or powerless group, such as those discussed in Chapter 8.³⁶

In determining which outside party might have an interest in the negotiation, it is important to keep in mind that few internal conflicts are purely internal. Most involve some kind of external influence, whether derived from a group which identifies with a neighboring state receiving support from that neighbor — such as Northern Ireland — or a search for an external source of power which creates a proxy war for distant states — such as in Afghanistan or the former Yugoslavia.³⁷ Sometimes, these interested external actors can be useful third party negotiators.

On the other hand, sometimes a military negotiator may be an interested third party to a dispute. For example, in military peacekeeping missions, the military may be requested to settle a dispute between two local warring parties whose conflict has the potential to escalate into regional conflict or civil war. In

these situations, regardless of the specific outcome, the military negotiator has an interest in settling the dispute to maintain peace and security in the region. The parties to the dispute, however, are more likely concerned with settling this specific dispute in their own favor than in finding an agreement that may bring long-lasting peace to the region.

Where a military negotiator (or the military in general) is trusted by all parties as a fair arbiter of disputes, he could build on that reputation to persuade the parties to consider an agreement which serves the broader needs of the region, in addition to their own interests.

However, when the military presence is not welcomed by one or multiple parties, it will be more difficult to find a neutral zone. In this situation, the negotiator must find a way to legitimize his participation in the negotiation (by building trust with each party) or locate an alternate, legitimate negotiator to serve his interests. If possible, it would be helpful to know (either through academic research or personal sources) how conflict is generally resolved in the region and whether the resolution method varies if the conflict is intra-group (within a single culture, i.e., within a family, town, race or ethnicity) or intergroup (involving more than one culture).³⁸ However, time may not exist and resources may not be available to conduct the necessary research and the negotiator will have to build trust with each party to legitimize his presence. To build trust, the interested third party negotiator may consider building trust with each party in individual meetings before the negotiation.³⁹

b. Using an Additional Party as a Neutral Facilitator

In most settings, negotiators may wish to consider the benefits of asking an additional party who does not have an interest in the outcome of the dispute to facilitate the negotiation.⁴⁰ Considering the complexity of multiparty cross-cultural negotiations, the use of a mediator or co-mediators could be helpful in resolving the dispute. Mediators from a culture other than that of the parties, or co-mediators from differing cultural backgrounds, can help set a neutral tone to the discussion. Facilitative mediators can also help organize the multi-faceted components of the negotiation in addition to identifying and clarifying any misinterpretations or misunderstandings among the parties. Unfortunately, finding appropriate third party neutrals can be a time-intensive and cost-prohibitive search. For a more in-depth discussion on the use of mediators in cross-cultural negotiations, see Chapter 14.

B. Subtracting to Minimize Complexity

Despite the advantages listed above regarding adding parties to the negotiation to encourage settlement, the more traditional approaches to multiparty negotiations in a single cultural context involve decreasing the amount of parties, issues, and positions in the negotiation.

1. Fewer Positions: The Use of Coalitions

Coalition-building is frequently cited as a useful negotiation technique in multiparty settings.⁴¹ While it can be useful even in a cross-cultural context, a negotiator will be well served to be aware of the specific problems this tactic could create. As discussed in previous chapters, miscommunication and misperceptions easily breed distrust. Social scientists have suggested that mistrust is also a common psychological effect of coalitions and alliances.⁴² Furthermore, if one is not particularly knowledgeable as to the interrelationships among the other parties and cultures, it is possible to alienate one party by including or failing to include the party in a coalition. Additionally, parties with whom the negotiator's interests may align (those with whom he should build a coalition in a traditional setting) may be opposed to joining forces due to other cultural considerations. Thus, a negotiator must tread extra carefully in coalition-building in this context.

Coalitions are also more likely to lead to another common mistake in multiparty negotiation—the oversimplification of a goal or objective. Fearing the complexity of the negotiation and unable to anticipate every issue which may arise at the negotiation table, negotiators sometimes excessively narrow their objective for the negotiation to an ideological position.⁴³ Getting entrenched in an oversimplified basic goal (such as “increase security using democratic principles”) can later impede the negotiation.⁴⁴ In order

to prevent retreating to such an unproductive tactic when multiple issues arise, a negotiator will want to reassess constantly whether she is needlessly sticking to a pre-determined strategy or goal (so as not to potentially give in on a previously unconsidered issue) or whether more flexibility (or a more subtle approach to the problem) would actually be in her best interest.⁴⁵

Although oversimplification may be more likely to occur when multiple parties' interests are combined into a single coalition strategy, single-party negotiators may also subconsciously engage in such behavior. In multiparty, multi-issue negotiations, particularly if more than one language is being spoken in the room, issues, topics and ideas can be difficult to follow. To avoid becoming needlessly inflexible while continuing to protect one's interests, it may be best for the negotiator to take a few minutes to step away from the bargaining table to reassess his strategy and goals, and perhaps to confer with colleagues or other coalition members.

When it only takes a majority of participants to reach an agreement, coalitions can be a useful strategy. For example, if there are three parties at the bargaining table and the negotiator successfully builds a coalition with another party, the agreement will be reached to the negotiator's liking without the need to convince the third party at the table to agree on the same settlement option. On the other hand, if the negotiator is concerned that coalition building may impede or create an unwieldy agreement (or an agreement that is unlikely to be followed by the non-consenting parties), she may consider negotiating for a requirement that an agreement will not be reached unless there is unanimous consent or a supermajority consensus to a particular settlement option.⁴⁶ Where there are many parties to an agreement, it may be difficult (or impossible) to build a coalition large enough to meet this requirement, thus rendering coalitions powerless. An additional benefit to unanimous consent or high-consensus agreements is that they are more likely to last longer than their majority-consensus counterparts because there are fewer parties who can vote against the settlement option. On the other hand, in a discussion about finding the appropriate consensus to an agreement, Robert Mnookin, Director of the Harvard Negotiation Research Project, notes that a unanimity requirement has the potential to create additional problems to resolution because a single party who opposes the agreement, or thinks he could receive further gains by "holding out" from the agreement, can prevent any agreement from being reached.⁴⁷

2. Fewer Parties: Re-assessing Necessary Participants

Another way to simplify the negotiation and to reduce the amount of interests at the table may be to decrease the number of parties present at the bargaining table. This can be done by only inviting parties who are necessary to the agreement (as opposed to all parties who may have an interest in the outcome of the negotiation) to participate in the negotiation, or by having multiple agreements to which only two parties at a time negotiate. This strategy deserves serious consideration when the negotiator must negotiate with two or more parties who do not share the same approach to negotiation. In such a situation, the negotiator's reciprocal approach to one party may offend or confuse the other parties at the table, especially if the negotiator is not reciprocating with other parties at the bargaining table. Additionally, such confusion could even lead to a lack of trust (or overconfidence)⁴⁸ among the parties who feel they are not being treated in a similar manner to other parties at the negotiation table.

a. Convening Only the Necessary Parties

Negotiators, particularly American-trained negotiators, are frequently taught to include representatives from all groups with a stake in the issue at the bargaining table. While there is merit to this consideration, such advice is based on the principles of representative democracy. In some cultures, it may not be appropriate (or it could be offensive) to include a minority political or social group at the negotiation bargaining table. Additionally, these groups may lack so much power that their presence is more of a hindrance (in terms of the logistical challenge of "finding neutral") than a benefit. In determining who is a necessary participant to the agreement, I. William Zartman warns that leaving out the "major contender" may "produce an agreement but not a solution."⁴⁹ Thus, a necessary party is a party who will be indispensable to a workable solution.

b. Conducting a Series of Bilateral Negotiations

When two or more parties are necessary to an agreement but logistical difficulties or the presence of issues only relevant to some of the parties at the bargaining table abound, a negotiator may consider dividing the issues into a series of bilateral negotiations. Thus, instead of having one agreement with multiple signatories, a negotiator may consider having multiple agreements with only two signatories. Additionally, shuttle diplomacy may be considered in order to minimize the complexity of a multiple parties at a single negotiation table.

V. Conclusion

Most multiparty negotiation literature argues that “multilateral negotiations are fundamentally different from bilateral negotiations.”⁵⁰ However, a negotiator should not take this assumption to mean that other chapters of this book are irrelevant in a multiparty context. Furthermore, what may work in a single-culture multiparty or international multilateral context will not necessarily be applicable in a cross-cultural, multiparty setting. As this chapter discusses, dealing with the multiple parties, issues, positions, languages, and negotiation approaches involved in multiparty cross-cultural negotiations can be overwhelming. Nevertheless, a negotiator can manage this complexity by considering the tips outlined above, such as adding or subtracting parties, positions, or issues to ameliorate the difficulty.

Questions for Cross-Cultural Negotiators to Consider in Multiparty Settings:

- *Who?*
 - Who will most effectively represent your party and come to an agreement?
 - An individual negotiator
 - A cultural or technical negotiation expert
 - A negotiation team
 - A combination of some or all of the above
 - Who should be invited to the bargaining table to best foster agreement?
 - A neutral third party
 - An interested third party
 - Only the most necessary parties
 - All stakeholders
- *How?*
 - Can, or should, the negotiation be a series of two-party negotiations?
 - Are other parties' negotiation approaches so different from each other?
 - If they differ, can I manage the differences effectively while reciprocating the approaches?
 - Could differing reciprocal approaches unnecessarily, and negatively, affect the outcome of the negotiation?
 - Would the negotiation be helpful if frequent breaks were built into the session(s)?
 - Do I know enough about the relationships among all parties to consider coalition building to my advantage?
 - How will the agreement be reached?
 - Majority rule
 - Supermajority
 - Unanimous Consent
 - Should the negotiation be public, private or a mixture of the two?
 - Could external influences, such as the media, hinder settlement?
 - Would negotiations be hindered or helped if the constituencies of the representative negotiators were aware of the negotiations or its details?
 - If I remain neutral as to all or some of the other parties, will that help or hinder my ability to reach my party's short- and long-term goals?
- *Where?*
 - Should multiple sites be used to maintain neutrality and avoid the "home-field advantage?"
 - Is the proposed "neutral" site really neutral?
 - Who proposed the site?
 - Do other neutral organizations such as the International Committee of the Red Cross/Red Crescent, United Nations, etc. also consider this site to be neutral?
 - Will secrecy or access to media be jeopardized in this location?
 - Will all parties feel as safe as possible in this location?
 - Where necessary, is the site amenable to multiple interpreters?

Toolbox for Negotiators

- If possible, consult a personal contact in each culture, or a respected nongovernmental organization working in the area, to assess each party's approach to negotiation and relationship with other parties to the negotiation.
- Maintain a broad perspective that despite the complexity of the negotiation, enhanced creativity in the process and outcome frequently result from successful multi-cultural, multiparty negotiations
- Arrange frequent breaks to reassess one's position, strategy, and comprehension of the situation
- Avoid oversimplifying the situation with the use of stereotypes in order to organize the complexity

Endnotes

¹ See, e.g., ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WARS (I. William Zartman ed., 1995); FEN OSLER HAMPSON, MULTILATERAL NEGOTIATIONS: LESSONS FROM ARMS CONTROL, TRADE, AND THE ENVIRONMENT (1995); INTERNATIONAL MULTILATERAL NEGOTIATION: APPROACHES TO THE MANAGEMENT OF COMPLEXITY (I. William Zartman ed., 1994); INTERNATIONAL NEGOTIATION: ANALYSIS, APPROACHES, ISSUES (Victor A. Kremenyuk ed., 2d ed 2002); MICHAEL WATKINS & SUSAN ROSEGRANT, BREAKTHROUGH INTERNATIONAL NEGOTIATION: HOW GREAT NEGOTIATORS TRANSFORMED THE WORLD'S TOUGHEST POST-COLD WAR CONFLICTS (2001); PEACEMAKING IN INTERNATIONAL CONFLICT: METHODS & TECHNIQUES (I. William Zartman & J. Lewis Rasmussen eds., 1997); Mary Jo Larson, *Low-Power Contributions in Multilateral Negotiations: A Framework Analysis* 19 NEGOT. J. 133, 133-149 (2003); I. William Zartman, *The Unfinished Agenda: Negotiating Internal Conflicts*, in STOPPING THE KILLING: HOW CIVIL WARS END 20, 20-34 (Roy E. Licklider ed., 1993).

² See e.g., HAMPSON, *supra* note 1; Zartman, *The Unfinished Agenda*, *supra* note 1; WATKINS & ROSEGRANT, *supra* note 1.

³ HAMPSON, *supra* note 1, at 29.

⁴ *Id.*

⁵ *Id.* at 30.

⁶ *Id.* at 30.

⁷ HAMPSON, *supra* note 1, at 30.

⁸ *Id.* at 30.

⁹ *Id.* at 30-31.

¹⁰ See KAMAL FATEHI, INTERNATIONAL MANAGEMENT, A CROSS-CULTURAL AND FUNCTIONAL PERSPECTIVE 161 (1996).

¹¹ *Id.*

¹² *Id.*

¹³ FATEHI, *supra* note 10, at 162.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See generally ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 56-57 (Bruce Patton ed., Houghton Mifflin 1991)(1981)(discussing how to find shared interests in a negotiation, turning differing interests into a workable agreement, and inventing options for an agreement that would satisfy both parties' interests).

¹⁷ See DONALD W. HENDON ET AL., CROSS-CULTURAL BUSINESS NEGOTIATIONS 107-08 (1996).

¹⁸ See generally *id.* 98-99.

¹⁹ Multiparty negotiation literature frequently cites Zartman's five classifications of the roles participants play in multiparty negotiations: leaders (or "drivers"), managers, defenders, blockers (or "brakers"), and followers (or "cruisers"). The leader tries to produce an agreement consistent with her interests. Managers also try to reach agreement, but from a neutral perspective. Defenders tend to have a single interest and are more concerned with the success of their own single issue than with the overall success of the negotiations. Blockers seek to block the agreement as they are solely interested in protecting their freedom from the agreement. Finally, followers will do whatever it takes to seek an agreement. INTERNATIONAL MULTILATERAL NEGOTIATIONS, *supra* note 1, at 5.

²⁰ HENDON, *supra* note 17, at 98-99.

²¹ *Id.* at 99.

²² *see generally id.*

²³ Larson, *supra* note 1, at 133.

²⁴ For an interesting discussion on inviting multiple stakeholders to a negotiation and its effects on consensus and a unified agreement, *see* Lawrence E. Susskind et al., *Multistakeholder Dialogue at the Global Scale*, 8 INT'L NEGOT. 235, 235 (2003).

²⁵ JOEL PETERS, PATHWAYS TO PEACE, THE MULTILATERAL ARAB-ISRAELI PEACE TALKS 5 (1996).

²⁶ *Id.* at 1-4.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ ELUSIVE PEACE, *supra* note 1, at 3.

³² *Id.*

³³ *Id.* at 3-4.

³⁴ *Id.* at 4.

³⁵ GREGORY TILLET, RESOLVING CONFLICT: A PRACTICAL APPROACH 47 (Oxford Univ. Press 1999)(1991).

³⁶ Susskind, *supra* note 24, at 240 (noting that inviting additional stakeholders such as international agencies and influential non-governmental organizations can add legitimacy to individual and group interests which may not otherwise have standing or political significance to be discussed during the negotiation).

³⁷ ELUSIVE PEACE, *supra* note 1, at 4

³⁸ Perhaps a religious leader, family elder, or former government official is well respected as an arbiter of disputes within his community. Alternatively, a third party from another region not involved in the dispute may help grant legitimacy to the military negotiator in an inter-group conflict.

³⁹ For an in-depth discussion of trust-building, *see* Chapter 5.

⁴⁰ *See* Chapter 14 for a more in-depth consideration of the use of mediators in multi-cultural settings.

⁴¹ Larry Crump & A. Ian Glendon, *Towards a Paradigm of Multiparty Negotiation*, 8 INT'L NEGOT. 197, 197-234 (2003); *see also* HAMPSON, *supra* note 1, at 29; WATKINS & ROSEGRANT, *supra* note 1, at 116.

⁴² *See* PAUL J. ZWIER & THOMAS F. GUERNSEY, ADVANCED NEGOTIATION AND MEDIATION THEORY AND PRACTICE: A REALISTIC INTEGRATED APPROACH 168 (2005).

⁴³ HAMPSON, *supra* note 1, at 31.

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ JEANNE M. BRETT, NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES 154-55 (2001); Robert H. Mnookin, *Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations*, 8 HARV. NEGOT. L. REV. 1, 19-26 (2003).

⁴⁷ Mnookin, *supra* note 46, at 4, 18-26.

⁴⁸ A party may misperceive a negotiator's actions by making a value judgment as to the negotiator's choice of reciprocal approaches. For example, if a negotiator reciprocates one party's approach by haggling and reciprocates another party's face-saving techniques at the same table, the party with whom the negotiator was face-saving may feel that the negotiator is preferring his interests and positions of the party with whom the negotiator is haggling, when in reality, the negotiator is merely trying to treat each party equally, but in their own styles.

⁴⁹ I. William Zartman, *Prenegotiation: Phases and Functions in* GETTING TO THE TABLE: THE PROCESSES OF INTERNATIONAL PRENEGOTIATION 1, 12 (Janice Gross Stein ed., 1989).

⁵⁰ HAMPSON, *supra* note 1, at 7. For a comparison of bilateral and multiparty negotiations, see Mnookin, *supra* note 46.

Chapter 14

Mediation

Andrea Cozza-Lawless

A b s t r a c t

This chapter demonstrates the usefulness of mediation as a tool in furthering cross-cultural negotiations in times of impasse or even as a step prior to negotiation. In addition to improving communication and understanding between negotiators of different cultures, mediation has the ability to counterbalance cross-cultural differences of power, timing, and other difficulties through the use of a mediator. In determining whether to engage in mediation or how best to utilize the process, there are many factors a negotiator should consider that can influence the course of the mediation, and therefore the ability of the parties to resolve the conflict. This chapter addresses those factors and provides a guide for a negotiator about to embark on a cross-cultural mediation.

I. Introduction

Mediation can be used as a continuation of the parties' own negotiating efforts.¹ Due to some of the difficulties with cross-cultural negotiations discussed in previous chapters, the parties, no matter how hard they tried to reach an agreement, may still arrive at impasse. If this occurs, mediation may be a beneficial next step. Mediation allows a third party to intervene and act as a facilitator of communication, reality-checker, or a scapegoat to improve and further the discussions when basic negotiation does not succeed.² Mediation may help in building trust between counterparts and allow parties to vent or express themselves without permanently damaging discussions. Additionally, due to mediation's more flexible and confidential characteristics, it may succeed in overriding significant cross-cultural difficulties, such as a communication breakdown, power imbalances, timing concerns, and procedural difficulties.³

II. Cultural Norms of Mediation

Mediation is practiced differently from culture to culture. Understanding the concept of mediation in a specific culture, as well as when mediation is utilized in that culture for a particular dispute, may be an important step in reaching a successful agreement through this process. Prior to agreeing to participate in mediation, a party may find it helpful to understand the implications and traditions of the practice within the pertinent culture.

In the United States, mediation is commonly used when negotiation counterparts reach impasse.⁴ The preferences in the United States towards "directness, specificity, frankness in stating demands, confrontation, and open self-disclosure when resolving disputes"⁵ are reflected in the U.S. model of mediation.⁶ Although people in the United States employ various models of mediation, the models almost always consist of a meeting or series of meetings run by a neutral third-person who works to assist the parties in reaching agreement.⁷ At the conclusion of the mediation, the mediator usually has little or no additional contact with the parties.⁸ However, during the mediation, the mediator often focuses on the goals of each individual party and assists them in working collaboratively to find the best way to satisfy each individual's needs.⁹ Neutrality is a key aspect of the U.S. model, and the mediator is often chosen due to his lack of personal stake in the outcome.¹⁰ In choosing a mediator, parties in the United States tend to examine the potential mediator's professional background, training, experience, and prior cases mediated.¹¹

Additionally, rules play an important role in the relatively informal process.¹² After the rules are set forth, the mediator often requests that the parties give opening statements. Next, the parties may be able to negotiate between themselves with only minor guidance from the mediator or the parties may rely on the mediator to shuttle back and forth between them if they must be separated. Because the goal is to reach a satisfactory agreement, it is often imperative that people with decision-making authority on behalf of each party are present during the course of the mediation.¹³

In contrast, people in collectivist societies, such as those in Mexico and Iraq, often use mediation as a first step, prior to negotiation, to assist in conflict resolution.¹⁴ Additionally, in collectivist cultures, a mediator is commonly chosen not because of his neutrality, but instead because he is a respected insider.¹⁵ Therefore, he may already be familiar with the background of the issue, and the parties may view him as being able to understand and assist in resolving the conflict. Because of this, the mediator may advise each party on potential resolutions, although he may have had no formal training in mediation or other dispute resolution processes.¹⁶ Often, this type of mediation is conducted without the parties in the same room, and the mediator instead meets informally with parties, individually, through a series of meetings until a satisfactory resolution is achieved.¹⁷

One reason the mediation process differs from culture to culture is because the process is used to accomplish different goals.¹⁸ For example, Joshua Berry observes that Muslim culture highly values honor, so mediation within the culture allows the parties to preserve that honor by settling dispute in a private setting with a close family member or respected community member.¹⁹ In contrast, people in American often utilize mediation as a quicker and less expensive route to a solution than participating in litigation.²⁰ Remaining aware of a counterpart's reasons for agreeing to mediation can often make the process smoother and enable a party to be more efficient at handling conflict.

Due to the significant differences in the understanding and practice of mediation from culture to culture, it may be helpful to develop an understanding of applicable mediation customs and practices to determine if mediation is a viable option. Sometimes having a mediator who is familiar with the conflict is not preferable; however, if that third party assists in continuing discussions where negotiation previously failed and is respected by the negotiating counterpart, using such a mediator may be worthwhile. Specifically, in collectivist societies, utilizing a third party that the counterpart respects may be a beneficial and successful solution to moving past negotiating deadlocks and reaching agreement.

III. Considerations for Choosing a Mediator in Cross-Cultural Disputes

If the parties decide to mediate, they may also decide to develop their own rules and procedures for conducting the mediation, otherwise known as “ad hoc” rules. Some of these rules may cover the selection of the mediator.²¹ The parties could choose to adopt established rules set forth by various international programs, or they can use these rules as guidelines or examples to provide the parties with a procedure for selecting a mediator.²² A mediator with international mediation experience or one who understands cultural differences, who can allay fears of being misunderstood and allow for improved trust and communication between the parties, may be preferable, depending on the circumstances of the individual negotiation.²³

A. The Choice of Mediation Style

The choice of which mediation style to employ can be crucial to the success of reaching a resolution or helping to solve a cross-cultural crisis.²⁴ Choice of style may also impact which mediator the parties choose. There are three basic mediation styles: the role of facilitator, the role of formulator, and the role of manipulator.²⁵ These roles may be viewed as a sliding scale based on the amount the mediator participates in the discussion and helps the parties formulate possible settlement options.

The first style, “facilitation,” is generally not viewed as “typical” because it involves little to no substantive contribution by the mediator.²⁶ “Facilitation” may involve simple things, such as assisting in message communication, providing physical space for negotiations, organizing the discussion order, working with a party to see their counterpart or the problem itself in a new light, and not offering substantive suggestions. The role of the mediator in this style is most often recognized as being “primarily facilitative and diagnostic, but also nonevaluative, noncoercive, and nondirective over outcomes.”²⁷ Often, the primary purpose of this style is to maintain communication and understanding between the parties while assisting them in their negotiation.²⁸

The mediator is more active in “formulation mediation,” and this practice is commonly used in the United States. The formulation mediator may suggest solutions, rephrase or refine the issues, work to defuse high emotions, and attempt to move the parties beyond an apparent impasse.²⁹ This may be particularly helpful when emotions run high or the parties are deadlocked in their negotiation.³⁰ However, under this model, the mediator is not expected to impose or pressure acceptance of a particular settlement.³¹ “Formulation mediation” encompasses a broad range of tactics, contributing to the ongoing debate in U. S. mediation literature regarding the appropriateness of the third party suggesting solutions or evaluating the positions of the parties as opposed to acting more like a facilitator.³²

The third mediation style, “manipulation,” differs quite substantially from the previous two styles. Manipulation is considered by some U.S. scholars to be extremely invasive and therefore not considered a “true” mediation.³³ The role of manipulator involves the mediator offering substantive suggestions and solutions, extending bonuses for acceptance of certain alternatives, as well as using authority to influence a party to enter an agreement, which may not have been accepted without this demonstration of power.³⁴ A manipulative mediator may even act as an advocate for one or more of the parties, depending on the circumstances.³⁵ Studies involving international mediation between governmental parties found that a mediator employing an intrusive style can be more effective in ending high crisis situations as opposed to a more facilitative mediator.³⁶ This U.S.-based research, however, determined whether parties were more committed to the result of their agreement when they were able to have a voice and play a primary role in the outcome of their situation.³⁷ Because of this, these studies may have little predictability for a culture in which the people expect the mediator to play a strong role, such as in the Navajo nation or in China.

The manipulator role may be effective when the mediator is able to offer incentives to encourage parties to reach a resolution and when the mediator has an interest in the outcome. For example, these methods may be valuable in resolving disputes between groups when the United States has an interest in the outcome and may be able to act as a third-party mediator. However, it may also be beneficial when the primary goal is reaching an agreement or it is necessary to employ additional measures to convince the parties to reach a certain solution.

B. Characteristics of the Mediator

Certain mediator traits may also affect the way a mediation progresses, so finding a mediator possessing desired traits is preferable.³⁸ Familiarity with the parties is one key characteristic. If the mediator is familiar with one of the parties, as may be desired by those in collectivist societies, she may feel a bias towards one side over the other, either consciously or unconsciously.³⁹ This bias may provide the mediator with a tactical advantage in influencing and accessing the familiar party, which can assist in obtaining greater concessions and eventually reaching agreement.⁴⁰ However, there exists risk that the bias would encourage the mediator to push the unfamiliar side to make greater concessions as well.

The U.S. negotiator may also be interested in choosing a mediator based on affiliations or lack thereof. For example, a negotiator could consider utilizing a private individual or a mediator associated with a state or other organization. Additionally, many outside mediators have an “institutional base,” whether it is a nongovernmental organization, a state government, or some other body.⁴¹ If so, this body will likely be responsible for “backing” the mediator financially, politically, with support staff, or with other accommodations.⁴² A private “unofficial” mediator is one without official status, and such a mediator generally does not need to answer to individuals other than the parties to the mediation.⁴³ When the mediator belongs to an organization or entity, the mediator’s ability to be free and flexible may be inhibited due to the “internal structure and constituency” of that organization, which could potentially affect the mediation’s course.⁴⁴ Private mediators, on the other hand, lack these constraints and therefore may have expanded entry points, tactics, and approaches.⁴⁵ However, a private mediator may also lack capacity and flexibility to influence the parties through more manipulative techniques.⁴⁶ Mediators working with non-governmental agencies or private groups may have the additional problems of lacking the financial and political support necessary for negotiations to continue moving forward.⁴⁷

When choosing a mediator who is affiliated with an organization, the negotiator will be well served to ensure whether that organization is willing to commit to the time required to complete the mediation. However, time constraints imposed by an organization may be beneficial in some situations because this allows the mediator to set time limits for the process and use those limits to subtly influence the parties into reaching a settlement.⁴⁸ Further, a backing institution may have the added benefit of being able to offer incentives to encourage parties to move past a stalemate or other negotiating stronghold.⁴⁹ These incentives can range from promises of financial assistance to improving the appearance of the party in the international community.⁵⁰

There are additional concerns about mediator characteristics when the mediator is retained by a superpower, such as the United States.⁵¹ These particular mediators may be biased and required to answer to the backing organization or constituents.⁵² For example, during the talks between Israel and Egypt led by President Jimmy Carter at Camp David, political problems would arise any time President Carter attempted to deal with the issue of Palestinian rights because of the American Jewish community.⁵³ According to William Quandt of the Brookings Institution, Carter found he needed to be less public with his statements regarding the issue of Palestinian rights, giving the improper impression that he was feeling domestic pressure and backing down.⁵⁴

Some final items to examine when selecting a mediator are the mediator’s personal and professional background.⁵⁵ Although scholars debate whether nature or nurture is more vital to mediator success, research has demonstrated that both are equally important considerations in choosing a talented, effective mediator.⁵⁶ Nature, or personal characteristics and family ties, may be just as significant as nurture, in this case, the opportunities, education, and experiences of the mediator.⁵⁷ Therefore, a party may want to become familiar with a potential mediator’s background and experiences to best determine whether that mediator will be helpful.

C. Mediation Teams

Because the mediator will usually determine the course of the discussion, at times, a team of mediators may be more effective than a single mediator. Several advantages can be gained from the use of a mediation team. First, a mediation team can include mediators from all parties' cultural backgrounds, thus creating an opportunity to build greater trust among the parties.⁵⁸ Involving such a team demonstrates to the counterpart that a diversity of views and values are important, perhaps opening the door for greater trust and respect.⁵⁹ In addition, mediation teams can bring with them a variety of experiences and backgrounds, which may be helpful in assisting the parties to move past cross-cultural negotiating difficulties.⁶⁰

However, there are risks associated with the use of mediation teams. The possibility exists that a party will work only with a mediator who he feels favors his side.⁶¹ Also, if discussions begin to break down, mediators can pass the blame to each other for the difficulties that have arisen instead of taking personal responsibility and attempting to work towards a potential solution.⁶² Therefore, although mediation teams may be helpful in creating and enacting a variety of workable solutions, the potential for inefficiency and impasse still exist.

IV. Additional Concerns Regarding Mediation

A. Putting Culture on the Table

Putting culture on the table during the mediation may be one way to move beyond the difficult issues involving cultural differences that can further complicate the negotiation. Being aware of cultural issues ahead of time and remaining flexible are ways to deal with these cultural pitfalls; however, the mediator may also choose to discuss the differences in the opening remarks prior to the official start of the mediation.⁶³ Allowing the mediator to place culture on the table in this way can subtly draw both parties' attention to the fact that certain differences exist and that negotiations may be difficult, not because of the parties' intent, but because of deeper cultural differences.⁶⁴ However, in some situations putting culture on the table may be offensive, and the mediator should use discretion in utilizing this practice.⁶⁵ Additionally, as noted above in Chapter 6, a party should never directly reference a stereotype, but may instead reference cultural differences in more general terms.⁶⁶ If a party feels specific cultural issues may be relevant to his negotiation, utilizing private sessions with the mediator, also called caucuses, may allow the parties to discuss sensitive subjects with more privacy.

Another way to place culture on the table is by acknowledging it directly when it arises during the course of a mediation. Instead of discussing it openly in the introduction to the mediation, a party or the mediator might wait until cultural differences are involved in a certain stalemate and raise the issue at that time. This technique may be beneficial to help parties recognize that cultural differences, rather than personal differences, play a role in the failing negotiation. A party who recognizes these differences may request in a private caucus that the mediator suggest ways to reach past these differences or ask the mediator to discuss the situation with the other party privately or with the parties together as a group if the situation is appropriate.

B. Mediation Structure

In some situations, the structure of the mediation plays a role in easing the tension between the parties. For example, mediators can determine the location of the mediation in order to best set the stage for a potential agreement.⁶⁷ Neutral locations far removed from controversial situations, such as Camp David, have been beneficial in increasing privacy and the flexibility of the parties.⁶⁸ When mediations are held within a disputant's home territory or in an area of high conflict, the likelihood of agreement is less than if the mediation is held in the mediator's own territory.⁶⁹

Additionally, the way that the mediation process is structured can play an influential role in the likelihood of reaching agreement.⁷⁰ Participating in social activities together, in addition to the actual negotiating, such as eating meals or sharing in recreational activities, can assist in bringing the parties to a similar level.⁷¹ These additional opportunities for interaction can encourage listening, re-examination of issues, and mutual understanding, thus helping ease tensions and avoiding cross-cultural pitfalls.⁷²

V. Conclusion

In deciding whether to continue negotiation with the assistance of a mediator, a negotiator may wish to consider the counterpart's desire to mediate and the way differences in mediation from culture to culture may affect the current situation. The negotiator may want to analyze what mediation signifies within the counterpart's culture and to understand the reasons underlying the counterpart's hesitancy or desire to mediate. Additionally, discovering the mediator's background and connections may be imperative in determining whether or not mediation is a beneficial alternative for the current situation. A mediator or mediation team may be able to utilize power balances, biases, or structures to assist the mediation. Understanding that the mediator is there to assist the parties in reaching a solution that both sides can accept, whether it be through influence of power or just offering space for the negotiation can help lead to an agreement. The mediator can also bring a great amount of assistance to a situation and provide many alternate ways to come to an agreement. Finally, the mediator's history and connections may play a role in interfering with a party's true best interests.

Toolbox

Potential questions a party entering into mediation should consider:

- 1) What is the pertinent culture's understanding of mediation and how is it used in resolving disputes? How does that differ from mediation within my own culture?
- 2) Why is my counterpart choosing mediation and how will that affect the status of the negotiations?
- 3) What am I trying to achieve through mediation?
- 4) What type of mediation style will help me reach my goal?
Is there a style that will worsen my situation?
- 5) Will an inside mediator help or hurt the situation for me?
- 6) What affiliation may have an impact on the mediator and the mediation?
- 7) What type of power does the mediator bring to the table and how does that affect my counterpart and I?
- 8) How does the mediator's background and experiences impact my situation and that of my counterpart?

Endnotes

- ¹ Jacob Bercovitch, *Introduction: Putting Mediation in Context*, in *STUDIES IN INTERNATIONAL MEDIATION, ESSAYS IN HONOR OF JEFFREY Z. RUBIN* 3, 5 (Jacob Bercovitch ed., 2002).
- ² Julie Barker, *International Mediation—A Better Alternative for the Resolution of Commercial Disputes: Guidelines for a U.S. Negotiator Involved in an International Commercial Mediation with Mexicans*, 19 *LOY. L.A. INT'L & COMP. L. REV.* 1, 10-11 (1996).
- ³ *Id.* at 52-53.
- ⁴ Joshua F. Berry, Note, *The Trouble We Have With the Iraqis Is Us: A Proposal for Alternative Dispute Resolution in the New Iraq*, 20 *OHIO ST. J. ON DISP. RESOL.* 487, 508 (2005) (citing Walter A. Wright, *Mediation of Private United States-Mexico Commercial Disputes: Will it Work?*, 26 *N.M. L. REV.* 57, 62 (1996)).
- ⁵ *Id.* (citing DAVID W. AUGSBURGER, *CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS* 28 (1992)).
- ⁶ *See id.* at 508-09.
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ *Id.* at 508; Wright, *supra* note 4, at 60.
- ¹⁰ Wright, *supra* note 4, at 63.
- ¹¹ *Id.* at 62-63.
- ¹² *Id.* at 63.
- ¹³ *Id.* at 64.
- ¹⁴ *Id.* at 65.
- ¹⁵ *Id.* at 65-66
- ¹⁶ *Id.* at 66.
- ¹⁷ *Id.*
- ¹⁸ Berry, *supra* note 4, at 511-12.
- ¹⁹ *Id.*
- ²⁰ *Id.* at 512.
- ²¹ Barker, *supra* note 2, at 15.
- ²² *Id.* One such set of rules the parties may wish to adopt are the Uniform Mediation Act, complete with the 2003 amendment adopting the UNCITRAL Model Law on Commercial Arbitration. More information on the Uniform Mediation Act and the amendments can be found at the website for the Uniform National Law Commissioners, at www.nccusl.org/Update/ActSearchResults.aspx (last viewed July 7, 2006).
- ²³ Barker, *supra* note 2, at 18.
- ²⁴ JONATHAN WILKENFELD ET AL., *MEDIATING INTERNATIONAL CRISES* 69 (2005).
- ²⁵ *Id.*
- ²⁶ *Id.* at 70.
- ²⁷ *Id.* at 71 (citing L. Keashly & R.J. Fisher, *A Contingency Perspective on Conflict Interventions: Theoretical and Practical Considerations*, in *RESOLVING INTERNATIONAL CONFLICTS: THE THEORY AND PRACTICE OF MEDIATION* (Jacob Bercovitch ed., 1996)).

²⁸ *Id.* at 70.

²⁹ *Id.* at 72.

³⁰ *Id.*

³¹ *Id.* at 72.

³² L. Randolph Lowry, *Training Mediators for the 21st Century: To Evaluate or Not: That is Not the Question!*, 38 FAM. & CONCILIATION CTS. REV. 48, 48 (2000).

³³ WILKENFELD, *supra* note 24, at 73; Pamela A. Kentra, *Hear No Evil, See No Evil, Speak No Evil: The Intolerable Conflict for Attorney-Mediators Between the Duty to Maintain Mediation Confidentiality and the Duty to Report Fellow Attorney Misconduct*, 1997 BYU L. REV. 715, 718 (1997) (citing Christopher W. Moore, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* 14 (1986)); *see generally* STEPHEN B. GOLDBERG ET AL., *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 103 (2d ed. 1992); LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* 4-5 (1987).

³⁴ WILKENFELD, *supra* note 24, at 73 (citing generally S. Touval & I.W. Zartman, *Introduction: Mediation in Theory, in International Mediation in Theory and Practice* (S. Touval & I.W. Zartman eds., 1985)).

³⁵ *Id.*

³⁶ *Id.* at 100.

³⁷ Carol J. King, *Burdening Access to Justice: The Cost of Divorce Mediation on the Cheap*, 73 ST. JOHN'S L. REV. 375, 437 (1999).

³⁸ CHESTER A. CROCKER ET AL., *TAMING INTRACTABLE CONFLICTS, MEDIATION IN THE HARDEST CASES* 15 (2004).

³⁹ Peter J. Carnevale, *Mediating from Strength, in Studies in International Mediation: Essays in Honor of Jeffrey Z. Rubin* 25, 30 (Jacob Bercovitch ed., 2002).

⁴⁰ *Id.*

⁴¹ CROCKER, *supra* note 38, at 78.

⁴² *Id.*

⁴³ A. Paul Hare, *Informal Mediation by Private Individuals, in Mediation in International Relations: Multiple Approaches to Conflict Management* 60-61 (Jacob Bercovitch & Jeffrey Z. Rubin eds., 1992).

⁴⁴ *see generally* CROCKER, *supra* note 38, 78-81.

⁴⁵ Chester A. Crocker, et al., *Multiparty Mediation and the Conflict Cycle, in Herding Cats, Multiparty Mediation in a Complex World* 19, 29-30 (Chester A. Crocker et al. eds., 1999).

⁴⁶ *Id.*

⁴⁷ Chester A. Crocker, et al., *Rising to the Challenge of Multiparty Mediation: Institutional Readiness, Policy Context, and Mediator Relationships, in Herding Cats: Multiparty Mediation in a Complex World* 665, 679 (Chester A. Crocker et al. eds., 1999).

⁴⁸ CROCKER, *supra* note 38, at 78-79.

⁴⁹ *Id.* at 79.

⁵⁰ *Id.* In discussing incentives, scholar Jeffrey Rubin identified several types of resources and influences related to power that a mediator can use to assist in aiding the negotiation: reward power, which exists when the mediator is able to offer something to the parties as an incentive to reaching agreement; coercive power, which relies on threats to attempt to change the parties' actions; expert power, that depends on the amount of experience and knowledge that the mediator has; legitimate power in authority under law; referent power, that is based on the parties goal to maintain a relationship with the mediator; and informational power, that plays on the information that is conveyed between the parties in the situation where the mediator is the "go-between" between the various parties. CROCKER, *supra* note 38, at 29.

⁵¹ CROCKER, *supra* note 38, at 80.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 75.

⁵⁶ *Id.*; *see also id.* at 196 n.4, stating "[B]oth his Mauritanian background and his long experience in public service in Mauritania and his United Nations were extremely helpful to Ahmedou Ould-Abdallah in his work as the UN secretary-general's special representative SRSG to Burundi."

⁵⁷ CROCKER, *supra* note 38, at 75.

⁵⁸ Isabelle R. Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55, 89-90 (1995).

⁵⁹ *Id.* at 89.

⁶⁰ Elizabeth L. Allen & Donald D. Mohr. *How to Choose the Right Mediator*, 26 VT. B. J. & L. DIG. 27, 27 (2000).

⁶¹ CROCKER, *supra* note 38, at 89.

⁶² *Id.*

⁶³ Daniel Q. Posin, *Mediating International Business Disputes*, 9 FORDHAM J. CORP. & FIN. L. 449, 471 (2004).

⁶⁴ *Id.* 471-72.

⁶⁵ *Id.* at 472.

⁶⁶ Barker, *supra* note 2, at 24.

⁶⁷ Dean G. Pruitt, *Mediator Behavior and Success in Mediation*, in *STUDIES IN INTERNATIONAL MEDIATION, ESSAYS IN HONOR OF JEFFREY Z. RUBIN* 41, 45 (Jacob Bercovitch ed., 2002).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

Chapter 15

Post-Agreement Issues

Matthew Monda

A b s t r a c t

This chapter deals with some issues that arise after the initial agreement is reached.

The first section suggests what a U.S. negotiator can do if he is being replaced, replacing someone, or dealing with a new counterpart. The second section discusses breach of the agreement and ways to remedy the breach without sacrificing the relationship. Both sections are organized by actions to be taken proactively and those that are reactive to the situation.

I. Introduction

As this book has shown, “negotiations” are more than just the discussions needed to reach a single agreement. A negotiation is the aggregate of events and interactions in a relationship between parties with separate interests. To this point, most of the chapters have focused on those events and interactions that take place up to and including the initial agreement between the parties. This chapter focuses on what occurs after that initial agreement is signed.

More specifically, this chapter deals with issues that create problems in the relationship. In an ideal negotiating relationship, the execution of the agreement proceeds as planned and leads to future agreements. When an issue arises that breaks the ideal continuum, both the initial agreement and the relationship become tested. Effectively dealing with these issues can make a failing negotiation successful.

Dealing with post-agreement issues requires both reactive as well as proactive actions. When the unexpected arises, negotiators who can react to the issue by minimizing its negative effect will be successful in maintaining strong negotiating relationships. This chapter will discuss how a negotiator can react effectively to such post-agreement issues.

Negotiators can prepare for many of these unexpected post-agreement issues. Steps can be taken, in anticipation of certain issues to minimize the negative effects or to avoid post-agreement problems altogether. These steps, however, may not be obvious or may be difficult to broach during the initial negotiations. Consequently, this chapter will also explore ways a negotiator can act reactively.

The first category of post-agreement issues involves when one or more of the negotiators are replaced. A new negotiator can signal the end of the relationship if it is not handled correctly. Furthermore, some cultures replace negotiators as an offensive tactic. A negotiator in a cross-cultural negotiation must be prepared to address this possibility.

The second type of post-agreement issue includes the breach of the original agreement. Often in cross-cultural or international agreements, the parties cannot resort to a court to protect the rights of the non-breaching party, and obtaining damages or performance may be difficult. In the United States, contracts commonly deal with a potential breach. Different cultures, however, may be reluctant to discuss this issue before a breach occurs. Also, some cultures vary on their approach to renegotiation, a common way of dealing with breaches.

II. Replacement Negotiators

In cross-cultural negotiations, one or more of the negotiators may be far from home in a negotiation relationship lasting over the course of several years. These factors can create a situation in which a negotiator from one side can no longer continue in the process, leaving the truly interested party, the backing organization, to find a replacement.

As discussed earlier,¹ the relationship forged between negotiators is important to the success of the negotiation. While demands and interests may be based on the positions of the parties, the relationship is usually based on the personal traits of the individuals. Replacing a negotiator can disrupt the relationship even if it does not materially change the issues involved in the negotiation.

A. Active Steps for Dealing with New Negotiators

In some cases, a negotiator’s exit from the negotiation process will be foreseeable. If this is the case, the outgoing negotiator can prepare for the arrival of the new negotiator. This is particularly important if the relationship is strong, but this may be an advantageous tactic even if the relationship is weak.

In either situation, the key is framing the change in negotiators in a way to alleviate any concerns of the counterpart. This begins by framing the negotiation as a relationship existing over the course of time. The exit of the outgoing negotiator and the arrival of the new negotiator are just steps in the ongoing relationship. Successfully framing the transfer as a natural step in the process allows the new negotiator to take advantage of the past discussions without having to restart the process.

An understanding of the way in which the counterpart views time creates an opportunity to frame the transfer in the most advantageous way. The counterpart’s perception of time dictates the negotiating

process, and cultural differences in the perception of time create a potential disconnect between the parties. By understanding the counterpart's perception, the U.S. negotiator can adapt his approach to relate in an appropriate manner.

In *The Military and Negotiation*, Deborah Goodwin suggests there exist two different ways people view time. The individual's perception of time is often a result of culture, and the two most common perceptual time models are sequential time and synchronic time.² The shape of the negotiation is often determined by the perceptual model adopted by the negotiators. In a sequential model, time is viewed on a straight continuum from past to future.³ The negotiator stands in the present, with all points in the negotiation either in front or behind. People who use this model are likely to prefer dealing with one task at a time and preparing thoroughly. In other words, they behave in a "highly structured manner."⁴ When dealing with a negotiator who views time sequentially, planning is important. The earlier a transfer can be "scheduled," the more the counterpart can mentally prepare for the change. Under this model, when the time comes, the new negotiator can be viewed as the next step.

In the synchronic model, past, present, and future are considered "interrelated phases," each affecting the others.⁵ Past events and future considerations shape the actions of the present.⁶ Although this model appears to accommodate flexibility,⁷ it may also result in stagnation. While a counterpart viewing time in the sequential model needs to be made aware of the future, the counterpart using the synchronic model may not have that same need. The arrival of the new negotiator may not surprise the counterpart, but it may slow down the process while the counterpart integrates the new negotiator into the relationship. Including the new negotiator, professionally and socially, in the negotiating relationship can act to begin the integration process before the new negotiator even arrives. If the identity of the new negotiator is known before the switch occurs, the new negotiator could speak on the phone or perhaps even meet the counterpart in an informal setting prior to the new negotiator's official start. For the outgoing negotiator, it is important to bring the new negotiator up to date with the relationship and inform the counterpart of such need. Finally, the outgoing negotiator can act as a contact or remain active in the relationship as an effort to help bridge the past, present, and future.

B. Reactive Steps for Dealing with New Negotiators

Besides communicating with the counterpart, the outgoing negotiator will be well served to communicate with the new negotiator. While it may be more effective to make such communications before the switch, it is something that can be done even when the switch is unexpected. Because not every replacement negotiator will have sufficient time to prepare, this section advises how to make the best of a sudden switch in negotiation partners.

The new negotiator will need to learn the facts and circumstances surrounding the negotiation. In this regard, the new negotiator will benefit from as much information as possible. A good test for the old negotiator is to think about what information would have been useful at the beginning of the process. Full information sharing is best; however, full disclosure carries a risk of the outgoing negotiator overwhelming the new negotiator.

The outgoing negotiator also has to be cautious of how the information is conveyed. A negotiator who has been immersed in a foreign culture may experience a "reverse culture shock"⁸ upon returning home. Unlike the anticipated shock of entering a foreign culture, the potential for reverse culture shock may be counterintuitive. It can occur when success in adapting to a new culture creates a confidence in adapting to the return home as well. Reverse culture shock can also occur because the people back home either do not expect or are not tolerant of the negotiator's changing circumstances.⁹

This reverse culture shock may create communication difficulties for a negotiator returning from a foreign culture. The outgoing negotiator may have adopted the foreign culture's methods of conveying messages without being aware, thus hindering communication to the new negotiator. For instance, while Americans tend to be verbally oriented, Africans tend to be more aware of nonverbal indicators. An African who has spent time in America developing verbal communication skills may not be used to the nonverbal emphasis upon returning home.¹⁰ If the outgoing negotiator is not communicating in a way understandable to the new negotiator, the intended meaning of the communication may become lost.

Anticipating the occurrence of reverse culture shock is the most effective way to cope with the possibility.¹¹ The outgoing negotiator needs to differentiate what aspects of communication are different in the foreign culture. By doing this, the outgoing negotiator can not only communicate effectively to the new negotiator but also use the opportunity to help the new negotiator minimize the initial culture shock.

C. Dealing with New Counterparts

The focus thus far has been on how the outgoing negotiator can ease the transition for both the new negotiator and the counterpart. The counterpart, however, cannot be counted on to take these same steps when a new counterpart is introduced to the negotiation relationship. In this regard, the U.S. negotiator is left to analyze the situation and decide how to proceed.

The U.S. negotiator may be tempted, and the new counterpart may wish, to begin the negotiating relationship from scratch. This is sometimes the correct approach, even though valuable time and energy will be lost. Ignoring the past relationship, however, may not be wise, particularly when delicate negotiations or relationships have become stronger due to the parties' recent efforts.

The U.S. negotiator will likely try to ascertain some information from either the old or the new counterpart and use this information to determine how best to proceed under the new circumstances. If the U.S. negotiator first learns about the possibility of a new counterpart from the old counterpart, the U.S. negotiator might benefit from having additional time to react to the news. The U.S. negotiator may also try to uncover what the new counterpart has learned from the old counterpart. Although the counterparts represent the same party, they do not necessarily know the same information. The more that the U.S. negotiator can confirm the new counterpart knows, the less ground that needs to be made up. Conversely, when the outgoing negotiator has not communicated even basic information regarding the negotiation to the new counterpart, the more likely it is that the U.S. negotiator needs to start back at an elementary level.

Another important strategy is to uncover the purpose of the switch, if possible. In some cultures, the party switches negotiators at a strategic point in the negotiation to capture an advantage.¹² Alternatively, a switch can be necessitated for unavoidable reasons, such as a transfer or even death. The reason for the switch may affect the way the U.S. negotiator reacts to it. When the switch is unavoidable, patience and accommodation may serve the negotiation. When the switch occurs in an attempt to elicit some concession, accommodation may only encourage the behavior and weaken the negotiator's bargaining position. One approach is to recognize the maneuver and refuse to deal.¹³ This, however, runs the risk of ending the negotiation. A more attractive approach may be to respond with the same action by bringing in a new U.S. negotiator. While this may delay negotiations, the risk of termination is lower. Then, the parties can use the latest discussions between the old negotiators as a starting point.

III. Breach of an Agreement or Impossibility to Complete an Agreement

In any agreement, there is a risk that a party will not fulfill its requirements, whether intentionally or not. Even if the party does fulfill what it believes are its obligations, the other party may understand those obligations differently. The added complexities of cross-cultural negotiations make these possibilities greater. Some of those complexities also make a breach more problematic. In the United States, while the parties can solve their problem in a variety of ways, they can always fall back on the court system. This safety net usually does not naturally exist in cross-cultural negotiations. Therefore, it is especially important to deal with the possibility of breach in creative ways.

A. Active Ways to Deal with Breach

The most effective way to deal with a breach of the agreement is to address it in the agreement itself. It may seem counter-intuitive to agree on how to deal with a broken agreement, and for many cultures, it is. Before exploring ways to deal with the breach, the parties have to acknowledge the need to address it.

Trust and confidence in the relationship are usually at their highest when the parties are close to an agreement. Consequently, the parties may be reluctant to suggest the possibility of future discord. Such suggestion may be viewed as a sign of distrust, leading to impasse. Approaching this subject, therefore, requires delicacy. Accordingly, before discussing potential breach, the focus could turn to impossibility of

completion. Impossibility includes any events making one party unable to meet some or all of its obligations under the agreement.¹⁴ How impossibility is treated varies across legal systems. The parties can, however, agree on how to deal with the situation if it arises. They can define what impossibility means in their situation. Addressing impossibility can be framed as a benefit for both parties in that it will avoid conflict if something beyond the control of the parties occurs.

From there, a negotiator can address the possibility of breach. The focus should be on preserving the agreement, not punishing for noncompliance. It is better to focus on preservation while the parties are on good terms, acknowledging that there may be a temporary distrust if a breach occurs. A rational approach to breach is more likely to be conceived during contracting rather than at the time of breach.

Once the idea of breach becomes a negotiable issue, the next step is to decide what needs to be protected from breach. Some aspects of the agreement may not be essential or worth protecting. The focus should be on what the parties deem the most important and most directly affecting the goals of the negotiation.

There are many ways to protect against future breach within the negotiated agreement itself. For instance, force majeure clauses deal with impossibility and can excuse performance in the event of impracticability, “acts of God,” or political disruption. A choice-of-law provision allows the parties to assign a jurisdiction to handle any future dispute. Mediation or arbitration clauses create an alternative procedure for handling disputes. Additionally, a penalty provision can be included to address damages.¹⁵

The above-mentioned clauses may be common in contracts in the United States, but they are not always useful in cross-cultural agreements. For example, the parties can agree to any method of handling the dispute. Creatively addressing the issue can lead to an approach that meets the unique requirements of an agreement. Similarly, a specific adaptation clause can create flexibility that may save the agreement. An adaptation clause allows certain aspects of the agreement to change depending on specified conditions. One adaptation clause could be to choose a method of determining price in a long-term supply contract by tying the price of the goods to the applicable market. This type of clause can help one party avoid being placed in a position in which the cost of breaching the agreement is less than the cost of fulfilling the obligations.¹⁶

Finally, a U.S. negotiator can incorporate into the agreement dispute resolution systems familiar to the counterpart. Some cultures have unique systems that may be more familiar and comfortable to the counterpart. Examples of this include culture-specific variations of mediation and arbitration.¹⁷ By becoming familiar with cultural customs, the U.S. negotiator can offer mutually acceptable dispute resolution approaches based on that culture’s practices. This approach is yet another way to lessen the negative impact of discussing future breach.

B. Reactive Ways to Deal with Breach

When a breach occurs the non-breaching party will often want to enforce the agreement. This may mean resorting to pre-agreed to forms of dispute resolution or, when applicable, seeking specific performance¹⁸ from a court. Even if the agreement addresses breach, and particularly if it does not, both parties may prefer to reenter negotiations rather than to seek a remedy.

Renegotiation can be as flexible as the parties wish. In essence, as little or as much of the past agreement can be reopened for negotiations. One option is to focus on the conditions that have changed. Another, broader approach is to focus on the most important parts of the agreement, which may include more than just the conditions that have changed. If a changed condition makes fulfillment of a mutually beneficial agreement exceptionally difficult for one party, renegotiating only the changed conditions may be the most beneficial way to proceed. If there is deeper unease about the contract, the changed condition may be an excuse to avoid existing obligations and open the negotiation to include a wider array of topics. If this is the case, renegotiating the entire agreement may be easier than trying to focus the negotiations on limited changed circumstances.

Regardless of the approach, renegotiation tends to be different than the normal negotiation process. Generally, renegotiations are more likely to be distributive, “tit for tat” negotiations than interest-based negotiations because the bargaining range of the parties has previously been defined. However, the distributive tone often increases hostility.¹⁹ Additionally, both parties usually have better information dur-

ing renegotiation.²⁰ What may have been a prediction during negotiations may be a fact during renegotiation. Further, the power of the parties may have shifted, creating a renegotiating context that is very different from the original.

Finally, a U.S. negotiator should be aware of varying cultural views of renegotiation. Some cultures may be more open to it, almost to the point of expecting to renegotiate at some point over the course of the relationship. This knowledge can help the U.S. negotiator determine scope and better understand the new context. On the other hand, the counterpart may be from a culture that would prefer to deal with the breach rather than renegotiate at all. By preparing for this situation, even after breach, the U.S. negotiator can be better prepared for either renegotiating the contract or seeking to enforce a remedy for breach.

IV. Conclusion

As this chapter presents, reaching a negotiated agreement is often not the end of the relationship between the parties. Sometimes, reaching an agreement is the first step of a lasting relationship. As in any relationship, the interested parties may change or the obligations imposed on the negotiators may become unbearable, if not impossible, to perform. In these situations, the U.S. negotiator will be well served to prepare for the possibilities of a change in the composition of the negotiators or breach of an agreement. By knowing how to both anticipate and react to these situations, negotiators will be better able to deal with these potential missteps.

Endnotes

¹ See Chapter 5 on trust building.

² DEBORAH GOODWIN, *THE MILITARY AND NEGOTIATION: THE ROLE OF THE SOLDIER-DIPLOMAT* 111 (2005).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 112

⁸ Gary R. Weaver, *The Process of Reentry*, in *CULTURE, COMMUNICATION AND CONFLICT* 220 (Gary R. Weaver ed., Pearson Press 2d rev. 2000) (1994).

⁹ *Id.* at 221.

¹⁰ *Id.*

¹¹ *Id.* at 225.

¹² Henry J. Graham, *Foreign Investment Laws of China and The United States: A Comparative Study*, 5 *FLA. ST. J. TRANSNAT'L L. & POL'Y* 253, 271 (1996).

¹³ *Id.*

¹⁴ WILLIAM J. FOX, JR., *INTERNATIONAL COMMERCIAL AGREEMENTS: A PRIMER ON DRAFTING, NEGOTIATING AND RESOLVING DISPUTES* 19 (Kluwer L. Int'l 3d ed. 1998) (1988).

¹⁵ *Id.* at 166-76.

¹⁶ *Id.* at 89.

¹⁷ Mediation and arbitration systems vary internationally. Chapter 14 of this book deals with mediation. *The Leading Arbitrators' Guide to International Arbitration* also provides an extensive discussion of international arbitration procedures. *THE LEADING ARBITRATORS' GUIDE TO INTERNATIONAL ARBITRATION* (Lawrence W. Newman & Richard D. Hill eds., 2004).

¹⁸ Specific performance is a contract remedy under which the non-breaching party seeks the court to enforce the terms of the agreement rather than awarding monetary damages for breach. E. ALLAN FARNSWORTH ET AL., *CONTRACTS: CASES AND MATERIALS* 17 (6th ed. 2001).

¹⁹ FOX, *supra* note 14.

²⁰ See *id.* at 224.