


International Business Negotiations

(2nd Edition)



Pervez N. Ghauri and
Jean-Claude Usunier

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Series Editor's Preface

The first edition of this book, published in 1996, was one of the most successful books in this series. It was printed twice and was sold out very quickly. For a couple of years we have been receiving messages from colleagues to publish a second edition of the book. A decision was made an year ago and we asked for some reviews from some colleagues in the field. They were all very enthusiastic and recommended a second edition. These comments were forwarded to the editors. We also received suggestions that the second edition should be published as a paperback to make it more accessible for students.

Through these reviews we also realized that the book has been used in a number of MBA and Master Courses and Modules in Europe, United States and Canada. The editors have also received direct comments from colleagues as how to improve the second edition. We thus believe that the second edition has been compiled with these comments in mind. A number of new chapters have been added while some dated chapters have been taken away. The sequence of chapters is now more logical and deals with the topics more thoroughly.

We understand that there are very few books dealing with this important topic, while it is considered a most important field in international business research and practice. We trust that this second volume will be at least equally successful and will fill the gap in the market.

Pervez N. Ghauri
Series Editor

Editor's Preface

Business negotiations are increasingly recognised as a full part of the managerial process, highly relevant to the implementation of business strategies. Traditionally, most of the business literature has focused on strategy formulation on the one hand, and management systems and procedures on the other. There is now more emphasis on “how to do” rather than simply “what to do”, implying an increased emphasis on relationships with clients, agents and partners as a key success factor in the implementation process. International marketers are now more and more business negotiators, who constantly discuss deals across borders with a variety of people, ranging from consumers to intermediaries and even competitors.

The dramatic growth of international trade over the last five decades has been not only in terms of volume but in complexity as well: service offerings are now mixed with products, and technology often plays a central role as an object of the exchange. Deals are not only made through discussions of a bundle of physical attributes and a price; they are also drafted between merchants and business people from different countries having different objectives and cultural backgrounds. Establishing, maintaining and fostering relationships are therefore of prime importance for the market transaction to take place. It is more and more recognised that international trade is not only a matter of price and product but also of people who manage a complex relational process. Business negotiations occupy a prominent place in international trade because any transaction is in some way negotiated even though on a limited range of issues. Within the relational process some more complex deals are worth consideration in more detail, not only sales agreements but also the discussion of agency and distribution contracts in foreign markets and the negotiation of joint ventures and licensing agreements.

Given the considerable growth in alliances, partnerships and technology deals across borders, finding the right partner(s) and developing an adequate

framework for conducting the relationship with them are now considered key success factors. Technology often plays a major role in such deals and this could mislead people into believing that the whole negotiation process is principally an engineers' discussion based on rational and scientific facts. In fact, technical complexity intermingles with human complexity to render such negotiation processes difficult to manage. Complexity is probably one of the main features of this kind of negotiation exercise: partners come from quite diverse national and cultural backgrounds, do not share the same native language, yet still have a major interest in dealing with each other.

A considerable amount of literature is available on negotiations, some of it also on business negotiations but the field of international business negotiations is quite neglected. Some studies on negotiations with different regions or countries such as the Middle East, Japan and China are available. However, there is no book on this topic that discusses international business negotiations in a comprehensive manner.

As the body of literature has been growing in the field of international business negotiations for the last fifteen years, we believe it is now appropriate to give a comprehensive overview of the knowledge that has been developed. Some twenty authors have contributed to this edited volume, some of them coming from academia, some from business companies, while most of them have been involved both in research and in the practice of negotiation at international level. The reason for compiling this book is that we want our readers to use it as a tool for increasing their knowledge and effectiveness in negotiation; the path towards achieving this is threefold: (i) understanding the process of international business negotiations; (ii) developing knowledge of the issues at stake and the main variables; and (iii) developing skills for being a successful international negotiator.

The second edition of the book is divided into five parts: (I) introduction and general aspects of international negotiations; (II) culture and international business negotiations; (III) the negotiation of specific kinds of agreements; (IV) a regional approach to international business negotiations; (V) some general guidelines of international business negotiations.

The first part is designed to cover the basics of international business negotiations. Chapter 1 gives an overview of international business negotiations and proposes a model that is used further in the text. A colourful illustration of mismatches that arise in the interaction between the negotiators who come from different countries and belong to different cultures is offered in Chapter 2. Chapter 3 discusses a variety of strategies employed by negotiators in the international business arena. These introductory chapters are followed by a discussion of how national culture, organisational culture and personality

impact buyer-seller interactions; it sets in perspective the respective roles of country, corporate and individual variables in shaping negotiation behaviour at the international level (Chapter 4).

Culture is a major determinant of strategies and tactics in international business negotiation, because negotiations involve communication, time, and power and these variables differ across cultures. The second part deals with various aspects of culture that have an impact on the negotiation of business at international level, starting with a chapter that gives an overview of these influences (Chapter 5). Chapter 6 presents the most widely used framework for describing national cultures, Hofstede's four dimensions of culture, and discusses their influence on international business negotiations. A discussion of multilateral negotiations is presented in Chapter 7. This chapter builds further on national, organisational and individual cultural aspects of negotiations and looks at the effects of social networks on negotiation outcomes. The two following chapters are dedicated to issues that have a quite significant cross-cultural variance: issues in cross-cultural communication and what they mean for international negotiators, how people view time and deal with it in business negotiations which are suffused with time-loaded aspects such as dates, planning, scheduling etc. (Chapter 8), and the role of atmosphere in negotiations (Chapter 9).

The third part is orientated towards the content of the deals being negotiated. The first two chapters present the agreements to be discussed by the parties: international sales and export transactions and licensing agreements and international alliances. An interactive way of simulating negotiations to learn more about them is offered in Chapter 12. Chapter 13 deals with mergers and acquisitions in the European Union, and shows how cooperative negotiation works as an asset for the future venture.

The fourth part of the book has a more regional focus, looking at how negotiations should be managed with people from various important areas, though it also builds on cultural factors as well as content-oriented aspects of international business negotiations. We could not be exhaustive here and decided to concentrate on major countries and areas that make up a quite significant part of world trade. The first chapter of this section is illustrative and shows the kind of mismatch that may occur in international business negotiations, when business people coming from various countries interact with each other. Chapter 14 deals with the IBM-Mexico microcomputer investment negotiations, a case in complex negotiations involving a large multinational company and a host government in a Latin American country. Chapter 15 explores the specifics of the negotiation in Eastern and Central Europe, where the political and economic environment has been subject to

tremendous changes over the last five years. The following two chapters are dedicated to North-South business negotiations, emphasizing the interaction between Asians and Westerners (Chapter 16) and presenting an in-depth analysis of Chinese negotiation behaviour (Chapter 17).

The fifth and final part of the book is rather normative in its nature. It presents some ethical issues involved in international business negotiations (Chapter 18) and provides some general guidelines in Chapter 19. This last chapter synthesises the lessons from previous chapters and provides some general rules that can be followed while negotiating internationally.

This is not a general book on negotiation. It focuses on its international business aspects and should therefore be read with cross-border business deals constantly in mind. References can be found at the end of the book; they lead to more general approaches to business negotiations. The first two parts should be read by all with an interest in the subject, since they deal with basic aspects of international business negotiation. For the third and fourth parts, it is up to readers to decide which kind of agreements and which areas of the world they wish to focus on. In the second edition, we have replaced a number of chapters with some new ones, keeping in mind three issues: to provide more recent and up-to-date studies; to provide more practical examples and illustrations; and finally, to create more coherence in the book.

Over the last five years, we have used the book in our courses and have noticed ourselves, and through feedback from our students, the weaknesses and strengths of the book. Before compiling the second edition, we asked a number of our colleagues who used/read the book and they provided us with many constructive remarks. At this stage, Elsevier also sent the first edition to three anonymous reviewers, also asking whether there is a need for a second edition. The remarks we received were most encouraging and helpful and have been extremely useful in putting the second edition together. We are thankful to all the colleagues and reviewers who contributed in this process. For colleagues who are going to use the book in their courses or training programmes, we suggest they look at the following hyperlinks: "<http://kellogg.nwu.edu/drrc/>" of Kellogg's School of Business. There are a number of exercises and material on this site that can be very useful. The CD Rom can be bought and it is quite cheap to use the games/simulations.

In this edition, most chapters have both a conceptual content and illustrative examples. This is designed to help readers who have not been personally involved in such situations understand how the concepts described operate in practice. For those readers who have professional experience of international business negotiations, the book can also be used to re-read situations, that is, to provide them with insights on why a particular negotiation developed in a

certain way. It may serve too as a base for preparing some negotiation in a specific area of the world, or with partners from certain cultures, or when negotiating certain types of agreements.

We would like to thank all the contributors in this volume, who made it possible to cover a broad range of issues related to international business negotiations. Our grateful appreciation goes also to Sammye Haigh and Neil Boon of Elsevier Science who have been instrumental in publishing this book and to Anna Zuyeva and Gill Geraghty who helped us in preparing this manuscript. Any errors and shortcomings remain our responsibility.

Pervez N. Ghauri
Jean-Claude Usunier
Editors

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xxii The Contributors

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Part I:

Introduction

Chapter 1

A Framework for International Business Negotiations

Pervez N. Ghauri

The Nature of Business Negotiation

Negotiation is a basic human activity. It is a process we undertake in everyday activities to manage our relationships, such as between a husband and wife, children and parents, employers and employees, buyers and sellers and business associates. In some of these negotiations, the stakes are not that high and we do not have to pre-plan the process and the outcome, but in some cases, such as business relationships, the stakes are high and we have to prepare, plan and negotiate more carefully. This volume deals, in particular with the latter type of negotiation. In business relationships, parties negotiate because they think they can influence the process in such a way that they can get a better deal than simply accepting or rejecting what the other party is offering. Business negotiation is a voluntary process and parties can, at any time, quit the process. Negotiation is, thus, a voluntary process of give and take where both parties modify their offers and expectations in order to come closer to each other.

In literature, sometimes “bargaining” and “negotiation” are used interchangeably. But in our opinion, they mean different things. *Bargaining* is more like haggling in a typical “bazaar” setting, or in so-called competitive bargaining or distributive bargaining. Here, the objective of the parties is to maximize their own benefit, quite often at the expense of the other party. It refers to a typical win-lose negotiation, where the resources are limited or fixed, and everybody wants to maximize his share of the resources. Parties are therefore more competitive and opportunistic. They normally do not like to

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share information with the other party unless they have to, and they want to get the maximum information on and from the other party. Although this view on negotiation is out-dated, it is still practiced and studied in some situations such as labor management negotiations (Walton & McKersie 1965).

On the other hand *negotiation*, also called “integrative bargaining”, refers to win-win negotiation where both or all parties involved can end up with equally beneficial or attractive outcomes. In other words, everyone can win. It is more related to a problem-solving approach, where both parties involved perceive the process of negotiation as a process to find a solution to a common problem. In integrative bargaining however, if negotiations are not properly handled, both parties can end up with a jointly inferior deal. With negotiation, it is possible for both parties to achieve their objectives and one party’s gain is not dependent upon the other party’s concession. Business negotiation is considered by many authors as being this type of negotiation (Fisher & Ury 1991; Pruitt 1983; Ghauri 1983 1986; Lewicki *et al.* 1991).

Some characteristics of this type of negotiation are:

- Open information flow between the parties. In this case, both sides sincerely disclose their objectives and listen to the other party’s objectives in order to find a match between the two.
- A search for a solution that meets the objectives of both parties.
- Parties understand that they do have common as well as conflicting objectives and that they have to find a way to achieve, as much as possible, common and complementary objectives that are acceptable to both sides.
- To achieve the above, both parties sincerely and truly try to understand each other’s point of view.

The above characteristics are, in fact, opposite to distributive bargaining. That means that the process of negotiation in a problem-solving situation is completely different from a process of distributive bargaining. In the problem-solving negotiation, parties have to look for a solution which is beneficial and acceptable to both sides: a win-win solution. In fact, they look for a jointly optimal outcome, which cannot be achieved unless the parties have this problem-solving approach.

In international business settings, the development of the negotiation process and how parties perceive the relationship are crucial. This process is influenced by some facts and factors beyond the negotiation process in question. The cultural differences that exist on several levels form one of the most important factors: on a national level, cultural differences at the level of different countries; on an organizational level, different type of organizations, depending upon their home country and industry, have different cultures; and on an

individual level, individuals involved in the process of negotiation have different cultural backgrounds not only due to different countries and organizations but also due to their professional backgrounds, such as engineers vs. marketing people. Cultural differences create a challenge to the negotiators involved, and demand understanding as well as flexibility. An ability to assess these differences and properly handle the consequences is essential for success in international business negotiations. This process is also of a dynamic nature and can move in a positive as well as a negative direction at any time, for example, after or during each session. This dynamism is characterized as “atmosphere” in our world. The atmosphere not only explains the perceptions of the parties but also the progress of the process. The more the parties understand and adapt to each other, the more positive the atmosphere around the process, and the more parties are willing to compromise and see common benefits.

A Framework for International Business Negotiation

An overall framework for business negotiation has three groups of variables: background factors, the process and the atmosphere. Since the negotiation process is inherently dynamic, a certain perception of the parties or a particular development in the process may influence a change in the background factors.

Background Factors

This group of variables serves as a background to the process. It influences the process of negotiation and the atmosphere. The effect of different variables on the process and its different stages varies in intensity. One of these variables may influence one stage positively and another negatively. A positive influence means that the process saves time and continues smoothly, while a negative influence causes delay and hindrances. Background factors include objectives, environment, market position, third parties and negotiators.

Objectives are defined as the end stage each party desires to achieve. They are often classified as common, conflicting or complementary. For example, parties have a common interest in as much as both want a successful transaction to take place. At the same time, their interests may conflict, since profit to one is cost to the other. In terms of complementary interest, buyers in international deals are concerned with acquiring the appropriate technology to build an infrastructure. On the other hand, sellers want to enter a particular

market and expect to do future business with it and with the surrounding countries' markets. Common and complementary objectives affect the negotiation process directly and positively, whereas conflicting objectives have negative effects. These effects, in turn, influence the atmosphere and the outcome. Opportunity for an agreement decreases as conflicting objectives dominate a relationship; it increases as common and complementary objectives dominate.

The *environment* refers to the political, social and structural factors relevant to both parties. Variation of the parties with respect to environment, in international negotiation, often hinders the process. There are greater chances of interaction interferences when unfamiliar parties, having different backgrounds, interact with one another. Some of the characteristics directly influence the process while others directly influence the atmosphere. Political and social aspects influence the process, and market structure influences the atmosphere. The parties' *market position* is an important factor influencing the negotiation process. The number of buyers and sellers in the market determines the number of alternatives available to each party, which, in turn, affects the amount of pressure imposed by its counterpart within the market. The process and bargaining position of the buyer or seller can be affected if either one has monopolistic power in the market place.

Most international business negotiations involve *third parties*, i.e. parties other than the buyer and seller, such as governments, agents, consultants and subcontractors. These parties may influence the negotiation process as they have different objectives. Often, governments are involved and influence the buyers towards complementary objectives, such as infrastructure, employment opportunities, foreign exchange considerations and any other prospective relationship between the countries involved.

Negotiators influence the negotiation process with their own experience and negotiating skills. Negotiators operate within two limits: firstly, they act to increase common interests and to expand cooperation among the parties; secondly, they act to maximize their own interests and to ensure an agreement valuable to themselves. The personality of the negotiators also plays a role, particularly when information about the other party is lacking and there is greater stress. A good personality is defined as an individual with the ability to make others understand his position, to approach strangers with ease and confidence and to appreciate the other person's position. However, the skills of negotiators are related to different objectives and motivations, pertaining to different people and professions. Negotiators with a technical background may place more emphasis on technical issues, while those with a business background might consider other issues to be more important.

Atmosphere

The relationship developed during the negotiation process between the parties is characterized by an atmosphere which is of fundamental importance to the process as a whole. The atmosphere and the process affect each other through interaction at each stage. Atmosphere is defined as the perceived “milieu” around the interaction, how the parties regard each other’s behavior, and the properties of the process. It has to do with people’s perception of reality. In other words, in negotiation it is the perception of reality which is more important than the reality itself. Some characteristics of the atmosphere are dominant at one stage; others at another stage. The pre-negotiation stage is dominated by cooperation rather than conflict, as parties look for mutual solutions. Different characteristics of the atmosphere dominate from process to process. These characteristics are conflict/cooperation, power/dependence and expectations.

The existence of both *conflict and cooperation* is a fundamental characteristic of the negotiation process. On one hand, parties have some common interests in finding a solution to the problem which fits both the parties. On the other hand, a conflict of interest may arise, as cost to one of them can mean income to the other. The magnitude of conflict or cooperation in the atmosphere depends upon the objectives of the negotiating parties. Some relationships are more complementary — and consequently less conflicting — than others. The degree of conflict or cooperation during different stages of the negotiation process is often a function of the issues being dealt with, while the degree of conflict or cooperation in the atmosphere is a function of how the parties handle various problems. Conflict is sometimes perceived, without the existence of real conflict, due to a misunderstanding of each other’s behavior. The more unfamiliar the parties are with one another, the higher the risk of such perceived conflicts. Each process and even each stage of the process can be characterized somewhere on a scale with cooperation and conflict on opposite sides.

The *power/dependence* relation is another basic characteristic of all negotiation processes. It is closely related to the actual power relation, which is influenced by the value of the relationship to the parties and their available alternatives. Background factors for example the market position — can influence the power/dependence relation. The ability to control a relationship is related to the perceived power of two parties, their relative expertise and access to information. This power is a property of the relationship and not an attribute of the actor; in fact, it is closely related to dependence. Therefore, the power relationship is in balance if both parties perceive equal power. The power

relationship is unbalanced if one of the parties perceives more power, or if one party is dependent on the other.

The last aspect of atmosphere concerns two types of *expectations*. Firstly, there are long-term expectations regarding the possibilities and values of future business. The stronger these expectations are, the more inclined the negotiators are to agree on the present deal. Long-term expectations are related to primary objectives. Secondly, there are short-term expectations concerning prospects for the present deal. The parties' decision to enter negotiations and to continue after each stage implies expectations of a better outcome from participating than from not participating. This compels the parties to proceed from one stage to the next. Expectations develop and change in different stages of the process.

The Negotiation Process

The process of international business negotiation presented here is divided into three different stages. A stage of the process refers to a specific part of the process and includes all actions and communications by any party pertaining to negotiations made during that part. Parties communicate with each other to exchange information within each stage. A particular stage ends where parties decide to proceed further on to the next stage or decide to abandon the communication if they see no point in further negotiations. In the pre-negotiation stage, parties attempt to understand each other's needs and demands, which is done through information gathering and informal meetings. The negotiation stage refers to face-to-face negotiations and the post-negotiation stage refers to the stage when parties have agreed to most of the issues and are to agree on contract language and format and signing the contract.

In international business negotiations, the process has three dimensions. In addition to the three stages, it has a cultural dimension and a strategic dimension. These two dimensions are present in each of the three stages of the process. However, these can play different roles in different stages. This is illustrated by Figure 1.1.

Stage I: Pre-Negotiation The pre-negotiation stage begins with the first contact between parties in which an interest in doing business with each other is shown. During this stage, some negotiations take place and tentative offers are made. The dynamism of the process can be observed at this early stage

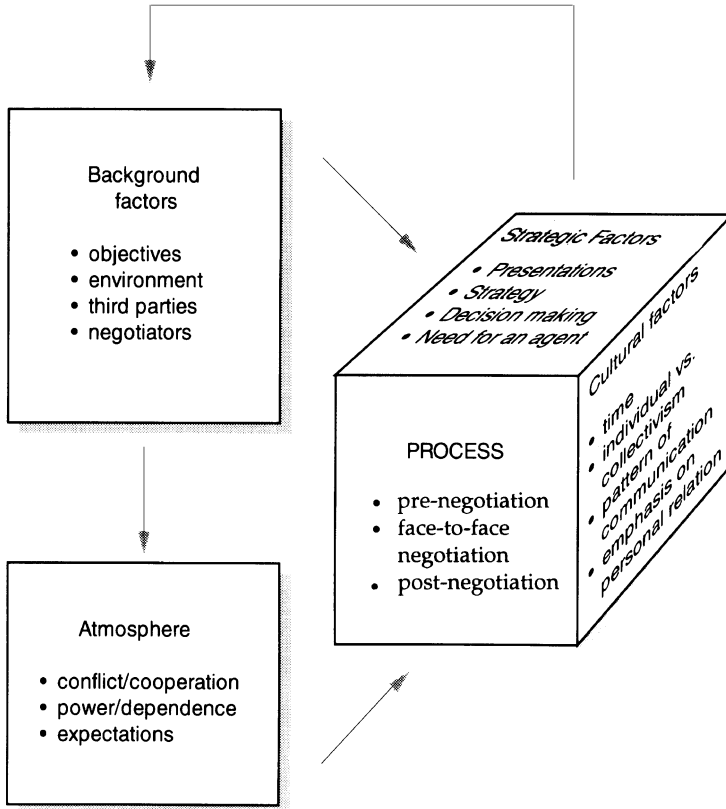


Figure 1.1: The process of international business negotiation.

Source: Based on Ghauri (1996) and Cavusgil & Ghauri (1990).

where parties begin to understand one another's needs and evaluate the benefits of entering into the process of negotiation.

The parties gather as much relevant information as possible on each other, the operating environment, the involvement of other third parties, influencers, competitors and the infrastructure. Parties need to be aware that their relative power relationship can be altered at any time by such events as the repositioning of competitors or movements in exchange rates. As we have defined this negotiation process as being of a problem-solving nature, the main issue here is to define the problem to be solved. It is important to define the problem jointly, as it will not only reflect each other's expectations but is also

necessary to acquire commitment from both parties. The parties should, therefore, truly and openly discuss each other's objectives and expectations in order to achieve a positive problem-solving situation.

Informal meetings take place as the parties examine each other's position. Whether the parties continue to the next stage of the negotiation process depends on the perceived level of cooperation or conflict, of power or dependence and the expected benefits of the relationship. The process often ends in failure if excessive conflict is sensed or if a successful future relationship seems doubtful. The parties should truly see how they are going to cooperate, examine whether it is realistic to expect to achieve the objectives of both sides and to identify the obstacles that have to be overcome to achieve these objectives.

The pre-negotiation stage is often more important than the formal negotiations in an international business relationship. Social, informal relationships developed between negotiators at this stage can be of great help. Trust and confidence gained from these relationships increase the chances of agreement. One method of establishing such contacts is to invite individuals from the other side to visit your office/country in an attempt to develop trust. The prime objective here is to get to each other's priorities. The parties need to understand the interests and fears of the other party.

Parties also begin to formulate their strategy for face-to-face negotiation. By strategy we mean a complete plan regarding problems, the solutions available and preferred choices, relative to the other party's choices and preferences. Parties try to build up their relative power. They compare the alternatives available, make check lists and assign arguments for and against these alternatives. They also decide on possible points of concession and their extent.

Parties try to foresee and take precautions against predictable events. Remittance of funds, taxes and import duties and work permits are just some examples of the rules and regulations of the particular country that must be researched at this stage. An understanding of the infrastructure of the country and the company is also critical at this point. In some countries, especially when the public sector is the buyer, purchasing organizations issue a "letter of award" (also called letter of intent/acceptance) after the first stage. The negotiators from Western countries often perceive this letter of award as a grant of contract. However, this is an incorrect assumption, the letter merely indicates the other party's intention to negotiate further (Ghauri 1986; Lewicki, R. J. *et al.* 1994).

Parties to international business negotiations should have an initial strategy, which is dependent on the information attained so far and the expectations. The

negotiators should list the problems and issues, especially the conflicting issues and form strategies and choices for all possible solutions they or the other party could suggest. These solutions should be ranked in terms such as preferred, desired, expected and not acceptable. If not acceptable, a solution that could be acceptable to the other party should be suggested. It is, thus, important to have several solutions for each problem or issue (Mintzberg, H. 1991; Cavusgil & Ghauri 1990).

Stage II: Face-to-Face Negotiation The basic issue at this stage is that parties believe that they can work together to find a solution to a joint problem. The parties should also be aware that each side views the situation, the matter under discussion, in its own way. Not only that it has a different perception of the process but it has different expectations for the outcome. It is therefore, important to start face-to-face negotiation with an open mind and to have several alternatives. At this stage, as the process continues, the parties should evaluate the alternatives presented by the other party and select those that are compatible with their own expectations. The best way is to determine criteria for judging the alternatives and then rank order each alternative, one's own as well as those presented by the other party, against these criteria. Here the parties can even help each other in evaluating these alternatives and can discuss the criteria for judgement. The main issue is to explore the differences in preferences and expectations and to come closer to each other.

Experience shows that the negotiation process is controlled by the partner who arranges the agenda, since he can emphasize his own strengths and the other party's weaknesses, thus putting the other party on the defensive. However, the agenda may reveal the preparing party's position in advance and hence permit the other side to prepare its own counter-arguments on conflicting issues. Some negotiators prefer to start negotiations by discussing and agreeing on broad principles for the relationship. Another way to ensure success at this stage is to negotiate the contract step by step — discussing both conflicting issues and those of common interest. In particular, an initial discussion on items of common interest can create an atmosphere of cooperation between parties. The choice of strategy depends upon the customer or supplier with whom one is negotiating. It is helpful to anticipate the other party's strategy as early as possible and then to choose a strategy to match or complement it.

It is often suggested that the negotiator should not agree to a settlement at once, even if there is considerable overlap of his position with that of the other party. The negotiator may obtain further concessions by prolonging the negotiation process. A number of studies have revealed that negotiators who directly submit a "final offer" can be at a disadvantage. In view of the diverse

cultural and business traditions prevailing in different countries, international negotiations inherently involve a discussion of differences. It is very difficult for parties to comprehend or adjust to each other's culture or traditions, but it is important to be aware of these differences. Social contacts developed between parties are far more significant than the technical and economic specifications in many emerging markets. Negotiators from these countries take their time and are very careful not to offend or use strong words; and the other party is expected to follow suit.

A balance between firmness and credibility is important in all types of negotiation. It is important to give and take signals of readiness to move from the initial stage without making concessions. Negotiators having prior dealings with each other can easily send and receive signals, but it is very difficult for those meeting for the first time. Negotiators often send conditional signals such as "We cannot accept your offer as it stands" or "We appreciate that your equipment is quite suitable for us but not at the price you mentioned".

It is also common that the party perceiving greater relative power makes fewer concessions and that the weaker party yields more, often to create a better atmosphere. Maintaining flexibility between parties and issues is of great importance in this stage. These usually occur after both parties have tested the level of commitment and have sent and received signals to move on. For example, the price can be reduced if the party offers better terms of payment. Other elements can be traded off but there may not be a way to evaluate them in accounting terms. For example, an entry into a huge protected market may be strategically more important than obtaining handsome profits on the present deal.

Stage III: Post-Negotiation At this stage, all the terms have been agreed upon. The contract is being drawn up and is ready to be signed. Experience has shown that writing the contract and the language used can be a negotiation process in itself, as meaning and values may differ between the two parties. In several cases involving Western firms and emerging-country parties, the language used and the recording of issues previously agreed upon took considerable time. This stage can lead to renewed face-to-face negotiation if there is negative feedback from background factors and atmosphere. Discussion should be summarized after negotiations to avoid unnecessary delays in the process. The terms agreed upon should be read by both parties after concessions are exchanged and discussions held, by keeping minutes of meetings, for example. This will help test the understanding of the contract, as parties may have perceived issues or discussions differently. This not only applies to writing and signing the contract but also to its implementation.

Trouble may arise later during the implementation of the contract if parties are too eager to reach an agreement and do not pay enough attention to details. The best way to solve this problem is to confirm that both sides thoroughly understand what they have agreed upon before leaving the negotiating table. A skilled negotiator will summarize and test understanding: “Do we understand correctly that if we agree to your terms of payment and repay the credit within three years from the date of the contract, you will reduce the price by 7%?”

Cultural Factors

As is apparent from the above discussion, cultural factors play an important role in international business negotiations. We have chosen to use the following factors that are most important in this respect:

Time Time has different meaning and importance in different cultures. While ‘time is money’ in the Western culture, it has no such value attached to it in many cultures in Asia, Latin America and Africa. This influences the pace of negotiations and the punctuality in meetings. For negotiators, it is important to have advance information on the opposite party’s behavior regarding time. This will help them to plan their time as well as to have patience and not to get irritated during the process.

Individual vs. Collective Behavior These are rather clear behavioral aspects in different cultures. As indicated by Hofstede’s study of 69 countries, we can place different countries on different scales. Even countries in Western Europe have clear differences in this respect (Hofstede G. 1980). In cases of negotiation, it is important to have knowledge of this cultural attribute, as it will help us to understand the behavior of the other party and to formulate an effective strategy. Knowing whether the opposite party is looking for a collective solution or an individual benefit will help in formulation of arguments and presentations.

Pattern of Communication Different cultures have different communication patterns as regards direct vs. indirect and explicit vs. implicit communication. These are related to culture as well as the contextual background of languages (Hall 1960). Some languages are traditionally vague and people from outside find it difficult to communicate with people with such language backgrounds. Indicators such as “maybe”, “perhaps”, “rather”, “I’ll consider it” and “inconvenient” are some examples of ambiguity in international communication and conversation. “Maybe” and “inconvenient” can mean impossible in

some cultures. In some cultures even “yes” means “may be” and “perhaps” means “no”. Some languages, for example some Arabic and some Asian languages, traditionally contain exaggerations, fantastic metaphors and repetition, which can be misleading for foreigners. It is, therefore, important to be aware of these aspects and read between the lines. This is even more important in non-verbal communication, the personal space, handshakes, ways of greeting each other, communication between males and females, signs of irritation, etc., are important aspects of communication patterns, and knowledge of these can improve the negotiation process and effectiveness.

Emphasis on Personal Relations Different cultures give different importance to personal relations in negotiations. In many countries in the West, the negotiators are more concerned with the issue at hand and the future relationship between the organizations, irrespective of who is representing these firms, while in some cultures, the personality of the negotiator is more important than the organization he is representing or the importance of an issue. So the emphasis on personal relations can be different in different negotiations.

Strategic Factors

While negotiating in an international setting, the parties have to prepare thoroughly with respect to how to present things, which type of strategy should be used and which type of decision-making process is followed by the other party. Whether or not they need an agent or an outside consultant is also a question of strategy.

Presentations Negotiators have to know whether the presentations to be made are carried out in a formal or informal setting. Whether these are to be made to teams, as in China and Eastern Europe, or to individuals, as in India and the Middle East. The formal vs. informal presentation style is very distinct in many countries. If not prepared, the negotiators can make serious blunders at an early stage of negotiations. It is also important to know whether issues can be presented in groups or whether each issue should be handled individually, and whether presentations should be argumentative or informative, factual and to the point.

Strategy There are several types of strategies in business negotiations. The most important are tough, soft or intermediate strategies. In tough strategy, a

party starts with a very high initial offer and remains firm on its offer and expects the other party to make the first concession. In soft strategy, a party does not start with a very high initial offer and makes the first concession in the hope that the other party will reciprocate. In intermediate strategy, a party does not start with a very high initial offer and as soon as an offer is made which is within its realistic expectations, it accepts it. It is important to have information on the opposite party's strategy and to adapt one's own strategy to it and to have a counter-offer ready.

Decision-Making Some information on the other party's overall decision-making pattern is necessary before going into negotiations. Does the party use impulsive or rational decision-making? Who makes the decisions? Do the negotiators coming to the table have the power to make final decisions or not? These are issues which are important to know in advance. In many cultures in Asia, decision-making is highly influenced by the importance of face-saving and influences the timing of decisions made.

Need for an Agent

It is part of strategy-formulation to realize whether or not the firm or negotiators can handle the particular negotiation on their own. What type of cost and benefits can be achieved by employing an agent for a particular negotiation process? In our opinion, the more unfamiliar or complicated the other party or the market is, the greater need for an agent or a consultant. These days, specialized agents and consultants are available for different geographic as well as technological areas. There are enormous efficiencies to be achieved by using their expertise.

Planning and Managing Negotiations

Dozens of books have been written about negotiation, many of which I disagree with. I don't believe in negotiating through intimidation, fear, bluffing or dishonest tactics. A good negotiation concludes as a good deal for every one; negotiation starts with what you want to accomplish. Then the realities and, sometimes, the complexities enter the picture. Sometimes many points of view and many elements have to be considered, but the deal itself must always be kept in view. Your first step should be

to rid yourself of an adversarial position. The reality is that you have a mutual problem, which you are going to solve to your mutual advantage. The intention must be to structure a deal that resolves the problem and gives each of you what you want. It's not always possible, of course. When it can't be done, you are better off making no deal than making a bad deal. A bad deal usually brings a future filled with enormous problems. Negotiating demands a recognition of reality on many levels. Only amateurs try to accomplish something that isn't real or possible; it is an attempt that inevitably leads to failure. Amateurs tend to dream; professionals consider the realities of a deal (Nadel 1987).

In the past, the ability to negotiate was considered innate or instinctive but it is now regarded as a technique which can be learned. Experimental studies, empirical observations and experience have made it possible to grasp the art of negotiation. This section provides some guidelines for planning and managing the negotiation process in three stages.

The Pre-Negotiation Stage

The most important success factor in negotiation is preparation and planning. One may have excellent negotiating skills, persuasive and convincing communication style, a strong market position and relative power but all these cannot overcome the shortcomings caused by poor preparation. As mentioned in the previous section, the presence of cooperation as well as conflict and the relative power/dependence in international business negotiation demands careful preparation and planning. In the problem-solving approach, this becomes even more important as both parties do truly want to do business with each other. In spite of this cooperative behavior, negotiation involves trade-off between own and joint interests. A number of authors have stressed the importance of preparation and planning for negotiation, see, e.g. Kuhn (1988), Sperber (1983), Scott (1981) and Ghauri (1986).

Identify the Contents of the Deal The initial points to consider are issues such as implications of the deal, the interests at stake, the "fit" with organizational objectives, and possible economic, political or other restrictions between parties. What will each gain or lose and how important is the deal for them? What alternatives does either side have? These issues must be considered in terms of tangible and intangible motives.

Comparison of one's own and the other party's strengths and weaknesses is quite important. In business negotiations, the other party does not only include the buyer or the party you are negotiating with, but also the competitors who also have an interest in the same business. In most cases, a party's arguments or preferences are influenced by the offers other competitors have made. Many negotiators use professional investigators for this task of getting information on the other parties and to find their weaknesses. According to one estimate, in the United States, \$800 million is annually spent on industrial spying (Harrison & Saffer 1980). In our opinion, the information required to prepare and plan for negotiation need not include such rather unethical methods. It is quite easy to get a lot of information from the annual accounts of the firms and through talking to their executives, customers and suppliers.

In international business relations, buy-back arrangements are becoming more common, and in large international deals with emerging markets, buyers are demanding some sort of a buy-back. For more details on this issue, see, e.g. Rowe (1989). Emerging countries engage in countertrade deals to correct their trade deficits as well as to earn hard currency. It is important to calculate deals in monetary terms when conducting trade in this medium. The seller might end up with goods which cannot be easily marketed in the home country. The countertrade demand can be just a bluff, so that the seller who seeks to avoid the expenses of buy-back may offer a major price discount. The plant's output supplied under the particular contract is part of the payment in some cases. China uses its cheap labor and re-exports products from local plants to the seller's country. Another example is the iron-producing Carajas project in northern Brazil. Most of the production of this complex is exported to Japan to pay for project financing.

Create Alternatives To negotiate effectively, the marketer must gather information on the strengths and weaknesses not only of the opposite party, but also of the other related parties such as competitors. By considering the resources and behavior of competitors, marketers can develop their own alternatives on different issues. There are several strategies by which the seller can pre-empt competitors, for example, offering credit to the buyer, price reductions or long guarantee periods. Sellers must also allow for alternative solutions to conflicting issues. Question one's own position: "What if they do not accept this . . .?"

Quite often Western negotiators believe they have only three options: (i) persuasion; (ii) threat; or (iii) concession. In fact, there are many alternative solutions to a problem. Different issues can be combined to produce numerous alternatives. If the customer demands a 5% concession on the price, the other

party can ask the customer to pay cash instead of the one-year credit proposed. In one case, the buyer demanded a 5% concession on the contract price after everything else had been agreed upon. The seller instead proposed that he was willing to give a 10% rebate on all the spare parts to be bought by the buyer during the next three years. This offer was accepted gladly by the buyer. One way of creating alternatives is to judge each conflicting issue in the following scale: our ideal position their ideal position. Here we should look for overlaps, is there any overlap of our and their position? If not, how can we create an overlap? What can be their minimum acceptable position? What is our minimum acceptable position? Can we move from there, perhaps give up on this issue and gain in another one which is not so sensitive to the other party, but equally important to us?

Put Yourself in their Shoes For negotiations to be successful, one party must understand the other party's position. This will help each side interpret and anticipate the other side's reactions to arguments. Anticipating and developing rational reactions to arguments allows each party to formulate new arguments and alternatives. This stimulates flexibility on different conflicting issues. Each party has to recognize the needs of the other, quite apart from gathering information and asking questions to check the other party's position. Being a patient listener will help improve negotiations. One can understand the meaning behind the words by listening attentively. One can create a positive and cooperative atmosphere in the negotiation process by showing the other party that he or she is well understood. However, be careful while listening — it is not what is said, but how it is said that is more important and one should read between the lines.

The harder a party tries to show understanding of the opposing viewpoint, the more open it will be to alternative solutions. A universal feeling exists that those who understand are intelligent and sympathetic. Parties feel obliged to reciprocate in these situations. The ability to look at the situation from the other's point of view is one of the most important skills in negotiations. It is important not only to see as the other party sees, but also to understand the other party's point of view and the power of its arguments.

Gauge the Appropriateness of the Message The information exchanged must be adjusted for easier comprehension by the other party. Technical specifications and other material should be provided in the local language. Not only does this facilitate effective communication but it also demonstrates respect for the local language and environment.

The problems of perception and language barriers often cause difficulties in the negotiation process. This is frustrating and places an added burden on all parties involved in the negotiating process. Different cultures interpret messages differently. An octopus is said to have several arms in the United States. It is said to have several legs in Japan. In Sweden, “next Sunday” does not mean the coming Sunday but the Sunday after. In India “next Sunday” means the coming Sunday. “Nice weather” means sunshine in Europe. “Nice weather” means cloudy or rainy weather in Africa and many Asian countries. The exchange of gifts and terms of reciprocity are quite normal in Asia, yet considered close to a bribe in many Western countries. It is important that negotiators adopt appropriate behavior for each negotiation. The chosen arguments should be tailored to the particular customer. One standard argument cannot be used throughout the world. Barriers to communication also arise from real or perceived differences in expectations, which create conflict instead of cooperation between parties.

In cross-cultural negotiations, non-verbal communication, in particular in the expression of emotions and the attitude of a negotiator toward the other party, is sometimes more important than the spoken language. Non-verbal communication can be telling. Liking and disliking, tensions and appraisal of an argument are shown by numerous signs such as blushing, contraction of facial muscles, giggling, strained laughter or just silence. People, sitting down, lean forward when they like what you are saying or are interested in listening, or they sit back on their seat with crossed arms if they do not like the message. Nervousness can manifest itself through non-verbal behavior, and blinking can be related to feelings of guilt and fear. It is difficult to evaluate non-verbal communication, as it is connected to the subconscious and emotions. Effective communication and understanding of people will assist you in adjusting your arguments to the moods and expectations of the other party. Negotiators may continue to hold out, not because the proposal from the other side is unacceptable, but because they want to avoid feelings of surrender. Sometimes simple rephrasing of the proposal or a different approach to the presentation can alleviate the problem (Fisher & Ury 1991).

Build Up Relative Power Negotiators can determine who has the relative power advantage by gathering information about the other party, considering each party’s position and developing different alternatives. They can try to build their own relative power by developing arguments against the elements of power and improving their own position. In the negotiation process, this kind of power may be increased by repeatedly mentioning the weak points of the other party. The uncertainty regarding infrastructure and exchange rates must

be handled here. Parties can agree on adjustments in the event of exchange rate variations. The party with greater information automatically acquires more power. The negotiator may have to work as a detective to ascertain the buyer's needs, his strong and weak points, and the strong and weak points of competitors. By being active in the negotiation process an experienced negotiator can build up information in order to gain relative power. This can be done by asking the other party questions. It can also be done by giving conditional answers such as "*If you agree to pay cash . . . then we can consider looking at our price*", or "*What if we agree to pay cash perhaps then you can lower the price by 5%*".

The Face-to-Face Negotiation Stage

Who Within the Firm Should Negotiate? A difficult question arises regarding who should conduct negotiations whenever a deal is to be made in a new market. Who is the most appropriate person to hammer out a particular deal? In fact, persons involved in international business negotiation can do more harm than good if they lack an integrated knowledge of their own firm and the objective of the deal. Whoever is selected for negotiations must have a good grasp of the deal's implications. This is especially true when long-term relationships are being discussed. One way to minimize this risk is to appoint a negotiation team, where the key members are selected from different departments.

Expendable Person It is important for management to realize that the selected person(s) should be expendable without creating organizational problems. When replacement is necessary, management must be able to escape deadlock. Sometimes negotiations end in an impasse and you may have to start with new players. It is also possible that the selected negotiators and the other party cannot reach a meeting of minds if there is a clash of personal chemistry. It may become necessary to change negotiators in such situations. This discussion gives rise to another question. From which level should the executives for the negotiations be chosen? In most countries, parties expect to negotiate with members of equal status. The managing director from one side expects to negotiate with his counterpart. It is advisable that firms match like with like.

Individuals vs. Teams Parties need to consider not only who should represent the company but also the number of negotiators, i.e. whether one goes

for individual or team negotiations Team negotiation affords marketers the opportunity to benefit from the advice and guidance of many participants. It is difficult for a single individual to be adept in all kinds of commercial, technical and legal issues. The best way however, is to conform to the opposite party. If the opposite side is coming with a team, we should also send a team.

What Makes a Good Negotiator? A number of studies identify characteristics of a good negotiator. Ikle defined a good negotiator as one having a “quick mind but unlimited patience, know how to dissemble without being a liar, inspire trust without trusting others, be modest but assertive, charm others without succumbing to their charm, and possess plenty of money and a beautiful wife while remaining indifferent to all temptations of riches and women” (Ikle 1964). A marketer’s personality and social behavior are of equal importance to social contacts and formal negotiation in many emerging countries.

Depending upon their behavior, negotiators are often grouped into different categories, such as bullies, avoiders or acceptors. Bullies want to threaten, push, demand or attack. Avoiders like to avoid conflicting situations and hide in fear of making a wrong decision or being held responsible. They will normally refer to their superiors for a final decision, “I have to call my head office . . .”. Acceptors always give a very positive answer and say “Yes” to almost anything, which makes it difficult to realize which “Yes” is “Yes” and which “Yes” is “Maybe”, and whether they will be able to deliver what they are promising or not. The best way to handle these behavior types is to first identify them and then confront them by drawing a limit, helping them feel safe and by asking them how and when they would be able to do what they are promising.

Patience It is essential to know the negotiators’ precise authority. In Eastern Europe and China, one team may negotiate one day, followed by a fresh team the next day. When this process is repeated a number of times, it becomes very difficult for negotiators to establish who is the negotiating party and who has the final authority. One of the characteristics of a good negotiator is the ability to discover the timetable of the other party and allow plenty of time for the negotiation process. It is usually not feasible to expect to fly to a distant country, wrap things up and be home again in a week. Nor is it reasonable to coerce a party that is not ready to reach a decision. Negotiations with emerging market customers take a long time! Patience and time are the greatest assets a negotiator can have while negotiating with customers from these markets. Some negotiators take their time, discussing all issues and justifying their role through tough negotiations.

Negotiators must be in a position to change their strategies and arguments, as the process of negotiation is highly dynamic. They must be flexible. The other party will often ask questions, probing the seller's weaknesses, just to provoke and obtain more concessions. It is important to keep calm and find out first if the questions asked are relevant and justified. Negotiators can use this in their favor if questions are not justified and the buyer has wrong information. A good negotiator is not just a person who can conclude an apparently good contract for the company or one who can arrive at a contract in a short time. A good negotiator is one whose agreements lead to successful implementation.

The Post-Negotiation Stage

What is a Good Outcome? A good agreement is one which leads to successful implementation. There are many examples of firms getting into trouble because they could not implement the contract conditions of a particular deal. Therefore, in some cases, no agreement may be a better outcome for the firm. A good outcome benefits both parties and does not make either party feel that it has a less advantageous contract. Sometimes negotiators want to avoid specifying some issues and want to keep them ambiguous. It is important to understand that on the one hand, ambiguity can lead to reopening of the conflict later on, in the implementation stage, and on the other hand, if we want to specify such issues, it might prolong the negotiation process or prevent an agreement. Sometimes, this ambiguity is unintended, whereas, on other occasions, it is intentionally deployed to speed up the process or to give the impression that the particular issue needs to be re-negotiated (Ikle 1964).

It is normally considered that a good business deal is one which provides financial gains. But what were the objectives of the firm when it decided to enter into negotiations? Was it the present deal which was most important or was it future business? The outcome must be related to the firm's objectives. If the objectives have been met then it is a good outcome. A successful negotiation is not a question of "win-lose" but a problem-solving approach to a "win-win" outcome.

The main purpose of the contract is to avoid misunderstandings and trouble in the future. The agreement should foster relationship development and be flexible enough to deal with expected or unexpected future changes. The language and terminology used in the contract must be simple and clear. It must not be necessary to seek legal help every time the contract is consulted.

Chapter 2

Vis-à-vis: International Business Negotiations

John L. Graham

“All ya gotta do is act naturally . . .”

Ringo Starr

The Russian Kiss (Moscow)

What an adventure. It was 1989, and this was my last night in town after a two-week stay. The Mezh (Mezhdunarodnaya Hotel) had been comfortable for the first week. But I still wasn't over my jet lag by the time I got to the Sputnik Hotel for week two. There's an eleven-hour time difference between Irvine and Moscow. And nothing gets better at the Sputnik. The food, furniture, linens, laundry, electrical power and plumbing were all . . . well, intermittent is the kindest adjective I can use. In the fifties I'm sure the Sputnik was a nice place. In fact, in the fifties, Moscow was probably a nice place. Now it isn't nice, but it is interesting.

Despite my personal problems with the business infrastructure in Moscow, my work had gone well and my host, Leonid, had dragged me out once again for a bit of a going-away party. This time it was the Russian equivalent of the Ed Sullivan Show, but staged in a huge smoke-filled, booze-guzzling restaurant. There were singers, dancers, jugglers, and fire-eaters. Most were scantily clad, but all were very talented in their specialties. Most impressive was the speed at which the big roller skater twirled his petite partner. They

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looked more like a NASA maximum-gravity experiment or perhaps a new cosmonaut launching system. Thankfully he didn't lose his grip.

Between the acts came the food, oceans of it including wave after wave of a greasy sliced salami and sliced cucumbers. Lots of cucumbers — obviously Cucumbers ship well, even over Russian roads. And there was absolutely no reason to smoke at dinner. The concentration of Winston and Marlboro smoke floating free in the air was far greater than anyone could possibly suck out of the end of any one cigarette. And the alcohol — relentless toasting. Thick red wine, volumes of vodka, and Moscow beer. Whatever you put your hand on first was fine. I had asked about the red-label Moscow beer the first time it was served to me in the Cosmos Hotel two weeks earlier, “Is this the most popular brand?” My hosts had all gotten a good laugh at my free-enterprise naivete — one replied, “Yes, it's not only the most popular, in fact it's the *only* brand!”

The two weeks had been a test of my physical stamina, a big change from decaf, cappuccinos and huevos rancheros in seaside patio cafes in California. I had entertained these same comrades in Newport Beach and Disneyland, and now they were returning the favor. Good friends and colleagues, all wonderful people. Despite the partying or perhaps because of the partying, I was feeling quite at home, quite comfortable with these Russians. Remarkable. And then he kissed me. In saying good-bye to me at my hotel, Leonid wrapped his big arms around me, gave me a big hug, and planted his lips right on my cheek!

Now I know that Russian men kiss each other on the cheeks. I've seen *Doctor Zhivago* in the theaters and newspaper pictures of even Khrushchev or Gorbachev issuing kisses of greeting. The French do the same thing, although I assume there's a difference in technique. And after all, I teach and/or write about this “cultural difference stuff” every day. Manners of greeting vary from country to country.

And now my quandary? Do I kiss Leonid back? And if I do, how do I do it? After all, how hard you squeeze someone's hand says a lot in the United States. In Japan the intricacies of bowing properly are learned only after years of practice. Back in the States there are all kinds of kisses — pecks, smooches, wet ones, french ones, passionate and passionless, even “sucking face”. This Russian kiss included much more lip than the typical touching of cheeks I had experienced in greeting women in Brazil, France and Spain. Would a peck be impersonal? But if I do it wrong, I can just picture Leonid getting into the cab, rubbing his cheek with his coat sleeve, and cursing those “sloppy Americans”. Ringo's words, “All ya' gotta do is act naturally”, simply didn't help me on that Moscow street in front of the Sputnik Hotel.

Marlin Fishing in Brazil (Rio de Janeiro)

Having a big fish on the end of the line can be quite exciting. It can also be a lot of work — back-breaking, muscle-cramping exasperation. The worst is when you've finally maneuvered that trophy close to the boat, and again your fishing reel begins to sing. There he goes again, down with your monofilament line playing out through the eyes of your arching pole to the dark blue depths. Once again, you'll have to begin the exhausting tedium of bringing him back to the boat.

I've seen this drama played out in a boat off Baja. I've also seen this drama played out in an office tower in Rio de Janeiro. In the latter case, the role of the fisherman was filled by a young vice-president of a major East Coast bank, and the role of the big fish was enacted by his Brazilian client.

It was a hot afternoon in February and all four of us were sweating because the air conditioning had gone out. Two representatives of the Bank of Boston were calling on the Brazilian financial manager of the local office of Solar Turbines (now a Division of Caterpillar Tractor Co.). I had been given permission by the top management at Solar to observe this meeting and several others in Brazil and other countries as part of my studies of international negotiation styles. Because I had previously worked at Solar, I was presented as an employee, which made it possible to observe unobtrusively.

The American bankers were in Brazil to present a new set of financial services developed specifically for branch offices of American companies in other countries. The junior Bank of Boston executive had been in Rio for more than two years. He spoke some Portuguese and had called on the client previously. Their relationship seemed quite positive. The vice-president, having recently been made responsible for the Rio de Janeiro branch, had come to Brazil for the first time to meet the people and to convey some of the particulars of the "new product options" to potential customers and his staff.

Because of the heat, the senior American refused the offered cup of coffee. Now I would be the first to agree that Brazilian coffee is a killer. More than one small espresso-sized cup and both your collar and shoes begin to feel too tight. In fact, the Brazilians who visit the U.S. call our strongest, blackest brew "tea". But refusing the coffee was only the banker's first mistake. There would be others.

Introductions were made. The talk began with the usual "How do you like Rio?" questions — "have you been to Ipanema, Copacabana, Corcovado, . . .?" We also talked about the flight down from New York, "Did you stop in Bahia?" After about five minutes of this chatting, the senior American quite

conspicuously glanced at his watch, and then asked his client what he knew about the bank's new services.

"A little", responded the Brazilian. The senior American whipped a brochure out of his briefcase, opened it on the desk in front of the client, and began his sales pitch.

After about three minutes of "fewer forms, electronic transfers, and reducing accounts receivables", the Brazilian jumped back in, "Yes, that should make us more competitive . . . and competition is important here in Brazil . . . in fact, have you been following the World Cup football (soccer) matches recently, great games . . ." And so the reel began to whirl, paying out that monofilament, right there in that hot high-rise office.

Given a few minutes dissertation on the local football teams, Pele, and why futbol wasn't popular in the United States, the American started to try to crank the Brazilian back in. The first signal was the long look at his watch, then the interruption, "Perhaps we can get back to the new services we have to offer".

The Brazilian did get reeled back into the subject of the sale for a couple of minutes, but then the reel started to sing again. This time he went from efficient banking transactions to the nuances of the Brazilian financial system to the Brazilian economy. Pretty soon we were all talking about the world economy and making predictions about the U.S. presidential elections.

Another look at his Rolex, and the American started this little "sport fishing" ritual all over again. From my perspective (I wasn't investing time and money toward the success of this activity), this all seemed pretty funny. Every time the American VP looked at his watch during the next 45 minutes, I had to bite my cheeks to keep from laughing out loud. He never did get to page two of his brochure. The Brazilian just wasn't interested in talking business with someone he didn't know pretty well.

My guess is that the local American bank representative had told his boss that the best you can expect to accomplish in a first meeting with a Brazilian is to establish a good rapport. Maybe this can be done in five minutes in the States, but it takes much longer in most other countries, especially Brazil. The time it takes to sip that first canister of caffeine is the bare minimum. Then you should really forget about technical business talk at the first meeting.

Probably the VP actually heard the advice. Perhaps he really didn't comprehend its importance and he really didn't appreciate how rude this American "let's-get-down-to-business" attitude can appear to foreigners. Or more likely, even if he was trying to adapt to Brazilian customs, it's not so easy to *not* "act naturally". That's because much of our "acting" in such interpersonal situations is unconscious behavior.

That Brazilian never did get close to the boat, and it was not clear that the local rep could fix things after the VP returned to Boston. When the two of them left the Brazilian summed up the meeting, “Some of these Americans are unbelievable! At least most of the people I work with in this company know how things work outside the States”.

Glimpses in an Aisatsu (Tokyo)

It is not so much that speaking only English is a disadvantage in international business. Instead, it's more that being bilingual is a huge advantage. My notes from sitting in on an *Aisatsu* (a meeting or formal greeting for high-level executives typical in Japan) involving the president of a large Japanese industrial distributor and the marketing vice-president of an American machinery manufacturer are instructive. The two companies were trying to reach an agreement on a long-term partnership in Japan.

Business cards were exchanged and formal introductions made. One of his three subordinates acted as an interpreter for the Japanese president, even though the president spoke and understood English. The president asked us to be seated. The interpreter sat on a stool between the two senior executives. The general attitude between the parties was friendly but polite. Tea and a Japanese orange drink were served.

The Japanese president controlled the interaction completely, asking questions of all of us Americans through the interpreter. Attention of all the participants was given to each speaker in turn. After this initial round of questions for all the Americans' the Japanese president focused on developing a conversation with the American vice-president. During this interaction an interesting pattern in nonverbal behaviors developed. The Japanese president would ask a question in Japanese. The interpreter then translated the question for the American vice president. While the interpreter spoke, the American's attention (gaze direction) was given to the interpreter. However, the Japanese president's gaze direction was at the American. Therefore, the Japanese president could carefully and unobtrusively observe the American's facial expressions and nonverbal responses. Additionally' when the American spoke, the Japanese president had twice the response time. Because he understood English, he could formulate his responses during the translation process.

What's this extra response time worth in a strategic conversation? What's it worth to be carefully able to observe the nonverbal responses of your top-level

counterpart in a high-stakes business negotiation? Later in the article I'll talk more about some of the other strategic and tactical advantages of knowing more than one language. But for now, my point is a simple one — bilingualism is not a natural characteristic for Americans, and thereby we afford our competitors with greater language skills a natural advantage in international commerce.

The Importance of Culture (New Jersey)

A few years ago I attended a conference on international business alliances sponsored by the Rutgers and Wharton Business Schools. Now you New Yorkers probably see a Jerseyjoke coming (culture in New Jersey?) but the keynote speaker at the conference started out a bit differently.

“You’ve all heard the story about the invention of copper wire — two Dutchmen got a hold of a penny”. This bit of anecdote was served up during a dinner speech by the American president of a joint venture owned by AT&T and Philips. At one level the story is a friendly gibe, although the professor from the Netherlands sitting at our table didn’t appreciate the American’s remarks in general or the ethnic joke in particular. Indeed, at another level the story is stereotyping of the worst sort.

However, at an even deeper level there is an important lesson here for all managers of international commercial relationships. Culture can get in the way. The American president was in his “humorous” way attributing part of the friction between him and his Dutch associates to differences in cultural values. He might have blamed personality differences or clashing “corporate” cultures, but instead he identified national cultural barriers to be a major difficulty in managing his joint venture. And although I also did not appreciate his humour, I certainly agree that cultural differences between business partners can cause divisive, even decisive problems.

Kathryn Harrigan at Columbia University suggests that a crucial aspect of international commercial relationships is the negotiation of the original agreement. The seeds of success or failure are often sown fact-to-face at the negotiating table, where not only are financial and legal details agreed but also, and perhaps more important, the ambience of cooperation is established. Indeed, as Harrigan indicates, the legal details and the structure of international business ventures are almost always modified over time, and usually through negotiations. But the atmosphere of cooperation established initially face-to-face at the negotiation table persists or the venture fails.

Plan for this Chapter

“Okay, so Americans don’t know how to return Russian kisses, we look at our watches too much, we just barely passed Spanish II in high school, and we tell bad jokes. So what?”

Although at this point it may seem so, this chapter is not about American bashing. You don’t need me for that. There are more objective sources. I ran across this quote in *Expansion*, a Spanish business newspaper: “Los mejores negociadores son los japoneses, capaces de pasarse días intentando conocer a su oponente. Los peores, los norteamericanos, que peinsan que las cosas funcionan igual que en su país en todas partes” (29 November 1991: 41). Roughly translated, this says, “The best negotiators are the Japanese because they will spend days trying to get to know their opponents. The worst are Americans because they think everything works in foreign countries as it does in the USA”. Part of the reason I’ve included this quote is it balances out the aforementioned “penny stretching crack”. That is, Samfrits Le Poole, the quoted author of *How to Negotiate with Success*, is Dutch. And I always listen to the Dutch guys. As a national group they have the best international skills. It seems they all speak about five languages and have lived in as many countries.

Certainly there are some Americans who are very effective in international business negotiations. And in some circumstances the best prescription might be something we call an American approach. However, in the pages to follow I must be critical at times, because a secondary purpose of this chapter is to get you to change your behavior. But usually meaningful changes in behavior take both time and many contacts with your foreign counterparts. In fact, the best way to learn to behave appropriately in a foreign country is by letting yourself unconsciously imitate those with whom you interact frequently. And a penchant for careful observation is also crucial. Hopefully, this article will help you sharpen your observation skills.

The primary purpose of this chapter is to make you aware of the multiple ways cultural differences in values and communication styles can cause serious misunderstandings between otherwise positively disposed business partners. And many of these problems manifest themselves in face-to-face meetings at the international negotiation table. For example, a silent Japanese doesn’t necessarily mean reticence and a Spaniard’s frequent interruptions shouldn’t communicate rudeness to you. And if that aforementioned Japanese president spoke English, why didn’t he use it? Was that Brazilian incompetent, a futbol freak, or what? And what does it mean to be kissed by your Russian business partner?

I cannot answer all of these questions here. Clearly, after you have finished the chapter, you'll still have more work to do. It will be your responsibility to deepen your understanding of cultural differences by asking your clients and partners directly about the strange things they do that weren't mentioned in Graham's article. Such informal interaction in a friendly place and in a friendly way will in the long run be far more important than any article, book or course on this subject, including mine!

Negotiation Styles in Other Countries

During the last 15 years, a group of colleagues¹ and I have systematically studied the negotiation styles of business people in 16 countries (18 cultures) — Japan, Korea, Taiwan, China (northern and southern), Hong Kong, the Philippines, Russia, Czechoslovakia, Germany, France, the United Kingdom, Spain, Brazil, Mexico, Canada (Anglophones and Francophones), and the United States. More than 1,000 business people have participated in our research. I chose these countries because they comprise America's most important present and future trading partners. I'd very much like to study negotiation styles in Tahiti, but, at the moment, we don't do much business there.

I have learned two important lessons by looking broadly across the several cultures. The first, I no longer generalize about regions. Had you asked me ten years ago, "Do Koreans and Japanese negotiate in the same way?", I would have responded, "I suppose so, they're both Oriental cultures". Anyone who has negotiated in both places knows the folly in that naivete. Indeed, the Japanese and Korean styles are quite similar in some ways, but, in other ways, they couldn't be more different. So now I talk about one country at a time, and

¹ Over the past 15 years, a group of colleagues and I have been gathering data for this research. The following institutions and people have provided crucial support for the research for this article: U.S. Department of Education, Toyota Motor Sales USA, Inc.; Solar Turbines, International (a division of Caterpillar Tractors Co.); the Faculty Research and Innovation Fund and the International Business Educational Research (IBEAR) Program at the University of Southern California; Ford Motor Company; The Marketing Science Institute; Madrid Business School; and Professors Nancy J. Adler (McGill University), Nigel Campbell (Manchester Business School), A Gabriel Esteban (University of Houston, Victoria), Leonid I. Evenko (Russian Academy of the National Economy), Richard H. Holton (University of California, Berkeley), Alain Jolibert (Universite de Sciences de Grenoble), Dong Ki Kim (Korea University), C. Y. Lin (National Sun-Yat Sen University), Hans-Gunther Meissner (Dortmund University), Alena Ockova (Czechoslovak Management Center), Sara Tang (Mass Transit Railway Corporation, Hong Kong), and Theodore Schwarz (Monterrey Institute of Technology).

even then the locals will always advocate within-country regional differences. For example, the Spaniards at my last seminar in Madrid told me the best negotiators in Spain are from Valencia, because of the persistent mercantile influence of the ancient Phoenicians. Now that's a stretch! But the point is, they see a difference between behaviors typical in Madrid and Valencia.

The second lesson from the list of countries is that Japan is a strange place. I don't mean that in a negative way. It's just that on almost every dimension of negotiation style we consider, the Japanese are on or near the end of the scale. Sometimes, we Americans are on the other end. Recall Le Poole's earlier comment. But, actually, most of the time we Americans are somewhere in the middle. You'll see this evinced in the data we present later in the article. The Japanese approach, however, is most distinct, even unique.

The methods of our studies include a combination of interviews with experienced executives from both sides of the table; field observations of business negotiations in most of the countries listed; behavioral science laboratory simulations. (See box 1 for details regarding the simulations.) The integration of these approaches allows a "triangulation" of our findings — that is, we can compare results across research methods. Indeed, we have found mostly consistency across methods, but we have also discovered discrepancies. For example, when we interviewed Americans who had negotiated with Japanese, their comments were consistent with those of Van Zandt (1970), "Negotiations take much longer". And, when in the behavioral science laboratory we match American negotiators with Japanese, the negotiations take longer (an average of about 25 minutes for Americans with Americans, 35 minutes for Americans with Japanese). So, in this respect, our findings are consistent for both interviews and laboratory observations. When we talk with Americans who have negotiated with Japanese, universally they describe them as being "poker-faced", or as displaying no facial expressions. However, in the laboratory simulations, we focused a camera on each person's face and recorded all facial expressions. We then counted them, finding no difference in the number of facial expressions (smiles and frowns). Apparently, Americans are unable to "read" Japanese expressions, and they wrongly describe Japanese as expressionless. Thus, discrepancies demonstrate the value of balancing and comparing research methods and results.

A Hierarchy of Problems

We find that cultural differences cause four kinds of problems in international business negotiations:

- (1) Language
- (2) Nonverbal behaviors
- (3) Values
- (4) Thinking and decision-making processes.

The order is important. As you go down the list, the problems are more serious because they are more subtle. Both negotiators notice immediately if one is speaking Japanese and the other German. The solution to the problem may be as simple as hiring an interpreter or talking in a common third language, or it may be as difficult as learning a language. But the problem is obvious.

Box 2.1

The participants in the study included business people from 18 cultures. There were at least forty in each group. All have been members of executive education programs or graduate business classes, and all have at least two years' business experience in their respective countries. The average age of the 1,066 participants was 35.2 years, and the average work experience was 11.2 years.

We asked participants to play the role of either a buyer or a seller in a negotiation simulation. In the case of the Japanese and Americans, three kinds of interactions were staged: Japanese/Japanese, American/American, and American/Japanese. In the other countries, only intracultural negotiations (that is, Koreans with Koreans, Brazilians with Brazilians, etc.) were conducted. The negotiation game involved bargaining over the prices of three commodities. The game was simple enough to be learned quickly but complex enough to provide usually one-half hour of face-to-face interaction (Kelley 1966).

Following the simulation, results were recorded and each participant was asked to fill out a questionnaire that included questions about each player's performance and strategies and his/her opponent's strategies. The profits attained by individuals in the negotiation exercise constituted the principal performance measure. We used a variety of statistical techniques to compose the results of the several kinds of interactions.

Finally, we videotape-recorded some of the exercises for further analysis. Several trained observers then documented the persuasive tactics negotiators used, as well as a number of nonverbal behaviors (facial expressions, gaze direction, silent periods, etc.). Each of the Japanese and American participants was also asked to observe his/her own interaction and to interpret events and outcomes from his/her own point of view. Each participant's comments were tape recorded and transcribed to form retrospective protocols of the interaction. Here, also, we employed a variety of statistical techniques in the analysis, as well as a more inductive, interpretive approach.

Alternatively, cultural differences in nonverbal behaviors are almost always hidden below our awarenesses. That is, in a face-to-face negotiation, we nonverbally give off and take in a great deal of information, and some argue that such information is the more important exchanged. Almost all this signaling goes on below our levels of consciousness, and when the nonverbal signals from our foreign partners are different, we are most apt to misinterpret them without even being conscious of the mistake. When the French client consistently interrupts, we tend to feel uncomfortable without noticing exactly why. In this manner, interpersonal friction often colors business relationships, goes on undetected and, consequently, uncorrected. Differences in values and thinking processes are hidden even deeper and therefore are even harder to cure.

Problems at the Level of Language

I finally found a country worse at foreign languages than the United States. At a seminar in Melbourne, the Australians all agreed that they were worse. Being “so far” from everyone else, foreign languages were given little attention in their educational system. But even if we’re not worse than the Aussies, we’re clearly down at the bottom of the languages list along with them. I must add that recently American undergrads have begun to see the light and are flocking to language classes. Unfortunately, we don’t have the teaching resources to satisfy the demand, so we’ll stay behind for some time to come.

It’s also fascinating to learn that the Czechs are now throwing away a hard-earned competitive advantage. Young Czechs won’t take Russian anymore. It’s easy to understand why, but the result will be a generation of Czechs who can’t leverage their geographic advantage because they won’t be able to speak to their neighbors to the East. However, even more appalling is my own university’s contemplated elimination of the Russian language program. This is short-sightedness at its worst.

I’ve already mentioned the language problem in the *Aisatsu*. The most common complaint I hear from American managers, however, regards foreign clients and partners breaking into side conversations in their native languages. Americans hate it. At best, we see it as impolite, and, quite naturally, we are likely to attribute something sinister to the content of the foreign talk — they’re plotting or telling secrets or . . .

This is our mistake. We’ve videotaped and translated many such conversations, and their usual purpose is to straighten out a translation problem. For instance, one Korean may lean over to another and ask, “What’d he say?” Or, the side conversation can regard a disagreement among the foreign

team. Both circumstances should be seen as positive signs by Americans, because getting translations straight enhances the efficiency of the interactions and concessions often follow internal disagreements. But because most Americans speak only one language, we can't appreciate either circumstance. By the way, I always advise foreigners to give Americans a brief explanation of the content of their first few side conversations to assuage the sinister attributions.

Data from our simulated negotiations are also informative. Using the approach detailed in Graham (1985), we studied the verbal behaviors of negotiators in thirteen of the cultures (six negotiators in each of the ten groups were videotaped). The numbers in the body of Table 2.1 are the percentages of statements that were classified into each category. This is, 7% of the statements made by Japanese negotiators were promises, 4% were threats 20% were questions, and so on. The verbal bargaining behaviors used by the negotiators during the simulations proved to be surprisingly similar across cultures. Negotiations in all ten cultures studied were comprised primarily of information-exchange tactics questions and self-disclosures. However, it should be noted that once again the Japanese appear on the end of the continuum of self-disclosures. Their 34% (along with the Spaniards and the Anglophone Canadians) was the lowest across all thirteen groups, suggesting that they are the most reticent about giving information.

Consider for a moment the complexity of this part of our work. Six business people in each culture played the same negotiation game in their native languages, we videotaped each negotiation, transcribed, translated, and classified each statement made into one of twelve categories, calculated percentages and averaged across the six negotiators. And look how similar are the verbal tactics used across the cultural groups!

Nonverbal Behaviors

Reported in Table 2.2 are the analyses of some linguistic aspects and nonverbal behaviors for the thirteen videotaped groups, as in Graham (1985). While our efforts here merely scratch the surface of these kinds of behavioral analyses, they still provide indications of substantial cultural differences. Note that, once again, the Japanese are at or next to the end of almost every dimension of the behaviors listed in Table 2.2. Their facial gazing and touching are the least among the thirteen groups. Only the northern Chinese used the words "no" less frequently and only the Russians used more silent periods than did the Japanese.

Table 2.1: Verbal negotiation tactics (the “what” of communications).

| Bargaining Behaviors and Definitions (Anglemar & Stern 1978) | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|--|--|------------|------------|-------------|-------------|------------|-------------|------------|------------|------------|------------|-------------|-------------|------------|
| | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Promise. A statement in which the source indicated his intention to provide the target with a reinforcing consequence which source anticipates target will evaluate as pleasant, positive, or rewarding | 7† | 4 | 9 | 6 | 5 | 7 | 11 | 5 | 11 | 3 | 7 | 8 | 6 | 8 |
| Threat. Same as previous, except that the reinforcing consequences are thought to be noxious, unpleasant, or punishing | 4 | 2 | 2 | 1 | 3 | 3 | 3 | 5 | 2 | 2 | 1 | 3 | 0 | 4 |
| Recommendation. A statement in which the source predicts that a pleasant environmental consequence will occur to the target, Its occurrence is not under source’s control | 7 | 1 | 5 | 2 | 4 | 5 | 6 | 3 | 4 | 5 | 8 | 5 | 4 | 4 |

Table 2.1: Continued.

| Bargaining Behaviors and Definitions (Anglemar & Stern 1978) | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|--|--|-----|-----|------|------|-----|------|-----|-----|-----|-----|------|------|-----|
| | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Warning. Same as recommendation, except that the consequences are thought to be unpleasant | 2 | 0 | 3 | 1 | 0 | 1 | 1 | 3 | 1 | 1 | 2 | 5 | 0 | 1 |
| Reward. A statement by the source that is thought to create pleasant consequences for the target | 1 | 3 | 2 | 1 | 3 | 4 | 5 | 3 | 3 | 2 | 1 | 1 | 3 | 2 |
| Punishment. Same as reward, except that the consequences are thought to be unpleasant | 1 | 5 | 1 | 0 | 1 | 2 | 0 | 3 | 2 | 3 | 0 | 2 | 1 | 3 |
| Positive normative appeal. A statement in which the source indicates that the target's past, present, or future behavior was or will be in conformity with social norms | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |

Table 2.1: Continued.

| Bargaining Behaviors and Definitions (Anglemar & Stern 1978) | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|--|--|-----|-----|------|------|-----|------|-----|-----|-----|-----|------|------|-----|
| | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Negative normative appeal. Same as positive normative appeal except that the target's behavior is in violation of social norms | 3 | 2 | 1 | 0 | 0 | 1 | 1 | 0 | 1 | 1 | 1 | 2 | 1 | 1 |
| Comttitment. A statement by the source to the effect that its future bids will not go below or above a certain level | 15 | 13 | 9 | 10 | 11 | 9 | 13 | 10 | 9 | 8 | 9 | 8 | 14 | 13 |
| Self-disclosure. A statement in which the source reveals information about itself | 34 | 36 | 42 | 36 | 40 | 47 | 39 | 42 | 34 | 39 | 38 | 42 | 34 | 36 |
| Question. A statement in which the source asks the target to reveal information about itself | 20 | 21 | 14 | 34 | 27 | 11 | 15 | 18 | 17 | 22 | 27 | 19 | 26 | 20 |

Table 2.1: Continued.

| | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|---|---------------------------------------|-----|-----|------|------|-----|------|-----|-----|-----|-----|------|------|-----|
| Bargaining Behaviors and Definitions (Anglemar & Stern 1978) | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Command. A statement in which the source suggests that the target perform a certain behavior | 8 | 13 | 11 | 7 | 7 | 12 | 9 | 9 | 17 | 14 | 7 | 5 | 10 | 6 |

* northern China (Tianjin and environs)

† Read “7% of the statements made by Japanese negotiators were promises”.

Table 2.2: Linguistic aspects of language and nonverbal behaviors (“how” things are said).

| Bargaining Behaviors (per 30 minutes) | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|--|--|------|------|------|------|------|------|------|------|------|------|------|------|------|
| | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Structural Aspects | | | | | | | | | | | | | | |
| “No’s.” The number of times the word “no” was used by each negotiator. | 1.9 | 7.4 | 5.9 | 1.5 | 2.3 | 6.7 | 5.4 | 11.3 | 23.2 | 41.9 | 4.5 | 7.0 | 10.1 | 4.5 |
| “You’s.” The number of times the word “you” was used by each negotiator. | 31.5 | 34.2 | 36.6 | 26.8 | 23.6 | 39.7 | 54.8 | 70.2 | 73.3 | 90.4 | 56.3 | 72.4 | 64.4 | 54.1 |
| Nonverbal Behaviors | | | | | | | | | | | | | | |
| Silent Periods. The number of conversational gaps of 10 seconds or longer | 2.5 | 0 | 0 | 2.3 | 3.7 | 0 | 2.5 | 1.0 | 0 | 0 | 1.1 | 0.2 | 2.9 | 1.7 |
| Conversational Overlaps. Number of interruptions | 6.2 | 22.0 | 12.3 | 17.1 | 13.3 | 20.8 | 5.3 | 20.7 | 28.0 | 14.3 | 10.6 | 24.0 | 17.0 | 5.1 |
| Facial Gazing. Number of minutes negotiators spent looking at opponent’s face | 3.9 | 9.9 | 19.7 | 11.1 | 8.7 | 10.2 | 9.0 | 16.0 | 13.7 | 15.6 | 14.7 | 18.8 | 10.4 | 10.0 |

Table 2.2: Continued.

| | Cultures (in each group, $n = 6$) | | | | | | | | | | | | | |
|--|---------------------------------------|-----|-----|------|------|-----|------|-----|-----|-----|-----|------|------|-----|
| Bargaining Behaviors (per 30 minutes) | JPN | KOR | TWN | CHN* | RUSS | GRM | U.K. | FRN | SPN | BRZ | MEX | FCAN | ECAN | USA |
| Touching. Incidents of bargainers touching one another (not including handshaking) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.1 | 0 | 4.7 | 0 | 0 | 0 | 0 |

* Northern China (Tianjin and environs)

A broader examination of the data in the Tables reveals a more meaningful conclusion. That is, the variation across cultures is greater when comparing linguistic aspects of language and nonverbal behaviors than when the verbal content of negotiations is considered. For example, notice the great differences between Japanese and Brazilians in Table 2.1 *vis-à-vis* Table 2.2.

Summary Descriptions Based Upon the Videotapes Following are further descriptions of the distinctive aspects of each of the thirteen cultural groups we have videotaped. Certainly, we cannot draw conclusions about the individual cultures from an analysis of only six business people in each, but the suggested cultural differences are worthwhile to consider briefly:

- **Japan.** Consistent with most descriptions of Japanese negotiation behavior in the literature, the results of this analysis suggest their style of interaction is among the least aggressive (or most polite). Threats, commands, and warnings appear to be de-emphasized in favor of the more positive promises, recommendations, and commitments. Particularly indicative of their polite conversational style was their infrequent use of “no” and “you” and facial gazing, as well as more frequent silent periods.
- **Korea.** Perhaps one of the most interesting aspects of this study is the contrast of the Asian styles of negotiations. Non-Asians often generalize about the Orient. Our findings demonstrate that this is a mistake. Korean negotiators used considerably more punishments and commands than did the Japanese. Koreans used the word “no” and interrupted more than three times as frequently as the Japanese. Moreover, no silent periods occurred between Korean negotiators.
- **China (northern).** The behaviors of the negotiators from northern China (i.e. in and around Tianjin) are most remarkable in the emphasis on asking questions at 34%. Indeed, 70% of the statements made by the Chinese negotiators were classified as information exchange tactics. Other aspects of their behavior were quite similar to the Japanese — the use of “no” and “you” and silent periods.
- **Taiwan.** The behavior of the business people in Taiwan was quite different from that in China and Japan but similar to that in Korea. The Chinese on Taiwan were exceptional in the time of facial gazing, on the average almost 20 out of 30 minutes. They asked fewer questions and provided more information (self-disclosures) than did any of the other Asian groups.
- **Russia.** The Russians’ style was quite different from that of any other European group, and, indeed, was quite similar in many respects to the style

- of the Japanese. They used “no” and “you” infrequently and used the most silent periods of any group. Only the Japanese did less facial gazing, and only the Chinese asked a greater percentage of questions.
- Germany. The behaviors of the western Germans are difficult to characterize because they fell toward the center of almost all the continua. However, the Germans were exceptional in the high percentage of self-disclosures at 47% and the low percentage of questions at 11%.
 - United Kingdom. The behaviors of the British negotiators are remarkably similar to those of the Americans in all respects.
 - Spain. “Diga” is perhaps a good metaphor for the Spanish approach to negotiations evinced in our data. When you make a phone call in Madrid, the usual greeting on the other end is not “hola” (hello) but is, instead, “diga” (speak). The Spaniards in our negotiations likewise used the highest percentage of commands (17%) of any of the groups and gave comparatively little information (self-disclosures, 34%). Moreover, they interrupted one another more frequently than any other group, and they used the terms “no” and “you”: very frequently.
 - France. The style of the French negotiators is perhaps the most aggressive of all the groups. In particular, they used the highest percentage of threats and warnings (together, 8%). They also used interruptions, facial gazing and “no” and “you”: very frequently compared to the other groups, and one of the French negotiators touched his partner on the arm during the simulation.
 - Brazil. The Brazilian business people, like the French and Spanish, were quite aggressive. They used the highest percentage of commands of all the groups. On average, the Brazilians said the word “no” 42 times, “you” 90 times, and touched one another on the arm about 5 times during 30 minutes of negotiation. Facial gazing was also high.
 - Mexico. The patterns of Mexican behavior in our negotiations are good reminders of the dangers of regional or language-group generalizations. Both verbal and nonverbal behaviors are quite different than those of their Latin American (Brazilian) or continental (Spanish) cousins. Indeed Mexicans answer the telephone with the much less demanding “bueno”. In many respects, the Mexican behavior is very similar to that of the negotiators from the United States.
 - Francophone Canada. The French-speaking Canadians in our study behaved quite similarly to their continental cousins. Like the negotiators from France, they, too, used high percentages of threats and warnings, and even more interruptions and eye contact. Such an aggressive interaction style would not mix well with some of the more low-key styles of some of the Asian groups or with English speakers, including Anglophone Canadians.

- Anglophone Canada. The Canadians in our study who speak English as their first language used the lowest percentage of aggressive persuasive tactics (that is, threats, warnings and punishments totaled only 1%) of all thirteen groups. Perhaps, as communications researchers suggest, such stylistic differences are the seeds of interethnic discord as witnessed in Canada over the years. With respect to international negotiations, the Anglophone Canadians used noticeably more interruptions and “no’s” than negotiators from either of Canada’s major trading partners, the United States and Japan.
- United States. Like the Germans and the British, the Americans fell in the middle of most continua. They did interrupt one another less frequently than all the others, but that was their sole distinction.

These differences across the cultures are quite complex. Specifically, you should not use this material by itself to predict the behaviors of your foreign counterparts. Please be very careful of the stereotypes. Rather, the key here is to be aware of *these kinds of differences* so you don’t misinterpret the Japanese silence, the Brazilian “no, no, no . . .,” or the French threat.

Differences in Values

It’s true what Le Poole said earlier about we Americans presuming that everyone else in the world shares our values. After all, how could anyone not see the sense in objectivity, competitiveness, equity, and punctuality?

Objectivity We Americans make decisions based upon the bottom line and on cold, hard facts. We don’t play favorites. Economics and performance count, not people. Business is business.

Roger Fisher and William Ury have written the single most important book on the topic of negotiation, *Getting to Yes*. I highly recommend it to both American and foreign readers. The latter will learn not only about negotiations but, perhaps more important, about how Americans think about negotiations. Fisher and Ury are quite emphatic about “separating the people from the problem”, and they state, “Every negotiator has two kinds of interests: in the substance and in the relationship” (p. 20). This advice is probably quite worthwhile in the United States or perhaps in Germany, but in most places in the world, their advice is nonsense. *In most places in the world, personalities and substance are not separate issues and can’t be made so.*

For example, look at how important nepotism is in Chinese or Hispanic cultures. John Kao (1993) tells us that businesses don't grow beyond the bounds and bonds of tight family control in the burgeoning "Chinese Commonwealth". Things work the same way in Spain, Mexico, and the Philippines *by nature*. And, just as naturally, negotiators from such countries not only will take things personally but will be personally affected by negotiation outcomes. What happens to them at the negotiation table will affect the business relationship regardless of the economics involved.

Competitiveness and Equity Our simulated negotiations can be viewed as a kind of experimental economics wherein the values of each cultural group are roughly reflected in the economic outcomes. The simple simulation we use well represents the essence of commercial negotiations — it has both competitive and cooperative aspects. That is, the "negotiation pie" can be made larger through cooperation before it is divided between the buyer and seller.

Our results are summarized in Figure 2.1. The Japanese are the champions at making the pie big. Their joint profits in the simulation were the highest (at \$9,590) among the eighteen cultural groups. The American pie was more average-sized (at \$9,030), but at least it was divided relatively equitably (51.8% of the profits went to the buyers). Alternatively, the Japanese (and others) split their pies in strange ways, with buyers making higher percentages of the profits (53.8%). The implications of our experimental economics are completely consistent with our own field work, the comments of other authors, and the adage that in Japan the buyer is "king". By nature, Americans have little understanding of the Japanese practice of giving complete deference to the needs and wishes of buyers. That's not the way things work in America. American sellers tend to treat American buyers more as equals. And the egalitarian values of American society support this behavior. Moreover, most Americans will, by nature, treat Japanese buyers more frequently as equals. Likewise, as suggested by Nakane (1970) and Graham (1981), American buyers will generally not "take care of" American sellers or Japanese sellers.

The American emphasis on competition and individualism represented in our findings is, in different ways, consistent with the work of both Geert Hofstede, the guru of international management, and J. Scott Armstrong of the Wharton School. Hofstede reports that Americans scored the highest among 40 other cultural groups on his individualism (versus collectivism) scale. Armstrong reports that "competition-oriented" objectives can have negative effects on profits. Of course, Adam Smith argued that competition ultimately serves society. However, in the context of the little society of our negotiation simulation, Smith's ideas don't appear to hold up. Perhaps the reason we hear

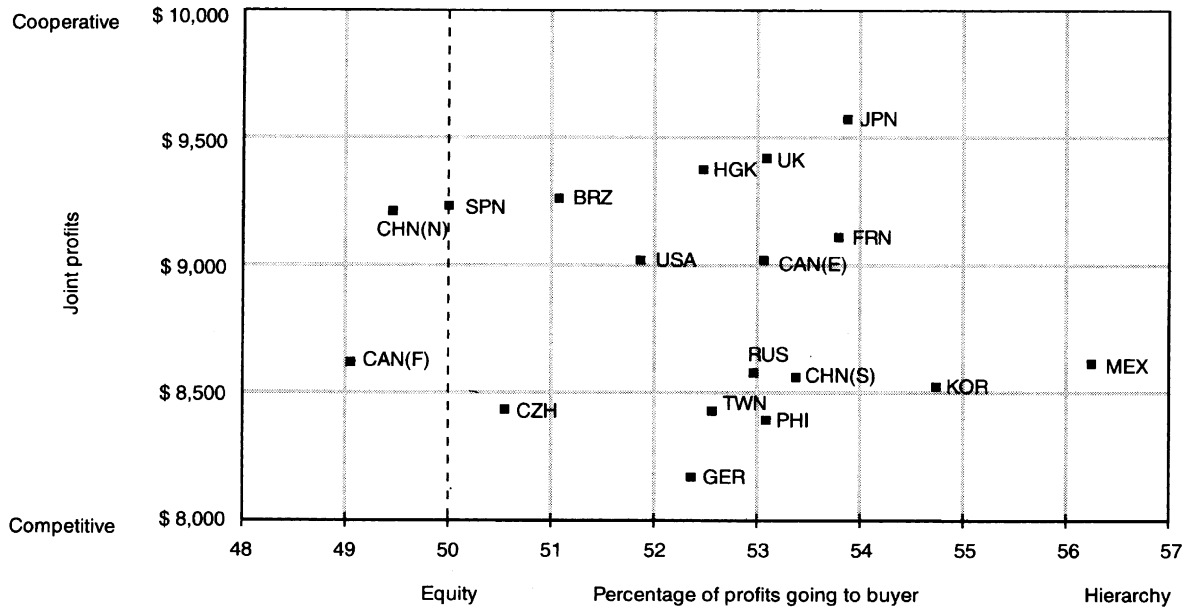


Figure 2.1: Cultural differences in competitiveness and equity.*

* Based upon at least 40 people in each cultural group.

so much about “win-win” negotiations here in the United States is because we really haven’t learned the lesson well enough yet.

Finally, when we run the numbers on the Japanese and American results, not only do Japanese buyers achieve higher results than Americans do, but Japanese sellers (\$4,430), compared to American sellers (\$4,350), also get more of the commercial pie, as well. Interestingly, when I show these numbers to Americans in my executive seminars, the majority still prefer the American seller’s role. That is, even though the American sellers make lower profits than the Japanese, the American managers prefer lower profits *if* those profits are yielded from an equitable split of the joint profits. Such an emphasis on equity is also echoed in a survey of American managers: “A recent Wall Street poll revealed this potentially destructive side of economic nationalism. Eighty-six percent of those polled said they would rather have a policy of slower growth in both countries than a policy of faster growth in both countries if that meant allowing Japan to take the lead” (*Wall Street Journal*, 2 July 1990, p. 1).

Punctuality “Just make them wait”. Everyone else in the world knows no negotiation tactic is more useful with Americans. Nobody places more value on time. Nobody has less patience when things slow down. Nobody looks at their wristwatch more than Americans. Recall our banker in Brazil. Edward T. Hall (1960) in his seminal writing is best at explaining how the passage of time is viewed differently across cultures and how these differences most often hurt Americans. But it is possible to put time to our own uses.

In the mid-1970s, my former company, Solar Turbines International (a division of Caterpillar), sold \$34 million worth of industrial gas turbines and compressors to the Soviet Union for a natural gas pipeline application. It was agreed that final negotiations would be held in a neutral location, the south of France. In previous negotiations, the Soviets had been tough, but reasonable. But in Nice, the Soviets weren’t nice. They became tougher and, in fact, completely unreasonable.

It took a couple of discouraging days before our people diagnosed the problem, but once they did, a crucial call was made back to headquarters in California. Why had the Soviet attitude turned so cold? Because they were enjoying the warm weather in Nice and weren’t interested in making a quick deal and heading back to Moscow. The call to California was the key event in this negotiation. Our people in San Diego were sophisticated enough to allow our negotiators to take their time.

The routine of the negotiations changed to brief, 45-minute meetings in the mornings, with afternoons at the golf course, beach, or hotel, making calls and doing paperwork. Finally, during week four, the Soviets began to make

concessions and to ask for longer meetings. Why? They couldn't go back to Moscow after four weeks on the Mediterranean *without a signed contract*. This strategic reversal of the time pressure yielded a wonderful contract for Solar.

Thinking and Decision-Making Processes

When faced with a complex negotiation task, most Westerners (I will generalize here) divide the large task up into a series of smaller tasks. Issues such as prices, delivery, warranty and service contracts may be settled one issue at a time, with the final agreement being the sum of the sequence of smaller agreements. However, in Asia, a different approach is more often taken wherein all the issues are discussed at once, in no apparent order, and concessions are made on all issues at the end of the discussion. The Western sequential approach and the Eastern holistic approach do not mix well.

For example, American managers report great difficulties in measuring progress in Japan. After all, in America, you're half done when half the issues are settled. But in Japan, nothing seems to get settled. Then, surprise, you're done. Often, Americans make unnecessary concessions right before agreements are announced by the Japanese. For example, we know of an American retail goods buyer traveling to Japan to buy six different consumer products for a large chain of discount department stores. He told us that negotiations for his first purchase took an entire week. In the United States, such a purchase would be consummated in an afternoon. So, by his calculations, he expected to have to spend six weeks in Japan to complete his purchases. He considered raising his purchase prices to try to move things along faster. But before he was able to make such a concession, the Japanese quickly agreed on the other five products in just three days. This particular businessman was, by his own admission, lucky in his first encounter with Japanese bargainers.

This American businessman's near blunder reflects more than just a difference in decision-making style. To Americans, a business negotiation is a problemsolving activity, the best deal for both parties being the solution. To a Japanese businessperson, a business negotiation is a time to develop a business relationship with the goal of long-term mutual benefit. The economic issues are the *context*, not the *content*, of the talks. Thus, settling any one issue really isn't important. Such details will take care of themselves once a viable, harmonious business relationship is established. And, as happened in the case of our retail goods buyer, once the relationship was established — signaled by the first agreement — the other "details" were settled quickly.

American bargainers should anticipate such a holistic approach and be prepared to discuss all issues simultaneously and in an apparently haphazard order. Progress in the talks should not be measured by how many issues have been settled. Rather, Americans must try, to gauge the quality of the business relationship. Important signals of progress will be:

- higher-level foreigners being included in the discussions;
- their questions beginning to focus on specific areas of the deal;
- a softening of their attitudes and position on some of the issues — “Let us take some time to study this issue”;
- at the negotiation table, increased talk among themselves in their own language, which may often mean they’re trying to decide something; and
- increased bargaining and use of the lower-level, informal and other channels of communication.

Implications for Managers

Having read what I’ve written so far, it’s a wonder that any international business gets done at all! Obviously, the economic imperatives of global trade make much of it happen despite the potential pitfalls but an appreciation of cultural differences can lead to even better international commercial transactions. It is not just business *deals* but highly profitable business *relationships* that are the goal here.

Another reason for our global business successes is the large number of skillful international negotiators. These are the managers who have lived in foreign countries and speak foreign languages. In many cases, they are immigrants to the United States or have been immersed in foreign cultures in other capacities. (Peace Corps volunteers and Mormon missionaries are common examples.) The Thunderbird School in Phoenix has long been a supplier of managers with international competencies. Thankfully, at more of our other business schools we are beginning to reemphasize language training and visits abroad. Indeed, it is interesting to note that the original Harvard Business School catalogue of 1908–1909 listed German, French, and Spanish correspondence within its curriculum.

While I was teaching at the Madrid Business School in 1992, I was most encouraged to see as the February 10th, cover story of *Business Week*, “Ford and Mazda: The Partnership That Works”. Although the article didn’t credit

directly the training program I helped design² the interviews with Ford people throughout reflected lessons learned in their Executive Development Center programme on Japan. Ford does more business with Japanese companies than any other firm. They own 25% of Mazda, they build a successful minivan with Nissan, and they buy and sell component parts and completed cars from and to Japanese companies But perhaps the best measure of Ford's Japanese business is the 8,000 or so U.S.-Japan round-trip tickets the company buys annually!

Ford has made a large investment in training its managers with Japanese responsibilities. More than 1,500 of their executives have attended a three-day program on Japanese history and culture and the company's Japanese business strategies More than 700 of their managers who work *vis-à-vis* with Japanese have attended a three-day program, "Managing Negotiations: Japan" (they call it MNJ), designed using many of the ideas in Yoshi Sano's and my book, *Smart Bargaining, Doing Business with the Japanese*. (See Box 2.2 for testimony regarding the latter program's effectiveness.) The program includes negotiation simulations with videotape feedback, lectures with cultural differences

Box 2.2

Pro-active and direct is the approach Ford uses to develop competence in employees who interact with the Japanese. This occurs through a variety of practices, including programs which help Ford personnel better understand the Japanese culture and negotiating practices and by encouraging the study of the spoken language. By designing training which highlights both the pitfalls and the opportunities in negotiations, we increase the chance to "expand the negotiation pie".

Back in 1988, the key personnel on our minivan team attended one of the first sessions of the Managing Negotiations: Japan Program at the Ford Executive Development Center. Our negotiations with the Nissan team improved immediately. But perhaps the best measure of the usefulness of the MNJ Program is the success of the Nissan joint-venture product itself. Reflected in the Villager/Quest are countless hours of effective face-to-face meetings with our Japanese partners.

Not everyone negotiating outside the U.S. has the advantages of in-house training. However, many sources of information are available, books (particularly on Japan), periodicals, and colleagues with first-hand experience. To succeed, I believe negotiators have to be truly interested in and challenged by the international negotiating environment. Structuring negotiations to achieve win-win results AND building a long-term relationship takes thoughtful attention and commitment. Joe Gilmore is the Ford executive in charge of the minivan project with Nissan (marketed as the Mercury Villager and the Nissan Quest).

² G. Richard Hartshorn, Antigone Kiriacopoulou, and Bruce Gibb were the other original design team members.

demonstrated via videotapes of Japanese/American interactions developed in our research, and rehearsals of upcoming negotiations. The company also conducts similar programs on Korea and the Peoples Republic of China.

Despite my own pride in MNJ, I have to credit the broader Japan training efforts at Ford for their successes. Certainly, we see MNJ alumni exercising influence across and up the ranks regarding Japanese relationships. But the organizational awareness of the cultural dimensions of the Japanese business system was quickly raised by their broader, three-day program.

Please recall my story about the Soviets in Nice. There were two critical events. First, our negotiators diagnosed the problem. Second, and equally important, their California superiors appreciated the problem and approved the investments in time and money to outwait the Russians. So it is that the Ford programs have targeted not only the negotiators working directly with the Japanese but also their managers who spend most of their time in Detroit. Negotiators need information specific to the cultures in which they work. Their managers back in the United States need a basic awareness and appreciation for the importance of culture in international business so that they will be more apt to listen to the “odd” recommendations coming from their people in Moscow, Rio, or Tokyo.

Conclusions

In the almost twenty years I’ve been working in this area, things are getting better. The “innocents abroad” or cowboy stereotypes of American managers are becoming less accurate (see Graham & Herberger 1983). Likewise, we hope it is obvious that the stereotypes of the reticent Japanese or the pushy Brazilian evinced in our research may no longer hold so true. Experience levels are going up worldwide, and individual personalities are important. So you can find talkative Japanese, quiet Brazilians, and effective American negotiators. But culture still does, and always will, count. Hopefully, it is fast becoming the *natural* behavior of American managers to take it into account. Perhaps Ringo Starr may yet be right!

Chapter 3

Strategies and Tactics in International Business Negotiations

Ramond Saner

We have now staked out the framework for a successful negotiation. We know our needs. We know exactly what we want. We also have an idea what our negotiation partner wants of us, and what we can offer him. To put all this together in a single package will require considerable patience, creativity and cooperation. First of all, we need to make a careful decision about strategy and tactics. These are familiar terms, but what exactly is the difference between them? And above all, which of them is the more important?

Strategy and Tactics

Both are necessary, but a clear distinction needs to be made between them. Strategy is the overall guideline, indicating the direction we need to take from our wishes and needs to our objectives. If, given a set of specific interests and objectives, we choose the wrong strategy, we will be setting a wrong course from the very start. We would then be very lucky to get where we want to go.

Tactics, on the other hand, always follow after strategy, fleshing it out with a concrete line of action. If strategy is the thought, then tactics are its formulation. If we are going to get our message across, both will be necessary — but the thought comes before the word. Tactics should not be directly oriented towards the objectives, but towards the strategy. For this reason they may sometimes take an unexpected turn, which may appear to be at odds with the general direction we are going. But as long strategy has been served, the

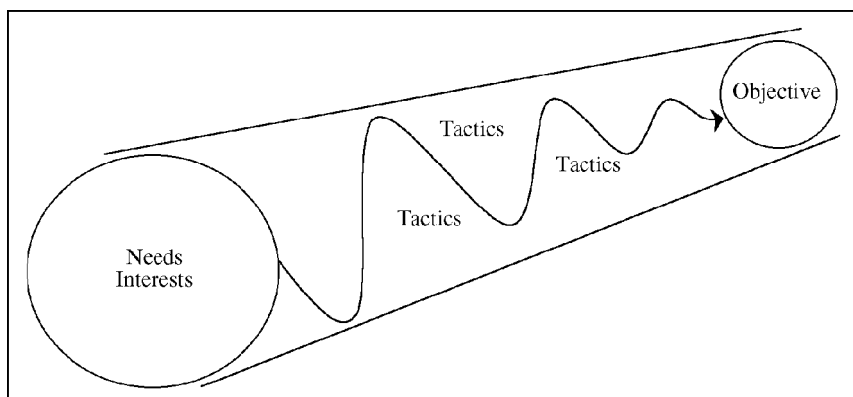


Figure 3.1: Strategic context of negotiations.

choice of tactic will have been a good one. Nor is the shortest route necessarily the best — sometimes we first need to overcome an obstacle, or work our way around it. Any tactic is suitable, as long as it achieves its aim — ideally of course with the smallest possible expenditure of time and effort. Tactical action is considerably more flexible than strategy in this regard: it is also correspondingly more versatile and adaptable to changing conditions.

Positions in the Conflict

In the case of strategy, our room for manoeuvre is considerably narrower. Blake & Mouton (1964) have developed the *managerial grid*, in which various management styles are represented. Each position in a conflict can be charted along two axes: assertion and cooperation. The assertion element describes the fervour with which someone goes about having his wishes satisfied, while his readiness to cooperate will bring the interests of the other side into the equation. We can construct a grid based on these two axes, which allows us to define five different behaviours in conflict management (see Figure 3.2).

On account of the major significance they have on the course of negotiations, these positions and their advantages and drawbacks will be discussed in detail in the sections that follow. The choice of which of the five basic positions is the most appropriate for a given conflict depends on the type of task at hand, the situation, and the personality of the negotiator (Thomas & Kilmann 1974; Dupont 1982). Later in the chapter, we shall see how this choice is made, using

Modes of conflict management

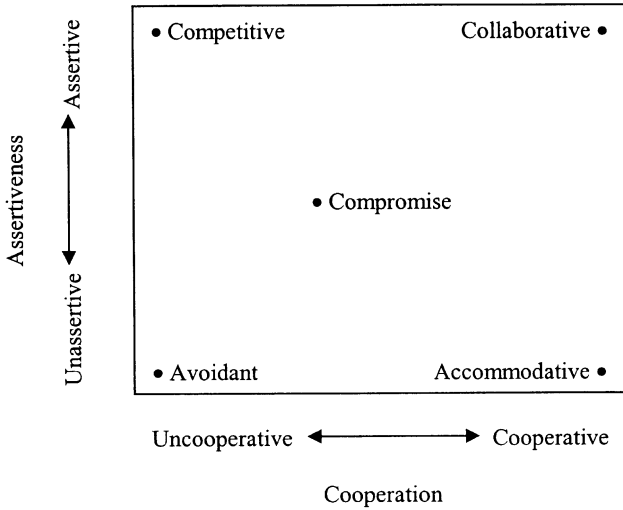


Figure 3.2: Modes of conflict management.

different examples. So let us start with the five basic positions in a given conflict.

Competition

To push hard to get what we want may be effective, but it is not cooperative. Its thrust is to put through our own aims exclusively, without heed to the other, in the shape of a distributive result, a zero-sum game. Such power-oriented behaviour uses all available means to attain the goal sought after — persuasive powers, pulling rank, or quite simply a stronger economic position, for example. We might fight for our rights, for a good cause, or simply for our own profit. Nothing is more appropriate if it is a matter of demonstrating our own strength, stamina or authority — even if we don't really have them. Such conduct has all the romance of the Wild West: a real man wins against all the odds! This may indeed be impressive, but it is also extremely disturbing, such as when a street trader or door-to-door salesman just won't give up and obdurately pressurizes his hapless victim into a sale. Nobody likes that. The person who advocates his cause energetically will have the advantage of

initiative — like the white pieces on the chessboard, which are always one move ahead. But such hectic pressure and activity gets in the way of receptivity. It leads to impatience and loss of flexibility. The warrior obsessed by the pursuit of victory in his campaign is also at risk of missing important signals from his adversary. He wants to exert his will and master the other. If both parties resort to such tactics, the inevitable result is confrontation, a battle of wills. One of them must give way or be bettered in the final showdown. In certain cases such stubborn maintenance of a position may be a good idea, but it leaves little room for cooperative approaches and a constructive solution to the conflict.

Collaboration

Constructive collaboration is also demanding in its way, but it is much more than that. It represents an attempt to find a solution in tandem with the other, that takes full account of the desires and interests of both parties. In the terminology expressed in this book, it corresponds to integrative bargaining. Collaboration simply requires that both parties familiarize themselves thoroughly with the conflict and its causes, and work towards finding a joint approach. This is almost always possible: there is a creative solution to be found for most problems if both sides pull together. With a little goodwill they can work through the differences that separate them and — without losing sight of their own principles — learn something from the other's point of view and experience. They might consider specific points as a separate issue, or put them to one side straight away, so as to open up the way to an overall agreement. As we have already seen, a decisive factor in such an agreement is to satisfy at least some of our partner's wishes. This implies the greatest possible understanding of the other's needs. Why should the negotiating partners not address their personal differences and clear them up in a climate of cooperation? Such a strategy creates mutual trust and has the great merit of far-sightedness. It does not have any real weaknesses, but does require a readiness to collaborate from both parties.

Compromise

A compromise is possible when each party meets the other half way. Something is demanded, but it is not absolute. Some cooperation occurs, but not the whole way. The purpose of compromise is to achieve a solution that is

tolerably acceptable to both parties, that is at least partially satisfactory to each of them. Splitting the difference also lies halfway on the assertion and cooperation axes — illustrated by the diagonal from top left to bottom right in Figure 3.2. When we reach a compromise we don't relinquish everything, but nor do we get everything we want, either. Such a solution will lie between the positions of avoidance and collaboration: it does not avoid the conflict, but nor does it go so far into the sort of detail a readiness for new alternatives would require. It is much more superficial. The compromise also lies at the centre point of the other diagonal. This aptly illustrates the expression, *to meet one another half way*, where the parties make moves towards one another or look for a rapid agreement that is just about acceptable to them. At least then, some agreement will have been struck. The compromise is widely used as a device in politics and diplomacy, where it is highly esteemed as the *art of the possible*. If neither side is able or willing to make further concessions (because his mandate is limited), it is often the only option, which by definition is therefore the best. In another context a mixture of cowardice and avidity may lead to a *bad compromise*, where the partners apparently did not have the courage or the generosity of mind to look for better alternatives, even though their mandate would have allowed one. A compromise may well be the best solution in many cases, but it is more likely only to appear so.

Avoidance

Avoidance is always possible as a no-win solution. Instead of insisting on his demands or cooperating, the negotiator withdraws from the conflict and forgoes an agreement. In this he is serving neither his own interests nor those of his opponent. He simply avoids coming to grips with the problem; perhaps because his opponent seems too powerful and a confrontation does not appear to have any prospects of success. In such a case a tactic worth recommending might be to let the opponent thrash about in the air for a moment — similar to the technique used to such effect in the Japanese martial arts *aikido* and *jujitsu*, which indeed constitutes a favourite ploy of Japanese management. The avoidance strategy may have a very diplomatic quality, with awkward issues being put on ice and postponed until a more favourable moment. If an agreement does not yet seem possible, conscious avoidance may help to prevent damaging an otherwise good relationship with the other party. It is far better to duck away at the right moment than to experience disappointment later, or set it up. But avoidance may also come up in the shape of the *ostrich policy*, when one of the parties sticks his head in the sand and plays the waiting

game. This is one way of deflecting a situation that threatens to be dangerous, but it will rarely be sufficient to defuse it completely. In cases such as this evasive action is a very circumspect and conservative way of responding. It does not involve much risk: nothing is ventured, but nothing much is lost. It also has the characteristic of covering up one's own interests or positions quite effectively. It forestalls the sort of discussion in which the other side might be apprised of important information. Certainly, such an attitude does not exactly make a friendly impression on the partner at the receiving end of the rebuff, but to opt out at a later date could cause much greater damage. Avoidance is an extremely versatile and thus useful position to take in such a situation. But like the other positions, it should only be used in a very targeted manner. Certainly, it should not be seen as a stock solution. The over-frequent avoidance of conflict whittles down our own expectations and thus minimizes the chances of truly satisfactory results in the future.

Accommodation

Accommodation is the opposite of competition. It is not assertiveness, but rather it is very cooperative. The negotiator renounces most of his objectives. In order to satisfy his opponent, he sacrifices his own interests — either from selfless generosity, munificence or forced obedience. Were the arguments of the other side so convincing, that our negotiator could only be convinced? Was he perhaps even converted? Straightforward capitulation is an effective strategy in its way, when it's a matter of defusing an escalating conflict or simply to re-establish a friendly atmosphere. But it may be read as an invitation for more demands, as our example of the Munich Conference in Chapter 1 showed. Giving in may also frequently be interpreted as weakness and as a sign of naive gullibility (or a just punishment for it!). But as a strategy it should not be rejected out of hand — everything depends on the objective and the circumstantial details.

Which Position, When?

Since these various positions are diametrically opposed to one another, the question automatically arises, which position should we adopt in a given situation? Although as a matter of principle cooperation is the best choice, it is not always available as an option. In this section we present four important criteria on which to evaluate strategies when confronted with a specific problem.

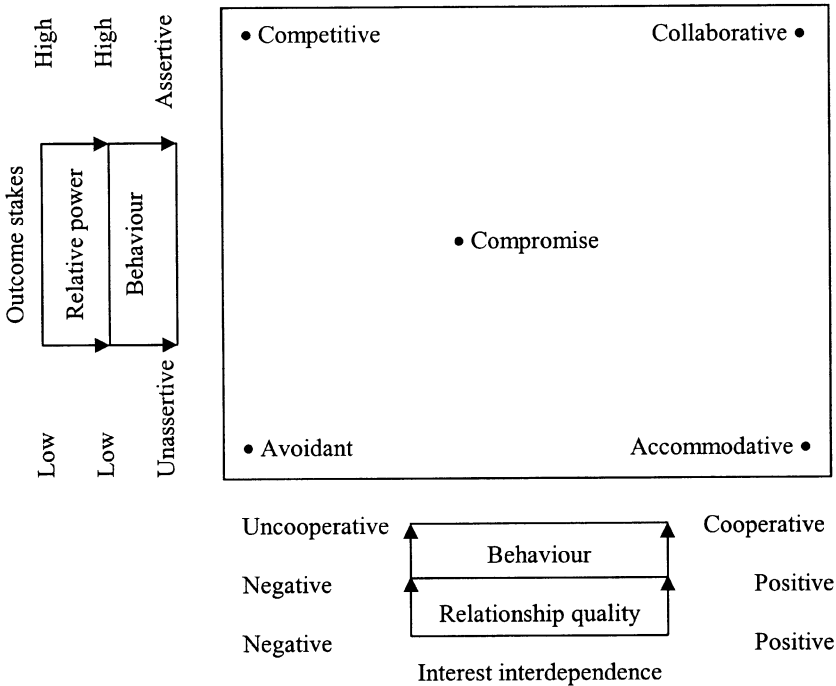


Figure 3.3: Determinants of conflict behaviour.

Let us begin with the vertical axis in Figure 3.3. How do we know how far we can go with our demands, and how forcefully we should present them? How much cooperation should we offer, and how much can we expect from the other side?

What is at Stake?

The first consideration underpinning this decision is: how vital is this negotiation for me? What is at stake here? If a failure would drive me to the wall, I am going to want to put more of my energy into it than if it were just a matter of buying a new telephone answering machine. I will want to fight every inch of the way to maintain my position or, better, work together with my opposite number to achieve an optimum outcome. At the very least I will want

an acceptable compromise, if that is the best alternative the circumstances have to offer — always a better solution than to give up an important negotiation without any agreement at all. But one thing is certain, I am not going to give up if the outcome means everything to me, or when a precedent would be established. For if I give way now, then other people are going to expect a similar deal in comparable cases in the future. To give way now would mean to give way again, and again, . . . and again?

The power balance between the participants has a similar impact on the course of events. This is something of a self-evidence: the one who has the power to impose his demands is in general likely to do so. Unless of course he is pursuing a quite different objective. The mere availability of power thus does not necessarily mean that it is going to be brought to bear in a given case. But clearly the very possibility that it might — whether on our own part or that of the other — is going to have a considerable or even decisive impact on the choice of strategy. For the side that has the power in its hands can resort to it at any time. That is the principle of deterrence. There is no point in attacking an adversary who is stronger than you. As important as an accurate assessment of one's own power, therefore, is the most accurate possible assessment of the adversary. For this, we need to understand the sources and basis of power.

Common Interests

Let us now turn our attention to the horizontal axis in Figure 3.3, which introduces two new variables that affect the level of cooperation: common interests and the quality of the personal relationship. Let us start with the first of these: it is natural to expect that the more the interests of the parties coincide, the more they will want to cooperate. If both are going for the same objective, they are more likely to pull together than if their aims are diametrically opposed. Conversely, the fewer interests the two sides have in common, the less cooperation will be an ingredient of their bargaining efforts. We don't need to dwell on that. But it is a good idea to be clear about even such simple steps of logic when we are devising our strategy. A similar situation obtains when it comes to adapting our own position in the course of the negotiation, as we shall see later in the chapter.

Relationship Quality

The scope for cooperation also depends on the quality of the personal relationship between the negotiating partners. This too is such an obvious point

that it sometimes risks being forgotten. Clearly, all of us behave differently towards a friend than we would towards a completely unfamiliar discussion partner, not to speak of a notorious double dealer in the trade. If we have had positive experience of a negotiating partner, who has proved himself or herself to be serious and reliable in our eyes, the way is wide open to cooperation. And of course the converse is equally true: our partner is going to need to feel that we are sufficiently trustworthy before wanting to cooperate with us. Both parties have to earn their right to cooperation. But there is of course always the possibility that despite a good personal relationship too many differences of interest stand in the way of an agreement being obtained through cooperation. In such a case the result is likely to be a compromise, or one of the parties will give way in order not to sully the good relations. Both may even choose to sidestep the conflict between interest and relationship, and not pursue the deal. As we have seen, each position on the grid described by Gladwin & Walter (1980) can be defined by four readily assessable criteria — relative power, outcome stakes, interest interdependence and relationship quality. On this basis, we can plot our own position on the grid as well as that of our partner in terms of demands and cooperation. True, this is not enough to resolve any conflicts that may arise, but an appreciation of the positions on both sides may be quite valuable when it comes to developing an appropriate strategy.

For Example: Business Lunch with IBM

The following example will show how effective it is to cultivate good personal relations. The movement along the horizontal axis in this case made it possible to pass from *avoidance* (on the part of the IBM representative) to *collaboration*.

Long before she became president of the advertising agency's North American operations, *Ogilvy & Mather's* Rochelle Lazarus had a sense of personal relations with clients. For several years she had lunched every day with former or current clients, cultivating relationships and the proverbial good connections, and not only at top executive level. In every company that she worked for — in the first third of her career, that included *American Express* — she knew armies of people in influential positions at all levels and in all sorts of departments. This enormous effort — to say nothing of the restaurant checks — paid off after several years for her company: in 1992 she won back American Express's charge-card advertising account for Ogilvy. But the really big deal came two years later, when her good relations enabled her to reel in the \$400 million-plus account of the computer giant IBM. She would of course never

have landed such a prize without the qualifications and proven successes of her employer. But an internal note at IBM indicated that the contacts of many years standing between Ms Lazarus with IBM president Louis V. Gerstner and his vice-president of corporate marketing, Abby Kohnstamm, were instrumental in swinging the giant's decision to put the account in the hands of *Ogilvy & Mather*. Ms Lazarus's relations with client executives went a long way to making IBM feel that the risk of investing in a new campaign was considerably less than it might have been. Indeed she had begun to cultivate her good connections with her clients Gerstner and Kohnstamm when they were still on the payroll of American Express. At that time she could have no notion of the exceptional deal with IBM she was to snare years later.

In addition to illustrating the important role of good personal relations with major negotiating partners, this example once again demonstrates the strategic significance of the long view.

(based on *Wall Street Journal* 1994).

For Example: Perestroika

The example that follows illustrates movement along the vertical axis. The Soviet Head of State and Party Chairman Mikhail Gorbachev received a warm welcome from the Western world shortly before he was installed as General Secretary in 1985. The American news magazine *Time* even featured him as *Man of the Century* on its front cover. After years and decades of confrontation, there now stood a man at the helm of the Soviet Union whose ideas of reform brought a powerful and welcome wind of freedom and democracy into the eternally repressed giant empire, long eschewed by the rest of the world. Real cooperation with the West, or at the very least an end to the arms race, now appeared to be a viable prospect. But was Gorbachev really the man to push through the results of negotiations with the West in his own country? For all the appeal of the new policies of *perestroika* (restructuring) and *glasnost* (openness), the capitals of the Western world could not rid themselves of the justified worry that the long-hoped-for change might be blocked by tough resistance from groups who sensed a risk to their personal privileges. Against this was the backdrop of a population that was body and soul behind the new man in the Kremlin. Numerous strategic analyses were undertaken with a view to pinpointing the individual groups involved.

Table 3.1 provides an illustration of the groups among the Soviet population that supported or opposed Gorbachev's reformist policies. This analysis was required if the Western governments and their various organizations were to

Table 3.1: What Soviet citizens thought about Mikhail Gorbachev's reform policy.

| Social strata and groups | Positions towards perestroika | | | | | | | |
|--|-------------------------------|-----------|--------|-----------------|-----------|-------------------|---------------|---------------|
| | Initiators | Advocates | Allies | Quasi-advocates | Observers | Neutral observers | Conservatives | Reactionaries |
| Leading industrial and collective farm workers | | | | | | | | |
| Political and economic managers | | | | | | | | |
| Intellectuals (soc. sciences and humanities) | | | | | | | | |
| Small business | | | | | | | | |
| Majority of industrial and collective farm workers | | | | | | | | |
| Intellectuals (sciences and technical disputes) | | | | | | | | |
| Managers | | | | | | | | |
| Officials in the commercial and service sectors | | | | | | | | |
| Privileged workers | | | | | | | | |
| Members of organized crime | | | | | | | | |

address the supporters and opponents of perestroika with carefully defined measures. The intention was to shift relations with the Soviet Union away from competition (at top left in Figure 3.2) towards collaboration (top right). For this, it was necessary not only to refurbish diplomatic relations at the protocol level, but for there to be a genuine convergence of Soviet and American interests. That, at bottom, was what *perestroika* and *glasnost* were all about. But the leaders of Western governments were well aware that to maintain the new General Secretary, regarded as a progressive, in power would require weakening the reactionary forces in the Soviet Union and supplying support to Gorbachev's followers. When it came to the crunch, however, this support was not forthcoming, and Gorbachev fell from power.

Choice of Strategy

We have now studied the basic positions and looked at their application through a number of examples. Which brings us to the important question of which position that *we* should adopt in a given situation. There is no all-embracing answer to this question. First, our own personal disposition will have a definite influence on the strategy we choose. A good negotiator will master the whole gamut of possibilities, and be able to put himself behind any one of the five basic positions. But each of us has his individual preferences — one likes to push his way through, another will tend to draw back, while a third is more comfortable looking for new alternatives. This personal aspect should not be underrated, as the following example illustrates:

For Example: Switzerland

“The Swiss go into a negotiation with a compromise and finish it with avoidance or confrontation”. This less than generous judgment of the abilities of the alpine republic is doubtless formulated a little too harshly, but it is not without a grain of truth. The reader will perhaps brush off this statement as a self-effacing remark from an author who is himself Swiss, with considerable experience of negotiating in his home country. But we have in fact accumulated empirical evidence to support this statement (Saner & Yiu 1993). The instrument used was MODE, Management of Difficult Exercises, a questionnaire developed to determine the preferred positions taken up in conflict resolution (Thomas & Kilmann 1974), which we submitted to 184 diplomats, senior civil servants, managers, bankers and students. The results showed a distinct preference for compromise and avoidant behaviour.

Table 3.2: Preferred conflict positions, Switzerland.

| Swiss Average score | Swiss Federal officials | Swiss Bankers (service sector) | Swiss Managers (transport sector) | Swiss University students | |
|------------------------------------|--|---|--|--|-----------------------------|
| (N= 184) | (N= 37) | (N= 24) | (N= 25) | (N= 37) | |
| Compromise – 7.14 | Compromise – 7.16 | Avoidance – 7.04 | Compromise – 8.20 | Compromise – 6.7 | Highest average score |
| Avoidance – 6.46 | Avoidance – 6.78 | Compromise – 6.38 | Avoidance – 6.12 | Avoidance – 6.46 | |
| Collaboration – 5.56 | Competition – 5.58 | Collaboration – 5.75 | Accommodation – 5.72 | Collaboration – 6.40 | |
| Competition – 5.53 | Collaboration – 5.51 | Accommodation – 5.58 | Compromise – 5.48 | Compromise – 5.54 | Lowest average score |
| Accommodation – 5.22 | Accommodation – 4.31 | Competition – 5.25 | Collaboration – 4.32 | Accommodation – 5.46 | |

This result, which was obtained uniformly through all the occupational groups investigated, seems logical in a country that not only depends on various neighbouring countries and their markets, but is divided up internally into several disparate ethnic, cultural, religious and linguistic communities. Without a predilection for compromise and avoidance of conflict on the part of the population, civil war is a far from remote possibility. This basic attitude is also recognizable in the government of this federal state by consensus of the seven members of the Federal Council (government ministers), who are nominated by the main political parties using a highly detailed key. A similar mentality is found in the industrial sector, which is dominated by cartels, or in the collective wage rounds, which for decades have guaranteed the country absolute social peace. Switzerland's position in diplomatic negotiations, for example with the European Communities, also reveals a natural tendency towards compromise. In the face of its far larger and more powerful neighbours, Switzerland has no negotiating power to speak of, yet the agreements debated often have major significance for the Swiss economy. The country's interests rarely coincide with those of the large European states, and relations with individual neighbours may not be too close in consideration of the various ethnic and linguistic groups of which Switzerland is composed. Otherwise there is a real danger that the federal state could break up. Active neutrality is the logical conclusion of this careful balancing act.

An interesting example of how Switzerland deals with conflict is given by the many negotiations it holds with the European Communities. These are succinctly illustrated in Figure 3.4. In the first phase from 1957 to 1972, the EEC was seen as a threat; membership would therefore never have been accepted by the people. In its search for a solution, Berne chose to participate in the establishment of the European Free Trade Association, EFTA. At the same time a free trade agreement was signed between EFTA and the EC countries, which made it possible for all EFTA countries, including Switzerland, to remain immune from the discrimination brought about by the EC customs union. With the switch from partnerships with major nations from EFTA such as the United Kingdom, to the EC, a new balance of power came into being between EFTA and the European Communities. Switzerland set its course on the avoidance of new discriminations and in the space of a single year concluded more than 130 bilateral agreements with EC countries (for example in the fields of research cooperation, improved market access for specific agricultural products, etc.).

Between 1989 and 1992 this course changed from avoidance to active cooperation, when membership of the European Economic Area appeared inescapable. But the hard-won agreement was then turned down by the people

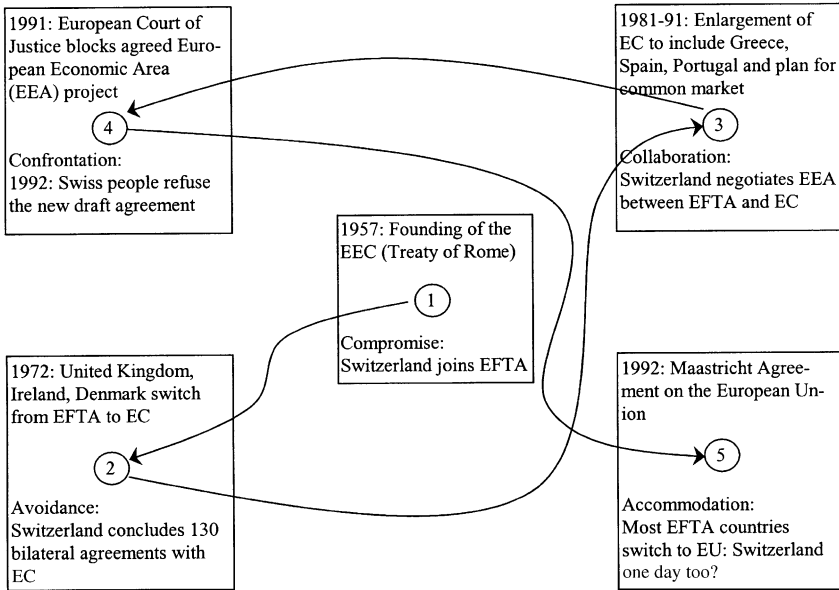


Figure 3.4: Relations between Switzerland and EEC, EC and EU.

of Switzerland in a popular referendum in 1992. Since that time, tension has reigned between Switzerland and the European Union. The situation was largely remedied by tough sectoral negotiations, which were concluded in 1999. A referendum was organized to oppose this bilateral agreement, and the Swiss people will now cast their vote for or against it in May 2000. If the vote goes in favour, Switzerland will once again have managed to negotiate an arrangement with the European Union that allows it to remain free from serious discrimination by the latter. But if the agreement is rejected, pressure on the part of the EU will increase. Even if the sectoral agreements are accepted, it is quite conceivable that Switzerland will not remain aloof for long and will finally one day take up membership of the EU.

Strategic Analysis

We have seen the role played by individual disposition in the choice of strategy in the example of Switzerland. While it is necessary to take the subjective inclination towards a particular position into account, we need to look at it

critically: is the preferred strategy really suited to solving a specific conflict? It feels much more important to regard the objective side of the matter, provided that the negotiator is able to distance himself from his personal preferences. Each conflict demands a completely new assessment of the situation, just as does each change in the position of the other side. The following section will deal with the adaptation of a chosen strategy to changing circumstances. At this point we would like to present a useful decision tool, with the help of which we can readily define our initial position.

When all the questions have been answered carefully for each of the four determinants addressed, the checklist reproduced in Table 3.3 provides a very informative figure. But just what information this number conveys becomes clear only when it is entered into the corresponding scale in Figure 3.5 as a vertical or horizontal line.

The checklist answers thus produce two horizontal and two vertical lines. We now turn our attention to the rectangle enclosed by these four lines. It may be useful to highlight it by colouring it in. Referring back now to the diagram by Thomas and Kilmann (Figure 3.2), the position of our rectangle will show us where we stand in respect of the five fundamental positions in the context of the conflict we are at present dealing with.

Adapting Strategy

We now have a clear basis on which to define where we stand — but that by no means implies that we have to remain in this starting position. Depending on the position adopted by the other side, we will want to vary our own as the talks progress. The strategy may even be defined by a movement from one position to another: *“The true policy is to confront power with power at a selected point where a decision in a military sense is possible, and then to use the delicate and unstable equilibrium as an opportunity to be seized for constructive and magnanimous negotiation”* (Walter Lippmann 1946).

The sequence and timing of the various positions may have a conclusive effect, as a famous example from Japanese management philosophy shows: *“When the enemy attacks, remain undisturbed but feign weakness. As the enemy reaches you, suddenly move away indicating that you intend to jump aside, then dash in attacking strongly as soon as you see the enemy relax. This is one way”* (Musashi, Miyamoto 1982).

The author of this directive, Miyamoto Musashi (1584–1645), is a very interesting man. He was a Samurai whose writings are still used as the theoretical basis for countless management seminars. Translated into marketing

Table 3.3: Strategic analysis checklist.

Instructions: First, circle the appropriate assessment of each individual factor on the 4-point scale. Then add up the score for each factor and plot each result as a horizontal or vertical line in Figure 5–5. The plane of intersection of the lines represents your initial strategic position.

| | | | | | | |
|---------------------------------|--------------|---|---|---|---|-----------------|
| 1. Outcome stakes (SK) | | | | | | |
| Impact on corporate strategy | negligible | 0 | 1 | 2 | 3 | substantial |
| Financial condition | sound | 0 | 1 | 2 | 3 | unsound |
| Sunk costs | negligible | 0 | 1 | 2 | 3 | high |
| Precedents | existing | 0 | 1 | 2 | 3 | none |
| Accountability | low | 0 | 1 | 2 | 3 | high |
| Urgency | low | 0 | 1 | 2 | 3 | high |
| Options | none | 0 | 1 | 2 | 3 | many |
| | Total | | | | | SK score |
| 2. Power position (PP) | | | | | | |
| Size | small | 0 | 1 | 2 | 3 | large |
| Financial base | limited | 0 | 1 | 2 | 3 | substantive |
| Additional manpower | unavailable | 0 | 1 | 2 | 3 | ample |
| Expertise | insufficient | 0 | 1 | 2 | 3 | sufficient |
| Leadership | poor | 0 | 1 | 2 | 3 | excellent |
| Prestige | low | 0 | 1 | 2 | 3 | high |
| Communication/Persuasion | poor | 0 | 1 | 2 | 3 | excellent |
| Access to media | lacking | 0 | 1 | 2 | 3 | multiple |
| Cohesiveness of organization | low | 0 | 1 | 2 | 3 | high |
| Experience handling conflict | negligible | 0 | 1 | 2 | 3 | substantial |
| Commitment | low | 0 | 1 | 2 | 3 | intense |
| Legitimacy | questionable | 0 | 1 | 2 | 3 | unquestionable |
| Risk-taking ability | inadequate | 0 | 1 | 2 | 3 | adequate |
| Potential coalition | unavailable | 0 | 1 | 2 | 3 | ample |
| Alternative options | none | 0 | 1 | 2 | 3 | many |
| Capability to reward | weak | 0 | 1 | 2 | 3 | strong |
| Capability to coerce | weak | 0 | 1 | 2 | 3 | strong |
| | Total | | | | | PP score |
| 3. Common interests (CI) | | | | | | |
| Goal compatibility | not at all | 0 | 1 | 2 | 3 | very much |

Table 3.3: Continued.

| | | | | | | |
|--|--------------|---|---|---|---|-----------------|
| Approach compatibility | not at all | 0 | 1 | 2 | 3 | very much |
| Resource interdependency | not at all | 0 | 1 | 2 | 3 | very much |
| | Total | | | | | CI score |
| 4. Quality of relationship (QR) | | | | | | |
| Quality of past relationship | poor | 0 | 1 | 2 | 3 | excellent |
| Mutual understanding | poor | 0 | 1 | 2 | 3 | excellent |
| Mutual willingness to help | weak | 0 | 1 | 2 | 3 | strong |
| Quality of communication | defensive | 0 | 1 | 2 | 3 | open |
| Value orientation | divergent | 0 | 1 | 2 | 3 | compatible |
| | Total | | | | | QR score |

Source: Yiu 1987.

terms, the above principle could represent a skilful strategy for introducing a new product. The tentative introduction of a relatively unimportant or an inferior product (signalling weakness) is merely a feint to mislead the competition. While they lean back and relax, the real product is put onto the market, with full power behind it.

Starting from the five positions presented earlier, there are a total of 16 possible routes linking each pair (see Figure 3.6). I leave it to the reader to interpret what each of these signifies in practice. All the options are open when it come to deciding whether to pass from a confrontational stance to one of evasion or cooperation. Depending on the circumstances, any of the routes shown may constitute the optimum strategy.

For Example: Go

i-Go, generally known simply as *Go* in the West, is an excellent school for tactical thinking and especially flexible strategy. Unlike chess, this strategic game, which has been played in Japan and China for centuries, does not comprise a hierarchy of strengths or a linear confrontation between the armies. The players move alternately, each laying a black or a white piece (called a “stone”) on any of the 361 intersections of a board composed of 19×19 horizontal and vertical lines. The aim of the game is for the players to control

the largest possible area of the board with the stones of their own colour. Once a stone (or several stones) has been surrounded, it is removed from the board. Otherwise all the stones remain where they were placed on the board, making up a complex network of local battlefields. A good player will evolve sophisticated strategies from the respective positions of the stones in relation to one another, so that at the end of the game he is in control of more than half of the free points (known as “liberties”) remaining on the board. The individual groups or chains of stones (“armies”) can form alliances to enable them to

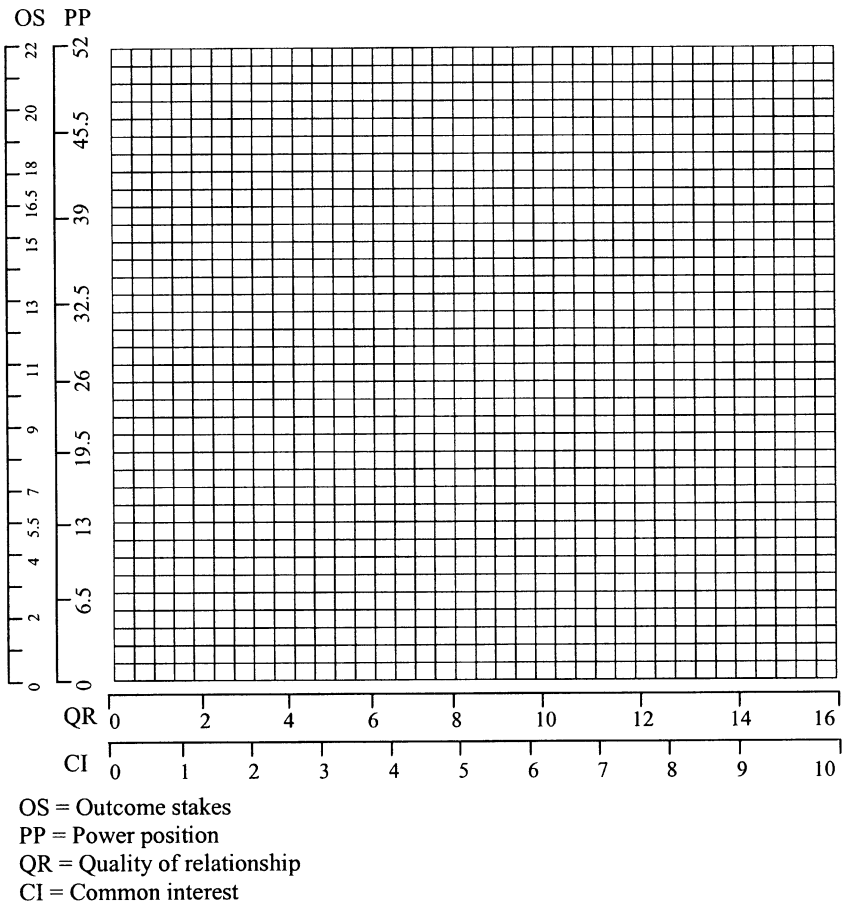


Figure 3.5: Strategic positioning grid.

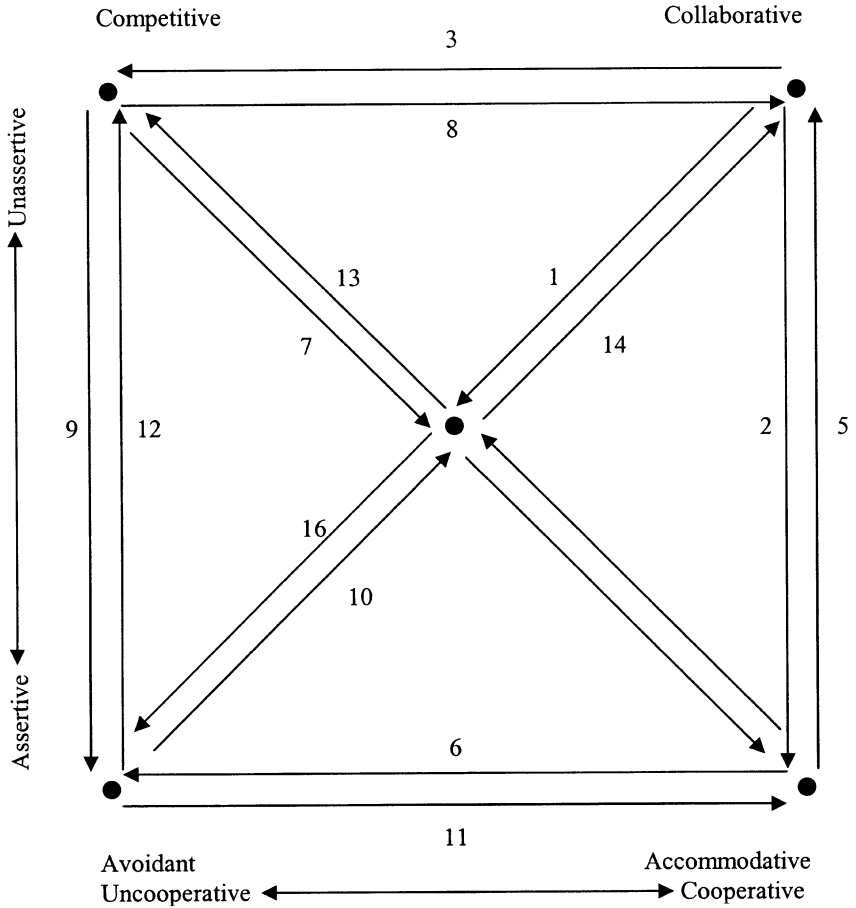
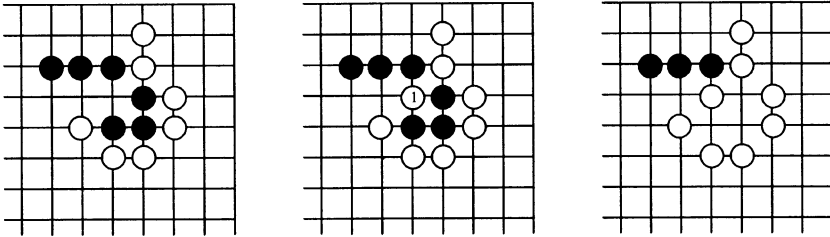


Figure 3.6: Sixteen strategic paths.

move in on the enemy forces and finally capture them. They can also limit themselves to securing their own territory by establishing an effective and invincible barrier around it. It is also possible to make forays behind the opponent's lines with the aim of linking up with other friendly stones and so to capture enemy territory from behind.

Figure 3.7 presents two simple examples of strategy and tactics in Go. The three diagrams along the top row show how the coordinated placing of his stones has permitted white to surround and capture three black stones. By placing a white stone on 1, white has surrounded black and is able to take out

1



2

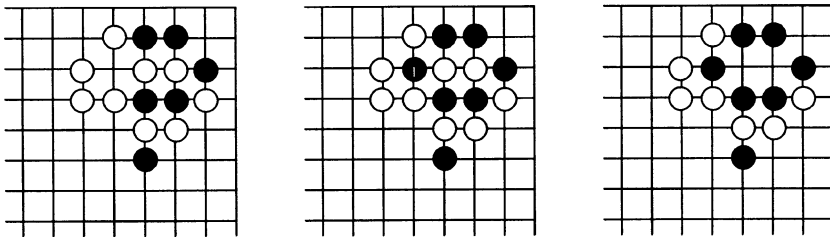


Figure 3.7: GO: Japanese game of strategy.

three black stones. With this strategy white has won territory for himself and has established a superior and invulnerable position. The situation is quite different for black in the second example (bottom row): while he is able to capture two white stones, he then finds himself threatened by the remaining white stones. Black needs to secure the point marked with a 1, if he is to protect himself from the forthcoming white offensive.

At first glance the similarity between this extremely exciting board game and conducting negotiations will perhaps not be very obvious. But anyone who needs to bargain frequently with partners from the Far East will rapidly find a study of the game invaluable. For all its exotic airs — and in passing, it is regarded as the world's oldest board game — it is able to reflect each and every one of the strategies we have spoken of in this chapter.

For Example: IBM

To conclude this chapter, the following example shows how a multinational corporation was obliged to harmonize its strategy with the position held by the

government of a host country, and immediately adapt it to any new position taken up. It contains many of the elements presented in this chapter and so serves as an excellent application of the theories dealt with here. Once again we are looking at the computer and office machine producer, International Business Machines, known the world over as IBM.

Since the 1970s, multinational concerns such as IBM have found themselves faced with an increasingly tougher stance on the part of many emerging nations on the political and economic fronts. Whereas in 1951 IBM could still be invited to India and received with open arms by Prime Minister Nehru, twenty years later the wind had changed radically. In the interval, IBM had succeeded in achieving almost complete control of the Indian computer market. The Indian government felt this to be a dangerous dependence from the strategic standpoint and pressed the firm to reduce its 100% ownership to 40%, a holding that still constituted a blocking minority. IBM was also enjoined to extend its computer design and manufacturing operations in India for both the domestic and export markets. IBM was highly reluctant to deviate from its traditional global policy on account of a new attitude on the part of the Indian government. So the concern changed its position towards India from collaboration to heavy

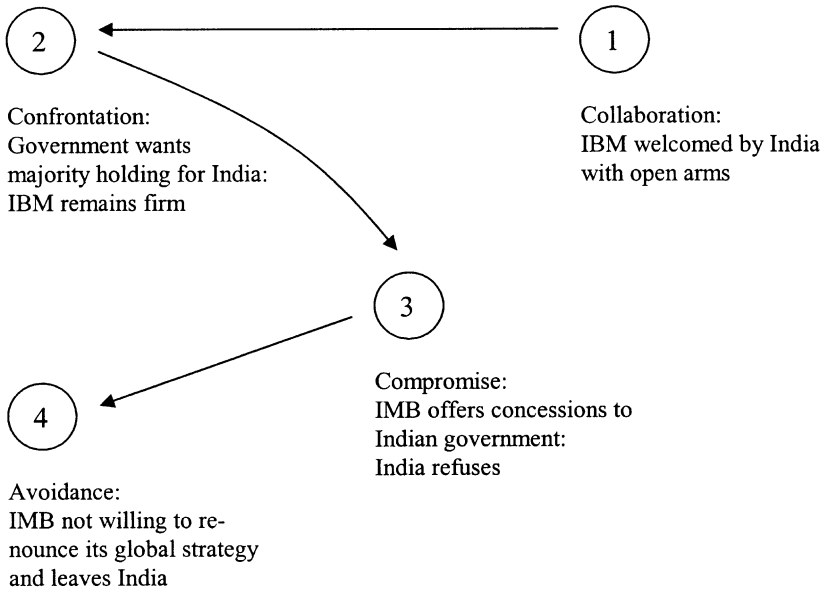


Figure 3.8: Strategic position of IBM in India.

confrontation. The equity dilution demanded by India could not be countenanced at IBM. However, a similarly rigid position on the part of the Indian government forced IBM to propose a range of concessions in the hope of a compromise.

But India rejected IBM's proposals. This led the computer giant to adopt a position which was as unfortunate as it was surprising for the Indian government: IBM considered the Indian demands to be a serious threat to its global strategy and renounced its activities in the subcontinent. When finally there was no longer any hope of compromise, the concern decided to turn to a policy of avoidance: on 15 November 1977 it announced its complete withdrawal from India

(Source: Gladwin & Walter 1980).

Chapter 4

How National Culture, Organizational Culture and Personality Impact Buyer-Seller Interactions

Sudhir H. Kalé

Introduction

The decade of the 1990s has witnessed more than its share of profound geopolitical changes. Ubiquitous loosening of trade barriers combined with the unprecedented zeal towards modernization exhibited by the developing countries has resulted in a global environment where nationalistic influences are dwindling in impact. Until recently, most international business phenomena could be largely explained on the basis of national culture, a dominant sculptor of consumer behavior and business practices. The universal weakening of nationalistic fervour and concomitant emergence of strong corporate and individual identities has necessitated that organizational culture and individual personality now be added to national culture to form the fundamental trinity of behavioral influences affecting international business interactions. This combination of national culture, organizational culture and individual personality is particularly relevant in appreciating cross-national sales interactions.

With the accelerated integration of world markets, the cosmopolitan salesperson has become a commonplace reality. However, scholarly work in the area of buyer-seller interactions has not incorporated this new reality in explaining the conduct and outcome of face-to-face selling. Most books on personal selling and sales management do not discuss the international context and many of the international marketing texts pay only scant attention to cross-national selling issues. As such, the art and science of cross-national selling

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remain under-researched and therefore difficult to fathom. Recent developments in market integration, particularly regarding the European Union, necessitate that the domain of cross-national selling be better comprehended. A crucial first step in this direction is to appreciate the factors that shape the behavior of actors in a dyadic cross-national selling encounter. This involves understanding how national culture, organizational culture, and individual personality combine to impact the personal selling transaction.

This chapter has three broad objectives: to explain the impact of national culture, organizational culture, and individual personality on dyadic sales encounters; to suggest an appropriate typology with which to evaluate, analyze, and measure each of these constructs; to offer suggestions on how this three-construct conceptual framework can help practitioners better comprehend cross-national sales interactions.

Cross-National Selling

The two main components of a personal selling transaction are content and style. Content refers to the substantive aspects of the interaction for which the buyer and seller come together. Sheth (1976) explains that the content of a personal selling interaction involves suggesting, offering, or negotiating a set of product specific utilities and their expectations. Style refers to the rituals, format, mannerisms, and ground-rules that the buyer and the seller follow in their encounter (Sheth 1983). A satisfactory interaction between the buyer and the seller will be contingent upon buyer-seller compatibility with respect to both the content and style of communication (Weitz 1981). The level of dyadic compatibility in content and style will largely be determined by the national culture, organizational culture, and individual personality.

National Culture

Culture has a profound impact on how people in the marketplace perceive and behave. The level of aggregation of this construct, however, has always been somewhat problematic. In the realm of international marketing, culture has been typically visualized at the national level. However, operationalization within the national context has been difficult because of a wide divergence of definitions, each reflecting different paradigms from varying disciplines (e.g. psychology, sociology, anthropology, etc.).

In this regard, Hofstede's four dimensions of culture appear most promising (Hofstede 1980). They are based on empirical research, and thus offer the advantage of quantifiability. Hofstede defines national culture as the "collective mental programming" of people in an environment. As such, it is not a characteristic of individuals, but of a large number of persons conditioned by similar background, education, and life experiences. Since this book was published, Hofstede has added a fifth dimension, however, conceptual and empirical support for this dimension is not very exhaustive (Hofstede 1991). Hofstede's dimensions of culture show meaningful relationships with important demographic, geographic, economic, and political national indicators (Triandis 1982). Uncertainty avoidance, individualism, masculinity, and power distance comprise the Hofstede framework.

Uncertainty avoidance (UAI) assesses the way in which societies react to the uncertainties and ambiguities inherent in daily living. At one extreme, weak UAI societies socialize members to accept and handle uncertainty without much discomfort. People in these societies tend to accept each day as it comes, take risks rather easily, and show a relatively greater tolerance for opinions and behaviors different from their own. The other extreme — strong UAI societies — feel threatened by ambiguity and uncertainty. Consequently, such societies emphasize the strong need to control environment, events, and situations. Based on Hofstede's research, Belgium, Japan, and France display strong uncertainty avoidance. Denmark, Sweden, and Hong Kong could be characterized as weak UAI societies; the United States is somewhat in the middle.

The dimension of individualism (IDV) describes the relationship between an individual and his or her fellow individuals, the collectivity which prevails in society. One extreme contains societies with very loose ties between individuals. Such societies allow a large degree of freedom, and everybody is expected to look after their own self-interest. At the other end are low-IDV societies, i.e. societies with very strong ties between individuals forming the in-group. People are expected to watch after the interests of their in-group and to hold only those opinions and beliefs sanctioned by the group. The United States, Great Britain, and the Netherlands display strong individualism, while countries such as Colombia, Pakistan, and Taiwan gravitate toward the other extreme.

Power distance (PDI) involves a society's solution to inequality. People possess unequal physical and intellectual capabilities, which some societies allow to grow into inequalities in power and wealth. Some other societies, those characterized by a small power distance, de-emphasize such inequalities and strive toward maintaining a relative equity in the distribution of power, status, and wealth. The Philippines, India, and France all display relatively large

power distance. Austria, Israel, and Denmark depict relatively small PDI, while the United States lies in the mid-range of the PDI continuum.

Masculinity (MAS) pertains to the extent to which societies hold values traditionally regarded as predominantly masculine or feminine. Examples of “masculine” values include assertiveness, respect for the super-achiever, and the acquisition of money and material possessions. “Feminine” values include nurturing, concern for the environment, and championing the underdog. Japan, Austria, and Italy are examples of typically masculine societies while Norway, Sweden, the Netherlands, and Denmark show strong feminine characteristics.

Organizational Culture

Organizational culture encompasses the pattern of shared values and beliefs which enables people within the organization to understand its functioning, and furnishes them with behavioral norms (Apasu *et al.* 1987; Deshpande & Webster 1989; Weitz *et al.* 1986). The values inculcated by an Organization along with the behaviors it prescribes have a discernible impact on a salesperson’s (or buyer’s) content and style of interaction (see Deshpande & Parasuraman 1986; Deshpande & Webster 1989; Sathe 1984). Deshpande & Webster go so far as to assert that the marketing concept in itself is a manifestation of a firm’s organizational culture (*ibid.*).

While extremely crucial in its import, the construct of organizational culture has been quite difficult to operationalize. Multiple definitions have caused the concept to remain fuzzy and elusive. Furthermore, until recently, empirical work in this area has been conspicuously lacking. A notable attempt to identify and operationalize the dimensions of organizational culture from a broad-based perspective was undertaken by Reynolds (1986).

Based on the premise that reliable procedures for the measurement of organizational culture are sorely needed, Reynolds identified 15 aspects of organizational culture derived from five earlier works (Ansoff 1979; Deal & Kennedy 1982; Harrison 1978; Hofstede 1980; Peters & Waterman 1982). Table 1 provides brief definitions of each of these dimensions. From a marketing perspective, five of these aspects seem to be vital, particularly in understanding dyadic interactions: External vs. Internal Emphasis; Task vs. Social Focus; Conformity vs. Individuality; Safety vs. Risk; and Ad Hockery vs. Planning. These five aspects of organizational culture are logically and empirically independent.

Table 4.1: Dimensions of Organizational Culture.

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1. External vs. internal emphasis: Emphasis on satisfying customers, clients or whatever as opposed to focusing on internal organizational activities such as committee meetings and reports.
 2. Task vs. social focus: Focus on organizational “work” versus concern for personal and social needs of people.
 3. Society vs. risk: Relative openness to adopting new and different programs and procedures.
 4. Conformity vs. individuality: Extent to which organizations tolerate or encourage their members to be distinctive and idiosyncratic in work and social life.
 5. Individual vs. group rewards: Whether rewards are distributed to all members of a work unit or in response to individual contributions.
 6. Individual vs. collective decision-making: Whether decision-making reflects the inputs of one individual or the entire group.
 7. Centralized vs. decentralized decision-making: Whether decisions are made by those in key positions or by those affected by the decision.
 8. Ad hoc vs. planning: Whether *ad-hoc* response or elaborate plans are created in the face of changing circumstances.
 9. Stability vs. innovation: Relative tendency to search for novel and distinctive goods, services, and procedures.
 10. Cooperation vs. competition: Whether peers are considered as competitors for scarce resources or trusted colleagues in a common cause.
 11. Basis for commitment: Whether financial rewards, prestige, interesting/challenging work, opportunity for self-fulfillment/expression or satisfying personal relations constitutes the individual’s involvement with the company.
 12. Simple vs. complex organization: Refers to tendency of organizations to develop elaborate procedures and structures.
 13. Informal vs. formalized procedures: Whether extensive, detailed rules and procedures and elaborate forms and written documents are needed to justify actions.
 14. High vs. low loyalty: Extent to which members place their organization above competing groups such as family and professional colleagues.
 15. Ignorance vs. knowledge of organizational expectations: Degree to which individual members know what they are expected to do and how their efforts contribute to the accomplishment of organizational objectives.
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An organization with an external emphasis underscores the task of satisfying customers, clients, or whoever. The other end of this dimension places a relatively greater accent on internal organizational activities such as committee meetings and reports. The outward orientation resulting from an external emphasis will make firms more market-driven as opposed to product-driven.

The dimension of task vs. social focus contrasts the relative priorities of an organization between organizational work vs. concern for the personal and social needs of its members. In recognition of the fact that an organization is a complex social system, firms with a social focus consciously try to accommodate the social needs of their members in terms of status, esteem, and belonging. Firms with a purely task-driven focus will strive toward robotic efficiency in the attainment of their financial and growth objectives. This acculturation for intra-organizational activities is expected to carry-over to inter-organizational interactions as well.

The dimension of conformity vs. individuality assesses an organization's degree of tolerance of distinctiveness and idiosyncrasy among its members. One extreme encourages homogeneity in work habits, dress, and even personal life while the other tolerates considerable within-group variation. Thus, firms emphasizing conformity portray a homogeneous organizational image and strive toward the perpetuation of the organizational stereotype. Firms which encourage individuality display an appreciation of diversity among their members, allowing a greater latitude in member lifestyles and behaviors.

An organization's response to risk is an important dimension of organizational culture, particularly in a fluid and rapidly changing business environment. One extreme depicts the tendency to be cautious and conservative in adopting new methods and practices while the other is a predisposition to change when confronted with new challenges and opportunities. Firms motivated by safety will typically be slow in decision-making, particularly when it comes to decisions involving the global marketplace. They are quite likely to curtail the level of autonomy of their members. Firms thriving on risk will typically want to be pioneers, be it in product development or in entering new markets. They will also allow their executives a fair degree of autonomy, and encourage learning through experimentation.

Ad hocery vs. planning captures the tendency to anticipate and plan for change. Some organizations create *ad-hoc* responses to all changes, while others may opt for elaborate plans that anticipate most future scenarios. Planning-oriented firms will be typically drawn to elaborate forecasting, mathematical modelling, and economic analysis. Firms practicing ad hocery will rely less on forecasts and numbers, and more on intuition.

Personality Factors

Dyadic communication takes place between individuals. Conditioned by the broader social environment at various levels (such as the family, school, and organization), people nevertheless exert their personality traits or individual preferences. The concept of personality has been called one of the “great” topics of behavioural sciences (Wilkie 1986). Drawing on commonality among hundreds of different definitions, personality can best be defined as an individual’s consistency in behaviors and reactions to events.

Given the face-to-face nature of most buyer-seller encounters, personality will have a direct and discernible impact on such interactions. The most popular way to depict personality is the Myers-Briggs Type Indicator (MBTI). The theory of temperament as developed by Keirsey and Bates is a parsimonious depiction of the MBTI personality profile. Temperament denotes, “a moderation or unification of otherwise disparate forces, an overall coloration or tuning, kind of thematization of the whole, a uniformity of the diverse (Keirsey & Bates 1978, p. 27). Before proceeding to the characteristics of the four temperaments in the Keirsey and Bates framework, it would be useful to briefly discuss their underlying MBTI dimensions.

The MBTI describes valuable differences in the ways people see the world, make decisions, choose careers, and communicate with one another. It identifies sixteen different personality types based on four dichotomous dimensions: extroversion vs. introversion (E or I), sensing vs. intuition (S or N), thinking vs. feeling (T or F), and perceiving vs. judging (P or J).

Extroverts typically are oriented to the outer world of people and things, whereas introverts gravitate toward their inner world of ideas and feelings. Thus, while terms like sociability, interaction, and external focus would categorize an extrovert’s life, apt descriptors for the lifestyle of an introvert would be territoriality, concentration, and internal focus.

A person with sensing-preference shows a marked predilection for facts whereas the intuitive person finds appeal in the metaphor and enjoys vivid imagery. Sensing types sniff out detail while intuitive people prefer to focus on the big picture. Words like sensible, down-to-earth, and practical would fit the sensing types. Intuitive types could be best described by words like imaginative, innovative, and ingenious.

The thinking-feeling dimension encompasses the basis for people’s decision making in life. Thinkers want to decide things logically and objectively; feelers base their decisions on more subjective grounds. Words like objective, principled, and analysis-driven typify the decision making of thinkers, while

the feeler's decision making could be described as subjective, value-based, and sympathetic.

Perceiving types tend to be flexible in life, always seeking more information. Persons who seek closure over open options are the judging types. Js fancy life to be settled, decided, and fixed; Ps opt for life to be in the pending, data gathering, and flexible mode. Judgers display a preference for organizing and controlling events of the outside world, whereas perceivers are primarily interested in observing and understanding such events. The four dimensions discussed here result in sixteen "types" of personality.

Keirsey and Bates collapse the sixteen possible MBTI types into four temperaments' thereby simplifying the MBTI framework while still preserving most of its substantive insights. These four temperaments have been metaphorically associated with four Greek Gods whom Zeus commissioned to make man more God-like: Dionysus, Epimetheus, Prometheus, and Apollo.

The Dionysian Temperament (SP) This temperament results from the combination of sensing (S) and perceiving (P) preferences. Focus on the SP temperament is joy. SPs prefer a life of freedom devoid of any responsibility. They tend to be impulsive and very expressive. SPs love to take risks and are always craving for adventure. "Action without constraints" typifies the SP lifestyle.

The Epimethean Temperament (SJ) Preferences of sensing (S) and judgement (J) fuse to form the SJ temperament. Unlike the thrill-seeking SPs, SJs exist primarily to be useful to the various social units they associate with. SJs feel the compulsion to belong, and they believe that belonging has to be earned. They have a very strong work ethic and they value hierarchy and order. SJs tend to be very attentive to details and can manipulate large amounts of data. The primary goal in life for an SJ is to maintain tradition and order in their environment. They live according to fairly rigid "shoulds" and "oughts".

The Promethean Temperament (NT) Intuition (N) combined with thinking (T) give rise to the NT temperament. This temperament values competence over everything. NTs dealings with others could be described as "coolly objective". They tend to be very critical of themselves and others. NTs tend to be very precise communicators and place little reliance on non-verbal qualifiers. They love to play with words, ideas, and models. They are very adept at planning but seldom care about the implementation of their plans.

The Apollonian Temperament (NF) This temperament results from the preferences of intuition (N) and feeling (F). NFs tend to be driven by

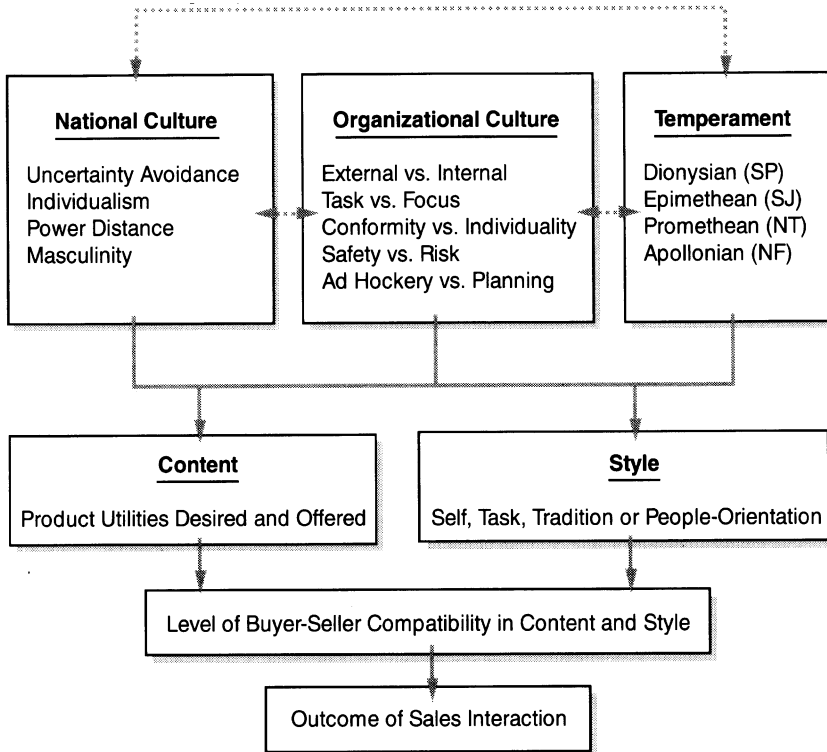


Figure 4.1: Impact of culture and temperament on buyer-seller interactions.

authenticity. They value integrity and are easily put off by facades, masks, pretences, and shams. Their entire life revolves around people. They believe that the most important thing is to be in harmony with themselves and others. This temperament, more than any other, values relationships and desires to inspire and persuade others.

Interrelationships Between Constructs

Figure 4.1 depicts how national culture, organizational culture, and temperament (or personality) combine to produce a person’s preferences in content and style of communication. It is important to note that the manifested impact of any

one construct will be tempered or amplified by the other two constructs. For example, an actor nurtured in a national culture of high individualism may reduce his individualistic tendencies when functioning in a corporate environment characterized by strong conformity. Similarly, a Dionysian SP's impulsive behavior may be somewhat tempered by a planning-oriented organizational culture. Which behavioral characteristics are ultimately manifested in an interaction will ultimately depend upon the strength of national culture, the robustness of corporate acculturation, and the intensity of temperament.

Organizational culture of a firm and the model temperament of its members will be systematically related as people will tend to stay with organizations whose culture suits their own temperament. The bullish SPs will gravitate to a company characterized by ad hockery and risks, whereas the Epimethean SJs will tend to thrive in an organizational culture that emphasizes planning and safety. NFs will prefer companies with a social focus, whereas NTs will be drawn to companies emphasizing individuality.

There will be a strong relationship between national culture and individual personalities as well. National culture is, after all, shaped by the preferences and predispositions of its inhabitants (Clark 1990). A society characterized by strong uncertainty avoidance would probably have relatively more judging types, particularly SJs, in its population than it would perceivers. Correspondingly, a collective society will have more NFs in its population than an individualistic society. We will now take a closer look at how the three constructs in our framework affect the content and style in dyadic interactions.

Effect on Sales Interactions

National Culture The dimensions of uncertainty avoidance, individualism, power distance, and masculinity broadly shape certain aspects of content for each actor in the sales dyad. A buyer conditioned in a national culture of strong uncertainty avoidance should typically display a strong preference for security utility, i.e. the uncertainty-reducing attributes in a product offering. Facets such as established brand name, superior warranty, and money-back guarantee should figure prominently in the choice processes of strong UAI societies. By the same token, "environment-friendly" products such as biodegradable bags and recyclable packaging should find greater appeal in the relatively feminine Scandinavian countries than they would in masculine countries such as Venezuela and Italy.

Countries displaying high individualism (such as the United States) place a significantly greater emphasis on seeking variety and pleasure as compared to the relatively collectivist societies (such as Yugoslavia and Colombia). Sheth (1983) uses the term “epistemic value” to describe those product utilities that cater to the novelty, variety, and curiosity needs of people. Thus, product attributes designed to offer the epistemic utility will be more valued by American consumers than they would be by Colombian customers. Social utility in a product results from its association with a certain socio-economic group. It is this utility that endows certain products with “status”. It is expected that large power distance societies such as Venezuela and Mexico would emphasize the status value of a particular product to a greater extent than would small power distance cultures such as Denmark and Austria.

The four dimensions of national culture should also shape the preferred style of communication. Hofstede (1984) observes that cultures displaying strong uncertainty avoidance also experience greater stress and anxiety when compared with weak UAI societies. Anxiety is often manifested into the level of aggressiveness displayed in social interactions. People nurtured in weak UAI cultures should evince greater receptivity to a soft-sell approach and non-aggressive sales techniques. Strong uncertainty avoidance societies, on the other hand, would show relatively greater preference and tolerance for the hard-sell approaches.

Graham *et al.* (1988) and his colleagues have investigated the use of the problem-solving approach (PSA) in sales negotiations. At one end of the PSA continuum are negotiation behaviors best characterized as cooperative and integrative. At the other end of the scale are negotiation behaviors described as competitive and individualistic. Collective societies aim at the welfare of everyone, individualistic societies focus on the relative maximization of self-interest. The use of PSA should therefore be more pronounced in low-IDV (or collective) societies than in high-IDV (or individualistic) cultures.

Power distance impacts style by way of the role of each negotiator in a sales transaction. Schmidt (1979) has observed that in a large PDI society like Japan, the seller has been considered “little more than a beggar”. Sellers have to be respectful and subservient to their buyers in large PDI societies. Another manifestation of power distance is the willingness to trust other people. Large PDI societies typically view others as a threat and as a result show less inclination to trust others. People in small power distance societies, however, feel less threatened by others and consequently trust others more. Consequently, people in large power distance societies (e.g. the Arab countries) will discuss business only after developing trust in the salesperson. Thus, the nonsense “task oriented” style of interaction — motivated by the desire to

expend a minimum amount of time, energy, and effort — may work well in the largely small PDI countries of Western Europe but would backfire in the Middle East.

Organizational Culture Culture control is increasingly used to replace rules-based control in an attempt to enhance the productivity of organizations (Lebas & Weigenstein 1986). Organizational culture of the buyer and the seller firms will not only affect intra-organizational conduct but should also impact the content and style of inter-organizational interactions.

An organization emphasizing an external orientation places singular emphasis on satisfying clients and customers. As opposed to a firm with internal emphasis, representatives of companies with external emphasis will use the problem solving approach to a greater degree. The external emphasis will also manifest into a relatively greater willingness on the part of the seller to modify the product offering in order to maximize a buyer's utility and convenience.

A task focus will drive a firm's employees toward the task-oriented style of interaction. A salesperson reared in such an environment will strive to conclude the sales transaction with utmost efficiency. The emphasis will be toward concluding the interaction with a minimum outgo of time, money, and effort. A culture emphasizing the social focus will show a relatively greater inclination for social chit-chat, personal rapport, and the socialization needs of each actor in the course of the sales transaction. A people-oriented preference in style will thus result. Also, the social and emotional utilities inherent in certain products will be valued higher by firms with a social focus as opposed to those with a task focus.

Persons conditioned by a culture of conformity should elicit a preference for standardized sales presentations or "canned approaches". Company policies and procedures will largely determine the scope of the concessions offered, terms of contract, and even the rituals of the transaction. Companies practicing relatively high individuality will allow their representatives a high level of autonomy in decision making during the sales negotiation process.

Self-oriented style of interaction is one where the individual is more concerned about his or her own needs than those of others and more interested in extrinsic as opposed to intrinsic rewards. This style will be manifested by representatives of firms bred in a climate of individuality especially when reinforced by the influences of a strongly individualistic national culture.

The dimension of safety vs. risk will determine the relative importance of attributes such as the reputation of the selling firm, the credit-worthiness of the buyer, the acceptable level of return privileges, and the desire for personal

rapport between the buyer and the seller. A safety-oriented organizational culture may result in an emphasis on written contracts as opposed to oral agreements. Conversely, representatives of firms with greater risk tolerance will be more inclined to encourage new suppliers, trying out new and innovative products, and accepting a certain level of ambiguity in sales contracts. Safety-orientation may also translate into a tradition-oriented style of interaction, where the same ground rules of the transaction have been followed over the course of generations.

Finally, the content and style displayed in a sales transaction will also be impacted by the dimension of ad hocery vs. planning. Planning-orientation will emphasize the need for non-ambiguous communication in conveying product benefits, warranty features, and contingency clauses. Conversely, representatives of firms with a preference for ad hocery will tend to negotiate in a manner that encourages flexibility in the role stipulation, delivery, and other aspects of sales negotiation. The interaction style of such representatives will be somewhat informal, and less task-driven when compared to the style of representatives of firms inculcating a planning orientation.

Personality Since a salesperson interacts with buyers spanning a whole spectrum of personalities, understanding how personality affects buyer preferences in content and style becomes crucial. Personality will determine the relative salience of various product utilities as well as the preferred format of the sales interaction.

The Epimethean (SJ) temperament values belonging to the various social units such as the church, school board, clubs, etc. Social-organizational utility results from the identification of a product with a selective set of demographic, socioeconomic, or organizational types, producing an imagery or stereotype (McIntyre & Kale 1988; Sheth 1983). It therefore follows that social-organizational utility (or disutility) would be more important to SJs than to any other temperament. Novelty or epistemic utility, on the other hand, will be most valued by the variety-seeking Dionysian SPs.

The people-driven NFs will prefer the people-oriented style of communication. They will elicit preference for establishing a personal bond with their dyadic counterpart prior to discussing business. Conservative SJs will probably prefer tradition-orientation in sales interactions.

SJs will also show a preference for quantifiable product performance data. They will be impressed by a factual presentation, full of charts, graphs, and statistics. Conversely, the Promethean NTs will be impressed by the use of metaphor and analogy.

While SJs will be swayed by reasoning and logic, NFs will be more comfortable with the use of emotional appeals such as love, loyalty, fear, and responsibility. Emotional utility (or disutility) — resulting from a product being associated with feelings such as anger, respect, love, and fear — will appeal more to NFs than to any other temperament.

SJs insist on being right and, consequently, may promote disagreements in a sales encounter. NFs, on the other hand, are more likely to be conversationalists. The discussion may go on and on, without any inclination for closure.

Managerial Implications

Conceptualizing buyer-seller interactions using the constructs of national culture, organizational culture, and temperament yields a wide array of managerial insights. It can help predict the outcome of a sales encounter. Based on the similarity hypothesis, the greatest level of success in buyer-seller interactions would occur where the buyer and seller are akin in their milieu of national culture, organizational culture, and individual personality (Evans 1963). Conversely, the most challenging scenario and the one with the least chance of success is denoted by a complete lack of congruence between the buyer and seller in the areas of national culture, organizational culture, and individual personality. In such a situation, should the seller fail to recognize this incongruence and take corrective action, a total mismatch in communication will occur resulting in virtual collapse of the transaction.

Bear in mind that the relative importance of the three dimensions in terms of their influence on a sales interaction will be situationally determined. For example, cross-cultural buyer-seller differences on the dimension of power distance may be potentially crippling in one situation (e.g. a U.S. vendor selling a fairly generic product to a powerful Japanese buyer), while in other cases they may not (e.g. an East Indian seller, who exhibits a large power distance, trying to sell a similar product to a U.S. buyer, whose national culture embodies smaller power distance). Similarly, consumer temperament will have little relevance if the seller is operating in a sellers' market (Frazier & Kale 1989; Kale 1986).

Situational factors aside, the importance of the three constructs discussed in this chapter has powerful implications in at least three areas: (i) choosing national markets for doing business; (ii) fine-tuning a firm's organizational culture; and (iii) recruiting and training salespeople for overseas business. This conceptual framework also leads to the development of a "selling sequence"

to maximize the success rate of cross-national face-to-face selling transactions.

Choosing National Markets

National culture can be used as an important entry criterion along with such traditional criteria as population, per capita income, the existence of infrastructure, etc., with which to evaluate the attractiveness of various national markets (Root 1987). Economics and infrastructure alone do not adequately predict a firm's chances of success in a foreign market. For instance, although Britain and the United States have somewhat similar per capita income figures, most U.S. firms will not succeed in Britain unless they adapt their marketing practices to Britain's national culture. The U.S. firm will typically have an easier time selling to buyers in Australia (which also has a high per capita income) which is culturally closer to the U.S. along Hofstede's four dimensions of national culture.

Using Hofstede's cultural dimensions, major national markets of the world can be segmented into relatively homogeneous clusters (Kale 1985). A company choosing national markets with a national culture similar to its own (i.e. belonging to the same cluster) will have to undertake relatively little learning and acculturation to sell its products successfully within these markets. Conversely, if markets with radically dissimilar national cultures are chosen, a lot of investment in acculturation, recruitment, and training of personnel will be needed to sell a company's products successfully within these markets. Thus, if a firm has to choose between two markets with comparable levels of market potential, economic well-being, competition, and infrastructural facilities, it should first choose one with the smaller "cultural distance".

Fine-Tuning Organizational Culture

If a firm is operating in a group of culturally homogeneous countries which have a national culture different from its own (such as a British trading company in West Africa), it can consciously design its organizational culture to better reflect the national culture of its markets. This will enhance the skills of the firm's boundary personnel in dealing with buyers who share a different national culture. Hindustan Lever Limited, a subsidiary of the Anglo-Dutch conglomerate Unilever, has inculcated an organizational culture in its Indian

subsidiary that takes into account the relatively low level of individualism, and the relatively large power distance within India. Similarly, Coca Cola in Japan has adopted the collective orientation of Japanese society (Wilson 1980).

Recruitment and Training of Salespeople

A cosmopolitan salesperson needs to possess a “flexible personality” (Simurda 1988). It has been suggested that the key attributes desired in a salesperson in a cross-cultural selling situation include openness and sensitivity to others, cultural appreciation and awareness, ability to relate across cultures, awareness of one’s own culturally derived values, and a certain degree of resilience to bounce back after setbacks (Noer 1975). Using the Myers-Briggs insights into personality, the perceivers (especially SPs) are more likely to possess these attributes than are judges. In their characterization of judges and perceivers, Keirsey & Bates (1978) describe the judges as “fixed” and the perceivers as “flexible”. Furthermore, judges, particularly SJs, like to plan their selling strategy a priori, whereas perceivers tend to follow an “adapt as you go” approach. Also, while the Epimethean SJs hunger for controlling the sales transaction, perceivers will try hard to observe, understand, and adapt. This adaptability gives perceivers an innate advantage in handling the various contingencies involved in cross-national selling (Weitz 1981).

Knowing the customer in international sales means more than comprehending the customer’s product needs; it includes knowing the customer’s culture. At broad levels, this culture is shaped by national culture and organizational culture. At the level of preferred ways of acting, an understanding of the customer’s temperament becomes important. A cosmopolitan salesperson will become more adept at cross-national selling if given a thorough grounding in the constructs of national culture, organizational culture, and individual temperament.

The Selling Sequence

Figure 4.2 is a flowchart of cross-national selling transactions. This step-by-step approach can be utilized in training sales personnel.

A well-trained salesperson is aware of his or her own conditioning and personality. This awareness process has been portrayed in Figure 4.2 as self-appraisal. The aim of self-appraisal is to develop a frame of reference whereby one’s own communication preferences with regard to content and style could

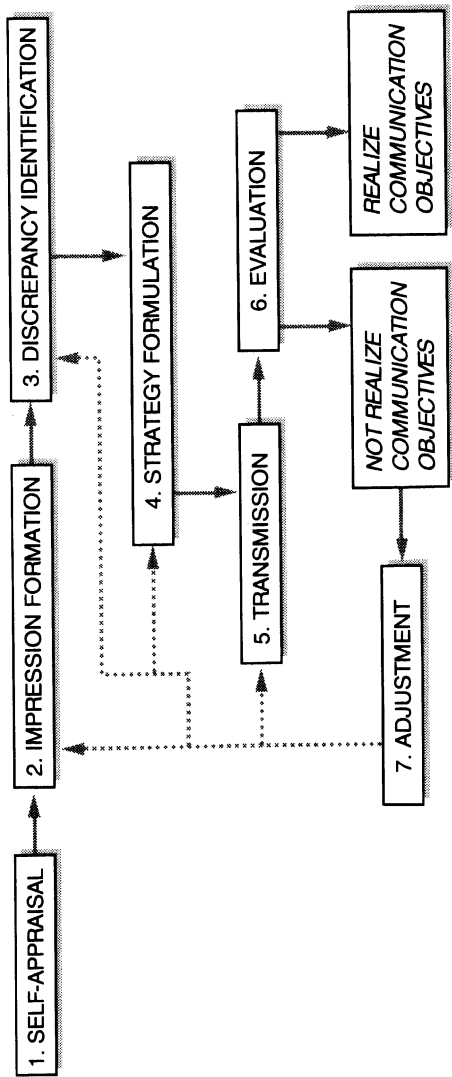


Figure 4.2: The cross-national selling sequence.

be understood. Dimensions discussed in this paper under temperament, organizational culture, and national culture become convenient labels with which to generate self-awareness.

Impression formation involves understanding the buyer's position on the three constructs. Typically, national culture and organizational culture can be assessed even before the seller meets with the buyer. Hofstede (1983) provides scores and ranks for fifty countries on the basis of their positions on the four dimensions of national culture. The organizational culture of most large and medium sized companies can be gleaned from their press-releases, annual reports, and from popular literature (Deal & Kennedy 1982). A salesperson trained in typewatching can assess a buyer's temperament with a fair degree of accuracy in a relatively short period of interaction. An accurate impression of the buyer in terms of national culture, organizational culture, and temperament lays the foundation for relationship building, which is so critical to successful selling.

In the third step, the seller goes through the mental exercise of "discrepancy identification". This involves comparing the buyer's estimated position on the various dimensions of the three constructs with one's own. This alerts the seller to potential problem areas in communication arising out of differences in temperament and cultural conditioning.

Strategy formulation involves minimizing the impact of problem areas identified in the earlier step. For instance, if the buyer is a feeler, and the seller is a thinker, the seller needs to modify his persuasion style. While his preferred persuasion style is logical and impersonal, this may not fit well with the buyer. The appropriate style in this instance would be to appeal to the buyer's feelings and emotions, and to point out the people-benefits behind the seller's offering. Similar adjustments need to be made on other dimensions as well where discrepancies exist between the seller and the buyer.

Transmission involves implementation of the communication/persuasion strategy. During the course of transmission, the seller should be sensitive to the verbal and non-verbal feedback received from the buyer. If the seller has correctly identified the buyer's mind-set based on temperament and culture, the strategy should be on target, and the feedback received from the buyer will be encouraging.

Assessing the effect of the communication strategy constitutes the "evaluation" phase (Weitz 1978). If the seller's communication objectives are realized, then the encounter has been successful. If not, the seller goes through the "adjustment" process where buyer impressions, discrepancies, and strategy are re-evaluated, and the transmission modified. At the evaluation and adjustment phases, the seller always has the choice of cutting short the

encounter, and trying again at a future point in time. Regardless of the outcome, every encounter adds to the seller's repertoire of experiences, skills, strategies, and alternative transmission approaches.

Summary

This paper provided a general framework to investigate cross-national personal selling transactions. Three levels of influences were identified: national culture, organizational culture and individual temperament. Buyer-seller positions along these constructs largely determine the overall compatibility in dyadic communication.

For each of the three constructs, there exist field-tested measurement instruments. Scholars in marketing and international business are urged to utilize these instruments in their studies of cross-national negotiation and marketing issues. From a managerial perspective, the practical applications and intuitive appeal of the proposed three-construct framework are indeed exciting. This conceptual schema should prove useful in the areas of selecting national markets, shaping an appropriate organizational culture, and the recruitment and training of cosmopolitan salespeople.

Part II:

The Impact of Culture on International Business Negotiations

Chapter 5

Cultural Aspects of International Business Negotiations

Jean-Claude Usunier

Some researchers have questioned the very fact that cultural differences have an impact on international business negotiations, arguing that negotiation is negotiation irrespective of where and with whom it takes place. Zartman (1993, p. 19) has phrased it in strong terms:

Culture is to negotiation what birds flying into engines are to flying airplanes or, at most, what weather is to aerodynamics — practical impediments that need to be taken into account (and avoided) once the basic process is fully understood and implemented.

However, there is now much empirical support for the view that culture has an impact on business negotiations (see for instance, Faure & Rubin 1993; Graham *et al.* 1994; Leung 1997; Brett & Okumura 1998; Bazerman *et al.* 2000; Adair *et al.* 2001; Adler 2002; Wade-Benzoni *et al.* 2002). Support is coming as well from authors actually involved in international negotiations (Foster 1995; Cohen 1997; Herbig 1998; Schuster & Copeland 1999; Saner 2000). When negotiating internationally, one needs cultural knowledge and skills in intercultural communication. Many agreements have to be negotiated, drafted, signed and finally implemented: sales contracts, licensing agreements, joint ventures and various kinds of partnerships, agency and distribution agreements, turnkey contracts, etc. Negotiation is not only based on legal and business matters, hard facts which are often emphasized as being the sole important facts, but also on the quality of human and social relations, “soft

facts” which become of the utmost importance in an intercultural encounter. Goldman (1994) emphasizes, for instance, the importance to the Japanese of *ningensei* which, literally translated, means an all-encompassing and overriding concern and prioritising of “humanity” or *human beingness* (see Box 5.1). According to Japanese specialists in international marketing negotiations:

The North American and U.K. negotiators failed to communicate *ningensei* at the first table meeting. Rushing into bottom lines and demanding quick decisions on the pending contract, they also overlooked the crucial need for *ningensei* in developing good will . . . Hard business facts alone are not enough . . . *Ningensei* is critical in getting Japanese to comply or in persuading Japanese negotiating partners (Nippon Inc. Consultation, quoted in Goldman 1994: 31).

There are various kinds of “distances” between the potential partners: physical distance certainly, but also economic, educational and cultural distance, which tend to inflate the cost of negotiating internationally. Difficulties in interacting, negotiating, planning common ventures, working them out and achieving them together are deeply rooted in the cultural, human and social, background of business people. They are not related to a superficial variance of business customs, and simple “empathy” is not enough for the avoidance of misunderstandings. In fact, people with different cultural backgrounds often do not share the same basic assumptions (see below) and this has an influence at several levels of international business negotiations: the behavioural predispositions of the parties; their concept of what is negotiation and what should be an appropriate negotiation strategy; their attitudes during the negotiation process which may lead to cultural misunderstandings and undermine trust between the parties; differences in outcome orientation. This chapter is the introductory text to Part II: it makes a summary of the topic, especially through Table 5.1, and it indicates where particular aspects of the influence of culture on international business negotiations are treated at greater length in other chapters.

Culture Defined

Culture as Learned and Forgotten Norms and Behavioural Patterns

Sometimes culture has a reputation for being rather vague, for being a somewhat “blurred” concept. The Swedish writer Selma Lagerlöf defines

culture as “what remains when that which has been learned is entirely forgotten”. Depicted thus, culture may appear to be a “rubbish-bin” concept. Its main use would be to serve when more precise explanations have proved unsuccessful. It would also serve as an explanatory variable for residuals, when other more operative explanations seem inadequate. Nevertheless, Selma Lagerlöf’s definition does have the important merit of identifying two basic elements of cultural dynamics (at the individual level):

- (1) It is learned.
- (2) It is forgotten, in the sense that we cease to be conscious (if we ever have been) of its existence as learned behaviour.

For example, if one has been told during childhood that modest and self-effacing behaviour is suitable when addressing other people, especially at first contact — which is the case in most Asian cultures — one forgets about this and is easily shocked by assertive, apparently boastful, behaviour which may appear in other cultures. Although largely forgotten, culture permeates our daily individual and collective actions. It is entirely oriented towards our adaptation to reality (both as constraints and opportunities). Since culture is “forgotten”, it is mostly unconsciously embedded in individual and collective behaviour. Individuals find, in their cultural group, pre-set and agreed-upon solutions which indicate to them how to articulate properly their behaviour and actions with members of the same cultural group.

Basic Definitions of Culture

Culture has been defined extensively, precisely because it is somewhat all-encompassing. After having assessed its nature as learned and forgotten, we need to provide some additional definitions of culture. Ralph Linton (1945: 21) for instance, stresses that it is *shared* and *transmitted*: “A culture is the configuration of learned behaviour and results of behaviour whose component elements are shared and transmitted by the members of a particular society”. However, we should not go too far in considering the individual as simply *programmed* by culture. At a previous point in his landmark book, *The Cultural Background of Personality*, Linton had clearly indicated the limits of the cultural programming which a society can impose on an individual:

No matter how carefully the individual has been trained or how successful his conditioning has been, he remains a distinct

organism with his own needs and with capacities for independent thought, feeling and action. Moreover he retains a considerable degree of individuality (1945: 14–15).

If individuals have some leeway, then what use is culture to them? According to Goodenough (1971), culture is a set of beliefs or standards, shared by a group of people, which help the individual decide what is, what can be, how one feels about it, what to do and how to go about doing it. On the basis of this operational definition of culture, there is no longer any reason why culture should be equated with the whole of one particular society. It may be more related to activities that are shared by a definite group of people. Consequently individuals may share different cultures with several different groups, a corporate culture with colleagues at work, an educational culture with other MBA graduates, an ethnic culture with people of the same ethnic origin. When in a particular situation, they will switch into the culture that is operational. The term “operational”, in this context, implies that a culture must be shared with those with whom there must be co-operation, and that it must be suitable for the task.

Goodenough’s concept of “operating culture” assumes that individuals are able to choose the culture within which to interact at a given moment and in a given situation. This is, of course, subject to the overriding condition that this culture has been correctly internalised during past experiences, that *it is so well learned that it can be forgotten*. Although the concept of operating culture is somewhat debatable, it does have the advantage of clearly highlighting the multicultural nature of many individuals in today’s societies, including binationals, multilingual people and people who have an international professional culture or are influenced as employees by the corporate culture of a multinational company. In this respect, international negotiation between culturally different organisations results in creating a new operating culture, a common set of beliefs and solutions, which is especially the case of joint ventures (Brannen & Salk 2000).

Significant Components of Culture

The following are some significant elements of culture that have an impact on international business negotiations, illustrated by examples in this chapter and other chapters of Part II.

Language and communication The way in which people communicate (that is both emit and receive messages) and the extent to which their native

language frames their world-views and attitudes directly affects international business negotiations (see for instance, Adachi 1998). They require a dialogue, although partners may have different native languages, writing contracts in a foreign language (at least foreign to one side) using interpreters, trying to express ideas, concepts which may be unique in a particular language, etc.

Institutional and Legal Systems Differences in legal systems, contractual formalism and recourse to litigation express contrasts in how societies are organised in terms of rules and decision-making systems. The level of formality in addressing public and private issues has to be considered in any kind of negotiated partnership, including the discussion of joint-venture contracts, the registration of subsidiaries and the addressing of sensitive issues with the public authorities of the host country.

Value Systems The prevailing values in a particular society, and the extent to which they are respected in the everyday behaviour of individuals, are important because they affect the willingness to take risks, the leadership style and the superior-subordinate relationships. This is true for the relationships between negotiators within a particular team, antagonistic negotiation teams and the negotiators on both sides and those from whom they have received the mandate for negotiating.

Time Orientations Attitudes towards time and how it shapes the way people structure their actions have a pervasive yet mostly invisible influence. Differences in punctuality, reflected in everyday negotiation behaviour, may probably appear as the most visible consequence, but differences in time orientations, especially toward the future, are more important as they affect long-range issues such as the strategic framework of decisions made when negotiating (see Chap. 8).

Mindsets Whether called “Mindsets” (Fisher 1988), “intellectual styles” (Galtung 1981) or “mental models” (Bazerman *et al.* 2000), another major difference concerns the way people reflect on issues. Do they prefer to rely on data, ideas or speech, and which combination of these? How does this influence the way they relate words and actions? Mindsets influence ways of addressing issues, of collecting information, of choosing the relevant pieces of information

and of assessing their “truthfulness”, so that finally they influence the negotiation process and the resulting decisions.

Relationship Patterns These concern how the individual relates to the group(s); what the dominant family and kinship patterns are; and how relationships are framed (individualism/collectivism; patronage relationships). These patterns affect international business negotiations through the style of interaction between people, their decision-making process, and the way in which they mix human relationships and business matters (see Leung 1997).

The Influence of Culture on some Important Aspects of Business Negotiations

Culture and Negotiation: The Academic Literature

A large part of the academic literature on the influence of culture on international business negotiations uses a comparative and cross-cultural setting (see for instance Graham 1985 or Wade-Benzoni *et al.* 2002). A laboratory experiment (e.g. the negotiation simulation by Kelley 1966, or the sale of rights to a television station as in Tenbrunsel & Bazerman 2000) helps in the comparison of negotiations between people of various nationalities. Nationality is used as a proxy and summary variable for culture. A basic description is made of the cultural traits of a specific nationality in negotiations, which is then contrasted with one or more different national groups. It is the basis for some hypotheses on either the process or the outcome of these negotiations, where the membership of a specific national group is one of the main explanatory variables.

It is advisable to be prudent before directly transposing data, on the behaviour or negotiation strategies of people from a particular country which have been collected during negotiations with their compatriots. Some traits may not recur when people are negotiating with partners of other nationalities. For instance, when Italians negotiate together, or with the French, they may not adopt exactly the same behaviour and strategies as they do when negotiating with Americans. Adler & Graham (1989) address the issue of whether these simple international comparisons are fallacies, when and if researchers are trying to describe cross-cultural interactions accurately. They demonstrate that negotiators tend to adapt their behaviour in intercultural negotiation. They do not behave as predicted by that which has been observed in intracultural

negotiations. Therefore their behaviour as observed in intracultural negotiations can only serve as a partial basis for the prediction of their style and strategies when negotiating with people belonging to different cultures. Graham and Adler, for instance, show that French-speaking Canadians are more problem solving orientated when negotiating with English-speaking Canadians than they normally are among themselves.

Hence, the word “intercultural” in this text directly relates to the study of interaction between people with different cultural backgrounds. The word “cross-cultural” relates to a research design that is generally comparative but may also be centered on the encounter/interaction.

General Influence of Culture on Business Negotiations

Culture has mostly an *indirect* influence on the outcome of negotiations (see, for instance, the models of McCall & Warrington 1990; Graham & Sano 1990; see also Bazerman *et al.* 2000). It works through two basic groups of mediating variables: the situational aspects of the negotiation (time and time pressure, power and exercise of power, number of participants, location, etc.); and the characteristics of the negotiators (especially personality variables and cultural variables). These two groups of factors, in turn, influence the negotiation process, which ultimately determines the outcome (Jolibert 1988). However, it is my contention that culture also has an influence on the outcome orientation: certain cultures are more deal/contract oriented whereas others favor relationship development. This is further developed later in this chapter and in Chaps 8 and 9. A census of the impact of culture on international business negotiations is given in Table 5.1. It indicates the positions in other chapters where these topics are treated with more detail.

Behavioural Predispositions of the Parties

Who is Seen as a Credible Partner?

Triandis (1983: 147) has emphasized three dimensions of the self-concept which may have a strong influence on the cultural coding/decoding process of credibility:

Table 5.1: The impact of cultural differences on international marketing negotiations.

| | |
|--|---|
| 1. Behavioural predispositions of the parties | |
| Concept of the self | Impact on credibility (in the awareness and exploration phases) |
| Interpersonal orientation | Individualism vs. collectivism/ relationship vs. deal orientation |
| In-group orientation | Similarity/“Limited good concept” |
| Power orientation | Power distance (Chap. 6)/Roles in negotiation teams/Negotiators’ leeway |
| Willingness to take risks | Uncertainty avoidance (Chap. 5)/Degree of self-reliance of negotiators |
| 2. Underlying concept of negotiation/Negotiation strategies | |
| Distributive strategy | Related to in-group orientation/Power distance/Individualism/Strong past orientation (Chaps 5 and 6) |
| Integrative strategy | Related to problem-solving approach and future orientation (Chap. 8) |
| Role of the negotiator | Buyer and seller’s respective position of strength (Chaps 4 and 17) |
| Strategic time frame | Continuous vs. discontinuous/Temporal orientations (Chap. 8) |
| 3. Negotiation process | |
| Agenda setting/Scheduling the negotiation process | Linear-separable time/Economicity of time/Monochronism/Negotiating globally vs. negotiating clauses (Chap. 8) |
| Information processing | Ideologism vs. pragmatism/Intellectual styles (Chap. 5) |
| Communication | Communication styles (Chap. 7)/degree of formality and informality |
| Negotiation tactics | Type and frequency of tactics/Mix of business with affectivity (Chap. 7) |
| Relationship development | The role of “Atmosphere” as bearing the history of the relationship and facilitating transition (Chap. 9) |

Table 5.1: Continued.

| | |
|--------------------------------|--|
| 4. Outcome orientations | |
| Partnership as outcome | Making a new in-group — “marriage” as metaphoric outcome |
| Deal/Contract as outcome | Contract rules being the law of the parties (litigation orientation) |
| Profit as outcome | Accounting profit orientation (economicity) |
| Winning over the other party | Distributive orientation |
| Time line of negotiation | Continuous vs. discontinuous view of negotiation (Chap. 8) |

- (1) self-esteem: the extent to which people think of themselves as very good or not too good;
- (2) perceived potency: the extent to which people view themselves as powerful, able to accomplish almost any task; and
- (3) perceived activity: the person sees him/herself as a doer, an active shaper of the world.

Since people generally live in homogeneous cultural settings (i.e. countries or regions within countries with one language, a dominant religion and shared values) they use the same cultural codes. But when people do not share the same codes, this may create problems for establishing credibility/trust. For example, a credible person may be considered by the emitter (coder) to be somebody showing a low self-concept profile (modest, patiently listening to partners, speaking little and cautiously etc.); if, conversely, the receiver (decoder) considers a credible person as somebody with a high self-concept profile (showing self-confidence, speaking arrogantly, not paying much attention to what the other is saying, etc.) there will be a credibility misunderstanding.

A classic example is the misinterpretation by the Soviet leader Khrushchev of the credibility of the American president, John F. Kennedy. It was one of the main reasons for the seriousness of the Cuban missile crisis at the beginning of the 1960s. Kennedy and Khrushchev had held talks in Vienna, after the

unsuccessful invasion by U.S. soldiers resulting in defeat at the Bay of Pigs. During their meeting, the young President Kennedy recognised that this attack had been a military and political mistake, which he regretted. Khrushchev saw this confession of error as a testimony of Kennedy's frank naivety and lack of character. He therefore inferred that it was possible to gain advantage by installing nuclear missiles in Cuba, which would have been targeted at the United States. This led the world to the brink of nuclear war between the superpowers. The events which followed showed that Khrushchev had been wrong in evaluating Kennedy's credibility. Ultimately, Kennedy showed great firmness and negotiation skill.

Khrushchev's mistake may be explained by differences in cultural coding of credibility. Whereas in the United States, reaching a high position while still young is positively perceived, Soviet people associate age with the ability to carry responsibilities. Moreover, the admission of a mistake or a misjudgement is also positively perceived in the United States. U.S. ethics value frankness and honesty. There is the belief that individuals may improve their behaviour and decisions by taking into account the lessons of experience. On the other hand, in the Soviet Union, admission of errors was rare. It generally implied the very weak position of people subjected to the enforced confessions of the Stalinist trials.

Signs of Credibility

Personal credibility is decoded through the filter of numerous physical traits, which are not often actively taken into consideration as they seem to be only appearances, or because we tend to use these reference points unconsciously (Lee 1966). Being tall may, for instance, be perceived as a sign of strength and character. Stoutness may be considered a positive sign for a partner in societies where starvation is still a recent memory. Where malnutrition is a reality for a section of the population, it is better to be fat, that is, well nourished and therefore rich-and powerful-looking. Naturally these signs have a relative value. Weight, height, age and sex cannot be considered as adequate criteria for selecting negotiators. Furthermore, people may, in fact, be largely aware of the cultural code of the partner.

Each of these basic signs plays a role in the initial building of a credibility profile: age, sex, height, stoutness, face, tone and strength of the voice, self-esteem, perceived potency, perceived activity, etc. This profile is a priori because it only influences credibility in early contacts, that is, in the phase of awareness and at the beginning of the exploration phase (Scanzoni 1979).

Interpersonal Orientation

The reproach made to Western business people by the Japanese, quoted in the introduction of this chapter, illustrates differences in interpersonal orientation. The concept of *ningensei*, presented at the beginning of this chapter has to do with the Confucian ethic which favors smooth interactions, underplaying conflict to the benefit of social harmony. For instance, the interpersonal sensitivity of Japanese people and their sincere interest in foreign cultures and people may make them friendly hosts at business lunches or dinners. As emphasized by Hawrysh & Zaichkowsky (1990: 42), “Before entering serious negotiations, Japanese business men will spend considerable time and money entertaining foreign negotiating teams, in order to get to know their negotiating partners and establish with them a rapport built on friendship and trust”. But it should never be forgotten that Japanese negotiators remain down-to-earth: they are strongly aware of what their basic interests are. *Ningensei* is, in fact, typical of collectivist values of interpersonal relationships (see Box 5.1). A basic divide in the interpersonal orientation is the individualism/collectivism divide (for a review of its impact on negotiation behaviour, see Leung 1997; Tinsley & Pillutla 1998). Its relevance for international business negotiations is examined in the following chapter.

Box 5.1

1. Based on active listening, *jen* is a form of humanism that translates into empathetic interaction and caring for the feelings of negotiating associates, and seeking out the other’s views, sentiments and true intentions.
2. *Shu* emphasizes the importance of reciprocity in establishing human relationships and the cultivation of “like-heartedness”; in Mastumoto’s (1988) words it is “belly communication”, a means of coding messages within negotiating, social and corporate channels that is highly contingent upon affective, intuitive and non verbal channels.
3. *I*, also termed *amae*, is the dimension which is concerned with the welfare of the collectivity, directing human relationships to the betterment of the common good. “The *i* component of *ningensei* surfaces in Japanese negotiators’ commitment to the organization, group agendas and a reciprocity (*shu*) and humanism (*jen*) that is long-term, consistent and looks beyond personal motivation”.
4. *Li* refers to the codes, corresponding to precise and formal manners, which facilitate the outer manifestation and social expression of *jen*, *shu* and *i*. The Japanese *meishi* ritual of exchanging business cards is typical of *li* coded etiquette.

Source: adapted from Goldman 1994: 32–33.

In-group Orientation

Equal concern for the other party's outcome is not necessarily to be found across all cultures. Cultures place a stronger or weaker emphasis on group membership (the other party is/is not a member of the in-group) as a prerequisite for being considered a trustworthy partner. In cultures where there is a clear-cut distinction between the in-group and the out-group (according to age, sex, race or kinship criteria) people tend to perceive the interests of both groups as diametrically opposed. This is related to what has been called the concept of "limited good" (Foster 1965).

According to the concept of "limited good", if something positive happens in favour of the out-group, the wealth and well-being of the in-group will be threatened. Such reactions are largely based on culture-based collective subjectivity: they stem from the conservative idea that goods and riches are by their very nature restricted. If one yields to the other party even the tiniest concession, this is perceived as directly reducing what is left for in-group members. The concept of "limited good" induces negotiators to adopt very territorial and distributive strategies. It is a view which clearly favors the idea of the zero sum game, where "I will lose whatever you may win" and vice versa. In Mediterranean and Middle Eastern societies where the in-group is highly valued (clan, tribe, extended family) the concept of "limited good" is often to be found; it slows the adoption of a problem-solving orientation, since co-operative opportunities are simply difficult to envisage.

It has been in fact argued that members of collectivist cultures make a sharp distinction between in-groups and out-groups, a reason for that being that harmony enhancement is only viewed as possible with in-group members (see Leung 1997, for a review of the empirical support). However, there is always some free room for negotiating insider/outsider status not only within but also across cultures. Merriam *et al.* (2001) present a number of case studies showing how people can gain status as partial insiders by leveraging on common features that transcend the borders of cultures, such as gender or professional cultures. Haugland (1998) demonstrates the role of a shared professional culture in blurring the ingroup/outgroup borders in an increasingly globalized world. His findings show that there is no significant impact of cultural differences on the international buyer-seller relationship in the context of the fisheries industries, whether trading partners of Norwegian exporters are European or American (more in-group) or Japanese (more out-group). As he points out, "It is not unlikely that industries or trades which are very international will develop a specific industry culture, serving the role of unifying persons and companies from different nations and ethnic groups" (p. 27).

Power Orientation

One must distinguish between the formal power orientation on the one hand and the real power/decision-making orientation on the other. The first has to do with the display of status and how it may enhance credibility, especially in high perceived-potency societies. This involves the kind of meetings, societies, clubs, alumni organizations which assemble potentially powerful people. Belonging to such circles gives an opportunity for socializing and getting to know each other. The simple fact of being there and being a member of a certain club is the main credibility message. The signs of formal power orientation differ across cultures; they may range from education and titles (English public schools, French *Grandes Ecoles*, *Herr Doktor*, etc.) to belonging to a particular social class or caste.

Real power orientation is a somewhat different issue. As illustrated in Box 5.2 with an African example, there may be wide differences between formal and actual influence on the decision-making process. When making contacts, in a cross-cultural perspective, people should be aware of the following:

- (1) status is not shown in the same way according to culture;
- (2) influential persons are not the same and individual influence is not exerted in the same way; and
- (3) the decision-making process differs.

Box 5.2

The story takes place in the corridor to the office of the Minister of Industry of the Popular Republic of Guinea. Whether you had an appointment or you came to request a meeting, you had to be let in by the door-keeper. Besides, the door was locked and he had the key. He was a little man, looking tired and wearing worn-out clothes; his appearance led foreign visitors to treat him as negligible and to pay little attention to him. When visitors had a lengthy wait while seeing other people being given quick access to the minister, they often spoke unreservedly to the old man who seemed to have only limited language proficiency. In fact, the door-keeper spoke perfect French and was the uncle of the minister, what gave him power over his nephew according to the African tradition. It was well-known that the Minister placed high confidence in his uncle's recommendations. Thus, some foreign contractors never understood why they did not clinch the deal although they had developed winning arguments with the minister himself.

Source: Reported by Prof. Gérard Verna, Université Laval, Québec. Reproduced with permission.

Hofstede (1989) in his article about the cultural predictors of negotiation styles (see Chapter 6) hypothesises that larger power distance will lead to a more centralized control and decision-making structure because key negotiations have to be concluded by the top authority (see Chapter 6 in this book, which examines how Hofstede's four-dimension framework may be applied to aspects of international business negotiations). And, in fact, Fisher (1980) notes in the case of Mexico, a typically high-power distance country (score of 81 on Hofstede's scale; see the following chapter) one finds a relatively centralised decision-making, based on individuals who have extended responsibility at the top of the organisation. They become frustrated when confronted by the Americans who tend to have several negotiators in charge of compartmentalised issues:

In another mismatch of the systems, the Americans find it hard to determine how much Mexican decision-making authority goes with which designated authority. There, as in many of the more traditional systems, authority tends to reside somewhat more in the person than in the position, and an organization chart does little to tell the outsider just what leverage (*palanca*) the incumbent has (Fisher 1980: 29).

Willingness to Take Risks

Negotiation activities are associated with risk-taking. Disclosing information, making concessions or drafting clauses involves risk taking because there is always a certain degree of vulnerability to the other party's opportunist actions. As shown by Weber & Hsee (1998), cultural differences exist in the perception of risk rather than in the attitudes towards perceived risk. They studied how respondents from China, USA, Germany and Poland, differed in risk preference for risky financial options and found the Chinese to be the less risk averse, with the Poles in the middle, and Germans and Americans showing the highest level of risk aversion. However, they show that attitudes towards perceived risk are shared cross-culturally, that is, people across cultures tend to be consistently willing to pay more for less risky options. What differs is the perception of risk itself. As emphasized by Weber & Hsee (1998: 1207), "An understanding of the reasons *why* members of different groups (for example, different cultures) differ in preference or willingness-to-pay for risky options is crucial if one wants to leverage this differences into creative integrative bargaining solutions in inter-group negotiations".

Risk taking is related to Hofstede's cultural dimension of uncertainty avoidance which measures the extent to which people in a society tend to feel threatened by uncertain, ambiguous, risky or undefined situations. Where

uncertainty avoidance is high, organisations promote stable careers, produce rules and procedures, etc. “Nevertheless societies in which uncertainty avoidance is strong are also characterized by a higher level of anxiety and aggressiveness that creates, among other things, a strong inner urge to work hard” (Hofstede 1980a). Hofstede points out that “uncertainty avoidance should not be confused with risk avoidance . . . even more than reducing risk, uncertainty avoidance leads to a reduction of *ambiguity*” (1991: 116).

A high level of uncertainty-avoidance is noted by Hofstede (1980) as being associated with a more bureaucratic functioning and a lower tendency for individuals to take risks. This may be a problem for business negotiators when they have received a mandate from top management. For instance, the bureaucratic orientation in ex-communist countries has imposed strong government control on industry. As a consequence, Chinese negotiators, for instance, tend not to be capable of individual decision-making. Before any agreement is reached, official government approval must be sought by Chinese negotiators (Eiteman 1990). The same has been noted by Beliaev *et al.* (1985: 110) in the case of Russian negotiators: “Throughout the process, a series of ministries are involved . . . Such a process also limits the degree of risk taking that is possible . . . the American who does see it from (the Soviet) perspective may well interpret it as being slow, lacking in initiative and unproductive”. Tse *et al.* (1994) confirm this tendency in the case of Chinese executives who tend to consult their superior significantly more than Canadian executives who belong to a low uncertainty-avoidance society.

Underlying Concepts of Negotiation and Negotiation Strategies

Integrative Orientation vs. Distribution Orientation

In business negotiations, the purchaser (or team of purchasers) and the vendor (or group of vendors) are mutually interdependent, and their individual interests clash. The ability to choose effective negotiation largely explains the individual performance of each party on the one hand, and the joint outcome on the other. In pitting themselves against each other, the parties may develop opposing points of view towards the negotiation strategy which they intend to adopt: distributive or integrative. In the distributive strategy (or orientation) the negotiation process is seen as leading to the division of a specific “cake” which the parties feel they cannot enlarge even if they were willing to do so. This

orientation is also termed “competitive negotiation” or “zero sum game”. It leads to a perception of negotiation as a war of positions — territorial in essence. These are negotiations of the “win-lose” type — “anything that isn’t yours is mine” and vice versa.

The negotiators hold attitudes and objectives that are quasi-conflictive. Interdependence is minimised whereas opposition is emphasized. At the opposite end of the spectrum is the integrative orientation (Walton & McKersie 1965). The central assumption is that the size of the “cake”, the joint outcome of the negotiations, can be increased if the parties adopt a co-operative attitude. This idea is directly linked to problem-solving orientation (Pruitt 1983). Negotiators may not be concerned purely with their own objectives, but may also be interested in the other party’s aspirations and results, seeing them as almost equally important. Integrative orientation has been termed “co-operative” or “collaborative”. It results in negotiation being seen as an attempt to maximise the joint outcome. The division of this outcome is to a certain extent secondary or is at least perceived as an important but later issue. Here negotiation is a “positive sum game” where the joint outcome is greater than zero.

In practice, effective negotiation combines distributive and integrative orientations simultaneously, or at different stages in the negotiation process (Pruitt 1981). The “dual concern model” (Pruitt 1983) explains negotiation strategies according to two basic variables: concern for one’s own outcome (horizontal axis) and concern for the other party’s outcome (vertical axis). This leads to four possible strategies (see Table 5.2). According to this model, the ability to envisage the other party’s outcome is a prerequisite for the adoption of an integrative strategy.

Problem-solving orientation can be defined as an overall negotiating behaviour that is co-operative, integrative and orientated towards the exchange of information (Campbell *et al.* 1988; Adler 2002). Fair communication and the

Table 5.2: The dual concern model.

| Concern for one’s own outcomes ⇒ | Low | High |
|---|------------|----------------------|
| Concern for the other party’s outcomes | | |
| | | ⇓ |
| High | Yielding | Integrative strategy |
| Low | Inaction | Contending |

exchange of information between negotiators are important. "Problem solvers" exchange representative information, that is, honest and objective data. There is no desire to manipulate the partner, as in instrumental communication (Angelmar & Stern 1978). Exchanging representative information is considered a basic element in problem-solving orientation. Empirical studies (experimental negotiation stimulation) have shown that this orientation positively influences the common results of negotiation (Pruitt 1983). Rubin & Carter (1990), for instance, demonstrate the general superiority of co-operative negotiation by developing a model whereby a new, more co-operative contract provides both the buyer and the seller with cost reduction, compared to a previous adversarial contract.

There are, however, some conditions; the first is the availability of cost-related data, the second is the release of this data to the other party during negotiation. The sharing of data is obviously conditioned by culture, language and communication-related issues. The adoption of an integrative strategy is facilitated by the following:

- (1) a high level of aspirations on both sides (Pruitt & Lewis 1975);
- (2) the ability to envisage the future (see Chap. 8);
- (3) the existence of a sufficient "perceived common ground", that is, enough overlap between the interests of the two parties (Pruitt 1983).

Cultural Dispositions to Being Integrative

Even though one may accept the superior effectiveness of integrative strategies, in as far as they aim to maximise the joint outcome, the problem of how this joint outcome is divided between the two sides remains largely unaddressed. When integrating the cultural dimension, three questions merit consideration:

- (1) Do the parties tend to perceive negotiations as being easier, and do they tend to adopt an integrative orientation more readily, when they both share the same culture?
- (2) Do negotiators originating from particular cultures tend towards an integrative or distributive orientation? Furthermore, do negotiators originating from cultures which favor a problem-solving orientation risk seeing their personal results heavily diminished by a distributive partner who cynically exploits their good will?
- (3) Do cultural differences and intercultural negotiation reduce the likelihood of integrative strategy?

Difficulties in Being Integrative in an Intercultural Negotiation Situation

Generally, speaking, it seems more difficult to pursue an integrative strategy in an intercultural than intracultural setting. Nationalistic feelings are easily aroused by conflicts of interest and the partner may easily be subjectively perceived as an “adversary”, occupying a different and rival territory. These negative feelings are often reinforced by an alleged atmosphere of “economic war” which, for instance, results in “Japan bashing” in the United States where the Japanese are considered to be unfair competitors. According to this view, a potential partner belonging to another country-culture would also be perceived as a global adversary.

There is general agreement in the existing literature that the results of negotiation are less favorable when the negotiation is intercultural as opposed to intracultural, all other things being equal (Sawyer & Guetzkow 1965; Corne 1992; Brett & Okumura 1998; Bazerman *et al.* 2000). Van Zandt (1970) suggests that the negotiations between Americans and the Japanese are six times as long and three times as difficult as those exclusively between Americans. This increases the costs of the transaction for the American firms in Japan owing to the relative inefficiency of communication. Brett & Okumura (1998) show that intercultural U.S.-Japanese negotiations result in significantly lower joint gains than intracultural U.S. or Japanese negotiations (in which both national groups achieve similar joint gains). It seems that an explanation is that intercultural negotiators lack sufficient skills to adapt successfully and need a lot more clarifying statements than do intracultural negotiators (Adair *et al.* 2001). Another possible explanation is that American negotiators tend to use harder tactics, engaging in threats, demands and sanctions when there is more cultural distance with their partners’ culture (Rao & Schmidt 1998). The subjective satisfaction of the negotiators (measured by a questionnaire) in their result tends to be inferior for intercultural negotiation compared to intracultural negotiation (Weitz 1979; Graham 1985; Graham *et al.* 1994). However, recent empirical findings have disconfirmed this. In Brett & Okumura (1998) intercultural negotiators were more happy and satisfied with the negotiation than were intracultural negotiators. This can be explained either by the subjective reward effect of achieving an obviously more difficult negotiation task (i.e. inter- as compared with intracultural negotiation) or by people being satisfied in both cultural groups by different — and not competing — outcomes (joint gains for Americans vs. outcome parity for the Chinese, as in Tinsley & Pillutla 1998).

Problem-solving depends on a collaborative attitude which is easier with a partner from the same culture. Negotiation partners’ similarity, according to

Rubin & Brown (1975), leads to more trust and an enhanced level of interpersonal attraction. As emphasized by Pornpitakpan (1999), greater similarity between two parties will induce greater interpersonal attraction. People need to evaluate others before entering into interaction: similarity facilitates accurate appraisal in the process of social comparison. As a result of similarity, each side tends to consider communication from the other as more representative, more honest and truthful. In other words, one party perceives that it transmits fairly objective information and does not try to unduly influence the other party, as is the case with instrumental communication (in the sense of Angelmar & Stern 1978). The hypothesis that the similarity of the parties leads to a more favorable outcome was proposed by Evans (1963). Similarity facilitates awareness and exploration between parties. In fact, it is more a question of perceived similarity which leads to more co-operative behaviour in negotiation (Matthews *et al.* 1972). If this similarity is perceived but not based on strictly objective indications (such as shared nationality, language or educational backgrounds) a dissymmetric view of similarity may arise between the buyer and seller. For instance, many business people in the Middle East have a good command of either the English or French language and culture. Middle Eastern business people are often perceived by their American or European counterparts as being similar, whereas they may perceive their Western counterparts as different.

The role adopted in negotiation, buyer or seller, combines with perceived similarity. If sellers perceive a greater similarity, this can lead to a stronger problem-solving orientation on their part. Although appealing, similarity-based hypotheses have been poorly validated by the empirical study carried out by Campbell *et al.* (1988). No significant relationship was found among American and British buyer/seller pairs: similarity did not favor problem-solving orientation. In the case of the French and the Germans, the perceived similarity only led to a stronger problem-solving orientation on the part of the seller. However, in Campbell *et al.* (1988) the actual dissimilarity between negotiators was strongly reduced by the fact that all the simulated negotiations were intracultural.

In intercultural terms, there is the possibility of a misunderstanding arising from a perception of similarity which is not shared by both parties. For example, one can imagine a situation where a seller (American, for instance) perceives the buyer as similar (an Arab buyer who is very Westernized in appearance, who has a superficial but misleading cultural outlook because of his cultural borrowing). However, the reverse situation does not occur; the Arab buyer is aware that the American seller knows little about the Arabic culture. In this case the seller will have a tendency to take a problem-solving

orientation, because of fallacious perceived similarity, whereas the buyer may exploit the seller without feeling obliged to reciprocate, and ultimately maximize his personal outcome by adopting a distributive strategy. However, the dynamics of similarity (showing to the other side that one understands, and thus laying the foundation for an integrative attitude on both sides) can be reversed, more positively. Harris & Moran (1987: 472) cite the case of a U.S. banker from the Midwest invited by an Arab sheik for a meeting in London. The banker demonstrates unusual patience and deep awareness of the other party's power.

The banker arrives in London and waits to meet the sheik. After two days he is told to fly to Riyadh in Saudi Arabia, which he does. He waits. After three days in Riyadh, he meets the sheik and the beginning of what was to become a very beneficial business relationship between the two persons and their organizations began.

National Orientations Favoring the Integrative Strategy

The second question concerns the adoption of integrative strategies by some nationalities more than others. Studies tend to show that American business people show trust more willingly and more spontaneously than other cultural groups, and have a stronger tendency towards a problem-solving and integrative orientation (Druckman *et al.* 1976; Harnett & Cummings 1980; Campbell *et al.* 1988; Tinsley & Pillutla 1998). The level of their profits as sellers depends on the buyer responding positively by also adopting a problem-solving approach (Campbell *et al.* 1988). American negotiators have a stronger tendency to exchange representative communication, making clear and explicit messages a priority. This is in line with the American appreciation of frankness and directness and their explicit communication style according to Hall (1976). This is what Graham & Herberger (1983) call the "John Wayne Style". They often meet certain difficulties with cultures who take more time in the preliminaries, getting to know each other, that is, talking generally and only actually getting down to business later. As a result, Americans may not foster feelings of trust in negotiators from other cultural groups who feel it necessary to get to know the person they are dealing with (Hall 1976). Graham & Meissner (1986) have shown, in a study comparing five countries, that the most integrative strategies are adopted by the Brazilians, followed by the Japanese. On the other hand, the Americans, the Germans and the Koreans choose intermediate strategies that are more distributive. This is consistent in the case of the Germans who, according to Cateora (1993), use the hard-sell approach,

where the seller is fairly pushy and adopts an instrumental communication and a distributive strategy (Campbell *et al.* 1988).

The concept of integrative strategy is strongly influenced by the American tradition of experimental research in social psychology applied to commercial negotiation. As explained by Leung (1997: 648), "In individualist societies, negotiation is seen more as a task than as a social process. The primary role of negotiators is to work out a solution that is acceptable to both sides". It is also based on a "master of destiny" orientation which feeds attitudes of problem resolution. As noted by Graham *et al.* (1994), the problem-solving approach appears to make sense to the American negotiators, but this framework may not work in all cases when applied to foreign negotiators. Americans tend to see the world as consisting of problems to be solved, whereas Arabs, for instance, see it more as a creation of God. However, to our knowledge, there is no empirical study that has shown, for example, that the Arabs from the Middle East have a tendency to be more distributive and or less problem-solving oriented than the Americans.

A key issue in the integrative approach is whether parties should primarily strive for achieving a maximum joint gain or for reaching outcome parity between negotiators. Tinsley & Pillutla (1998) show that American negotiators consider problem solving as a more adequate strategy and are more satisfied with joint gain maximization than Hong Kong negotiators. When presented with cooperative instructions, Hong Kong negotiators tend to interpret them as meaning that they should strive for equality and display more satisfaction than Americans when the goal of outcome parity is reached. The tendency to search for equality in outcomes and to share the burden by allocating resources equally is confirmed in the case of Japanes as compared to American negotiators by Wade-Benzoni *et al.* (2002).

The dilemma about maximizing joint gains vs. outcome parity is precisely where the "double-bind" situation in negotiation is at its peak and where cultures offer simplified, pre-framed solutions to the paradox of having to cooperate at the risk of being taken advantage of. As emphasized by Bazerman *et al.* (2000: 297), cross-cultural negotiation research has provided data "consistent with the generalization that members of individualist cultures are more likely to handle conflicts directly through competition and problem solving, whereas members of collectivist cultures are more likely to handle conflict in indirect ways that attempt to preserve the relationship". Leung (1997) explains that "disintegration avoidance" (DA) is at the very heart of Chinese negotiation behaviour; as long as there is reason for maintaining the relationship, DA will result in a preference for conflict avoidance. However,

when the conflict is perceived as caused by the other party's misbehaviour, DA ceases to be effective and Chinese negotiators are more likely to recommend discontinuing the negotiation.

Box 5.3

Americans, more than any other national group, value informality and equality in human relations. The emphasis on first names is only the beginning. We go out of our way to make our clients feel comfortable by playing down status distinctions such as clients and by eliminating "unnecessary" formalities such as lengthy introductions. All too often, however, we succeed only in making ourselves feel comfortable while our clients become uneasy or even annoyed. For example, in Japanese society interpersonal relationships are vertical; in almost all two-person relationships a difference in status exists. The basis for such distinction may be one or several factors: age, sex, university attended, position in an organisation, and even one's particular firm or company. Each Japanese is very much aware of his or her own position relative to others with whom he or she deals. . . . The roles of the higher status position and the lower status position are quite different, even to the extent that Japanese use different words to express the same idea depending on which person makes the statement. For example, a buyer would say *otaku* (your company) while a seller would say *on sha* (your great company). Status relations dictate not only what is said but also how it is said.

Source: Graham & Herberger 1983: 162. Reproduced with permission.

Ignorance of the Other Party's Culture as an Obstacle to the Implementation of an Integrative Strategy in Negotiation

One of the most important obstacles to effective international business negotiation is the ignorance of all or at least the basics of the other party's culture. This is intellectually obvious, but is often forgotten by international negotiators. It refers not only to the cognitive ignorance of the main traits of the other party's culture, but also to the unconscious prejudice that differences are minor (that is, ignorance as absence of awareness). This favors the natural tendency to refer implicitly to one's own cultural norms, especially for the coding/decoding process of communication (the self reference criterion of Lee 1966). Lucian Pye (1982, 1986), Eiteman (1990) and Tinsley & Pillutla (1998) in the case of business negotiations between American and Chinese people, and Tung (1984), Hawrish & Zaichkowsky (1990) and Brett & Okumura (1998) for U.S.-Japanese business negotiations, note the relative lack of prior knowledge

of the American negotiators about their partner's culture. Before coming to the negotiation table, Americans do not generally read books, nor do they train themselves for the foreign communication style, nor learn about the potential traps which could lead to misunderstandings. As Carlos Fuentes states (in a rather harsh aphorism), "What the U.S. does best is understand itself. What it does worst is understand others" (Fuentes 1986). French negotiators also tend to be underprepared in terms of cultural knowledge (Burt 1984) whereas the Japanese seemingly try to learn a lot more than the French or the Americans about the other party's culture before negotiation takes place.

The negotiation and implementation (which often means ongoing negotiations) of a joint venture may last for several years. In this case, national cultures tend to disappear as the two teams partly merge their values and behaviour in a common "venture culture". In order to improve intercultural negotiation effectiveness, it is advisable to build this common culture between the partners/adversaries right from the start of the negotiations. It means establishing common rules, communication codes, finding people on each side who will act as go-betweens and trying to agree on a common interpretation of issue, facts, solutions and decision-making. This must not be considered as a formal process; it is informal and built on implicit communications. Furthermore, it relies heavily on those individuals who have been involved in the joint venture over a long period of time and who get on well together.

Cultural Misunderstandings during the Negotiation Process

If future partners do not share common "mental schemes", it could be difficult for them to solve problems together. Buyer and seller should share some joint views of the world, especially on the following questions: What is the relevant information? How should this information be sought, evaluated and fed into the decision-making process?

An important distinction in the field of cross-cultural psychology opposes ideologism to pragmatism (Glenn 1981; Triandis 1983). As indicated by Triandis (1983: 148), "Ideologism vs. pragmatism, which corresponds to Glenn's universalism vs. particularism, refers to the extent to which the information extracted from the environment is transmitted within a broad framework, such as a religion or a political ideology, or a relatively narrow framework". This dimension refers to a way of thinking, an important element of the "mindset".

Ways of Processing Information: Is there a Common Rationality Between Partners?

People differ in their ways of relating thinking to action: while the ideologists tend to think broadly and relate to general principles, the pragmatist orientation concentrates on focusing on detailed issues that are to be solved one by one. Pragmatists will prefer to negotiate specific clauses, in sequential manner. Conversely, ideologists see arguments in favour of their “global way of thinking”, when negotiating a large contract, such as a nuclear plant or a television satellite for instance: it is a unitary production, it is a complex multi-partner business, it often involves government financing and also has far-reaching social, economic and political consequences. Pragmatists will also find many arguments in favor of their way of thinking: the technicalities of the plant and its desired performance require an achievement and deadline orientation (pragmatist values).

Triandis hypothesises that complex traditional societies will tend to be ideologist ones, whereas pluralistic societies or cultures experiencing rapid social change will tend to be pragmatist. This distinction may also be traced back to the difference between the legal systems of *common law* (mainly English and American) and the legal system of *code law*. Whereas the former one favours legal precedents set by the courts and past rulings (cases) the latter favors laws and general texts. These general provisions are intended to build an all-inclusive system of written rules of law (code). Codes aim to formulate general principles so as to embody the entire set of particular cases.

The ideologist orientation, which is to be found mostly in Southern and Eastern Europe, leads the negotiators to try and set principles before any detailed discussion of specific clauses of the contract. Ideologists have a tendency to prefer and promote globalised negotiations in which all the issues are gathered in a “package deal”. The pragmatist attitude corresponds more to attitudes found in Northern Europe and the United States. It entails defining limited scope problems, then solving them one after the other. Pragmatists concentrate their thinking on factual aspects (deeds, not words; evidence, not opinions; figures, not value judgements). They are willing to reach real world decisions, even if they have to be down to earth ones.

Ideologists will use a wide body of ideas which provide them with a formal and coherent description of the world, Marxism or Liberalism for instance. Every event is supposed to carry meaning when it is seen through this ideologist framework. On the other hand, the pragmatist attitude first considers the extreme diversity of real world situations, and then derives its principles inductively. Reality will be seen as a series of rather independent and concrete

problems to be solved (“issues”). These issues will make complete sense when related to practical, precise and even down-to-earth decisions. Typically, ideologists will *take* decisions (*prendre des décisions*) that is, pick a solution from a range of possible decisions (which are located outside the decision maker). Conversely, pragmatists will *make* decisions, that is, both decide and implement: decisions will be enacted, not selected. Box 5.4 illustrates how the pragmatist Americans can resent the ideologist French in international negotiations.

Box 5.4

Rather imprecisely defined, the idea is that one reasons from a starting point based on what is known, and then pays careful attention to the logical way in which one points leads to the next, and finally reaches a conclusion regarding the issue at hand. The French assign greater priority than Americans do to establishing the principles on which the reasoning process should be based. Once this reasoning process is underway, it becomes relatively difficult to introduce new evidence or facts, most especially during a negotiation. Hence the appearance of French inflexibility, and the need to introduce new information and considerations early in the game. All this reflects the tradition of French education and becomes the status mark of the educated person. In an earlier era observers made such sweeping generalisations as: “The French always place a school of thought, a formula, convention, a priori arguments, abstraction, and artificiality above reality; they prefer clarity to truth, words to things, rhetoric to science . . .”.

Source: Fisher 1980; Zeldin 1977.

Communication may be difficult when partners do not share the same mindset. The most unlikely situation for success is an ideology-orientated contractor/supplier who tries to sell to a pragmatism-orientated owner/buyer. The ideologist will see the pragmatist as being too interested in trivial details, too practical, too down-to-earth, too much data-oriented (Galtung 1981) and incapable of looking at issues from a higher standpoint. Pragmatists will resent ideologists for being too theoretical, lacking practical sense, concerned with issues that are too broad to lead to implementable decisions. In the first steps of the negotiation process, differences between ideologists and pragmatists may create communication misunderstandings which will be difficult to overcome during subsequent phases. Indeed, developing common norms will be fairly difficult, although it is necessary if partners want to be able to predict the other party’s behaviour. A frequent comment in such situations will be: “One never knows what these people have in mind; their behaviour is largely unpredictable”. An American (pragmatism-orientated) describes negotiations

with the French (more ideology-orientated) in the following terms (Burt 1984: 6): “The French are extremely difficult to negotiate with. Often they will not accept facts, no matter how convincing they may be”.

Argument in Negotiation: Data, Theory, Speech and Virtue

Galtung (1981) contrasts what he calls the “intellectual styles” of four important cultural groups: the “Gallic” (prototype: the French), the “Teutonic” (prototype: the Germans), the “Saxonic” (prototype: the English and the Americans) and the “Nipponic” intellectual style (prototype: the Japanese). Saxons prefer to look for facts and evidence which results in factual accuracy and abundance. They are interested in “hard facts” and proofs, and do not like what they call “unsupported statements”. As Galtung states (1981: 827–828) when he describes the intellectual style of Anglo-Americans, “. . . data unite, theories divide. There are clear, relatively explicit canons for establishing what constitutes a valid fact and what does not; the corresponding canons in connection with theories are more vague One might now complete the picture of the Saxonic intellectual style by emphasizing its weak point: not very strong on theory formation, and not on paradigm awareness”.

Galtung contrasts the Saxonic style with the Teutonic and Gallic styles, which place theoretical arguments at the centre of their intellectual process. Data and facts are there to illustrate what is said rather than to demonstrate it. “Discrepancy between theory and data would be handled at the expense of data: they may either be seen as atypical or wholly erroneous, or more significantly as not really pertinent to the theory. And here the distinction between empirical and potential reality comes in: to the Teutonic and Gallic intellectual, potential reality may be not so much the reality to be even more avoided or even more pursued than the empirical one but rather a *more real reality*, free from the noise and impurities of empirical reality” (p. 828). However, Teutonic and Gallic intellectual styles do differ in the role that is assigned to words and discourse. The Teutonic ideal is that of the ineluctability of true reasoning *Gedankennotwendigkeit*, that is, perfection of concepts and the indisputability of their mental articulation. The Gallic style is less preoccupied with deduction and intellectual construction. It is directed more towards the use of the persuasive strength of words and speeches in an aesthetically perfect way (*élégance*). Words have an inherent power to convince. They may create *potential reality*, thus probably the often-noted Latin love of words.

Finally the Nipponic intellectual style, imbued with Hindu, Buddhist and Taoist philosophies, favors a more modest, global and provisional approach. Thinking and knowledge are conceived of as being in a temporary state, open to alteration. The Japanese “rarely pronounce absolute, categorical statements in daily discourse; they prefer vagueness even about trivial matters . . . because clear statements have a ring of immodesty, of being judgements of reality” (Galtung 1981: 833).

Communication and Language

Needless to remark that the cross-cultural communication processes are a key component of the influence of culture on international marketing negotiations. If negotiators want to promote an integrative approach, it is important for them to focus on sharing and seeking information. Communication has been shown to generate greater cooperation even among negotiation partners that display strong tendencies to self-interest (Wade-Benzoni *et al.* 2002). The language used for negotiation has its importance: the myth that any language can be translated into another language often causes English to be chosen as a central negotiation language and to add interpreters when proficiency is too low on one side.¹ As emphasized by Hoon-Halbauer (1999) in the case of Sino-Foreign joint ventures, few Chinese can speak a foreign language and all oral communication between the Chinese and their foreign partners has to pass through interpreters, “When a third person is involved no genuine, direct communication between two persons can take place. In other words, “heart-to-heart” talks are unlikely to take place” (p. 359). Furthermore, due to poor translation, it may be that only 30–40% of the actual content of what is said in Chinese is conveyed to the non-Chinese speaking negotiation partners, resulting in the discarding of good ideas and suggestions made by the Chinese (Hoon-Halbauer 1999).

¹ Brannen & Salk (2000: 473–475) give a detailed account of how language used is negotiated in the case of a German-Japanese joint venture. “The negotiated outcome for language use [English as official venture language] was really the only one available. When a Japanese or German was confused or needed help, they would confer with members of their same cultural group in their mother tongue. This was done solely to expedite matters and clarify issues rather than as a means of excluding one or the other group from decision-making. One German manager spoke this way of the negotiation outcome: ‘The work language is English. But, during discussion, they would sometimes speak Japanese and I thought this was a good thing because you know your own language better and can understand better and can discuss things more precisely. One has to be tolerant . . .’” (p. 474).

There are semantic differences in the words used and many misunderstandings can arise from ignoring the precise meaning of key concepts for the negotiation; Adachi (1998) gives the example of noticeable differences in the use of the word “customer” by Japanese and American negotiators. She shows that cultural connotations is a crucial aspect of conversation which needs careful attention in understanding the meaning beyond the mere one-to-one translations of words. Moreover, speakers of certain languages (i.e. high context languages such as Japanese, Chinese or Arabic) use more contextual cues to decode messages. The role of high context vs. low context communication has been described by Hall (1960, 1976).

When messages are exchanged, the degree to which they should be interpreted has to be taken into account as well as the cross-cultural differences in linguistic styles, involving the use of silence or conversational overlap (George *et al.* 1998). For instance, silence is a full form of communication for the Japanese, and Graham (1985) reports twice as many silence in Japanese interaction than in American. Westerners often have the impression that they “do all the talking”. Low-context negotiators, such as Americans, tend to be explicit, precise, legalistic and direct in communication, sometimes forceful and even appearing as blunt to the other party (USIP 2002). In a recent empirical survey of Japanese and U.S. negotiators, Adair *et al.* (2001: 380) show that direct and indirect communication patterns are consistent with Hall’s theory of low- vs. high- context communication:

The U.S. negotiators relied on direct information to learn about each other’s preferences and priorities and to integrate this information to generate joint gains. They were comfortable sharing information about priorities, comparing and contrasting their preferences with those of the other party, and giving specific feedback to offers and proposals. The Japanese negotiators relied on indirect information, inferring each other’s preferences and priorities from multiple offers and counteroffers over time.

In fact, the capacity to cope with very different communication styles is a key to successful international business negotiation. This is especially true for non-verbal communication. For instance, a lack of eye contact for the Americans is a signal that something is amiss and “American executives reported that the lack of eye contact was not only disconcerting but reduced their bargaining performance” (Hawrysh & Zaichkowsky 1990: 34).

Negotiators must be ready to hear true as well as false information, discourse based on facts as well as on wishful thinking or pure obedience to superiors.

Frankness and sincerity are culturally relative values, they can be interpreted as mere naivety, a lack of realism or a lack of self-control in speaking one's own mind. Furthermore, waiting for reciprocation when disclosing useful information for the other party, makes little sense in an intercultural context. Frankness and directness in communication are a substantial value to the Americans and to a lesser extent to the French, but not to Mexicans in formal encounters, nor to Japanese at any time (Fisher 1980).

The issue of formality vs. informality is a difficult one. Frequently, a contrast is made between cultures which value informality (e.g. American) and those which are more formal (most cultures which have long historical roots and high power distance). "Informality" may be simply another kind of formalism, and the "icebreaking" at the beginning of any typical U.S. meeting between unknown people is generally an expected ritual. It is more important to try and understand what kind of formality is required in which circumstances with which people. Outside of formal negotiation sessions, people belonging to apparently quite formal cultures can become much more informal. In Chap. 7 Camilla Schuster and Michael Copeland give a detailed account of the influence of patterns of communication on negotiations.

Due to increased global communication through the Internet and the extensive use of computer-mediated communication, in particular E-mail, as well as to the rise of Business-to-Business marketplaces, there is an increasing use of global electronic media in negotiating international deals.² Contrary to traditional negotiation which is assumed to be carried out almost exclusively via face-to-face communication, E-mail does not offer much of the non-verbal feedback which exists in other media. However, electronic communication is very useful for dispersed negotiations, when matters have to be discussed without incurring the high costs associated with face-to-face cross-border negotiation. Potter & Balthazard (2000) show that both Chinese and American managers prefer face-to-face over computer-mediated negotiation. However, both Chinese and Americans, negotiating intraculturally, do not perceive a significant difference between E-mail based written negotiation and the same negotiation dealt with a web-based threaded discussion even though the latter method seems to allow for more continuous interaction. Ulijn *et al.* (2001) based on a study involving 20 participants, use speech act theory and psycholinguistic analysis to show that culture affects non face-to-face communication as is the case of negotiation through E-mail. Kersten *et al.*

² For a review and discussion of non face-to-face negotiations, see the section entitled "The case against face-to-face communication in bargaining", in Bazerman *et al.* (2000: 295–296).

(1999a, 2002) also find a number of cultural differences between managers from Austria, Ecuador, Finland and Switzerland who negotiate electronically.³ Finally E-mail communication is often mixed with face-to-face encounters; E-mailing is widely affected by prior personal acquaintance of the people involved: if negotiators have started with some face-to-face activity, computer-mediated negotiation will be largely facilitated and communication misunderstandings arising from the «dry style» of E-mails may largely be avoided.

Negotiation Tactics

Graham (1993) studied the negotiation tactics used in eight cultures, using videotaped negotiations in which statements were classified into twelve categories using the framework of Angelmar & Stern (1978). His results show very similar negotiation tactics across cultures, most of them using a majority of tactics based on an exchange of information, either by self-disclosure or questions (more than 50% in all cases). The Chinese score the highest in posing questions, which is consistent with Pye's comments about them: "Once negotiations begin the Chinese seem passive. They simply ask questions, probe for information, and conceal any eagerness they may feel" (1986: 78). On the other hand, the Spaniards score the highest in making promises. The proportion of "negative" tactics, including threats, warnings, punishment and negative normative appeal (a statement in which the source indicates that the target's behaviour is in violation of social norms) is fairly low in all cases, never exceeding 10% of the information exchange. Finally, cross-national differences are not great at the level of the type of tactics used, nor at the level of their frequency, but are more significant at the level of how they are implemented.

The use of theatricality, withdrawal threats and tactics based on time, such as waiting for the last moment to obtain further concessions by making new demands, are based on national styles of negotiations. Tactics are also related to the ambiguous atmosphere of business negotiations when implied warm human relations are supposed to be mixed with business. This relates to the divide between affective and neutral cultures (Trompenaars 1993). Negotiations are always interspersed with friendship and enmity, based on personal as well as cultural reasons. *Atmosphere* can be considered as a central issue in the

³ Full electronic negotiation systems have been proposed, such as INSPIRE (Kersten & Noronha 1997, 1999) and Negoplan (Kersten & Szpakowicz 1998).

negotiation process. Ghauri & Johanson (1979) posit atmosphere as being of basic importance to the development of the negotiation process. Atmosphere has a double role, as a bearer of the history of the relationship and as main factor explaining the transition from one stage to the next. Atmosphere is characterised in a number of respects, namely the dynamics of conflict and cooperation, reducing or overcoming the distance between the partners, the power/dependence relation and, lastly, the expectations of the parties concerning future deals. Chapter 9 examines in detail the role of atmosphere in international business negotiations.

Emotions and Conflict-Handling Styles in Cross-Cultural Negotiations

Communication misunderstandings in intercultural negotiation quite often result in increased level of emotions, that is, negotiators tend to depart from the rational and objective evaluation of issues at stake and to mix subjectivity and feelings with business matters. Morris *et al.* (1998: 730) outline two types of misunderstandings that frequently arise between Asian and American negotiators: "In one type of misunderstanding, U.S. managers make the error of reading silence of their Asian counterpart as an indication of consent . . . A different type of misunderstanding occurs when Asian managers make the error of reading an U.S. colleague's direct adversarial arguments as indicating unreasonableness and lack of respect". Emotions such as anger result in negotiators being less accurate in judging the interests at stake, more self-centered on their own interests; they also have a general effect of reducing joint gains (Bazerman *et al.* 2000).⁴

Kumar (1997) makes a sharp distinction between positive and negative emotions in negotiation. Emotions contain both an element of affect and an accompanying physiological arousal. For him, positive emotions result in being more flexible in negotiations, as well as helping negotiators to be more persistent, especially since a positive affective state increases the confidence level of negotiators. However, a positive affective state may also heighten expectations and result in negotiators' disappointment with actual outcomes.

Negative emotions, on the other hand, may result in conflict escalation, that is, actors take matters personally when they should see them with a more distanced attitude. Likely consequences are the attribution to the other side of the responsibility for conflict, and possibly the discontinuation of the relation. While negative emotions may serve to inform the parties that an existing

situation is untenable, they may also be snowballing and result in a negative conflict spiral (George *et al.* 1998; Brett *et al.* 1998). Negative spirals are partly based on selectively choosing those information cues which will confirm the negative feelings of a negotiators leading her/him to an escalation of negative feelings toward the other party which are no more based on hard facts. They also result from systematic reciprocation of contentious communication. Negative spirals are particularly likely to occur in cross-cultural negotiations due to differences at three levels: differences in internalised values and norms, differences in emotional expression and differences in linguistic styles (George *et al.* 1998). A conflict spiral appears as circular as it is based on repeated contentious communication whereby each side “responds” to the other side contentious communication by negative reciprocation (Brett *et al.* 1998).

The way to solve problems of negative spirals in negotiation has to do with both models of conflict resolution and with strategic communication styles in negotiation which may help to manage discrepancies in process and outcomes of negotiation (Kumar & O’Nti 1998). Tinsley (1998) shows that the Japanese, the Americans and the Germans use different models of conflict resolution. The Japanese tend to use what she calls the “status model”, that is, social interaction is viewed as governed by status and parties might solicit the advice of higher status Figures to solve the conflict. The German display a preference for the “regulations” model whereby conflict is seen as to be solved by applying standardised, universal and impersonal rules. Finally, Americans prefer the “interest” model whereby parties exchange information on their interests, try to prioritise them and trade off interests. Another dimension of conflict resolution is whether people tend to avoid or to directly confront conflict. Morris *et al.* (1998) show that Chinese managers tend to display conflict avoidance whereas American tend to develop a competing style. Moreover, negotiators who come from more traditional societies, where the dimension of social conservatism is high, tend to be more conflict averse (Morris *et al.* 1998; Kozan & Ergin 1999).

Monitoring emotions in negotiation has to do with the avoidance of negative spirals but also with the avoidance of being too systematically conflict avoidant. A number of communication strategies have been recommended for breaking negative spirals in cross-cultural negotiations. George *et al.* (1998) recommend that negotiators engage in what they call “motivated information processing”, that is, a process whereby information is selectively processed in ways that are supportive of motivational goals; motivation for certain outcomes, rather than affect, guides interpretation. Brett *et al.* (1998) show that a mix of reciprocation combined with non contentious communication is likely to help breaking negative spirals in negotiations.

Differences in Outcome Orientation: Oral versus Written Agreements

It would be naïve to believe that profits, especially future accounting profits for each party, are the only possible outcome of the negotiation process. Other possible outcomes are listed in Table 5.1. The main reason for profits not being the sole possible outcome is that they are not really foreseeable. Basic differences in outcome orientation are generally hidden from the negotiation partners, generating increased misunderstandings. Another reason is that many cultures are relationship- rather than deal-oriented. As is described by Oh (1984) and Corne (1992) in the case of the Japanese, and Pye (1986) and Rotella *et al.* (2000) in the case of the Chinese, they prefer a gentleman's agreement, a loosely-worded statement expressing mutual co-operation and trust between the parties, to a formal Western-style contract. The most crucial element of preparation for a negotiation with the Japanese is drafting an opening statement which seals the start of a relationship, in which the Western side may have the opportunity to seize the moment and set the tone for the rest of the negotiation (Corne 1992).

Asymmetry in the Perceived Degree of Agreement

Agreements are generally considered as being mostly written. They are achieved by negotiation and by the signing of written contracts, which are often considered "the law of the parties". This is unfortunately not always true. Keegan (1984) points out that for some cultures "my word is my bond" and trust is a personal matter, which he contrasts with the "get-it-in-writing" mentality where trust is more impersonal. The former is typical of the Middle East, whereas the latter is to be found in the United States where hundreds of thousands of lawyers help people negotiate written agreements and litigate within the framework of these written agreements. This has to be interpreted. It does not mean that people rely *entirely* on either an oral base (oaths, confidence between people, membership of a common group where perjury is considered a crime) or a written base. Exploring, maintaining and checking the bases for trust is a more complex process (Usunier 1989). It entails various possibilities:

- (1) An agreement may be non-symmetrical. A agrees with B, but B does not agree with A. Various reasons may explain this situation: either B wishes to conceal the disagreement or there is some sort of misunderstanding, usually language-based.

- (2) People agree, but on different bases, and they do not perceive the divergence. They have, for instance, quite different interpretations of a clause or some kind of non-written agreement. Although much may be written down, some things will always remain unwritten. What is unwritten may, to one party, seem obviously in line with a written clause, but not to the other. Moreover, if there is no opportunity to confront their interpretations, they cannot be aware of their divergent nature.
- (3) The agreement is not understood by both parties as having the same degree of influence on:
 - stability;
 - precision and explicitness of the exchange relation.

Written Documents as a Basis for Mutual Trust Between the Parties

There is a fundamental *dialectic* in written agreements between *distrust* and *confidence*. At the beginning there is distrust. It is implicitly assumed that such distrust is natural. This has to be reduced in order to establish confidence. Trust is not achieved on a global and personal basis but only by breaking down potential distrust in concrete situations where it may hamper common action. Trust is built step by step, with a view towards the future. Therefore *real trust* is achieved only gradually. Trust is deprived of its personal aspects. Thanks to the written agreement, the parties may trust each other in business, although they do not trust each other as people. Trust is taken to its highest point when the parties sign a written agreement.

On the other hand, cultures that favor oral agreements tend not to hypothesise that trust is constructed by the negotiation process. They see trust more as a prerequisite to the negotiation of written agreements. Naturally, they do not expect this prerequisite to be met in every case. Trust tends to be mostly personal. Establishing trust requires that people know each other. That is probably why many Far Eastern cultures (Chinese, Pye 1982; Japanese *et al.* 1990; Tung 1984; de Mente 1987, Corne 1992) need to make informal contacts, discuss general topics and spend time together before they get to the point, even though all this may not appear task-related.

Subsequently, the negotiation process will be lengthy because another dialectic is at work. Since people are supposed to trust each other, the negotiation process should not damage or destroy the basic asset of their exchange relationship — trust. They will avoid direct confrontation on a specific clause, and therefore globalise the negotiation process. Global friends

may be local foes, provided trust as the basic asset of the negotiation process is not lost.

The Ambiguity of the Cultural Status of Written Materials

That one should always “get-it-in-writing” is not self-evident. The contrary idea may even impose itself (“if they want it written down, it means that they don’t trust me”). Regina Traoré Sérié (1986, quoted in Ollivier and De Maricourt 1990) explains, for instance, the respective roles of oral communication (spoken, transmitted through personal and concrete communication, passed through generations by storytellers) and written materials (read, industrially printed, impersonally transmitted, with no concrete communication) in the African culture.

Reading is an individual act, which does not easily incorporate itself into African culture. Written documents are presented as either irrelevant to everyday social practices, or as an anti-social practice. This is because someone who reads, is also isolating himself, which is resented by the other members of the community. But at the same time, people find books attractive, because they are the symbol of access to a certain kind of power. By reading, people appropriate foreign culture, they get to know “the paper of the whites”. As a consequence, reading is coded as a positive activity in the collective ideal of Ivory Coast society, since it is a synonym for social success. This contradiction between “alien” and “fetish” written documents encapsulates the ambiguity of the status of books in African society.

Do Written Contracts and the Intervention of Lawyers Produce Irreversible Commitments?

In cultures where relationships are very personalized, confidence cannot be separated from the person in whom the confidence is placed. The basis for mutual trust is no longer the detailed written contractual documents, but a man’s word, which is his bond. It is not “just any word”, but a special kind of word, which is heavily imbued with cultural codes (Hall 1959, 1976). These words as bonds cannot easily be transferred from one culture to another. Adler (1980) describes the case of an Egyptian executive who, after entertaining his Canadian guest, offered him joint partnership in a business venture. The Canadian was very keen to enter this venture with the Egyptian businessman. He therefore suggested that they meet again the next morning with their

respective lawyers to fill in the details. The Egyptians never arrived. The Canadian businessman wondered whether this was caused by the lack of punctuality of the Egyptians, or by the Egyptian expecting a counteroffer, or even the absence of available lawyers in Cairo. Adler (1980: 178) explains:

None of these explanations was true, although the Canadian executive suggested all of them. At issue was the perceived meaning of inviting lawyers. The Canadian saw the lawyer's presence as facilitating the successful completion of the negotiation; the Egyptian interpreted it as signaling the Canadian's mistrust of his verbal commitment. Canadians often use the impersonal formality of a lawyer's services to finalize an agreement. Egyptians more frequently depend on a personal relationship developed between bargaining partners for the same purposes.

If agreements are mostly person-based, then their written base may be less important. Thus the demand for renegotiation of clauses by a Middle Eastern buyer in a contract already negotiated and signed, should not be seen as astonishing. It should not necessarily lead to litigation. Behind the demand for renegotiation is the assumption that, if people really trust each other, they should go much further than simple and literal implementation of their written agreements. This leads to the following question; to what extent should the contract signature date be considered as a time line which signals the end of the negotiation? (see Chapter 8).

Different Attitudes Towards Litigation

It is easy to understand that the function of litigation will be different for both sides. Recourse to litigation will be fairly easily made by those favoring written-based agreements as the ultimate means of resolving breaches of contract. The oral and personal tradition is less susceptible to recourse to litigation, because litigation has major drawbacks:

- (1) It breaks the implicit assumption of trust;
- (2) It breaches the required state of social harmony, especially in the Far Eastern countries, and may therefore be quite threatening for the community as a whole.

As David (1987: 89, author's translation) states:

. . . in Far Eastern countries, as well as in Black Africa and Madagascar . . . subject to the Westernization process which has

been attempted, one does not find, as in Hinduism or Islam, a body of legal rules whose influence may be weakened by the recognized influence of other factors; it is the very notion of legal rules which is challenged. Despite authorities having sometimes established legal codes, it is well known and seems obvious that the prescriptions of these codes are not designed to be implemented literally. They should only be considered as simple patterns. The judge will be able to moderate their strictness and, moreover, it is hoped that this will not be necessary. The “good judge”, whether Chinese, Japanese or Vietnamese, is not concerned with making a good decision. The “good judge” is the one who succeeds in not making any award, because he has been skillful enough to lead the opponents to reconciliation. Any dispute, as it is a threat to social harmony, has to be solved by a settlement through conciliation. The individual only has “duties” towards the society. Recognition of “subjective rights” in his favor is out of the question. Law as it is conceived in the West is seen as good for barbarians, and the occupation of lawyer, in the limited extent that it exists, is regarded with contempt by the society.

These remarks by a specialist in comparative law give a good idea of the differences of litigious tradition between the Far East and the West. In the field of contracts, the Western saying “the contract is the law of the parties” dominates the practices of international trade. But this is, in part, window-dressing. When negotiating internationally, a set of written contracts is always signed. This is not to say that people choose either oral or written agreements as a basis for trust. The real question is rather: how should the mix of written and oral bases for trust, as they are perceived by the parties, be interpreted? People do not deal with conflicts in the same way. Negotiating together requires a capacity to envisage different ways of managing disputes. Not only differences in rationality and mental programs, but also differences in time representations, may lead to a partner “who thinks differently” being considered a partner “who thinks wrongly”.

The utmost caution is recommended when interpreting the bases of trust, whether written documents or oral and personal bonds. Even in the Anglo-Saxon world, where it is preferred to “get-it-in-writing”, a number of business deals, sometimes large ones — in the area of finance, for instance — are based on a simple telex or fax, or the simple agreement between two key decision-makers. It would be a mistake to believe that personal relationships do not exist

in places where written contracts are generally required. Moreover, in cultures where “my word is my bond”, it should never be forgotten that it is difficult to trust somebody who is not a member of the in-group, whether on a written or spoken basis. Therefore, trust has to be established (and monitored) on both bases, while at the same time keeping in mind a clear awareness of the limits of each.

Conclusion: Negotiating Shared Cultures

The process of intercultural encounter in negotiation has been described as akin to a dance in which one dancer dances a waltz when the other dances a tango (Tinsley *et al.* 1999). There is, however, much adaptation in intercultural negotiation; negotiators tend to adjust to the other party’s behaviour in ways that derive significantly from what would be the stereotypic attitude in their native culture (Adler & Graham 1989; Bazerman *et al.* 2000). It is naturally difficult to step out from one’s own culture (Shapiro & Von Glinow 1999). However, negotiators exchange masses of information during a full negotiation and they process it in complex ways, that do not aim at an intellectual understanding of the beliefs and attitudes of the other party, but rather target mutual adjustment in view of maximising outcomes. Negotiators therefore tend to adapt their behaviour to the other party, at least to the extent they perceive as useful for smoothing the process and improving the outcomes. On average cultural adaptation, provided that it is done properly — without naïve imitation — is positively experienced by the other side. Pornpitakpan (1999) shows that neither the Japanese nor the Thais feel that their social identity is threatened by high adaptation coming from American sellers in sales negotiations. The Japanese buyers positively experience cultural adaptation by American sellers despite the marked tendency in Japan to make a clear-cut distinction between in-group members (*nihon-jin*) and out-group members (*gai-jin*).

Culture clash in negotiation may be strong at the very start, when negotiators expect behaviour from the other side which normatively corresponds to what they are used to as well as to what they consider as the most appropriate for effective negotiation. Cultural adaptation is not necessarily symmetrical. For instance, Japanese negotiators tend to adjust to Americans by using more direct information sharing and less indirect communication than in negotiations with their countrymen, whereas Americans adapt less to their Japanese counterparts (Adair *et al.* 2001). A common professional culture may also help overcome the barriers related to cross-cultural understanding (Haugland 1998). That is why, culture often appears as a relatively poor predictor of the negotiation

process and outcomes and should not be used directly to predict negotiation behaviour (Tinsley & Brett 1997).

In complex international negotiations (see Chapters 7 and 15) there is a mix of antecedents constructs, based on national cultures, individual characteristics of negotiators and organisational factors surrounding the negotiation (Money 1998). Coalition building and emergent roles in the negotiation process transcend the borders of culture, leading to a re-design of the set of relationships. More extrovert negotiators and individuals who are proficient in the other side's language emerge as central Figures in the negotiation process. Brannen & Salk (2000) show how a German and a Japanese company negotiate a common organisational culture within an International Joint Venture. This negotiated culture is not a blend of both cultures. It is rather an idiosyncratic whole, pragmatically defined for certain issues domains, containing parts of both parent cultures, but also new ways of doing that are specific to the common organisation. Brannen and Salk take the example of problems related to working hours and summer vacations: the Germans tend to take three weeks vacation during the summer whereas the Japanese typically do not take more than five consecutive days of vacation and this created conflicts between German and Japanese managers.

There was no possibility of a negotiated outcome with regard to the length of summer vacation because of Germany's legal climate; Japanese simply continued to take vacation time off as they were accustomed while Germans continued as they had always done. Over time, however, negotiated outcomes did evolve with regard to socializing and the length of working hours though they were reached in a more idiosyncratic fashion. Certain German managers began to stay later at work while many of the Japanese worked fewer hours than they were accustomed to in Japan (Brannen & Salk 2000: 472).

Chapter 6

Hofstede's Dimensions of Culture and their Influence on International Business Negotiations¹

Geert Hofstede and Jean-Claude Usunier

National, Professional, and Organisational Cultures in International Negotiations

Negotiators in international negotiations, by definition, have different national cultural backgrounds. "Cultural" is used here in a sense of "collective programming of the mind which distinguishes the members of one category of people from another". National culture is that component of our mental programming which we share with more of our compatriots as opposed to most other world citizens. Besides our national component, our cultural programs contain components associated with our profession, regional background, sex, age group and the organisations to which we belong. National cultural programming leads to patterns of thinking, feeling and acting that may differ from one party in an international negotiation to another.

The most fundamental component of our national culture consists of values. Values are broad preferences for one state of affairs over others. Values are

¹ Hofstede 1989. Reproduced with the kind permissions of the publisher and the author. Comments in second part of the chapter were written by Jean-Claude Usunier.

acquired in the family during the first years of our lives, further developed and confirmed at school and reinforced in work organisations and in daily life within a national cultural environment. Values determine what we consider as good and evil, beautiful and ugly, natural and unnatural, rational and irrational, normal and abnormal. Values are partly unconscious and because of their normative character, hardly discussable. We cannot convince someone else that his/her values are wrong. It is essential that negotiators share the national culture and values of the country they represent, because otherwise they will not be trusted by their own side.

Other components of national culture are more superficial — that is, visible, conscious and easy to learn even by adults. They include symbols: words, gestures and objects that carry a specific meaning in a given culture. The entire field of language consists of symbols; and a culture group's language can be learned by outsiders. Besides symbols, a culture has its collective habits or rituals, ways of behaviour that serve to communicate feelings more than information; these, too, can be learned by outsiders, although not as easily.

Those involved in international negotiations will have developed a professional negotiation culture, which considerably facilitates the negotiation process. This professional culture, however, is more superficial than their national cultures: it consists of commonly understood symbols and commonly learned habits more than of shared values. Different types of negotiators will have their own kind of professional cultures: diplomats, bureaucrats, politicians, business people, lawyers, engineers, etc. Negotiations are easier with people from other countries sharing the same professional culture than with those who do not.

Finally, organisations, too, develop their own cultures. In the field of international negotiations, international bodies, such as, International Institute for Applied Systems Analysis (IIASA), the IAEA and the various other United Nations (UN) agencies, can play an important role because their internal culture facilitates communication. Again, and even more than in the case of professional cultures, these organisation cultures are superficial — that is, they reside on the level of the easily acquired common symbols and habits. Organisational cultures are not always an asset; they can develop into liabilities, too, by blocking communication instead of facilitating it.

The behaviour of negotiators in international negotiations will thus be influenced by at least three levels of culture: national, professional and organisational, besides the contribution of their own personal skills and character.

Dimensions of Differences in National Cultures

The remainder of this chapter will be devoted to national culture differences and their supposed impact on negotiation styles, because it is in this area that the author's research has been mostly focused. National culture differences, as we argued, reside to a large extent in values acquired in early life, and are therefore quite deep-seated, often unconscious and hardly discussable.

National cultural value systems are quite stable over time; element of national culture can survive amazingly long, being carried forward from generation to generation. For example, countries that were once part of the Roman empire still today share some common value elements, as opposed to countries that did not inherit from Rome.

National cultural value systems have been measured in international comparative research projects. Such projects use samples of people from different countries as respondents on value questions. These samples should be carefully matched — that is, composed of similar people from one country to another, similar in all respects except nationality (same age, sex, profession, etc.). They need not be representative of the entire population of a country, although if this is possible, it makes the sample even more attractive. Two such international comparative value research projects were carried out by this author (Hofstede 1980, 1983) and by Bond (1987), respectively.

The Hofstede-IBM Study

The Hofstede research used a data bank containing 116,000 questionnaires of the values of employees of the multinational business organisation IBM in 72 countries, and collected between 1967 and 1973. These employees represent extremely well-matched subjects of each country's population, because they do the same jobs with the same technology in the same kind of organisation, have the same education levels and can be matched by age and sex. Initially, data from 40 countries were analysed; later on, this number was extended to 50, and data from 14 more countries were grouped into three geographic regions — East Africa, West Africa and Arab speaking countries — bringing the total number of cultures covered up to 53. As the data were collected inside a capitalist enterprise, the socialist countries are not covered in this research project. However, matched data from a Yugoslav organisation selling and servicing IBM equipment are included.

The IBM project revealed that the 53 countries covered differed mainly along four dimensions:

- (1) *Power distance*, that is, the extent to which the less powerful members of organisations and institutions (like the family) accept and expect that power is distributed unequally. This represents inequality (more vs. less), but defined from below, not from above. It suggests that a society's level of inequality is in the followers as much as in the leaders. Power and inequality, of course, are extremely fundamental facts of any society, and anybody with some international experience will be aware that "all societies are unequal, but some are more unequal than others".
- (2) *Individualism* on the one side vs. its opposite, *Collectivism*. This describes the degree to which the individuals are integrated into groups. On the individualist side, we find societies in which the ties between individuals are loose: everyone is expected to look after him/herself and his/her family. On the collectivist side, we find societies in which people from birth onward are integrated into strong, cohesive ingroups; often their extended families (with uncles, aunts and grandparents) continue protecting them in exchange for unquestioning loyalty. The word "collectivism" in this sense has no political meaning: it refers to the group, not to the state. Again, the issue addressed by this dimension is an extremely fundamental one, relevant to all societies in the world.
- (3) *Masculinity* vs. its opposite *Femininity*. The distribution of roles between the sexes is another fundamental issue for any society to which a range of solutions are found. The analysis of the IBM data revealed that: (a) women's values differ less among societies than men's values; (b) if we restrict ourselves to men's values (which vary more from one country to another), we find that they contain a dimension from very assertive and competitive and maximally different from women's values on the one side, the modest and caring and similar to women's values as the other. We have called the assertive pole "masculine" and the modest, caring pole "feminine". The women in the feminine countries have the same modest, caring values as the men; in the masculine countries they are somewhat assertive and competitive, but not as much as the men, so that these countries show a gap between men's values and women's values.

The three dimensions described so far all refer to expected social behaviour: toward people higher or lower in rank (Power Distance), toward the group (Individualism/Collectivism) and as a function of one's sex (Masculinity/Femininity). It is obvious, that the values corresponding to these cultural choices are bred in the family: Power Distance by the degree to which children are expected to have a will of their own. Individualism/Collectivism by the

cohesion of the family vs. other people, and Masculinity/Femininity by the role models that parents and older children present to the younger child.

- (4) A fourth dimension found in the IBM studies does not refer to social behaviour, but to man's search for truth. We called it "Uncertainty Avoidance": it indicates to what extent a culture programs its members to feel either uncomfortable or comfortable in unstructured situations. "Unstructured situations" are novel, unknown, surprising, different from usual. Uncertainty-avoiding cultures try to prevent such situations by strict laws and rules, safety and security, and on the philosophical and religious level by a belief in absolute truth: "There can only be one Truth and we have it". People in uncertainty-avoiding countries are also more emotional and motivated by inner nervous energy. The opposite type, uncertainty-accepting cultures, are more tolerant of behaviour and opinions different from what they are used to do; they try to have as few rules as possible, and on the philosophical and religious level they are relativist and allow many currents to flow side by side. People within these cultures are more phlegmatic and contemplative, and not expected by their environment to express emotions.

Table 6.1 lists scores for the 53 cultures in the IBM research, which allow positioning them in each of the four dimensions (plus a fifth, which we will describe in the next section). These scores are relative. We have chosen our scales such that the distance between the lowest- and the highest-scoring country is about 100 points.

The Bond Study

The other comparative value research project relevant to our topic was carried out by Michael Bond of the Chinese University of Hong Kong. He asked a number of Chinese social scientists to prepare a list of basic values for Chinese people. After discussion and elimination of redundancies, this led to a 40-item Chinese questionnaire which was subsequently translated into English. Through an international network of colleagues, this Chinese Value Survey was administered to 1000 students in a variety of disciplines (500 male, 500 female) in each of the 22 countries from all five continents; the only socialist country covered was Poland. Wherever possible, translations into the local language were made directly from the Chinese. To a Western mind, some of the items such as, "filial piety" look exotic — so exotic that it was explained "obedience

Table 6.1: Scores on five dimensions for 50 countries and 3 regions.

| Country | Power Distance | | Individualism | | Masculinity | | Uncertainty Avoidance | | Confucian Dynamism | |
|----------------|----------------|-------|---------------|-------|-------------|-------|-----------------------|-------|--------------------|------|
| | Index (PDI) | Rank | Index (IDV) | Rank | Index (MAS) | Rank | Index (UAI) | Rank | Index (CFD) | Rank |
| Argentina | 49 | 18–19 | 46 | 31–32 | 56 | 33–34 | 86 | 39–44 | – | – |
| Australia | 36 | 13 | 90 | 52 | 61 | 38 | 51 | 17 | 31 | 9–10 |
| Austria | 11 | 1 | 55 | 36 | 79 | 52 | 70 | 29–30 | – | – |
| Belgium | 65 | 34 | 75 | 46 | 54 | 32 | 94 | 48–49 | – | – |
| Brazil | 69 | 40 | 38 | 27–28 | 49 | 27 | 76 | 32–33 | 65 | 18 |
| Canada | 39 | 15 | 80 | 49–50 | 52 | 30 | 48 | 12–13 | 23 | 4 |
| Chile | 63 | 29–30 | 23 | 16 | 28 | 8 | 86 | 39–44 | – | – |
| Colombia | 67 | 37 | 13 | 5 | 64 | 42–43 | 80 | 34 | – | – |
| Costa Rica | 35 | 10–12 | 15 | 8 | 21 | 5–6 | 86 | 39–44 | – | – |
| Denmark | 18 | 3 | 74 | 45 | 16 | 4 | 23 | 3 | – | – |
| Ecuador | 78 | 45–46 | 8 | 2 | 63 | 40–41 | 67 | 26 | – | – |
| Finland | 33 | 8 | 63 | 37 | 26 | 7 | 59 | 22–23 | – | – |
| France | 68 | 38–39 | 71 | 43–44 | 43 | 18–19 | 86 | 39–44 | – | – |
| Germany, F. R. | 35 | 10–12 | 67 | 39 | 66 | 44–45 | 65 | 25 | 31 | 9–10 |
| Great Britain | 35 | 10–12 | 89 | 51 | 66 | 44–45 | 35 | 6–7 | 25 | 5–6 |
| Greece | 60 | 26–27 | 35 | 24 | 57 | 35–36 | 112 | 53 | – | – |
| Guatemala | 95 | 51–52 | 6 | 1 | 37 | 11 | 101 | 51 | – | – |
| Hong Kong | 68 | 38–39 | 25 | 17 | 57 | 35–36 | 29 | 4–5 | 96 | 22 |

| | | | | | | | | | | |
|----------------|-------|-------|----|-------|-------|-------|-------|-------|----|----|
| Indonesia | 78 | 45–46 | 14 | 6–7 | 46 | 23–24 | 48 | 12–13 | – | – |
| India | 77 | 43–44 | 48 | 33 | 56 | 33–34 | 40 | 9 | 61 | 17 |
| Iran | 58 | 24–25 | 41 | 30 | 43 | 18–19 | 59 | 22–23 | – | – |
| Ireland | 28 | 5 | 70 | 42 | 68 | 46–47 | 35 | 6–7 | – | – |
| Israel | 13 | 2 | 54 | 35 | 47 | 25 | 81 | 35 | – | – |
| Italy | 50 | 20 | 76 | 47 | 70 | 49–50 | 75 | 31 | – | – |
| Jamaica | 45 | 17 | 39 | 29 | 68 | 46–47 | 13 | 2 | – | – |
| Japan | 54 | 21 | 46 | 31–32 | 95 | 53 | 92 | 47 | 80 | – |
| Korea, Rep. of | 26–27 | 18 | 11 | 39 | 13 | 35 | 37–38 | 75 | – | – |
| Malaysia | 53 | 26 | 18 | 50 | 28–29 | 36 | 8 | – | – | – |
| Mexico | 81 | 48–49 | 30 | 22 | 69 | 48 | 82 | 36 | – | – |
| Netherlands | 38 | 14 | 80 | 49–50 | 14 | 3 | 53 | 19 | 44 | 14 |
| Norway | 31 | 6–7 | 69 | 41 | 8 | 2 | 50 | 16 | – | – |
| New Zealand | 22 | 4 | 79 | 48 | 58 | 37 | 49 | 14–15 | 30 | 8 |
| Pakistan | 55 | 22 | 14 | 6–7 | 50 | 28–29 | 70 | 29–30 | 0 | 1 |
| Panama | 95 | 51–52 | 11 | 3 | 44 | 20 | 86 | 39–44 | – | – |
| Peru | 64 | 31–33 | 16 | 9 | 42 | 16–17 | 37 | 45 | – | – |
| Philippines | 94 | 50 | 32 | 23 | 64 | 42–43 | 44 | 10 | 19 | 3 |
| Portugal | 63 | 29–30 | 27 | 19–21 | 31 | 9 | 104 | 52 | – | – |
| South Africa | 49 | 18–19 | 65 | 38 | 63 | 40–41 | 49 | 14–15 | – | – |
| Salvador | 66 | 35–36 | 19 | 12 | 40 | 14 | 94 | 48–49 | – | – |
| Singapore | 74 | 41 | 20 | 13–15 | 48 | 26 | 8 | 1 | 48 | 15 |
| Switzerland | 34 | 9 | 68 | 40 | 70 | 49–50 | 58 | 21 | – | – |
| Taiwan | 58 | 24–25 | 17 | 10 | 45 | 21–22 | 69 | 28 | 87 | 21 |
| Thailand | 64 | 31–33 | 20 | 13–15 | 34 | 10 | 64 | 24 | 56 | 16 |

Table 6.1: Continued.

| Country | Power Distance | | Individualism | | Masculinity | | Uncertainty Avoidance | | Confucian Dynamism | |
|----------------|----------------|-------|---------------|-------|-------------|-------|-----------------------|-------|--------------------|------|
| | Index (PDI) | Rank | Index (IDV) | Rank | Index (MAS) | Rank | Index (UAI) | Rank | Index (CFD) | Rank |
| Spain | 57 | 23 | 51 | 34 | 42 | 16–17 | 36 | 39–44 | – | – |
| Sweden | 31 | 6–7 | 71 | 43–44 | 5 | 1 | 29 | 4–5 | 33 | 12 |
| Turkey | 66 | 35–36 | 37 | 26 | 45 | 21–22 | 35 | 37–38 | – | – |
| Uruguay | 61 | 28 | 36 | 25 | 38 | 12 | 100 | 50 | – | – |
| USA | 40 | 16 | 91 | 53 | 62 | 39 | 46 | 11 | 29 | 7 |
| Venezuela | 81 | 48–49 | 12 | 4 | 73 | 51 | 76 | 32–33 | – | – |
| Yugoslavia | 76 | 42 | 27 | 19–21 | 21 | 5–6 | 88 | 46 | – | – |
| Regions: | | | | | | | | | | |
| East Africa | 64 | 31–33 | 27 | 19–21 | 41 | 15 | 52 | 18 | 25 | 5–6 |
| West Africa | 77 | 43–44 | 20 | 13–15 | 46 | 23–24 | 54 | 20 | 16 | 2 |
| Arab Countries | 80 | 47 | 38 | 27–28 | 53 | 31 | 68 | 27 | – | – |
| Bangladesh | – | – | – | – | – | – | – | – | 40 | 13 |
| Poland | – | – | – | – | – | – | – | – | 32 | 11 |

rank number 1 = lowest; 53 = highest (for CFD: 22 = highest)

to parents, respect for parents, honoring of ancestors, financial support of parents". Of course, to the Chinese mind, some of the items on the IBM questionnaire, designed by Western social scientists, may have looked equally exotic.

A statistical analysis of the 22-country Chinese Value Survey (CVS) results, based on the relative importance attached in a country to each value vs. the other values, yielded again four dimensions. Twenty out of 22 countries were covered earlier in the IBM studies. Thus, we could compare the country scores on each CVS dimension to those of the IBM dimensions, one Individualism-Collectivism (most of the Chinese value being associated with the collective pole), and one to Masculinity-Femininity, this in spite of the completely different questions, different populations, different moments in time, and different mix of countries. One dimension from the IBM studies, however, is missing in the CVS data. We did not find a CVS dimension related to Uncertainty Avoidance. We earlier associated this dimension with man's search for truth; it seems to the Chinese mind, this is not an essential issue. However, we did find another quite clearly marked dimension. It is made up of the following values:

On the positive side:

- persistence (perseverance)
- ordering relationships by status and observing this order
- thrift
- having a sense of shame

On the negative side:

- personal steadiness and stability
- protecting one's "face"
- respect for tradition
- reciprocation of greetings, favours and gifts

For some countries, the values on the positive side are relatively more important; for others, those on the negative side. All of them are already found in the teachings of Confucius, dating from 500 B.C. However, the values on the positive side are more oriented toward the future (especially perseverance and thrift), those on the negative side toward the past and present. Bond has therefore called this dimension Confucian Dynamism. Country scores on Confucian Dynamism for the countries surveyed with the CVS are listed in the last column in Table 6.1, raising the total number of relevant dimensions to five. Interestingly, Individualism (both in the Hofstede and Bond study) is strongly correlated ($r=0.84$) with a country's wealth (per capita GNP), and we can prove with diachronic data that the causality goes from wealth to individualism. Confucian Dynamism is strongly correlated ($r=0.70$) with a country's

economic growth over the past 25 years (increase in per capita GNP), with a likely causality from Confucian Dynamism to economic growth.

National Cultures and International Negotiations

Negotiations, whether international or not, share some universal characteristics:

- two or more parties with (partly) conflicting interests;
- a common need for agreement because of an expected gain from such agreement;
- an initially undefined outcome;
- a means of communication between parties;
- a control and decision-making structure on either side by which either side's negotiator(s) is/are linked to his/their superiors.

However, in international negotiations, the following characteristics vary according to the national negotiation styles of either side:

- the nature of the control and decision-making structure on either side;
- reasons for trusting or distrusting the behaviour of the other side (a certain amount of trust is an indispensable ingredient for successful negotiation);
- tolerance for ambiguity during the negotiation process;
- emotional needs of negotiators, e.g. ego boosting or ego effacement.

If one knows the approximate position of a country's national cultural value system on the various cultural dimensions listed in Table 6.1, one can predict aspects of the negotiation style of its negotiators.

- (1) Larger Power Distance will lead to a more centralised control and decision-making structure (key negotiations have to be concluded by the top authority);
- (2) Collectivism will lead to a need for stable relationships, so that negotiations can be carried out among persons who have become familiar with each other over a long time (often, several years). Every replacement of one person by another is a serious disturbance of the relationship, which has to be reestablished from scratch.

In collectivist cultures, mediators or go-betweens have a more important role in negotiations than in individual cultures. Formal Harmony is very important in a collectivist setting; overt conflict is taboo. Mediators are able to raise sensitive issues with either party within an atmosphere of confidence and to avoid confrontation.

- (3) Masculinity leads to ego-boosting behaviours and sympathy for the strong on the part of negotiators and their superiors. Masculine cultures tend to resolve conflicts by fighting rather than compromising. Femininity leads to ego-effacing behaviours and sympathy for the weak. Negotiations between two masculine cultures are more difficult than if at least one of the cultures is more feminine. A historical comparison that can be cited in this respect is the difference between the solution of the Aland Island crisis between Finland and Sweden in 1921, and the Falkland Island crisis between Argentina and Great Britain in 1983; the first was resolved peacefully through a plebiscite, the second is still unresolved in spite of a bloody war. Both Finland and Sweden in our research are found on the feminine side of the scale; both Argentina and Britain on the masculine side.
- (4) Uncertainty Avoidance leads to a low tolerance for ambiguity and distrust in opponents who show unfamiliar behaviours; negotiators from uncertainty-avoiding cultures prefer highly structured, ritualistic procedures during negotiations.
- (5) Confucian Dynamism leads to perseverance for achieving desired ends even at the cost of sacrifices.

Obviously, such predictions should be checked in empirical research.

Conclusion

For success in international negotiations, it is important that parties acquire an insight into the range of cultural values they are going to meet in the negotiations. This includes an insight into their own cultural values and the extent to which these deviate from those of the other side(s). Such insight will allow them to interpret more accurately the meaning of the behaviour of the other side(s).

In addition to insight, cultural differences in international negotiations demand specific skills:

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- For communicating the desired information and emotions to the other party by the spoken word, the written word, and nonverbal behaviour.
- For preparing, planning, and arranging negotiations: making an appropriate use of go-betweens, choosing places and times for meeting, setting up the proper social gatherings, etc.

It is important that cultural differences in international negotiations be recognised as a legitimate phenomenon, worthy of study, and as a liability skilled and well-trained negotiators can turn into an asset.

**A COMMENT ON THE USE OF HOFSTEDÉ'S CULTURAL
DIMENSIONS IN THE ACADEMIC LITERATURE ON
INTERNATIONAL BUSINESS NEGOTIATIONS**

JEAN-CLAUDE USUNIER

A number of authors have referred to Hofstede's cultural dimensions as potential explanatory variables of the processes and outcomes of international business negotiations, either in general (Adler *et al.* 1987; Elgström 1990; Kale & Barnes 1992; Weiss 1993, 1994; Tinsley & Brett 1997; Leung 1998; Morris *et al.* 1998; Bazerman *et al.* 2000) or in the case of negotiations with the Chinese (Shenkar & Ronen 1987; Kirkbride *et al.* 1991; Adler *et al.* 1992; Tse *et al.* 1994; Tinsley & Pillutla 1998) or with the Japanese (Hawrysh & Zaichkowski 1990; Goldman 1994; Brett & Okumura 1998; Wade-Benzoni *et al.* 2002). Sudhir Kalé in Chap. 2 of this book has outlined some of the consequences of these cultural dimensions on negotiation behaviour, in combination with personality traits and organisational variables.

Graham *et al.* (1994) have tested the relevance of Hofstede's dimensions for international business negotiations on the basis of a meta-analysis of previous empirical studies. They did it by comparing negotiation behaviour across eleven cultures (United States, Canada (Francophone), Canada (Anglophone), Mexico, United Kingdom, France, Germany, Former USSR, Taiwan, China and Korea). A number of negotiation variables (profits, satisfaction, problem solving approach (PSA), attractiveness of the other party) and relationships between these variables have been tested for correlation with the scores of these countries on Power Distance, Individualism, Masculinity and Long Term Orientation (LTO), using Pearson correlation coefficients. However, Tinsley & Brett (1997) have argued that Hofstede's cultural dimensions lack predictive power and cannot be used to predict negotiation behaviour in isolation of negotiation variables related to process (e.g. conflict-handling styles) and behaviour (e.g. seeking help from a boss). As outlined in Bazerman (2000), cultural as well as personality traits influence negotiation in conjunction with key elements of the negotiation game itself.

Power Distance and Negotiation

On the basis of Hofstede's concept of power distance, which is deeply ingrained in social life and takes its roots in early socialisation, Graham *et al.*

(1994) expect that cultures with higher PDI will place more emphasis on the importance of role relations, that is, buyer-seller relative power positions. Indeed, power distance is significantly correlated with the hypothesis that buyers achieve higher individual profits than do sellers (0.75 with $p < 0.05$). In a review of negotiation research involving power distance, Leung (1998: 650–653) shows that power distance is systematically related to conflict behaviour: in low PD societies, subordinates (e.g. negotiators who have to report to a constituency) will have a stronger tendency to resolve disputes on their own or to rely on their peers for conflict handling, than in high power distance societies. Moreover, high power distance results in greater tolerance for unjust events, unfair treatment, and promotes the acceptance of higher differentials in negotiators' roles, to the extent of even tolerating insulting remarks if it comes from a high status person belonging to the same ingroup (Gudykunst & Ting-Toomey 1988).

Individualism/Collectivism and Negotiation Behaviour

In line with point 2 of Hofstede's point on the influence of collectivism on negotiators attitude, Graham *et al.* expect negotiators from individualistic cultures to behave in a more self-interested way, being competitive and confrontative rather than problem solving oriented, and achieving higher profits when they behave individually. The correlation coefficients confirm these findings (IDV scores with profits: 0.67; IDV scores with PSA: -0.83 ; IDV scores with the relationship linking PSA to profits: 0.64; all $p < 0.05$). This is in line with the opposite preference of collectivist cultures for the maintenance of formal harmony and the avoidance of overt conflict, often a direct consequence of individualistic and competitive values which promote self-enhancement and an independent self rather than self-transcendence and an interdependent self (Markus & Kitayama 1991).

Brett & Okumura (1998), comparing Japanese and American negotiators, show that members of individualist cultures tend to endorse self-interest in negotiations more than people from collectivist cultures. Similarly, Tinsley and Pillutla (1998) show that Americans consider a self-interested behaviour more appropriate than their Chinese counterparts, and Wade-Benzoni *et al.* (2002) show that American negotiators intend to harvest more than Japanese negotiators, consistent with the view that individualist values increase the concern for one's own self-interest. Morris *et al.* (1998) show that Americans, members of a typical individualist culture, tend to rely more on a competing

negotiation style than the members of three collectivist cultures (China, India and the Philippines). Potter & Balthazard (2000) find that Chinese dyads negotiating via computer mediated technology achieved higher average joint profits than American dyads negotiating through the same communication medium, what supports Graham *et al.*'s findings. However, contrary to Graham *et al.*'s findings, Americans display a stronger preference for joint-problem solving than Hong Kong Chinese in Tinsley & Pillutla (1998).

In fact, Leung (1997) shows that in a number of studies comparing Chinese and Americans, Chinese score high on yielding and avoidance (consistent with the harmony-seeking orientation of collectivist cultures; see also the empirical findings of Morris *et al.* 1998), but also high on contending, what seems inconsistent with Graham *et al.*'s findings. Leung argues that animosity reduction is a major goal in dispute resolution in collectivist cultures while previous research shows that collectivists have a weaker preference for compromising and a stronger preference for avoidance than people in individualist cultures. To overcome this contradiction, Leung proposes that collectivists are concerned with "disintegration avoidance", that is, the major issue for them is whether the conflict has the potential to disintegrate an ongoing relationship. Contending will be acceptable as long as it does not threaten the relationship itself. He phrases it in the following terms (1997: 645): "The general prediction is that compared to individualists, collectivists will avoid behaviour that may lead to the disintegration of the ongoing relationship. That is, collectivists should prefer yielding and avoiding more strongly, and problem solving and contending [in terms of Pruitt's *Dual Concern Model*] less strongly than individualists".

Bazerman *et al.* (2000) emphasize that previous research has shown that negotiators coming from individualist societies are more concerned with preserving individual rights and attributes whereas the collectivist negotiator is more concerned with preserving relationships. Wade-Benzoni *et al.* (2002) argue that decision makers from individualist cultures and decision makers from collectivist cultures may respond differently to an allocation decision according to its context. Following Leung (1997) proposition that decision makers from collectivist cultures placed in dual roles (both allocator and recipient) will prefer equity, they show that Japanese decision makers, faced with a social dilemma, prefer equality solutions more than U.S. decision makers. The preference for equality in collectivist cultures (goals of equal outcomes for both parties) is confirmed by Tinsley & Pillutla (1998) who show that Chinese negotiators see equality-oriented behaviours as more appropriate than American negotiators. Furthermore, when briefed with pro-social instructions, Chinese negotiators tend to develop a goal of equal outcomes

while Americans are led by the same instructions to the aim of maximising their joint outcome.

Other Cultural Dimensions

Concerning the two last dimensions (masculinity and LTO), Graham *et al.* (1994) do not find significant links. In line with the third point of Hofstede (see 6.4), Graham *et al.* expect higher masculinity to lead to less nurturing attitudes and to lower satisfaction levels. However, the contrary result appears: masculinity leads to significantly higher satisfaction levels (0,68, $p < 0.05$) signaling that, probably, the influence of the masculine/feminine dimension on international negotiation behaviour should be interpreted cautiously. The sample of 700 experienced business people in 11 countries, used by Graham *et al.*, was probably composed of predominantly male national subsamples (their demographics do not describe distribution by sex); it is not a problem if the various samples had similar gender distributions. But, the test of the influence of the masculinity/femininity dimension on negotiation variables may be biased if the gender repartition of the national subsamples is not similar.

Graham *et al.* expect higher LTO to lead to a stronger influence of the role relations (buyer-seller) on profits. They cite Hofstede arguing that LTO should reflect “ordering relationships by status and observing this order” (Hofstede 1991: 165). However, this is not supported by their empirical findings. The expectation that the traditional Confucian, hierarchical society would lead the buyer to dominate was also disconfirmed by Adler *et al.* (1992) in the case of PRC Chinese negotiators. They explained that the prevailing economic conditions in today PRC still make it a seller’s market, thus probably offsetting the dominance of the buyer role which, on the contrary, can be found clearly in Japan (Hawrysh & Zaichkowski 1990), with an affluent economy which allows the traditional strength of the buyer’s role in Asian societies to emerge.

Similarly, it was expected by Graham *et al.* that negotiators from lower LTO cultures would behave on the basis of reciprocation, a series of closely tabulated favours on each side within a relatively short time period, thus calling for a stronger reciprocal relationship between PSA on each side. This is not confirmed. However, their study brings an unexpected result which seems quite consistent with the prediction of Hofstede that “Confucian Dynamism (LTO) leads to perseverance for achieving desired ends even at the cost of sacrifices” (1989: 200). In fact, PSA, problem solving approach, is strongly correlated with Long Term Orientation (0.89, $p < 0.05$).

A dimension which has not been examined by Graham *et al.* (1994) is uncertainty avoidance (UA). However in their study of U.S.-USSR trade negotiations, Beliaev *et al.* (1985) find support for the fact that negotiators coming from higher UA countries are somewhat unwilling to take risks, and prefer as emphasized by Hofstede “highly structured, ritualistic procedures during negotiations” (1989: 200).²

Beliaev *et al.* describe in the following terms the typical Soviet negotiator: “well trained in Party discipline; obedient, with a well-developed sense of hierarchy; hard working and trained but with narrow horizons; loyal to the state and fearful of making mistakes because of the risk of falling at the level of the average Soviet citizen; cautious, tough, inflexible because of the strictness of their instruction” (1985: 105). This portrait of a highly risk averse Russian negotiator, is confirmed by Graham *et al.* (1992) even after the Soviet regime has been abolished.

Conclusion

Some of the hypothesised influence of cultural dimensions on international business negotiations still remain to be tested, especially the influence of high power distance on a more centralised control exerted over negotiators, final decisions having to be made by the top authority. However, the relevance of Hofstede's cultural dimensions for international business negotiations seems now clearly established, even if they do not work as isolated predictors of the negotiation process and outcomes, but rather in conjunction with key aspects of the structure and the context of negotiation.

² These comments must be considered with some caution: the Ex-USSR or Russia were not included in Hofstede's study since there was no IBM subsidiary there. However, the nearer country in terms of geography, language and political regime, Yugoslavia, scored quite high on uncertainty avoidance (88).

Chapter 7

International Multilateral Negotiations and Social Networks

R. Bruce Money

Compared to their bilateral counterparts, multilateral negotiations in an international setting present an extremely complex set of negotiation phenomena. This paper proposes a model of negotiations that examines how national culture, organisation specific factors and individual characteristics of the negotiators impact the multilateral negotiation process in a cross-national context. Specifically, social network theory and tools are utilised to examine how coalitions form and roles emerge among participants. The model also posits the effect of social network activity on negotiation outcomes. Research propositions are forwarded in hopes of setting an agenda for the research stream implied by the model. Methods for testing the model and implications for academics and managers are also discussed.

“One [negotiator] arrived with a shopping list that included not only his own items, but those of the other four parties as well”

Devine (1990), describing a multilateral negotiation.

Introduction

The above quote illustrates the complexities of multilateral negotiation, or bargaining among several parties at the same time. For example, in the United States, forming and managing research and development consortia, such as

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14-firm SEMATECH for the semiconductor industry, or Microelectronics and Computer Technology Corporation (MCC) with over 100 member organisations, is a time-consuming, expensive, complicated and difficult process, often producing mixed results. Merely choosing the location of the consortium's headquarters can involve protracted, difficult negotiations (Browning *et al.* 1995; Gibson & Rogers 1994).

In an international setting, the multilateral negotiation process becomes all the more complex and difficult. The process of creating and maintaining the \$17 billion international space station, for example, involved agreements among governments and space agencies, such as NASA, from 14 countries. Each year \$2 billion of budget and production decisions need to be made among Boeing, the lead contractor and dozens of subcontractors from around the globe — virtually every major aerospace company in the world has some role. A recently negotiated issue was switching to a non-metric system, which was done over strenuous objections from European interests. One NASA consultant, in describing budget overruns and other challenges of the multinational effort involving 180 firms, remarked, "Managers have underestimated their task" (Cole 1998).

The management of Airbus, created in 1970 with sales currently of \$12 billion, is another example of businesses and governments of many nationalities involved in complex, multilateral negotiations to run a large venture. Airbus manufactures planes with wings from Britain, fuselages from Germany, cockpits from France and tailpieces from Spain. How to value each partner's assets, and which country will control the aircraft design have been subjects of intense negotiation (Goldsmith 1998).

International business negotiations are typically researched on a bilateral basis, i.e. a dyad consisting of a buyer and seller (Graham *et al.* 1988), or partner to partner in a joint venture (Brouthers & Bamossy 1997; Yan & Gray 1994). Even very complex negotiations, such as the General Motors-Toyota agreement to produce cars in the United States (Wiess 1987), typically revolve around two (albeit large) parties, and the underlying models acknowledge the need for more research on a multilateral basis. Multilateral negotiations are obviously important in the arena of world politics to peacefully resolve conflicts between countries concerning such issues as economic policies, disarmament, pollution and immigration. In a business sense, given the rise of strategic alliances between multiple firms (such as airline alliances), and the obvious importance of trade negotiations, such as GATT, to multinational firms (Kufour 1997), studying multilateral negotiation in an international business context has become a critical, yet unfulfilled need (Graham *et al.* 1994; Wiess 1996).

Multilateral negotiation is distinct from bilateral negotiation in three ways (Devine 1990): (i) coalitions inevitably form between parties; (ii) negotiators tend to vastly oversimplify the problem; (iii) various parties take on wider roles, such as leader, mediator, scapegoat and blocker. It is how coalitions and roles emerge that has gone largely unexplored (for an exception, see Polzer *et al.* 1998).

Pruitt (1994) describes two popular models of inter-organisational negotiation: the “constituent influence” model and the “mutual influence” model. Both account for the influence of outside constituents on those who negotiate (c.f. Greening & Gray 1994), although the latter model assumes more two-way influence than the former. However, both models draw a “misleading distinction between inter-organisational . . . and intra-organisational negotiation” (Pruitt 1994: 219) and show that preparation for negotiation is found more often in the second type than the first. Instead, he proposes a “branching chain” model of negotiation, whereby negotiation occurs in networks consisting of organisation members and parties outside the organisation which have an interest in the outcome. The networks are “chains” that begin inside the organisation, cut across organisational boundaries and end outside with stakeholders (e.g. investors, union members, citizens, governments).

This paper contributes to the international business literature by examining how coalitions form in a network-sensitive environment of multilateral negotiations, answering the call for more research in that realm (Pruitt 1995). The paper proposes a model that specifically examines social network activity among parties to an international multilateral negotiation, and what effect social networks might have on the outcome. Why do subgroups and roles emerge, who talks with whom in the process, and how are the negotiations affected? The treatment of these questions in an international or cross-cultural setting is the first to the author’s knowledge. In forwarding a model of social networks and international multilateral negotiation, the paper sets an agenda with research propositions for future studies in this topic.

Model Overview

Figure 7.1 shows the conceptual model for the paper. Antecedent constructs of national culture, with other characteristics of the international organisation and individual differences, influence social network constructs concurrent to multilateral negotiation, namely, clique formation and the emergence of player centrality, terms to be defined. These, in turn, influence two consequent

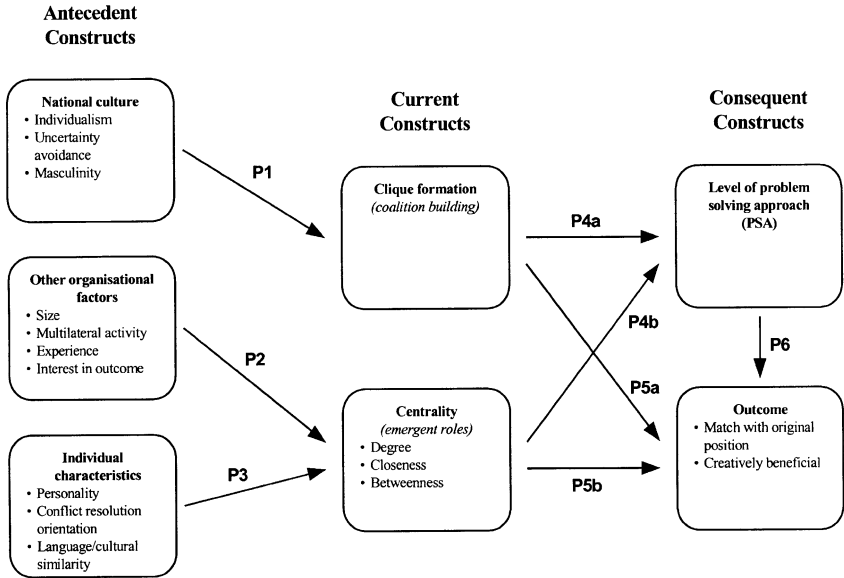


Figure 7.1: Proposed Model.

constructs of the negotiation outcome: the level of a problem-solving approach used, and the degree to which a negotiator’s original position reflects the final agreement or was creatively beneficial.

Separately, the problem-solving approach is theorised to directly affect the outcome as well.

Settings

International multilateral negotiation can involve and affect only governments, only firms, or a combination of the two types, which is typically the case (e.g. the International Monetary Fund’s proposed measures for Indonesia or the multi-country bank bailouts in Russia). Much illustrative attention has been focused on multilateral talks concerning the natural environment (Lang 1991) — e.g. air/water pollution, deforestation and nuclear accidents. International environmental negotiations obviously affect companies that, for example, need to conform to standards set forth in the Montreal Protocol (Williams 1992). Also, disarmament talks and the negotiated end of the cold war severely impacted the U.S. defence industry.

Trade talks, important to the basis and future of international business research (Czinkota & Ronkainen 1997), are where the topic of multilateral negotiation is typically showcased (Sjostedt 1991), particularly given the establishment and recently visible nature of the World Trade Organisation (WTO) (Hart 1997) in resolving the Kodak-Fuji dispute in the larger context of anti-dumping issues that the WTO handles (Petersmann 1996). Some economists (Krugman 1997) have disputed the need for any overarching global harmonisation of trade inputs or policies, such as rules of origin (Keizer 1997). However, the settling of trade disputes among countries and the firms that operate in those countries is an important topic of multilateral negotiation interest (Marceau 1997; Wang 1997). Government policies (Gomes-Casseres 1990; Nollen 1987) and interventions create imperfections that affect trade and foreign direct investment (Brewer 1993; Guisinger 1989). In addition, government assistance with exports (Kotabe & Czinkota 1992) demonstrates the salience of business-government issues that can be enlightened by multilateral negotiation research. Although international trade is probably the most visible, a variety of business-related phenomena demonstrate the importance of the topic and the need for exploratory theory building and subsequent testing.

Antecedent Constructs

Figure 7.1 reflects the widely recognised model (Graham 1987; Sawyer & Guetzkow 1965; Weiss 1993) that theorises that bargainer characteristics and situational factors (antecedent constructs) affect negotiation processes (concurrent constructs) that influence negotiation outcomes (consequent constructs). In the present research, the following constructs are antecedent:

National Culture

The SEMATECH and MCC consortia were formed to combat the erosion of U.S. market position by the Japanese. Indeed, over 70% of U.S. firms compete against foreign companies (Gulbro & Herbig 1996), underscoring the importance of understanding how national culture influences the negotiation process, which several studies have documented (Graham *et al.* 1994; Graham, *et al.* 1988). Most non-U.S. negotiators tend to adapt their styles more than Americans (Adler & Graham 1989) to the other party, increasing their

attractiveness (Francis 1991). Some cultures pay more deference (and profits) to the buyer than others, particularly in Japan — where the customer is apparently “kinger” than in other cultures (Graham & Sano 1989). Communications from representatives of “high-context” (Hall & Hall 1990) cultures, such as those in Asia or Latin America, where face-saving, innuendo and “between the lines” communication is important, are often misunderstood by counterparts from “low context” cultures, such as the United States or Germany, where more explicit communications place emphasis on the message content (Weiss 1993).

Hofstede and his colleagues identified five widely-used dimensions of culture from the Value Survey Module (VSM) and subsequent research (Hofstede 1980; Hofstede & Bond 1988): (i) *Individualism vs. collectivism*: The value of the individual’s rights, characteristics, and identity vis-à-vis those of the group. Cultures high in individualism emphasise what is best for the person. Cultures high in collectivism approach decisions from a group-oriented, “we”, standpoint. (ii) *Uncertainty avoidance*: Basically a tolerance for risk. Cultures with high uncertainty avoidance tend to shun risk and seek ways to add structure and control to their environments, while those in low uncertainty avoidance cultures, such as the United States, are more comfortable with risk. (iii) *Masculinity*: High masculinity cultures emphasise material achievement, competition and assertiveness. Low masculinity (high femininity) cultures value quality of life, interdependence and relationships. (iv) *Power distance*: Indicates the tolerance for social hierarchy and class structure. High power distance cultures exhibit marked class and power differentials by title and social standing. In low power distance cultures, egalitarianism and equality are valued. (v) *Confucian dynamism*: Basically refers to the time orientation of a culture, that is, long-term or short-term. Cultures high in Confucian dynamism emphasise long-term horizons (as do many Asian cultures, hence the Chinese affiliation of the construct’s name). Three of the above dimensions (individualism, uncertainty avoidance, and masculinity) will be the subject of examination in the model because they have been deemed to have the most effect on social network concurrent constructs (Money *et al.* 1998).

Other Organisation Factors

Besides culture, characteristics specific to a party at the bargaining table would affect the type and level of social network activity in negotiations. For purposes of the model, these include: (i) *Size*. Negotiators from larger, more powerful organisations probably become more central to the negotiation (Lang 1991;

Winham 1987). Research has shown that larger companies tend to succeed in negotiations more than smaller ones (Gulbro & Herbig 1996). (ii) *Level of current multilateral activity*. This refers to the level of participation (intense vs. peripheral) in the negotiation at hand. Members in consortia who are more “networked” stay in their consortia longer (Olk & Young 1997). Also, trade “network” analysis has found that nations who trade more are more central to the global trade process (Smith & White 1992). It follows that a similar pattern would emerge in multilateral negotiation; the more involved participants would emerge as more central to the network. (iii) *Experience*. In general, a historical perspective on (ii) above, experience refers to the length of time an organisation (not necessarily the individual who represents it) has been involved in the current or past multilateral negotiations. Those who are more familiar with the complexities seem to better deal with them and become leaders in the group (Devine 1990). (iv) *Interest in the outcome*. Involvement has been shown to be an important determinant of the success in forming long-lasting research and development consortia (Olk & Young 1997). From a networks perspective, other research has shown that those negotiators who put items on the agenda (a manifestation of interest in the outcome) typically emerge as leaders or chair of various causes in multilateral negotiations (Lang 1991). In the management literature, interest alignment has been shown important in the negotiation process (Polzer *et al.* 1998). Interest in the outcome could be operationalised by measuring the importance of the issue to the various parties to the negotiation.

Individual Characteristics

In addition to the cultural and “structural” nature of the environments from which the various negotiators come, individual differences among people have long been shown to influence the process and outcomes of negotiation (Lewicki *et al.* 1993). U.S. diplomat Elliot Richardson indicated that in the five-year Law of the Sea Conference, the talks were influenced much more by the personality of head delegates than by the economic power of the country which they represented (Graham & Sano 1989). Personality (Rubin & Brown 1975), conflict resolution orientation (Thomas 1992) and gender (Pinckley 1990) — similar, but not identical to Hofstede’s masculinity/femininity dimension — are some of the ways in which characteristics of the individual negotiator have an effect on the process of coalition and role emergence. In addition, language similarity among individuals affects negotiations (Adler & Graham 1989). For example, it is easier for all of the Spanish speakers from several countries to get together informally. West & Graham (1998) found that distance from English

in the languages of the countries Hofstede studied correlated with the distance in cultural values from those of the United States.

Concurrent Constructs from Social Networks

Differences in social network activity are a natural outgrowth of variance in the above constructs. Social networks analysis, which considers the nature of the relationships between individuals in a social system (Granovetter 1973), has been used to study phenomena in management (Labianca *et al.* 1998; Rowley 1997), marketing (Iacobucci & Hopkins 1992; Reingen & Kernan 1986) and economics (Berkowitz & Fitzgerald 1995). Only a few researchers have considered differences in networks across groups, as the current study proposes. Olk & Young (1997) found that research and development consortia members who had ties with other member organisations outside of the consortium agreement were more likely to continue their membership. Social networks in China and the Netherlands have been shown to differ greatly (Ruan *et al.* 1995), and Chinese networks seem to strengthen over time (Ruan *et al.* 1997). In international negotiations, a rich context for its application, social network analysis has not been utilised. Of the many concepts that are available from social networks theory, two are considered particularly relevant to multiparty negotiations: Clique formation (the phenomenon of coalitions) and levels of centrality (related to emergence of roles in a group of negotiators).

Clique Formation

This formal network term measures to what extent ties between cohesive subgroups form among group members within the larger system of individuals (Knoke & Kuklinski 1982). Individuals who forge ties through social functions or formal conversations leading to similar positions on an issue would be considered a clique. The concept of coalition among parties has been found to be related to interest alignment in the management literature (Polzer *et al.* 1998), and is considered a key facilitating factor in multinational negotiation (Touval 1989). For example, in the Law of the Sea Conference, the “Group of 77” emerging markets and “Landlocked and Geographically Disadvantaged” coalitions formed. Formally, network analysis clique detection has been used previously to study the subgroups among economic development organisations (Hagen *et al.* 1997).

It is generally expected that certain dimensions of national culture will affect the formation of cliques (coalitions) as parties to a multilateral negotiation. Highly collectivist cultures (low in individualism) will tend to naturally form more ties with more players, as will highly risk avoidant (high uncertainty avoidance) cultures, afraid of being on the losing side of important agreements, which has been demonstrated by prior research (Winham 1987). Highly masculine cultures would be less likely to form cliques, as competition rather than co-operation characterises their cultures. Expressed as a research proposition:

Proposition 1: Negotiators from national cultures that are characterised by:

- (a) low individualism;
- (b) high uncertainty avoidance; and
- (c) low masculinity

will form more coalitions (cliques) than negotiators from cultures characterised by high individualism, low uncertainty avoidance and high masculinity.

Centrality

As the term suggests, centrality refers to how strategically placed an actor (i.e. company or individual) is in a network (Freeman *et al.* 1980). Centrality is comprised of three measures: *degree* (the number of ties in the network between individuals); *closeness* (the sum of the fewest number of contacts between an individual and each other person); and *betweenness* (the frequency with which an individual acts as an intermediary between pairs of others in the network on the shortest “path” connecting those pairs). Research in management (Rowley 1997) and marketing (Ronchetto *et al.* 1989) have used the centrality concept to show the importance of the position of an influential individual in a communication network, or an interdepartmental purchasing decision, for example.

In the current model, centrality is proposed to be positively influenced by the organisation factors delineated above. That is, large nations or firms who have a high level of trade activity and experience would tend to become more central players in the negotiation process. Empirical evidence for this phenomenon exists in France becoming “spokesperson” for the European Union during GATT negotiations and WTO debates (Finel-Honigman 1997). A high level of interest in the outcome would also lead negotiators to seek out “central” positions of influence in the group to sway the result of the negotiations in their

favour. Prior research has shown the importance of turning to a key source of influence in the event that negotiations break down or need facilitation (Aurisch 1989).

Proposition 2: Centrality (as measured by degree closeness, and betweenness) of negotiators will be positively associated with:

- (a) organisation size (GNP, revenues, number of employees, etc.);
- (b) high level of current multilateral activity;
- (c) experience in multinational negotiations; and
- (d) level of interest in the outcome.

Personal characteristics also are expected to predict which players will become more central in a negotiation. Those negotiators who exhibit a more extroverted personality (Lewicki *et al.* 1994) would be expected to exhibit a high degree of centrality. Individuals who use a more collaborative (as opposed to confrontational) style of conflict resolution (Thomas 1992) would emerge as central figures, as would those who share a common culture or language with a broader range of nationalities (such as Spanish, for example).

Proposition 3: Centrality (as measured by degree, closeness and betweenness) of negotiators will be positively associated with:

- (a) extroverted personalities;
- (b) collaborative conflict resolution styles; and
- (c) language and cultural similarity with group members.

Consequent Constructs: Problem Solving and Outcomes

The problem-solving approach in negotiation (or PSA) is defined as the degree to which bargainers use co-operation, collaboration and information exchange in arriving at a solution (Graham *et al.* 1994), or what Lewicki *et al.* (1994) describes as “integrative” negotiation. In contrast, the lack of PSA (or “distributive” bargaining) would be characterised by a win-lose, or zero sum approach. In addition, two types of negotiation outcomes are posited: (i) how closely the actual agreement matched the negotiator’s original position or goal; and (ii) how creative solutions might be in generating outcomes that were previously unconsidered, but were nonetheless advantageous to the negotiator — creating “a bigger pie”, in essence.

The model proposes that clique formation (coalitions) and centrality (emergent roles) influence positively both PSA levels and outcomes in the

international setting of the study. This is because more collectivist, less masculine and more risk avoidant national cultures are posited to form cliques and have been shown to use a higher level of PSA within the group (Graham *et al.* 1988). Erez & Earley (1993) suggest that national culture affects ingroup-outgroup differences; specifically, that members of cliques in more collectivist cultures tend to protect one another more, and treat outgroup members more harshly than do clique members in more individualistic cultures. Ingroup members in more collectivist, high uncertainty avoidance cultures are more susceptible to group pressure and more likely to disregard outgroup opinions (Hofstede 1980).

Also, those negotiators who display high centrality in the multilateral process would likely be more motivated to use PSA and generate positive outcomes, because of the difficulty of the “internal negotiation” (coalition building) compared to the “external negotiation” with other members of the process at large (Pruitt 1995; Winham 1989). That is, once past the difficulty of forming a coalition and becoming central to the process, negotiators would be more likely to take pride in finishing the negotiation task (Lang 1991) by using a high level of PSA to the benefit of a wide range of parties. Olk (1997), for example, found that more centralised, face-to-face activity in multilateral consortia leads to participants judging the outcomes as more successful. As propositions:

Proposition 4a: The level of use of the problem-solving approach (PSA) will be positively influenced by the extent of clique formation.

Proposition 4b: The level of use of the problem-solving approach (PSA) will be positively influenced by the level of centrality (degree, closeness and betweenness).

Proposition 5a: outcomes that more closely match a negotiator’s original goal and/or are considered creatively beneficial will be positively influenced by the extent of clique formation.

Proposition 5b: outcomes that more closely match a negotiator’s original goal and/or are considered creatively beneficial will be positively influenced by the level of centrality (degree, closeness, and betweenness).

PSA and Outcomes

Although PSA has been used mostly as a concurrent construct in previous studies (Adler & Graham 1989; Campbell *et al.* 1988), in this study, inclusion

of social networks activity as a concurrent construct suggests that problem-solving might also be considered a result of network emergence in the process. In addition, multilateral negotiation studies suggest that problem solving is more dependent on process (i.e. becomes a type of outcome) than in a bilateral situation (Touval 1989). However, consistent with the previously established positive relationship between PSA and mutually beneficial outcomes, the following proposition is advanced:

Proposition 6: The level of use of the problem-solving approach (PSA) is positively associated with outcomes that more closely match a negotiator's original goal and/or are considered creatively beneficial.

Proposed Methods

Studying multilateral negotiation is vastly more complicated than analysing a series of bilateral bargaining sessions (Winham 1987), which would suggest care be exercised in developing methods to eventually test the propositions herein with formal hypotheses. Because of such complexities, most of the methodology in extant research on multilateral negotiation takes the form of case studies (Devine 1990; Williams 1992) that describe a complex government or business-related negotiation and explicate lessons to be learned (Koh 1990). Alternatively, prescriptive pieces abound that include "how-to" direction in conducting multilateral negotiation (Aurisch 1989).

Collecting data in an actual or a series of actual multilateral negotiations would require nearly an impossible omnipresence to record simultaneously the actions and responses of many parties. Some kind of a post-hoc survey on what happened in the negotiation might suffice. Recreating a multilateral negotiation in a laboratory setting would be less than ideal, reflecting the accuracy vs. reality trade-offs inherent in methodology decisions (McGrath 1982). To plausibly test the propositions herein, some kind of simulation is suggested. Subjects of variant nationalities (such as a multinational student group) could be assigned to groups to study the real or constructed position of a nation or firm that is party to a multinational negotiation. For example, a consortium similar to Airbus could be constructed, with each person in the group representing a company from a different country. Variation in the groups in national culture and other antecedent constructs (e.g. size of organisation, language/ cultural similarity) could be created either by the simulation, or by actual nationalities of the subjects. Individual characteristics could be varied by administering personality inventories or conflict-resolution surveys beforehand,

and making group assignments based on these differences/similarities. Interests in the outcome or positions on the issue could also be manipulated across groups. The teams would then negotiate or respond to an offer presented in the simulation. Arranging for the negotiations to be conducted by e-mail with all group members logged on simultaneously, with a copy of all correspondence going to an administrator, would create the data necessary to study a complicated multilateral negotiation. Clique formation and centrality, as well as the consequent constructs could be measured.

As an alternative to a single, large negotiation simulation, a series of smaller, less unwieldy negotiations could be carried out to examine the relationships between constructs suggested in research propositions. The insights gained from the results of the smaller simulations might possibly be aggregated in discussing new knowledge for the topic. In either type of simulation, additional, rich qualitative data could be gathered by arranging a face-to-face meeting either formally or informally (e.g. a casual lunch), videotaping the interactions and surveying the subjects post-hoc on bargainer characteristics important to the negotiation, such as interpersonal attractiveness of other parties.

Unit of Analysis

The unit of analysis in multilateral negotiation should be considered at three levels. The first is the individual person who does the negotiating, The second is the organisation that the person represents: a business, a government institution (e.g. the State Department) or a Non-governmental Organisation, such as the Red Cross, Sierra Club, or AARP. The third is the country from which the institution and person come. The unit of analysis in the study is primarily the organisation, but national culture and individual personality differences of the negotiators would be measured at the individual level.

Measurement

National culture could be a predetermined variable, depending on the real or assigned nationalities of the subjects involved. Rather than assuming Hofstede's 1980 cultural characteristics assigned to the nationalities, his updated VSM 94 could be administered to participants to actually measure cultural dimensions present in the sample. Similarly, a multinational research

team is currently measuring culture's impact on organisations and leadership in 61 countries (House 1998); perhaps those results/scores could be utilised as well. Other organisation factors (size, experience etc.) could be manipulated in the simulation.

For the social network constructs, the measurements would be taken by asking the participants with whom they discussed the simulation's issues. Sufficient time and space would need to be provided to allow free association among members during the simulation. A blockmodel (Harary 1959) could then be constructed that lists the participants on both an x and y axis graph, with a dichotomous entry for whether a person was contacted by someone else (taking a 1 on the grid) or not (taking a 0):

| | | <i>Negotiator</i> | | | | | | |
|-------------------|----------|-------------------|----------|----------|----------|----------|----------|----------|
| | | A | B | C | D | E | F | G |
| <i>Negotiator</i> | A | – | 0 | 0 | 1 | 1 | 0 | 0 |
| | B | 1 | – | 1 | 0 | 0 | 0 | 1 |
| | C | 0 | 0 | – | 1 | 0 | 0 | 0 |
| | D | 1 | 1 | 0 | – | 1 | 1 | 0 |
| | E | 0 | 0 | 1 | 1 | – | 0 | 0 |
| | F | 0 | 1 | 0 | 1 | 1 | – | 1 |
| | G | 1 | 1 | 0 | 0 | 1 | 1 | – |

When the blockmodel is entered into the UCINET IV (Borgatti *et al.* 1992) or another social networks software program, measures of clique formation and centrality are produced. Qualitative data on the nature and strength of coalitions and centrality measures could also be collected (e.g. "How much did you trust the leader of the coalition?"). Centrality is conceptualised in the present research for individuals ("point" centrality), but the degree of PSA use and outcomes are also group-level concepts. Therefore, a broader measure of centralisation (or "graph" centrality) for the entire negotiating group can and should also be examined as to its effect on the consequent constructs.

Level of PSA usage could be determined with scales extant in the negotiations literature (Alder & Graham 1989). Measures of outcomes could be taken by surveying subjects as to how closely the outcome matched their original position or goals, and to what extent "creative" solutions were found that were previously not considered, but made the results better than what the negotiator originally expected.

Construct Equivalence and Data Analysis

For the various languages spoken by the members of the sample, the survey instruments would be translated and backtranslated by native speakers, perhaps even “decentered” if possible. However, measuring the constructs in a sample that includes several varying cultures and languages would raise the issue of construct equivalence inherent in international research (Davis *et al.* 1981). Equivalence has been a thorny issue concerning the PSA measure in past international negotiation studies (Graham *et al.* 1988). The structural equation modelling tool of partial least squares (Fornell & Bookstein 1982), or PLS, has been shown effective in dealing with construct equivalence problems. This is because it estimates parameters independent of sample sizes, avoids parameter estimation biases inherent in regression and minimises reductionism by allowing use of formative indicators of a construct (Graham *et al.* 1994). PLS would therefore be recommended in calculating parameter estimates to test the proposed relationships between constructs.

Implications and Conclusion

For academics, the current study implies that much work remains in theory building and testing in the field of international negotiations. Multilateral negotiations in the international arena, its natural habitat, is an under-researched field that deserves more attention in the international business literature. This study attempts to forward a partial agenda. The inclusion of social networks in the model adds the interesting and important dimension of who interacts with whom, and what impact such interactions have on the negotiation outcomes.

For the benefit of managers, the study sets the stage for future empirical research to assist in understanding what in the past has been a highly complex and daunting process. Hopefully, such future studies would highlight effective strategies to use in the multilateral negotiating setting, while avoiding its inherent pitfalls (Devine 1990). Success may not automatically come to the most powerful player at the table, but may instead be the result of skilfully forming coalitions and aligning with, or actually becoming a figure of high centrality in the process. One of the more interesting questions for managers that might be addressed in future studies is that of degree of influence in larger, government-based negotiations. If it is indeed possible through social network

activity for businesses to “lobby” the process of diplomacy, how does one find the highly central players to attempt to influence?

For international academics and managers alike, the complexities of multilateral negotiation can be overwhelming. In the words of one researcher, “The problem with this . . . is that it is often a very messy affair, almost defying generalisation” (Holsti 1982: 160). It is hoped that this paper has provided some structure to the issue and that future testing of the propositions herein might make the understanding of multilateral negotiations somewhat less “messy”.

Acknowledgements

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Chapter 8

The Role of Time in International Business Negotiations

Jean-Claude Usunier

Herb Cohen recounts a negotiation with Japanese partners in the following terms: “Instead of beginning negotiations right away, they first had me experience Japanese hospitality and culture. For more than a week I toured the country from the Imperial Palace to the shrines of Kyoto. They even enrolled me in an English-language course in Zen to study their religion. Every evening for four and a half hours, they had me sit on a cushion on a hardwood floor for a traditional dinner and entertainment. Can you imagine what it’s like sitting on a hardwood floor for all those hours? If I didn’t get hemorrhoids as a result, I’ll probably never get them. Whenever I inquired about the start of the negotiations, they’d murmur, “Plenty of time! Plenty of time!” (Cohen 1980: 94).

Time-based misunderstandings in international business is a classic topic which has drawn much attention and given rise to a lot of anecdotes, most of them relating to appointments, punctuality and the diverse concepts of time-related courtesy across cultures. Synchronisation is always difficult; even when the basic time codes seem to be shared by people or by organisations, there still may be some significant variations related to the particular time systems of individuals or the specific temporal cultures of organisations. Complex negotiation, such as in the case of international turnkey operations, requires a synchronisation process which is heavily loaded with precise, linear time; meeting the dates is strongly emphasized and delay penalties are assigned to lateness in the realisation phase.

Among all the dimensions of culture which have a significant but almost invisible impact on business negotiations, time patterns are probably the

strongest. It illustrates the invisible nature of culture particularly well: business negotiators wear watches, use a planner, and agree that it is standard practice to fix dates and deadlines, that is, they seemingly share common beliefs about time management. Yet, beyond this apparent uniformity, they behave quite differently in terms of planning and scheduling tasks. In fact, time permeates the whole of business negotiation, both the starting phase and the process, and finally also the outcome of the negotiation, at least in terms of durability of the business relationship. Taking time explicitly into account in international business negotiations makes all the more sense when one realises that there are differences in the representation of time and how the patterning of time consistently differs across cultures. As the example of Cohen shows, there are substantial differences in the very beginning of business negotiations, and that is why use of time in the starting phase is dealt with: getting to know each other, scheduling the process and making appointments. The negotiation process itself involves a series of tasks that are either directly time-related (planning tasks for instance) or are embedded in time, such as time pressure in the bargaining process which may result in one party unnecessarily yielding for reasons of perceived time pressure. When discussing substantive clauses dealing with plant construction or common operations, the partners plan, define dates and deadlines and possibly set delay penalties. This chapter explains how this common planning process is often flawed by the uneven temporal cultures of the partners, sometimes making the negotiation of common planning an illusion rather than a reality. Time may also be viewed as an outcome of the negotiation; interpretations vary as to the extent to which the signing of a contract is seen as actually concluding the negotiation process. Finally, advice is offered for using time shrewdly in international business negotiations. Although examples in this chapter are taken from a great many countries and cultures, the major contrast is between Western temporal models (linear, economic time), mostly that of Americans and Northern Europeans, and Eastern Asian time patterns (cyclical-integrated time), especially Chinese and Japanese, as East Asian nations are now obvious challengers of the Westerners in terms of business efficacy, given their rise in world trade.

The Influence of Time on International Business Negotiations

An isolated round of negotiation for selling aircraft can take place over some months (the negotiation time itself); several such “rounds” may be necessary for signing a particular contract between an airline and a plane manufacturer that will extend over the next five years, including maintenance and possible

change for a new version of the plane (venture time). These two time frames are generally embedded in a much longer relationship between the airline and the aircraft company, which may have been continuous over the last twenty-five years (time frame of the exchange relationship). Time aspects of negotiation have their initial basis in the actors: How long will they negotiate, from start to finish? Will they participate up to implementation? What is their own cultural background as far as time is concerned? How does the negotiation fit with their personal agenda, as individuals and as members of organisations, with their degree of occupation and the possible scarcity of their individual time? Time is related to *the structure of negotiation*: parties may set a common agenda, plan and organise negotiation on the base of precise time schedules or, on the contrary, they may prefer an informal style of negotiation in which time is seen as a constraint rather than a key resource. Time may also influence *negotiation strategies* in as much as future orientation seems a necessary prerequisite for developing an integrative strategy. Time works also as a *process variable*, influencing negotiation phases, the appointments between the parties and the rhythm of negotiation, its pace, speed and its rituals. Finally, time is embedded in the kind of outcomes sought by the parties, whether a deal, with strict time boundaries, or a relationship which is hoped to extend into the long term. Table 8.1 presents the different aspects of time which must be considered in international business negotiations when they involve people from different cultural backgrounds.

As emphasized by Ancona *et al.* (2001), a temporal framework involves three separate categories with a set of interrelationships between these categories: conceptions of time (based mostly on culture), mapping activities to time (related to both situations and tasks) and actors relating to time (i.e. their individual beliefs, behaviour, and adjustment). Time management in international business negotiations is a complex issue as shown in Figure 8.1. First, it is both a process and an outcome variable. Secondly, individual negotiators have their own attitudes to time and time management which result from their personality traits (Usunier & Valette-Florence 1994). Last but not least, negotiators belong to particular national/cultural groups in which they have been educated; consequently, they have developed a view of what time *is* and how it should be managed in terms of *synchronisation with others* in the native group. Synchronisation, which means in Greek developing a common time frame, is the key learning process through which people develop beliefs, attitudes and behaviours related to time management. In negotiators' native cultures, there are modal beliefs and behaviour as to setting dates, dealing with delays and managing time in meetings. Time-loaded negotiation activities display both cultural and individual variability and they are influenced by

Table 8.1: Time in international business negotiations.

| | |
|--|--|
| Starting the negotiation | <ul style="list-style-type: none"> • Time for preliminaries (getting to know each other) • Setting the agenda/scheduling the negotiation process |
| Time in the negotiation process | <ul style="list-style-type: none"> • Making appointments and setting deadlines • Managing temporal clash in IBNs • Temporal clashes between negotiating organisations • Time pressure in the bargaining process • Timing of concessions |
| Relationship time frame | <ul style="list-style-type: none"> • Long-term orientation favoring an integrative orientation • Making plans together: planning construction and resources; dealing with deadlines and delays • Discrepancies in the partners' temporal cultures |
| Time as an outcome variable | <ul style="list-style-type: none"> • Relationship vs. deal: continuous vs. discontinuous view of time • Written agreements as a time-line for negotiation |

situational variables in the negotiation process, such as the amount of time available for talks or some inescapable deadline (e.g. the date of the opening ceremony for the Olympic games).

The next section insists on cross-cultural differences in time patterns. However, it should always be kept in mind that there are also individual and situational determinants of negotiators' time. For example, an American negotiator whose cultural background emphasizes time scarcity may nevertheless display patience and a sense of timelessness, if he has plenty of time available and his company has not put him under pressure to close the deal promptly.

Cross-cultural Differences in the Patterning of Time

Most business concepts are time-based: actualisation, investment choice, product life cycle, sales forecasting or the planning of new product launches,

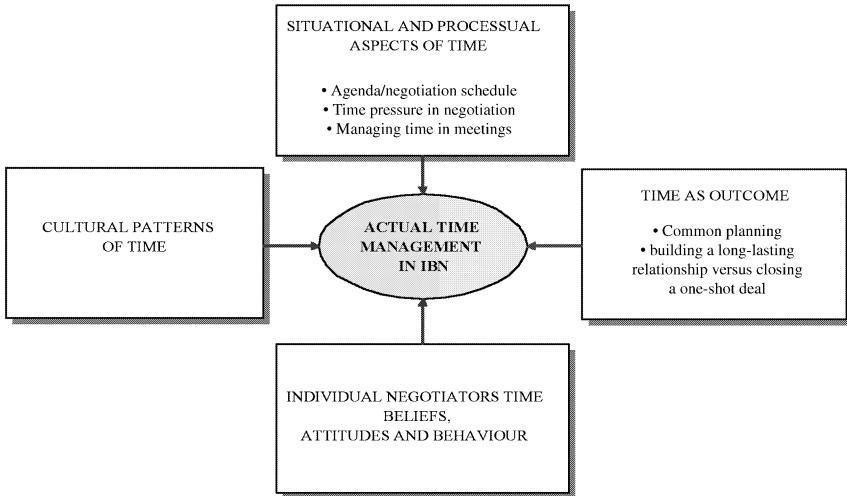


Figure 8.1: Determinants of time management in IBN.

to name a few. Normative time in marketing and management seems indisputable, and its very nature is rarely questioned: it is perceived as linear, continuous and economic. However, time, in a cross-cultural perspective, is probably the area where differences are both the largest and the most difficult to pinpoint, because assumptions are very deep-seated; and formally, we adopt a common model of time. People's relationship with time changes with respect to periods of history and the level of human development, according to the technology available for measuring time, to the emphasis given to natural and social rhythms, and to the prevailing metaphysical views. Each vision of time (*Zeitanschauung*) corresponds to a vision of the real world, its origins and destiny (*Weltanschauung*). Time manifests itself prominently through its social functions in that it allows people to have a common organisation of activities and helps to synchronise individual human behaviour. Encyclopaedic approaches to the concept of time (Attali 1982) show that never has one time pattern eliminated another previous one. Each new time pattern superimposes itself on the one that previously prevailed. As a consequence, individual time perceptions may result from adding or mixing different basic patterns of time. Most of the literature in cultural anthropology considers time perceptions as cultural artifacts. As Gurevitch states (1976: 229), "Time occupies a prominent place in the 'model of the world' characterizing a given culture".

Dimensions of Time Orientations

Table 8.2 shows time-related cultural assumptions which correspond to four common problems:

- (1) To what extent should time be regarded as a tangible commodity? (economicity of time);
- (2) How should tasks and time be combined? (Monochronic vs. polychronic use of time);
- (3) Should time be seen as a single continuous line or as combining multiple cyclical episodes? (Linearity vs. cyclicity of time);
- (4) What are the appropriate temporal orientations: towards the past, the present and the future?

As the reader will see, there is some overlap between the prevailing solutions to these four questions. However, I have noted all four basic time assumptions because they need to be considered in order to acquire a substantive view of what is a cultural model of time, which is exemplified at the end of this section by the Japanese *Makimono* time.

Economicity of Time

Time may be seen as external to us and, as such, be treated like a tangible commodity. The concept of economic time is based on accurate time reckoning, dependent on precise dating and defined duration. It results in people trying to use their time as wisely as possible, scheduling, establishing timetables and deadlines. Measurement of parking meter time by units of 7.5 minutes or sport performance in hundredths of a second is typical of economic time being precisely measured and bearing direct and explicit financial consequences. Many European countries as well as the United States, are emblematic of the “time-is-money” culture, where time is an economic good (Usunier 1991). Since time is a scarce resource, or at least perceived as such, people should try to achieve its optimal allocation between the competing ways of using it. Norms tend to be very strict regarding time schedules, appointments and the precise setting of dates and durations in a society where time is strongly felt as economic. Needless to say, that attitudes towards money and the money-value of time are inseparable from business negotiations. Economicity of time has a general impact on buyer-seller interaction: “undue” waiting is experienced as a waste of scarce resource and the time spent negotiating together is always balanced with the potential return of the deal.

Table 8.2: Time-related cultural differences.

| Basic problem/Cultural orientations | Contrasts across cultures |
|--|--|
| <p>Is time money? (a) Economicity of time (tangible time)</p> | <p>Time is regarded as a scarce resource or, conversely, as plentiful and indefinitely available.</p> |
| <p>How to schedule tasks (b) Monochronism vs. polychronism</p> | <p>Only one task is undertaken at any (preset) time, following a schedule (“agenda society”), vs. dealing simultaneously with different tasks, actions and/or communications (polychronism) for convenience, pleasure and efficiency.</p> |
| <p>Is time a continuous line? (c) Linearity (L) vs. cyclicity (C) of time</p> | <p>Time is seen as linear-separable, cut in slices (L) vs. the daily, yearly and seasonal cycles are emphasized (C).</p> |
| <p>How should we emphasize past, present and future? (d) Temporal orientations</p> | <p>The focus in negotiation may be on future common achievements, past, present and/or future relationships, or present conflicts and trade-offs.</p> |
| <p>(i) towards the past</p> | <p>People with high past orientation consider the past as important: resources must be spent on teaching history, visiting museums, and referring to tradition and past works. The basic assumption is that people’s roots are implanted deep in the past and no plant can survive without its roots. Conversely for low past orientation.</p> |
| <p>(ii) towards the present</p> | <p>People with high present orientation consider that they basically live “here and now”. Although not always enjoyable, the present must be accepted for what it is: the only <i>true</i> reality we live in.</p> |
| <p>(iii) towards the future</p> | <p>People easily and precisely envisage and plan their future. They are project-oriented, prepare for the long-term, appreciate the achievements of science, and so on. For them the future is inevitably “bigger and better”. Conversely for low future orientation.</p> |

Monochronic vs. Polychronic Use of Time

Hall (1983) has described two extreme ideal-types of behaviour in task scheduling, which he calls M-time (monochronism) and P-time (polychronism). Individuals working under M-time do one thing at a time and tend to adhere to preset schedules. When confronted by a dilemma (e.g. a discussion with someone that lasts longer than planned), M-time people will politely stop the conversation, in order to keep to their schedule. In M-time societies, not only the start of a meeting but also its finish will be planned. P-time, on the other hand, stresses the involvement of people who do several things at the same moment, easily modify preset schedules and seldom experience time as “wasted”. P-time may seem quite hectic to M-time people: “There is no recognized order as to who is to be served next, no queue or numbers indicating who has been waiting the longest” (Hall 1983: 47). P-time people are more committed to persons than to schedules. When confronted with a conflict such as the one described above, they prefer to go on talking or working after preset hours and break their schedule, if they have one. Mexican negotiators, coming from a polychronic culture, often move from one issue to another, discuss many issues simultaneously, overlap in conversation and ignore turn taking in talks, and interrupt the negotiation for unrelated events (Foster 1995). In contrast, monochronic American negotiators organise issues sequentially and prefer to work on one issue at a time. In general, Hall has described Americans as typical M-time people whereas Japanese, Chinese and Middle-Eastern people are typical P-time people.

The PERT (programme evaluation and review technique) programming method is an example of a typical “agenda-culture”, where M-time is the central assumption. PERT is based on graph theory, and has an appealing U.S. “management science” look: the technique is based on the starting and finishing dates of each individual task and the constraints across tasks (especially those which need to be finished before other tasks can be started). The algorithm calculates the “critical path”, that is, the succession of articular tasks which have to be realised without delay if the total completion time is to be minimised. It explicitly aims to reduce a universe of polychronic tasks (they really take place simultaneously, which is part of the problem) to a monochronic solution (the critical path). Management methods, basically originating in the United States and Europe, favour pure monochronic organisation. They clearly push aside polychronic attitudes, which tend to make plans and schedules rather hectic. When it comes to delays and being “on time”, precise monochronic systems give priority to meeting dates and commitment to schedules.

To illustrate sources of tension between people who have internalised different time systems, Hall (1983: 53–54) takes the example of a monochronic woman who has a polychronic hairdresser. The woman, who has a regular appointment at a specific time each week, feels frustrated and angry when she is kept waiting. At the same time, the hairdresser also feels frustrated. He inevitably feels compelled to “squeeze people in”, particularly his friends and acquaintances. The schedule is reserved for impersonal people such as this woman, but since he does not know them personally, keeping to the schedule is not important to him. The distinction between M and P-time is important for business negotiations, in as much as the parties will have to discuss issues, write down clauses, schedule their meetings.

Recent Advances in the Study of Polychronicity. There is a relative paucity of empirical research as concerns individual and culture attitudes to time and international business negotiations. However, recent studies about time and international business negotiations are disconfirming the view held by Edward Hall that Americans are typical M-Time people and Japanese or French people typical P-time persons. In an empirical comparison of conflict resolution models in Japanese, German and American cultures, Tinsley (1998) uses the IPV polychronicity¹ scale from Bluedorn *et al.* (1999) to assess the degree of polychronicity of negotiators coming from the three cultures under review. Her results show that Americans are more polychronic than German and Japanese negotiators who do not differ significantly from each other. Potter & Balthazard (2000) show that, contrary to what they expected, American negotiators did not consider time dispersion in negotiation (measured by the time needed to achieve the negotiation task) to have a greater negative impact on outcome than Chinese negotiators. Conte *et al.* (1999), show that, contrary to what was to be expected based on Hall’s work, French people are not more polychronic than Americans. Similarly, Prime & Bluedorn (1996), studying how managers from the United States and France negotiate delivery delays in international

¹ From now on, the term “polychronicity” is used to refer to the simple time use preference of dealing simultaneously with several tasks (called indifferently poly- or multi-phasia or multitasking, or even polychronicity *stricto sensu*). When time tangibility and context are added, we speak of polychronism (P-time) or monochronism (M-time) in Hall’s original sense. For in-depth insights about what multi-tasking (polychronicity) means for individuals from two cultural groups (Anglo-Americans and Latin Americans), see Cotte & Ratneshwar (1999).

business, find that French negotiators are more oriented than Americans toward “quantitative time” (which is to a large extent comparable to Hall’s M-time). Their findings, combined with those of Tinsley (1998), Potter & Balthazard (2000) and Conte *et al.* (1999), seem to partly disconfirm Hall’s assertions about M and P-time across cultures.

An enlightening discussion of the various dimensions of P-time and M-time is offered by Palmer & Schoorman (1999) who distinguish three different dimensions in Hall’s M-/P-time: time use preference, context and time tangibility. Time use preference refers to narrowly defined polychronicity, that is the extent to which people prefer to engage in multiple tasks simultaneously. It is now well documented that Americans display strong tendencies to polychronicity *stricto sensu* (Kaufman *et al.* 1991; Bluedorn *et al.* 1999; Kaufman & Lindquist 1999). A second aspect of Hall’s contrast of M- and P-time is the interaction with *context*: M-time is associated univocally by Hall with low context communication, conveying only explicit meaning in messages, while P-time is directly associated by him with high context communication. Polychronic people, according to Hall, would systematically take into account the information that surrounds an event as well as many indirectly meaningful cues that allow interpretation of messages. People are part of the context, and that is why P-time cultures tend to give priority to people over tasks. The third element is “time tangibility”, what we refer to above as “economic time”, that is, time being viewed as a commodity that can be bought, sold, saved, spent or wasted. Palmer & Schoorman (1999) suggest that there is a lack of connection between time use preference, high or low-context, and time tangibility, and that these dimensions do not correlate well.

In the view of Palmer and Schoorman, individuals may display a behaviour where low context and polyphasia (or multiphasia, i.e. a multi-tasking behaviour in the sense of polychronicity *stricto sensu*) combine with a tangible view of time being a scarce and economic resource. They associate it with type A behavior pattern (TABP) which was described by Wright (1988) following early work by Friedman & Rosenman (1974) as “involving time urgency, chronic activation and multiphasia” (1988: 3, quoted by Palmer & Schoorman, p. 327). These type A individuals, in which many will recognise typical business people from many nations and cultures, are time tangible but also polyphasic when they are involved in international negotiations. Palmer and Schoorman surveyed 258 middle and senior executives from 25 nations with 21.7% of the participants being non American. Among them, the vast majority (44.2%) is type A behaviour while 31.8% are “classic monochronic”, that is monophasic, time tangible, and low context. Table 8.3 shows the eight different

Table 8.3: Description of the eight types of individual temporality and their distribution in Palmer and Schoormann’s (1999) study.

| Type | Dimensions | Cases | Percentage | Description |
|----------------------------|-----------------------|-------|------------|--|
| M1: classic monochronic | M, LC, T _i | 82 | 31.8 | This is the type described by the continuum model as monochronic. |
| M2: bureaucratic | M, LC, T _i | 2 | 0.8 | This type describes the caricature of the “bureaucrat” (Crozier 1964; Merton 1957; Taylor 1983) as someone who is very specialised, communicatively low context and oriented toward task completion and rules-following (even in the face of compelling evidence to deviate) with no regard for the timeliness or his/her actions. |
| M3: discordant monochronic | M, HC, T _i | 21 | 8.1 | This type is labeled “discordant” in recognition of its violation of Hall’s fundamental correspondence between monophasia and low context. This individual’s HC style may not be able to sustain a consistent and effective monophasic approach. |
| M4: Type R | M, HC, T _i | 3 | 1.2 | This type is the reverse image of Type A prone. There is a fundamental (according to Hall) disconnect between HC and monophasia. |
| P4: Type A prone | P, LC, T _i | 114 | 44.2 | This type corresponds to the configuration of dimensions identified with the Type A behaviour pattern (i.e. polyphasic, time urgent (tangible), and hostile (low context)). There is a fundamental (according to Hall) disconnect between LC and polyphasia. |

Table 8.3: Continued.

| Type | Dimensions | Cases | Percentage | Description |
|----------------------------------|-----------------------|-------|------------|---|
| P3: discordant polychronic | P, LC, T _i | 4 | 1.6 | This type is labeled “discordant” in recognition of its violation of Hall’s fundamental correspondence between polyphasia and high context. This individual’s LC style may not be able to sustain a consistent and effective polyphasic approach. |
| P2: synchronic | P, HC, T _i | 27 | 10.5 | This type describes the “manager” evident in Mintzberg’s (1973, 1989) research as an individual who is involved in fragmentary, brief, multiple activities, but attuned to a cultural norm of time as a valuable resource. The polyphasic orientation is supported by a high context style, but task completion may be emphasized to a greater degree due to the sense of time as tangible. |
| P1: classic polychronic | P, HC, T _i | 5 | 1.9 | This is the type described by the continuum model as “polychromic”. |

Notes: M = monophasic, P = polyphasic, LC = low context, HC = high context, T_i = time tangible, T_i = time intangible.

Source: Palmer & Schoormann’s (1999: 330); references to be found in their article.

individual styles of temporality revealed by their data. As we will argue later, M-time and P-time may partly represent simplistic assumptions about time-related behaviour in international business negotiations. It is rather likely that time tangibility and polychronic behaviour *stricto sensu* cross the borders of cultures and that there is some room for fuzzy temporal adjustment in the process of negotiation, even between culturally different negotiation partners.

Linearity vs. Cyclicity of Time

A strongly economic view of time, when it is combined with monochronism, emphasizes the linearity of time. Time is viewed as being a line with a point at the centre, the present. Each portion of the line can be cut into slices, which are supposed to have a certain money value. Basic religious beliefs play a key role in supporting such a linear view of time: Christianity has a one-shot interpretation of worldly life, and people do not live twice (as in the James Bond film title). People wait until the final judgement for enjoying reincarnation. On the contrary, Asian religions, including Hinduism and Buddhism, assume that, on the death of the body, the soul is born again in another body. The belief in regular reincarnation, until a pure soul is allowed to escape the cycle and go to *nirvana*, radically changes the nature of time in a specific life: it is not all the time I have got, it is simply one of my “times” across several lives. For most Asians, cyclicity is central to their pattern of time: the *nirvana* is the final release from the cycle of reincarnation, attained by extinction of all desires and individual existence, culminating (in Buddhism) in absolute blessedness, or (in Hinduism) in absorption into Brahman. Naturally, patience is on the side of the people believing in cyclical reincarnation of the soul. For the Christians, it is more urgent to achieve, because their souls are given only one worldly chance. But, as the New Testament puts it clearly, those who do right, even in the very last moment, will be considered favorably . . .

Another element which favours a cyclical view of time is the degree of emphasis put on the natural rhythms of years and seasons, the sun and the moon. So-called “modern” societies are then largely opposed to “traditional” ones, in as much as modern means technology, mastering nature and, to a certain extent, the loss of nature-related reference points. The Japanese are known for having maintained a strong orientation towards nature, even in a highly developed society. Their floral art of *Ikebana* or the emphasis on maintaining a contact with nature, even in highly urban environments, are testimonies to their attachment to the natural rhythms of nature. Even within a country, the relationship to nature influences the model of time adopted by urban in contrast to rural people.

Elements of cyclicity are based mostly on metaphysical assumptions or on astronomical observations, but they also include some arbitrary divisions, which are more social than natural. The example of the duration of the week is a good example of the social origins of the reckoning of time cycles. In a classical article, Sorokin & Merton (1937) give the following illustrations of the variability in the number of days of the week, through anthropological observation:

Our system of weekly division into quantitatively equal periods is a perfect type of conventionally determined time-reckoning. The Khasi week almost universally consists of eight days because the markets are usually held every eighth day. A reflection of the fact that the Khasi week had a social, rather than a “natural”, origin is found in the names of the days of the week which are not those of planets (a late and arbitrary development) but of places where the principal markets are held. In a similar fashion, the Roman week was marked by *nundinae* which recurred every eighth day and upon which the agriculturists came into the city to sell their produce. The Muysca in Bogota had a three-day week; many East African tribes a four-day week; in Central America, the east Indian Archipelago, old Assyria (and now in Soviet Russia), there is found a five-day week . . . and the Incas had a ten-day week. The constant feature of virtually all these weeks of varying length is that they were always found to have been originally in association with the market.

Elements of cyclicity of time have therefore three main origins: religious assumptions about reincarnation of the soul; natural rhythms of years, seasons and days; the social division of time periods which is more arbitrary, less natural and “given” than we assume. Time is naturally both linear and cyclical, and culture has complex time patterns which combine both views, as shown below by the example of Japanese *makimono* time. It is important for business negotiations that linear time emphasizes *discontinuity*: a point on the time-line such as the signing of a contract or the start-up of a plant is perceived as opening a totally new period of time. Conversely, cyclical time favors a more integrative picture of the universe, a stronger sense of the *continuity* of events.

Temporal Orientations: Past, Present, Future

The perception of time also tends to be related to temporal orientations *vis-à-vis* the arrow of time. As stated by Kluckhohn and Strodtbeck (1961: 13–15):

The possible cultural interpretations of temporal focus of human life break easily into the three-point range of past, present and future . . . Spanish-Americans, who have been described as taking the view that man is a victim of natural forces, are also a people who place the present time alternative in first position

. . . Many modern European countries . . . have strong leanings to a past orientation . . . Americans, more strongly than most people of the world, place an emphasis upon the future — a future which is anticipated to be “bigger and better”.

Being past-oriented means that people emphasize the role of the past in the explanation of where we are now. Europeans are typical of this assumption, as are some Asian people. They will tend to restore old buildings, invest in museums, teach history at school, etc. It does not mean that temporal orientation to the past is only based on cultural assumptions. It also depends on individual psychological traits (Usunier & Valette-Florence 1994). Furthermore, in societies undergoing a rapid process of economic change, past orientation is often provisionally underplayed.

Present orientation is the most logical assumption, in terms of quality of life at least. It means that people favour the “here and now”, believing that the past is over and the future is uncertain, theoretical and difficult to imagine. Religion may play an important role in pushing people towards present orientation, if it emphasizes that only God decides about the future. In terms of temporal orientations, the Arabic-Muslim character has been described as fatalistic, rather short-term oriented, and not future oriented (Ferraro 1990). As stated by Harris & Moran (1987: 474), “Who controls time? A Western belief is that one controls his own time. Arabs believe that their time is controlled, to a certain extent, by an outside force — namely Allah — therefore the Arabs become very fatalistic in their view of time . . . most Arabs are not clock watchers, nor are they planners of time”.

Future orientation is naturally related to the view that people can master nature, but also to the view that the future can in some way be predicted or at least significantly influenced; future orientation is reflected in languages. In societies where future orientation is strong, it is backed by the educational system and by an “imagination of the future” supported by reports on scientific breakthroughs and technological developments.

Combined Cultural Models of Time: The Japanese Makimono Time

Economic time usually goes with linear time, monochronism and future orientation, and it is our “modern” time, near to R. J. Graham’s (1981: 335) concept of the “European-American (Anglo) perception that allows time to have a past, present and future, and to be sliced into discrete units and then

Box 8.1

Time vocabulary tells a lot about the linkage between language and cultural representations. For those who have doubts about the existence of differences in cultural representations of time which are revealed, conveyed and reproduced by language, the example of the English/U.S. word “deadline” is very illustrative. A quick translation in French would give “*échéance* [temporelle]” or “*délaï de rigueur*” (Langenscheidt 1989) but would not render the intensity of this word. Taken literally, it seems to suggest something like “beyond this (temporal) line, you will (there is a danger of) die (dying)”. It therefore gives a genuine notion of urgency to what was originally a very abstract notion (a point which has been agreed upon on a line of time). The word *deadline* is used in French by many businesspeople as such (un *deadline*), even though it is not in the official dictionary, because it conveys a typically Anglo-American sense of urgency that French people do not find in their own language.

Language also reflects (and pre-shapes) how people envisage the future. In some African languages (Kamba & Kikuyu), there are three future tenses which express (i) action in two to six months; (ii) action that will take place immediately; (iii) action “in the foreseeable future, after this or that event”. Commenting on the uses of these African tenses, M’biti demonstrates how coherence and sophistication in the accurate use of the near future, are important to people. “You have these tenses before you: just try to imagine the tense into which you would translate passages of the New Testament concerning the Parousia of Our Lord Jesus Christ, or how you would teach eschatology . . . If you use tense no. 1, you are speaking about something that will take place in the next two to six months, or in any case within two years at most. If you use no. 2, you are referring to something that will take place in the immediate future, and if it does not take place you are exposed as a liar in people’s eyes. Should you use no. 3 you are telling people that the event concerned will definitely take place, but when something else has happened first. In all these tenses, the event must be very near to the present moment: if, however, it lies in the far distant future — beyond the two-year limit — you are neither understood nor taken seriously” (M’biti 1968: 10).

allocated for specific tasks”. From this view, time can be saved, spent, wasted or even bought, just like money. Graham has tried to represent a synthesis of time perception dimensions, not only as a set of different perceptual dimensions, but also as complete temporal systems. He contrasts “Anglo” time, which he describes as being “linear-separable”, with the “circular-traditional” time of most Latin-American countries. This perception arises from traditional cultures where action and everyday life were not regulated by the clock, but rather by the natural cycles of the moon, sun and seasons. Graham proposes a third model, “procedural-traditional”, in which the amount of time spent on the activity is irrelevant, since activities are procedure-driven rather than time-driven. This system is typical of the American Indians, and to a large extent it also typifies the African time. Graham’s “procedural-traditional” time is hardly a “time” in the Western sense.

But it is not that simple: some people may share different cultures and move from one time model to another, depending on the other people involved and the particular situation, using different types of “operating cultures” (Good-enough 1971). As Hall states (1983: 58) “The Japanese are polychronic when looking and working inward, toward themselves. When dealing with the outside world . . . they shift to the monochronic mode The French are monochronic intellectually, but polychronic in behavior”.

A naive view of Japanese temporal orientation would lead one to assume that the Japanese are simply future oriented. In fact, a specialist in Japanese business, Robert Ballon, argues that the Japanese are neither future nor past oriented. To him, the Japanese are present oriented and focused on the here and now (in Hayashi 1988). Hayashi explains the difficult attempt at finding cross-culturally equivalent terms by asserting that “Many kinds of Japanese behavior are extratemporaneous” (2), meaning that they are not time-based. Hayashi explains further what he calls the *Makimono* time. In their model of time, the Japanese tend to posit the future as a natural extension of the present. Japanese are basically people working with a cyclical view of time, based on their Buddhist background which believes that souls of dead people transmigrate to newly-born human beings, in an eternal cycle. As Hayashi states (1988: 10), “In Japanese cultural time, the past flows continuously toward the present and also the present is firmly linked to the future. In philosophical terms, we might say the past and the future exist simultaneously in the present”.

Therefore, the linear-separable model of time, found in Western cultures, does not predominate in Japan. The notion of continuity is central to Japanese time, just as the notion of discontinuity is central to Western models of time. A Japanese definition would say “the present is a temporal period that links the region of the past with the world of the future” (Hayashi 1988: 18). Both the notion of continuity and the arrow of the future targeted *towards* the present are central in the *Makimono* time pattern (Figure 8.2). Coming back to Cohen’s

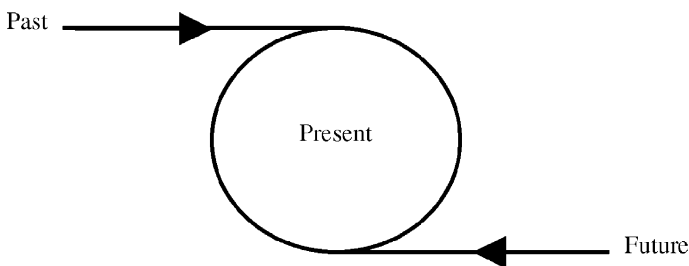


Figure 8.2: *Japanese Makimono time pattern.*

experience cited at the beginning of this chapter, the Japanese concern to have him learn what they are reflects a preoccupation with continuity: if he is to make deals with them he has to understand their past.

Starting the Negotiation

Time for Preliminaries

The role of spending time on establishing personal relationships, especially in Asia and South America, is noted by many authors (Hall 1983; Pye 1986; Graham & Sano 1990; Hawrysh & Zaichkowski 1990; Li & Labig 2001). There is a series of reasons why a personal relationship is needed: establishing the context of communication (Hall 1976); acquaintance with the other persons being part of the necessary context; a less strict separation between personal and professional spheres than in the West; the importance of personal status that creates the need to spend time in exploring who is who with some discretion, in order not to offend partners. This is all summed up in Burt's comments (1984: 7) that an American negotiator will be well advised to develop personal relations away from the negotiation room. "The usual intense and rather dry approach to doing business must be supplemented with a social relationship. The Japanese are accustomed to the use of entertainment as a means of becoming better acquainted and of developing goodwill".

The cultural time concept of Americans, strongly economic, partly explains why spending time to build personal relations is implicitly seen as bad. Time being seen as a resource not to be wasted, spending time on non-business matters, on non-task related issues is experienced as a violation of their cultural norms. What Graham (in Graham & Lin 1987) calls "non-task sounding", that is, establishing rapport and getting to know each other, the first phase in his four-phase process of business negotiations, not only needs a relaxed sense of economic time but also some past orientation: seeing Japanese shrines, learning the basic about Zen or Ikebana, the Japanese floral art. The Japanese feel that an understanding of their past is necessary for understanding them as negotiation partners today.

Setting the Agenda and Scheduling the Negotiation Process

These tasks are considered by most of the negotiation literature as necessary for the second step in Graham's four-stage model — task-related exchange of

information. An agenda is a schedule and list of items to be discussed during the negotiation process. In many cultures the very notion of “agenda setting” is unheard of; cutting the process into pieces in advance and allocating time lots to each “task” is, at best, theoretical. Hall’s differences between monochronic and polychronic is relevant for the scheduling of negotiation. An agenda-oriented negotiation team, with a strong belief in the value of monochromic time, tends to try to negotiate clauses sequentially, whereas the other party, polychronic, may skip from one issue to another, coming back to points which had apparently been already settled, because they tend to negotiate globally. Graham & Herberger (1983) call it “One thing at a time”. For example, Americans usually attack a complex negotiation task sequentially, that is, they separate the issues and settle them one at a time. As emphasized by the report of the United States Institute of Peace (2002: 5) about U.S. negotiating Behavior, “Americans tend to subscribe to a view of negotiation as a linear process, a sequence of stages, that typically begins with prenegotiation, advances to the opening moves of the formal negotiation, continues through a probing middle phase, and culminates in an end game and a binding agreement”.

Time in the Negotiation Process

Making Appointments and Setting Deadlines: Managing Temporal Clash in Intercultural Business Negotiations

Partners from different cultures may be working together to develop a low-cost operation, or a new R&D project, or distribution and sales facilities, depending on the objective of the joint venture. In such settings, issues to do with time will inevitably arise, both at an everyday level, simply in order to meet at the same time, and at a deeper level, that of assigning a common time frame to business operations. The fictitious case in Box 8.2 is an excerpt from Fons Trompenaars; it recounts a story which is stereotypical and illustrates the clash of temporal cultures, both at the individual and at organisational levels, when negotiating.

Different time perspectives, be they organisational or cultural, result in temporal clashes. The conflicts that result from the inability to merge different ways of dealing with time may be located at an individual level, that of business people interacting with foreign partners and negotiating with them. Temporal clash at the level of individual interaction results from differing answers given to the following questions: How is somebody treated when he or she arrives

Box 8.2

Young Mr Johnson, a U.S. (or English) executive, is organising an international meeting: “At 1.50 p.m. most participants returned to the meeting room. At 2.05 Johnson started pacing restlessly up and down. Munoz and Gialli were still down the hall making telephone calls. They came in at 2.20 p.m. Johnson said, ‘Now, gentlemen, can we finally start the meeting.’ The Singaporean and African representatives looked puzzled. They thought the meeting had already started. The first point on the agenda was the time intervals determining bonuses and merits. All except the American, Dutch and other north-west European representatives complained that these were far too frequent. To Johnson and his Dutch and Scandinavian colleagues the frequency was obviously right: ‘Rewards must closely follow the behavior they are intended to reinforce, otherwise you lose the connection.’ The manager from Singapore said: ‘Possibly, but this go-for-the-quick-buck philosophy has been losing us customers. They don’t like the pressure we put on at the end of the quarter. They want our representatives to serve them, not to have private agendas. We need to keep our customers long-term, not push them into buying so that one sales person can beat a rival’”.

Source: Trompenaars 1993: 115.

half an hour late for a negotiation session? Do sessions have a finishing time in addition to their starting time? Is time also structured during the meeting by setting an agenda and a definite time limit for discussion on each point?

To illustrate the synchronisation problem at work, let us take the example of a French business meeting vs. a meeting in the United States (a fairly polychronic vs. a fairly monochronic culture). In France, some people come a quarter of an hour late, and some half an hour. Not only does the meeting not start on time, but those people who were on time have to wait for those who are late. Rarely do people who are late apologise. Some, not all, simply explain why they were late. It is not rare that, when somebody arrives quite late, most other people stop their discussion and spend five or ten minutes explaining to the latecomers what has been said up to now (fortunately, the content of French meetings is generally easy to summarise!). Moreover, contrary to the U.S. meetings, French meetings are almost never assigned a finishing time. This means that quite often, if there are several successive meetings, the reason why some people arrive late is that the previous meeting was late and finished one or two hours after the (more or less vaguely and implicitly) agreed finishing time.

Temporal Clashes Between Negotiating Organisations

Temporal clash in negotiation may also be based at an organisational level, that of companies trying to design some sort of common venture, through a merger,

an acquisition or a joint venture. There are many instances where the failure of an international alliance has been attributed to lack of cultural fit, or conflict between the two cultures; temporal clash based on culturally different time patterns is also a cultural clash. Knittel & Stefanini (1993) recount the case of a French-Indian joint venture which they call IJV (Indian Joint Venture). The French partner, a world leader in specialised equipment goods with one plant in France and two in the United States, was willing to enter the Indian market with a 5–6 year time horizon for pay-back. India limits foreign ownership to 40% and sets strong red-tape on foreign partners' route to JV formation. Finally, it was decided to invest in two stages. In the first stage IJV was supposed only to assemble imported parts. In a second stage, it was due to increase local manufacturing. But, in fact, communication misunderstandings added to delays in some governmental authorisations and, finally, financial difficulties related to expected large orders that did not come led the two partners to a typical temporal clash. The Indian partner interpreted the situation as a lack of long-term commitment on the French side and asked for a direct progression to the second stage. Having a much shorter horizon than that which needed to overcome the problem, the French company refused. Finally, IJV slowly came to a halt because neither of the two partners wanted to take the responsibility for officially discontinuing the venture.

Time-based Tactical Moves: Exerting Time Pressures in the Bargaining Process

The effect of time pressure is contingent on the accountability of the negotiator. “When negotiators are not accountable to a constituency, time pressure results in less competitive interaction and a higher proportion of agreements. In contrast, when negotiators are accountable to a constituency, time pressure results in more competitive interaction and in a higher proportion of impasses” (Mosterd & Rutte 2000: 241). Suffice it to say that international business negotiators are generally accountable to a constituency, the CEO or top-level executives in their organisation. As a consequence, the effect of time pressure often translates in more competitive behaviour, the use of harder tactics (involving demands and threats) and a greater propensity to break negotiation talks.

The place where the negotiation takes place has an obvious influence of time-scarcity. Those who are “at home” can monitor their regular business tasks while participating in the negotiations. Those who have left their home country to negotiate at their partner's location can for many reasons, both

professional and personal, be impatient to go back. The pressure of “wasted time” can be easily used against those who have both an economic pattern of time and are far from their home base.

As such, the expression “to waste time” has little meaning for many cultures, especially for most African cultures (Usunier 1996). One may lose something tangible, like a ring or a pencil. But in order to waste and lose time, time should be a thing or, at least, it would be necessary to be able to separate time from the events with which it is inextricably bound up, making it difficult to equate abstract time with a monetary unit of measurement. For instance, within their culture, the Bantu people of the Southern part of Africa know nothing comparable to a linear Newtonian time, in which events take place. There are events, and each one of these events carries its own desire and its own time. Time cannot be wasted or lost, because time has simply to be lived or experienced, whatever may be the way to experience it. No one can steal time, not even death.

The same tranquillity in the face of time may be seen in the Orient, compared to the Occidental anguish and guilt about time that might be wasted or lost. Several authors in the field of international business negotiations note that time pressure is strongly felt by American negotiators, whether they negotiate with the Chinese (Pye 1982) or with the Japanese (Graham 1981; Graham & Sano 1990; Tung 1984a, b). American negotiators are eventually forced to yield by their representation of time, potentially wasted or lost if it is not optimally allocated. When this logic is pushed to its extreme, it may result in total inefficiency. People spend their whole time thinking of possible alternative uses of their time and calculating which of these alternatives offers the best marginal return. As noted by Adler (2002: 219):

Americans’ sense of urgency disadvantages them with respect to less hurried bargaining partners. Negotiators from other countries recognize Americans’ time consciousness, achievement orientation, and impatience. They know that Americans will make concessions close to their deadline (time consciousness) in order to get a signed contract (achievement orientation).

Pressure can be exerted on economic-time-minded negotiators by postponing the beginning of the negotiation, delaying meetings, keeping the end of negotiations a secret, etc. Cohen gives a classical example of how the Japanese manipulate their Western partner’s excessive time consciousness. The Japanese ask him when he is arriving at Tokyo airport:

Are you concerned about getting back to your plane on time?”
(Up to that moment I had not been concerned.) “We can

schedule this limousine to transport you back to the airport”. I thought in myself, “how considerate”. Reaching my pocket, I handed them my return flight ticket, so the limousine would know when to get me. I didn’t realize it then, but they knew my deadline, whereas I didn’t know theirs (Cohen 1980: 94).

However, urgency has two sides. As noted by careful observers of American negotiation style, “Americans are not always looking at the clock” (USIP 2002). They may use their own self-defined deadlines to put under pressure the other party. They may also let diplomatic negotiations stretch out for years when there is little interest in the American media for the issue under discussion.

Timing of Concessions

The pattern of timing of concessions tends to differ whether people tend to settle one issue and proceed to the next or whether they negotiate more globally. Certain cultures, like the Chinese and the Japanese, tend to make fewer concessions through the earlier stages of the negotiation process, because they have a much longer non-task sounding phase, needing more time to establish the relationship and obtain information. In Asian cultures, negotiators will discuss all issues prior to making any concessions and begin with mutual concessions only when they perceive that the end of the negotiation is in sight (Simintiras & Thomas 1998). U.S. executives tend to offer concessions throughout the negotiation process, seeing the “give and take” process as having to start early and to lead to reciprocal and balanced concessions. The difference in the appropriate view of what are “timely concessions” (continuous vs. last moment, “cherry-on-the cake” concessions) can lead to misunderstandings between the partners. As emphasized by Schuster & Copeland (1999), if two parties use different approaches to the timing of concessions (linear, segmented vs. holistic and global concession making), the process may lead to frustration and distrust, because both parties are confused about the willingness of their counterpart to concede and tend to underestimate the other party’s goodwill.

As noted above, time pressure can be seen as a legitimate tool to be used for extracting last-minute concessions from the other party. Exploitation of time pressure can be resented by the party which is taken advantage of. However, this party should probably have prepared some minor but noteworthy concession to be offered in such a case.

It has been noted that, in highly bureaucratic contexts, negotiators will use argument of the complexity of their organisational process and the consequent necessity to refer to various bodies in order to delay concessions (see for instance Eiteman 1990). However, negotiators from such countries also need also to bring back something to their superiors, and as noted in Chapter 4 by John Graham, the timing of concessions can be inverted when these negotiators come close to their deadline. They run short of time and, if they are negotiating in a costly place, their organisation will not allow them to stay longer and, ultimately, they risk being blamed by their superiors if they go back empty-handed. This leads them to concede.

The Time Frame of Relationship between the Negotiation Partners

Negotiations Strategies: Long Term Orientation as Favoring an Integrative Strategy

The adoption of an integrative strategy is facilitated, inter alia, by the ability to envisage the future; this permits the discovery or “invention” of new solutions, which enables both partners to overcome the problem of the fixed size of the “territorial cake”. Its size is limited in the very short term and it is only by envisaging what the future between the negotiation partners could be does it become feasible to adopt a more expansive view of the “common cake”. The nature of international transactions often imposes it: business is fairly continuous over several years, and therefore implies a very strong buyer-seller interdependence. The performance level depends largely on the extent and the quality of the collaboration between the partners.

Rao & Schmidt (1998) show that negotiators’ time horizon when forming international strategic alliances influence their strategic behaviour in negotiation. It is a well established result that expectation of future interaction with cooperation partners affects current behaviour: in a last round with no future interaction, negotiators use harder tactics and are more prone to defection and exploitation than to cooperation (Axelrod 1984). Rao & Schmidt (1998) have studied how time horizon influences the cooperative frame; they found that the correlation is 0.38 significant at the 0,01 level. Furthermore, American alliance negotiators with longer time horizons tend to limit the use of hard tactics in negotiation and to be more rational in their approach to alliance negotiation.

The value of long-term orientation is often better understood by the Asians for whom a new fifth dimension has been added to Hofstede’s four dimensions

(Hofstede 1991). A research team based in Hong Kong and initiated by Michael Bond has designed a questionnaire called CVS, Chinese Value Survey, which has been administered in 23 countries (Chinese Culture Connection 1987). It is based on basic values as seen by native Chinese social scientists. A new dimension was discovered through the CVS. Bond coined the term “Confucius dynamism” to emphasize the importance of Confucius’ practical ethics, based on the development of long term relationships and valuing: (i) the stability of society based on unequal relationships, expressing mutual and complementary obligations; (ii) the family as the prototype of all social organisations; individuality; (iii) virtuous behavior towards others consists of not treating others as one would not like to be treated oneself; (iv) virtue, with regard to one’s tasks in life consists of trying to work hard and being patient and persevering.

Pye (1986) notes the role played by differences of attitude relating to the concept of “friendship”, in terms of time-span and expectations from the other side. Thus, it seems that whereas the Americans view friendship in terms of a feeling which rests on a natural mutual exchange within definite time limits, in other words on a principle of reciprocity, the Chinese view friendship in terms of loyalty. The idea is that of a long-lasting obligation: “What the Chinese neglect in terms of reciprocity they more than match in loyalty. They not only keep their commitments, but they also assume that any positive relationship can be permanent. A good example of this is the number of Chinese who have tried to establish pre-1949 ties with U.S. companies and individuals — as though nothing had happened in the intervening days”. (Pye 1986: 79).

Making Plans Together: Co-ordinating and Planning the Common Venture

In many international negotiations planning a common venture, the steps of construction of a turnkey plant or the implementation phases of a joint venture or licence agreement, need explicit reference to dates, deadlines, and the sequencing of interdependent tasks, that is, planning. Planning is such a basic function of management that it is extremely difficult to admit that there are other models of time than those on which it implicitly rests. Naturally, it would be naive to consider that business people have purely traditional time patterns, such as those described earlier. In fact, complex patterns of time-related behavior may be used by people sharing several cultural backgrounds, one of them being the original in-depth background, the other(s) being much more superficial. Furthermore, the native cultural background may be undervalued

because it is supposed to be “inefficient” or it is unknown to foreigners. Accordingly, people belonging to non-linear/economic time cultures often have a tendency to imitate the cultural way of life that they tend to regard as the “best”. It might result in buying a superb watch as an item of jewellery or a diary because it is fashionable. But the functional behavior which is in line with the watch or the diary will not be adopted. After these objects have been bought, they lose their cultural value as practical tools of the economic/monochronic/linear/separable time pattern. People involved in this type of cultural borrowing might prove unable to take any appointment seriously. They will probably experience difficulties in following any preset schedule.

Ideal and Actual Temporal Behavior

Ideal patterns of time and actual temporal behavior may differ widely for negotiators who apparently use their partners’ time culture rather than their own. The idea of possible discrepancies between ideal patterns and actual behavior was expressed by Linton (1945: 52–54): “All cultures include a certain number of what may be called ideal patterns . . . They represent the consensus of opinion on the part of the society’s members as to how people should behave in particular situations . . . comparison of narratives usually reveals the presence of a real culture pattern with a recognizable mode of variation . . . it [the ideal pattern] represents a desideratum, a value, which has always been more honoured in the breach than in the observance”.

Bista (1990), in the case of Nepal, highlights the conflict between time-based behavior related to foreign education and the traditional influence of fatalistic beliefs on the lack of future orientation and sense of planning:

Planning involves the detailing of the connections between resources, objects and events, and the determination of an efficient course of action to attain desired results . . . Control is placed in the hands of the planner. But fatalism does not allow this kind of control, and is inherently antithetical to pragmatic thought . . . Over the past few decades, many Nepali students have travelled abroad to study in other countries, and have returned with advanced degrees in various professional capacities . . . Upon their return many are placed in positions of authority, as they represent the cream of Nepal’s manpower resources. Though they may be initially inspired by a high degree of idealism, the new values that they bring back with them immediately confront fatalism and are typically defeated

by it . . . After forty years of planning and an accumulation of foreign trained graduates, Nepal, then, still has little manpower to effectively bridge the disparities between the culture of the foreign aid donors and that of their own (137–138).

Hidden Language of Time: The Fallacies of Borrowed Time Patterns in Negotiation

In everyday management behavior (appointments, scheduling, meetings), it is quite probable that we face a high level of cultural borrowing; actual time behavior of economically successful countries like the United States or countries of northern Europe have been imported by other nations as ideal patterns (Usunier 1991). It is, for instance, very clear that in Latin-European countries, the PERT technique, which is designed for the scheduling of interrelated tasks, has been implemented mostly for its intellectual appeal. In France, where many managers and top executives have been trained as engineers, there has been a great interest in this scientific management technique. Real project planning in France and Latin-European countries very often works with high discrepancies relative to PERT dates; French people tend to be intellectually monochronic but actually behave in a polychronic manner (Hall 1983).

Sometimes people even use two completely different systems in parallel. This somewhat schizophrenic situation is most easily recognised by looking at the construction of some turnkey projects in developing countries (Bista 1990). At the beginning, during the negotiation process and on signature of the contract, everybody seemingly (and also sincerely) agrees about using economic time/monochronic pattern. In fact, the partners share the same belief, but it is an ideal pattern on one side and the actual behavior on the other. There may not even be discussion about it — obviously it is the right way to proceed. But afterwards, extreme confusion appears when the project is being implemented.

Time as an Outcome Variable

Relationship vs. Deal: A Continuous vs. Discontinuous View of Time

Many Western negotiators consider that a signed contract places a clear-cut temporal limit upon the negotiation process. It is stopped and the implementation phase starts, based on the precise contractual outcomes: time-based clauses and agreements. As noted by Ghauri (1994: 9) in the Chinese case:

... the real problems begin after the formal negotiations, at the time of the signing of the contract and quite often during the implementation of the agreement. The Chinese want to agree on broad principles and general policies in formal negotiations and want to keep the detail rather ambiguous. This policy creates problems at the time of writing out and signing the contract, when foreign firms want to specify and make responsibilities clear.

Cultures which have a cyclical and integrative view of time, described in the second section, have an underlying concept of negotiation in which it is only one round of a recurrent relational process, with little sequencing compared with people holding a linear/separable view of time. This is to be found also in the outcome orientation, where the time line of negotiation is less important to people with a cyclical/integrative view of time. To them, a signed contract is no real reason not to pursue the negotiation process further. Eiteman (1990: 62), reporting on American executives' perceptions of negotiating joint ventures with PRC managers, notes the comments of a negotiator for a major U.S. firm that "the bargaining (with the Chinese) never stopped after the original agreement was signed and business actually started" and the president of this firm, located in Beijing, remarks that "production operations were nothing more than a continuation of the frustrations of the original negotiating sessions, with previously agreed upon points always changed by the Chinese". Li & Labig (2001) report that most Chinese negotiators attribute success to negotiation activities involving relationship-building. For them failure occurs when either they have not established a relationship, or they have done it, but it is not perceived as a good one. As a consequence, Chinese negotiators appears as less task-oriented than Americans. "The approach of getting to the business at hand immediately is regarded as rude and impolite, which affects negotiation outcomes and subverts long-term relationships" (p. 356).

Written Agreements as a Time Line for Negotiations

Following what has been explained in Chapter 6, there are two different ways to look at the influence and function of the written agreement on the time span of the exchange relationship.

Those favoring written-based trust-building tend to see a written agreement as a very definite break in the exchange relationship, embedded in "written" time, based on dates, deadlines and delay penalties, all of them task-centered rather than relationship-centered. It completes a phase during which potential

relations have been carefully discussed and explored. It establishes a strict contractual code, which has then to be implemented with punctuality and timeliness. Written words, sentences and formulas have to be strictly observed. If a party feels free to depart from what has been written down, the Damoclean sword of litigation will hang over the parties.

Those favoring oral-based, personal trust consider the signing of a written agreement as an important step, but only one of many in a continuous negotiation process. The negotiation process was active before signature and will be active afterwards. A continuous negotiation process, where the contract is only one step, is seen as the best basis for maintaining trust.

As stated by Edward Hall (1960: 94),

Americans consider that negotiations have more or less ceased when the contract is signed. With the Greeks, on the other hand, the contract is seen as a sort of way station on the route to negotiation, that will cease only when the work is completed. The contract is nothing more than a charter for serious negotiations. In the Arab world, once a man's word is given in a particular kind of way, it is just as binding, if not more so, than most of our written contracts. The written contract therefore violates the Moslem's sensitivities and reflects on his honour. Unfortunately, the situation is now so hopelessly confused that neither system can be counted on to prevail consistently.

Using Time Shrewdly in International Business Negotiations

Temporal Adjustment in International Negotiations

With increased international interaction it would be naïve to assume that negotiators do not adjust in business negotiations when they come from culturally alien temporal cultures. Furthermore, when getting acquainted to each other, they tend to develop a common time frame where each party has its own contribution. The common venture being negotiated also has an influence on the progressive building of a shared temporal culture.

Very often the starting model for time management in the negotiation process will be a classic monochronic one, involving agenda setting and a precise planning of the talks. Both parties, wherever they come from, tend to consider this model as the best one from a normative point of view, since it is the dominant normative model in business. However, as argued by Slocombe

(1999), time management has three facets which may be complementary or, at times competing:

- beliefs, that is, the extent to which people in a particular time-culture believe it is the right way to do things;
- attitudes, that is, to what extent people prefer to be engaged in a particular way of managing their time and synchronising themselves with others;
- behaviour, that is, what time management they actually practice and implement, possibly in discrepancy with both their beliefs and attitudes.

If we think of type A behaviour, as described above, it is likely that most businesspeople in the world have a certain ability to adjust to a polyphasic behaviour. Consequently international business negotiators will evolve from normative assumptions to real-world adjustment. They will partly renounce their beliefs and attitudes as to what is appropriate and develop a form of behavioural adjustment which takes into account what works and what is acceptable to the other side as a way of working together. We outline below a likely adjustment process in terms of the three dimensions of M- vs. P-time (tangibility, polyphasia and low vs. high context).

Tangible time will remain tangible because the negotiations process tends to lend credit to the view that time is a scarce resource, especially at start and finish periods. Talks are always longer than foreseen. Additional issues arise as the negotiation proceeds, and a reasonable level of contending (with some confrontation on both sides) is time consuming. Negotiators have an idea (even if vague) of the “time budget” they are going to allocate to a particular negotiation. Even though they do not calculate a precise amount of time (e.g. in hours or days) dedicated to a particular negotiation, they have a sense that negotiation is extending way beyond what was scheduled to happen and beyond implicit deadlines as to the wished end for the negotiation process. Consequently, even negotiators who do not feel a sense of urgency (i.e. people with time rather intangible) tend to adjust to a more economic-minded view of time. Time tends to become more reified, commoditised and therefore economic, when, being partly consumed, it is perceived as becoming scarce. The general direction of adaptation will be from time intangible to time tangible views of the negotiation process.

Those coming from monotasking (monochromic *stricto sensu*) cultures may start the negotiation by imposing some typical devices of monochronic cultures: an agenda where each issue is clearly delineated and its discussion precisely scheduled. However, monochronic negotiation partners, when confronted with polychronic partners (*stricto sensu*) will be forced to give up the precise planning of the negotiation process; they will not be even able to

defend it as a reasonable procedure for going further. As a consequence, negotiations processes between polychronic and monochronic people tend to develop according to a polychronic way of mixing issues and debating several topics at the same time. Moreover as shown by Palmer & Schoorman (1999), multitask orientation and polychronicity are frequent among managers, even in supposedly economic time minded cultures such as that of the United States.

Multitasking is a natural evolution of the negotiations process. It is likely that monochronic negotiators perceive polychronicity as negatively related to coordination and teamwork (Benabou 1999). However, polychronicity has to do with fuzzy and unorganised synchronisation, and although not satisfactory for negotiators with strongly ingrained beliefs that only linear and organised processes are efficient, polychronicity may at times liberate the creative exploration of joint solutions. Conte *et al.* (1999) show that polychronicity is positively associated with achievement striving but also positively correlated with impatience and irritability. Polychronic behaviour allows the reduction of role overload for negotiators who have to face the discussion of multiple issues at the same time (especially in the phases of information exchange and persuasion), and in this sense it may help them monitor their level of stress. This positive effect may even overcome the negative impact on stress for monochronic persons of being forced to adopt a polychronic approach to the negotiation.

Moreover, when in the middle of a smoothly and satisfactorily proceeding negotiation, business negotiators may feel that they still have plenty of time available, thereby reducing their perceived time urgency. As a consequence, they may provisionally experience a sense of timelessness (Mainemelis 2001) which helps them adopt a more polychronic and less time tangible approach to business negotiations. However, as we will see later, the feeling of timelessness, caused by people being stimulated and rewarded by the task and forgetting about time, schedules and deadlines, ceases when negotiators actually run out of time and when their high workload forces them to adopt a more monochronic approach.

Negotiators may begin from low-context premises, especially if one party comes from a low context culture and drives their counterparts into a quick jump into the discussion of issues at stake without spending enough time to get acquainted and create a common context *at the start*. However the level of joint context in communication will increase with the sharing of information, with common knowledge about issues at stake and progressive acquaintance of people around the negotiation table. As a consequence, the level of usable, common context for both parties, increases and they are more likely to adopt higher context communication as the negotiation proceeds. To sum up, even if

a negotiation round starts between classic monochronic and classic polychronic partners, it is likely to progressively shift to a more synchronic mode (tangible, multitask time combined with relatively high context communication in the terms of Palmer & Schoorman, see Table 8.3).

Finally, it is also common practice that parties follow a more monochronic approach in the last phase of a negotiation round which deals with the drafting and signing of a detailed contract. Drafting each clause is a particular task to be performed and even though parties may sometimes jump from one clause to another because they are interrelated, mono-tasking will be dominant. Furthermore time becomes urgent at the very end of a negotiation process since negotiators have generally spent more time on talks than initially foreseen. Based on a laboratory experiment involving 26 groups, it has been shown that time urgency reduces a group's polychronicity (Waller *et al.* 1999). At the very end of a negotiation process, time-urgent group members will increase the level of monochronicity in group work and this has been shown to have a positive effect on efficiency with the primary task activity (Waller *et al.* 1999).

Some Basic Rules for Managing Time in International Business Negotiations

In short, the international business negotiator, should follow some basic rules:

- (1) Take time for adequate preliminaries: getting to know the other party is most often crucial. More time is needed than in domestic business negotiations, since cultural as well as personal knowledge have to be acquired. However, don't get fooled by your partner exploiting you by overextending initial socialising and reducing thereby time available for task-oriented negotiation.
- (2) Control your time: do not get trapped by your own cultural time model; that is, try be aware of it. If needed, be prepared to renounce a negotiation, because the stakes are too low, or send lower level, less expensive executives. If possible, negotiate at home where you have a competitive advantage over your foreign partner in terms of time control.
- (3) Never tell the other side when you are leaving because this gives them control over your time.
- (4) Allow yourself plenty of time, and even more: patience is an asset for negotiation and it is destroyed by time pressure. In the U.S.-Vietnamese peace talks in Paris, the Vietnamese were at a time advantage because they had rented a villa with a two and a half years lease, whereas the Americans rented hotel rooms on a week-to-week basis.

- (5) Do not get fooled by the other party seemingly sharing your time pattern, try to set realistic dates and deadlines and, if needed, plan softly, introducing time slack, allowing for delays to be absorbed without ruining the economy of the whole venture. Remember: better plan modestly and realistically than go into enormous delays that ruin the credibility of the whole planning process.
- (6) Accept temporal clash to the extent possible. Before participating in a negotiation, learn the basics about the behavioral norms in your partner's culture concerning appointments, punctuality and planning.
- (7) Wait for the negotiation process to extend beyond the signature of the deal. For most cultures there is no clear time-line defined by the signing of a contract, the most important time frame is that of the relationship, not that of a particular deal.

Chapter 9

The Role of Atmosphere in Negotiations

Pervez N. Ghauri

An Indian company, Hindustan Paper Corporation (HPC) approached the Swedish company Defibrator and asked for a quotation for a pulp mill. The quotation was sent eighteen months later. Two competitors of Defibrator also gave quotations for the project. A number of meetings were held between the parties, before and after the quotation, and the quotation was revised. Later there were two intensive, formal negotiation sessions before the contract was signed some four years after the first enquiry.

Introduction

The above-mentioned type of business transactions are becoming increasingly frequent in international business. The opening up of several centrally planned economies in Europe and Asia will, in the coming decades, further encourage such business transactions. This type of negotiation between parties with no previous experience of each other and coming from entirely different environments is thus quite typical in today's international business relationships. Initially, the parties are unfamiliar with each other's environment and a rather long and complex negotiation process has to be carried out before the agreement is reached.

¹ This chapter is based on: Ghauri & Johanson (1979) and Ghauri (1986).

The delay and complexity is mainly caused by unfamiliarity and the parties' perceptions of the other's country, company and individuals. The purpose of this chapter is to shed some light on the impact of the "ambience" around the negotiation and on the process itself. This "milieu" has been defined as "Atmosphere" in our model of international business negotiations (see Chap. 1) and includes perceptions of parties on each other's behaviour. It includes issues such as: cooperation and conflict, power and dependence and expectations. For the sake of this chapter, we shall also refer to the "Atmosphere" of the formal session as including items such as: seating arrangements and non-verbal communication.¹ In our opinion these factors add to the perceptions of the parties about each other's behaviour. A process can be more conflict oriented if the seating arrangement and settings are not properly taken care of. On the other hand, a process can acquire a positive (cooperative) atmosphere if the seating arrangements and settings are pleasant and thoroughly considered: the same is true for non-verbal communication, which can send positive or negative signals, thereby creating a certain atmosphere.

A fundamental characteristic of these negotiations is the existence of conflict as well as cooperation in the relationship. To some extent, especially in "win-win" negotiation, the two parties have a common interest in finding a solution which is optimal and suitable with regard to the supplier's ability and the user's requirements. Basically, the two parties complement each other. At the same time however, there is a conflict of interest — costs to one of them are income to the other. The degree of conflict or cooperation in the atmosphere is also a matter of how the parties handle various problems. Atmosphere is thus a subjective and perceived view of the process and is related to the objective situation in the negotiation process. In a way, negotiation skill is the ability to let the cooperative aspects dominate the negotiation process. Unless there is some degree of cooperation, it is not worthwhile to continue negotiating. One function of the negotiation process is to reduce or even to overcome the distance between the parties. It is particularly important in international deals where parties have no earlier experience of one another or possibility to develop a relationship gradually by demonstrating in practice what they mean and can.

Conflict and Cooperation

In the context of negotiation, the conflict can best be defined as "the perceived divergence of interests, or a belief that the parties' current aspirations cannot be achieved simultaneously (Pruitt & Rubin 1986: 4). Or as, "the interaction of

interdependent people who perceive incompatible goals and interference from each other in achieving those goals” (Hocker & Wilmot 1905). For this purpose we refer to interpersonal or inter-group conflict perceived by interacting parties to a negotiation process. As we have explained above, conflict not only has a negative connotation but also negatively influences the process as a whole. In reality however, the parties may not be in conflict, as both of them want the transaction to take place. Moreover, as conflict intensifies, perceptions become distorted and people interpret everything according to their own perspective. In extreme cases, people endorse and accept proposals coming from people they perceive as being cooperative and reject outright the proposals or opinions of those they perceive as being conflicting. The perceptions and feelings become emotionally charged as parties become irritated, annoyed or frustrated. Moreover, as the perceived conflict escalates, parties become more and more irrational (Lewicki *et al.* 1994).

There is a universal feeling that we increase our communication with those people we perceive as being cooperative and agreeable and we decrease our communication with those whom we find antagonistic. As a result, parties get locked into their position and the negotiation process is seriously and negatively affected. There is hardly any negotiation process where there is no conflict, so conflict in a negotiation process is almost unavoidable. The issue at hand is how to handle this conflict and how to perceive, and let the other party perceive, more cooperation than conflict. The more the parties perceive cooperation the more the conflict appears to disappear. Moreover, the more problem solving orientation the parties have the more they will perceive cooperation in the process.

Power/Dependence

One function of the negotiation process is to bring about unanimity in the perception of the power/dependence relationship. Generally, it is assumed that the buyer from an emerging market has less power than other buyers (for example, from the domestic market of the seller). On the other hand, it is assumed that a buyer of a one-shot deal has no commitment to the supplier as regards an earlier relationship etc., which makes it less dependent or more powerful. If there is a big difference between two parties’ perceptions of the power situation, there will be no deal. Furthermore, a deal can only be made if this situation is acceptable to both parties. The parties cannot become independent of each other as they are interdependent, or dependent on each other to find a solution to the problem. That is why they are in negotiation with

each other. However, in our negotiation setting, the interdependence is one of a “win-win” nature and not that of “win-lose”. Mutually dependent relationships are normally very complex. Thus, the behaviour in such relationships is very calculated behaviour. It is therefore evident that the more information parties have on each other, the more easily they will understand each other’s behaviour.

As interdependence is a fundamental issue in these negotiations, it is of the utmost importance to realize how the perceptions of this interdependence influence the negotiation process. It is widely accepted that the perception of these interdependencies may influence the process in a number of ways, as their perceptions can have important influence on the judgments one party makes about: (i) the other party; (ii) itself; (iii) utilities of both parties; (iv) offers and counter-offers; (v) negotiation outcomes; and (vi) the negotiation process.

One side of this issue is that if one of the parties perceives more dependence, the other party is most likely to perceive more power. Most negotiators thus actively seek power, as it gives them an advantage over the more dependent party. The powerful party can control and guide the process to secure a desired outcome. Power has been defined in different ways by different authors (see, for example, Salancik & Pfeffer 1977; Emerson 1962). For our purpose however, the following definition is most appropriate:

... an actor ... has power in a given situation (situational power) to the degree that he can satisfy the purposes (goals, desires or wants) that he is attempting to fulfill in that situation. Power is a relational concept; it does not reside in the individual but rather in the relationship between persons to his/her environment. Thus, the power of an actor is in a given situation determined by the characteristics of the situation as well as by his/her own characteristics (Deutsch 1973: 84–85).

It is clear that power is not an attribute of the actor but of the particular relationship, in our case, the negotiation process. There are several sources of power in such a process. Some of these sources are listed in Table 9.1.

In negotiation, information is the most important power source. The party that wants to be powerful must gather information on the other party, its capabilities, its limitations and its financial position. Information on organisational as well as individual level is important. This information can then be

Table 9.1: Sources of power.

| | | |
|----|-----------------------|---|
| 1. | Information power | <ul style="list-style-type: none">• information on the other party• information on the situation |
| 2. | Expert power | <ul style="list-style-type: none">• superior technology• superior know-how |
| 3. | Legitimate power | <ul style="list-style-type: none">• authority• performance |
| 4. | Location in structure | <ul style="list-style-type: none">• centrality• criticality |
| 5. | Personal power | <ul style="list-style-type: none">• attractiveness and friendliness• integrity |

Source: Based on Lewicki *et al.* (1994: 298).

used in the negotiation process to support the position the party wants to take. This information can also be used to counterbalance the other party's power. The information on the situation refers to the information on environments and other factors related to the particular deal: the rules and regulations of one's own and other party's government/country, the competitors involved, the third parties such as consultants, and their role in the process. All this information will help the party to handle the process efficiently and smoothly. This will also help to check the counter-offers and bluffs by the other party and will help one to prepare counteroffers to the expected demands of the other party. The information is gathered beforehand, even during the process, by being extra observant about what is exchanged. What we do in negotiation is, in fact, exchange information on each other. Expert power is often exercised by Western MNE's while negotiating with emerging markets.

Expert power refers to the power that has clearly been achieved by the other party. A particular firm can be accepted as having achieved a certain expertise in a certain technology. Defibrator, the Swedish producer of pulp plants, has, over the years, achieved this type of expert power as a supplier of pulp plants. A particular party can, if it feels that it lacks such expert power, hire specialist consultants. This will demonstrate that it does have expert power, even if it does

not possess it itself. A certain university/professional degree can also provide one with this expert power (e.g. lawyers and accountants). Finally, a negotiator can let the other party perceive him as an expert, just by acting like one and by demonstrating that he has the required knowhow.

Legitimate power refers to a formal job title, office or hierarchy in the organization. For example, by sending the CEO or managing director to a negotiation process, one gives the impression that he has all the power to make concessions and close the deal. One can also establish legitimacy through proven performance.

Location in structure refers to the position of the individuals of this particular project in the overall organisational and strategic perspective of the respective organisation. How central is that position? Is he in a position to get all the support from his organisation or not? Also, how critical is this project for each organisation? In recession periods, the suppliers of heavy machinery might be willing to sign the contract just to be able to keep their employees busy, or to find a reference project. The criticality of different issues in a particular negotiation process may also influence this power source.

Personal power refers to the personal characteristics of the negotiators. Can he be trusted or not? Is he perceived as being friendly or not? Can he demonstrate integrity or not? Being a good listener and demonstrating empathy and sensitivity are some of the characteristics that enhance trustworthiness in a person. To show interest in the other party's comments and points of view is an important aspect of a good negotiator. On one hand, one has to understand and show sympathy for the other party's point of view, on the other hand, one has to be firm on one's own point of view and position. Finding the right balance between the two is showing integrity. It is also closely related to trust, that people believe that if an agreement has been made with someone, they will get what is promised (Lewicki *et al.* 1994).

Expectations

One of the characteristic features of the atmosphere is the expectations each party has from the negotiation process and from each session of the negotiation process. When entering a negotiation process, both parties have some idea of what they want to achieve as a whole, as well as what they want to achieve on most crucial issues, such as price. It is also called minimum vs. maximum position of the parties. Once the parties know what they expect to achieve, they can easily decide about their limits. For a negotiation process to progress, both

parties need to perceive some overlap in their minimum vs. maximum expectations. If a party perceives that it cannot achieve an outcome that will fulfil its minimum expectations, a negative atmosphere prevails. The same happens when a party perceives that the other party is demanding something beyond its maximum limit; in that case, it will see no point in continuing negotiations. Besides these short-term expectations' parties may also have long-term expectations that go beyond the scope of a particular session or process. For example, a company might be looking for a reference project or may want to penetrate a lucrative market, in which case the profits on the particular deal are less important. The parties need to have a clear picture of their short-term as well as long-term expectations. These expectations should not be based on wishful thinking but on realistic ambitions and possibilities. This demands an understanding of one's own as well as the other party's position and limitations. The realistic expectations create a positive atmosphere, while unjustified demands or objectives create a negative atmosphere.

In face-to-face negotiation, the longer the parties debate on a particular issue, the more the parties perceive that they will not be able to achieve their expected outcome, at least on that issue, and the parties perceive a negative atmosphere. The atmosphere during the negotiation process is dynamic and constantly changing. Each session and each argument may influence the expectations of the parties. Moreover, different dimensions of atmosphere also influence each other. For example, if the parties perceive a lot of conflict or cooperation, the expectations are influenced accordingly. The way the negotiations are run and the rules by which negotiations are conducted have great impact on the atmosphere. The site, the agenda, the participants, the seating arrangement and the manner in which the information is exchanged (e.g. threatening vs. persuasive) all work together to create a positive or negative atmosphere. It is thus up to the negotiators to take the above into consideration and create a positive atmosphere around and in the negotiation process.

The parties may have different expectations about the value of a deal. Consider the case of a singer negotiating with the owner of a concert hall over the payment for a proposed concert. They could not agree over the size of fee, with the singer's demand exceeding owner's maximum limit. The fixed amount demanded by the singer was based on the assumption that the house would be full while the owner's expectations were based on half-capacity. In fact, this difference in their expected value was the key to the deadlock. They reached an agreement where the singer received a modest fee plus a percentage of ticket receipts. As the singer expected a full house, he perceived it as a very valuable outcome. The hall owner was happy with the agreement as he only had to pay a very moderate fee (Lax & Sebenius 1986: 30–31).

Non-Verbal Communication

One of the important issues that influence the atmosphere in face-to-face negotiations is non-verbal communication. Language can be a barrier in international business negotiation. What may not be readily recognised is that non-verbal communication (also called “silent language” or “body language”) can interfere in cross-cultural interactions. Non-verbal communication includes the values ‘attached to time, space, material possessions as well as body movements, eye contact, hand gestures, friendship and simple nods of agreement (Cavusgil & Ghauri 1990).

In non-verbal communication, our sense-organs pick up predominant clues (e.g. the firmness in the handshake, eye contact, etc.) and we give meaning to these non-verbal symbols through our filter of knowledge, viewpoints and emotions. We also respond to non-verbal communication in the same manner (e.g. through a smile, eye contact, grip of the handshake or by stepping back). We select one or more of these gestures which is right for the situation, just as we would construct a spoken message. The difference is that quite often the messages received and sent through non-verbal communication are unconsciously done (Lesikar & Pettit 1939).

In negotiations, we should carefully observe the body language in order to grasp the full message. For example, someone leaning on the table and listening attentively suggests that he/she wants to hear more and appreciates our point of view. The movement of an eyebrow can also reflect his/her acceptance or rejection. Coughing or swallowing of saliva often indicates that the other person is nervous or rejects the idea. Moving restlessly on the chair or looking at the wristwatch also shows that the person does not approve of our comments and that he/she does not want to hear any more. Eye contact has different meanings in some cultures. For example, in many Asian countries such as Japan and Thailand, people of low rank (subordinates) normally do not look into the eyes of superiors. In crucial negotiation, the seating arrangements are often such that the parties do not sit directly facing each other, especially not at a small table. This is done to avoid the feeling of confrontation. All these aspects influence the atmosphere through its different dimensions: power/dependence, cooperation/conflict and expectations.

The rules of negotiating differ from country to country. Some of these rules are spelled out while others are based on implicit customs and practices. While Westerners rely more on written rules, in many countries of Asia and the Middle East people rely more on implicit practices. Therefore it is advisable to be briefed on crucial characteristics of the culture of the country in which the negotiations are to be held. All cultures resent certain gestures or actions. For

example, in some countries it is not considered polite to point at people or to cross legs in a manner that the soles of your feet are pointing towards the other person. Ignorance of these non-verbal or implicit aspects of face-to-face interactions may create a negative atmosphere and thereby disturb the negotiation process.

The Case Study²

Defibrator is a Swedish company which designs, manufactures, and markets a whole line of machines for pulp processes. In its special field — thermo-mechanical processes — it is considered a world leader; it has developed the technique and it has supplied half of the plants in the world. The competitors have, however, followed suit and the technical lead is diminishing. Organisationally, the company is divided in three units: development, manufacturing and marketing. The marketing unit is further divided into four departments, sales, project, service and marketing services. The sales department has a sales manager and there are sales engineers, each one being responsible for a part of the world. The project department designs the plants and for each project a project group is formed, which consists of a project manager and a number of technical specialists. The company has a number of agents abroad. Their main functions are market contacts and service. All negotiations, technical as well as commercial, are carried out by the Swedish sales department. The agent in India is a well-established subsidiary of an old Swedish trading firm. Hindustan Paper Corporation (HPC) is state-owned. It was formed in 1971 and given control over several Indian pulp and paper mills. It has a board of directors, which is responsible to the Department of Industry. There are some limits to its decision-making power, so that it has to get approval from the Department of Industry. It has also to follow a number of government rules and policies. Thus, when buying equipment it has to ask for quotations from all prospective vendors and there must be at least three comparable quotations.

The Indian government planned to use a West German government loan to finance the project. One condition of this loan was that the project had to be evaluated by a reputable foreign consultant. As it was a new process with a new

² The case study is based on interviews in Sweden and India, and studies of correspondence between the companies and other documents.

raw material, of which HPC had no previous experience, HPC also considered it necessary to have a consultant. Sandwell & Co from the USA was selected.

The Negotiation Process

The following seven stages of the negotiation process were distinguished:

- the first offer;
- informal negotiations;
- the final offer;
- planning for the formal negotiation;
- the first formal negotiation session;
- internal meetings;
- the second formal negotiation session.

The First Offer

HPC contacted Defibrator and asked for a quotation for the project. After some time, a project group was formed within Defibrator with the sales manager as the project leader. But it took about one and a half years until Defibrator produced the quotation. According to the project manager, the reason for the delay was that Defibrator did not have the necessary information about the customer and about the availability of chemicals and raw materials. Defibrator also had to receive quotations from the subcontractors. Besides, their opinion was “in deals with unfamiliar customers it always pays to wait and see, and let the idea of the project mature”. In other words, they were not sure about the seriousness of the buyer.

Before giving the quotation, Defibrator asked for a meeting and HPC's technical staff visited Sweden. In those meetings, mostly technical issues were discussed. But HPC also informed that they intended to pay cash and that there would not be any foreign exchange problems in India. By the time Defibrator gave the quotation, three other companies had also given quotations, one Indian supplier, one from Finland — Enso — and one from Austria — Voith. Quite naturally, during this stage, the atmosphere was mainly characterized by distance, a distance which was dependent on the physical distance between the countries and the lack of experience of each other's country. As a consequence, with regard to the dimensions of the atmosphere, the situation was very vague.

The strong influence of the distance is illustrated by the project manager's view that "with a Swedish or otherwise familiar customer this kind of quotation would only take one month".

Informal Negotiations

After Defibrator's submission of the quotation, a period of informal negotiations followed, which lasted about two years. The parties met each other several times, mostly to discuss technical matters. HPC's representatives visited Sweden a number of times and Defibrator's engineers were in India twice. HPC's consultants and Defibrator's agent took an active part in some of those meetings. A group of HPC board members studied the quotations and prepared a report in which they rejected the Indian quotation and strongly recommended Defibrator's machines. The consultants, Sandwell & Co examined the quotations and supported the views of the board members. HPC decided, after consulting Sandwell, that the capacity of the plant should be enhanced and that laboratory tests should be made on Defibrator's and Enso's machines, as the raw material eucalyptus to be used was quite new. The laboratory test was performed and that was important because the test and the meetings around it gave Defibrator information about the raw material and other chemicals to be used in the plant. Finally, after similar informal meetings with Enso, the technical staff of HPC and the consultants prepared another report, in which they strongly advocated that Defibrator's machines were the only ones suitable for the project. However, both foreign vendors were asked to give their final quotations for the project with the enhanced capacity. This was in accordance with the rules of the Indian government.

During this stage, the atmosphere cleared in several ways. Firstly, the distance decreased and the parties learned more about each other. "In the beginning it was very difficult for us to understand the objectives of the buyer and what he really wanted. During this stage, we met the buyer again and again, the situation became much clearer to us and we could perceive what was to be delivered". HPC became seriously interested in cooperating with Defibrator. Defibrator also got some ideas about the Indian firm's way of doing business. They received copies of a contract draft that HPC had concluded with a German firm for another project' and they got copies of standard terms and conditions, which the Indian government requires of such projects. Defibrator also realized HPC's strong financial situation and thus, during this stage, expectations of a future deal really evolved. Defibrator also learnt that HPC's engineers and consultants strongly supported their machines, which clarified and strengthened Defibrator's sense of power in the relation.

The Final Offer

Although Defibrator spent many more resources on the final quotation than on the first, it was delivered after a month only. The parties knew that this was the final quotation, which was to serve as a base for the contract. Thus, almost all issues had been considered. The technical problems had already been solved, now terms and conditions and financial matters took most of the time; in particular, the price was crucial. The margin for bargaining was difficult to reach. The atmosphere did not change very much during this stage; it was mainly characterized by growing expectations of a future deal.

Planning for the Formal Negotiation

About one month after the submission of the offer, the formal negotiation started in India after more than three years from the first contact. Defibrator nominated a negotiation team with a senior sales engineer as leader. He had some experience of negotiating deals with less developed countries. The company lawyer was a member of the team. A number of meetings were held and they tried to get some information on the behaviour of the buyer through the Indian agent. However, they had to accept that they did not have nearly enough knowledge. With the help of HPC's terms and conditions they worked out a contract draft, which they sent to HPC and demanded that it should serve as an agenda in the forthcoming negotiations. At HPC, the board of directors was to act as the negotiation team and they had to follow the previously determined terms and conditions of the government. Their preparation was mainly to examine how, and with regard to which issues. Defibrator's offer and contract draft differed from the government regulations. They also tried to get final quotations from the competitors who, however, did not respond.

Both parties had rather high expectations of a deal at the time. They felt inclined to cooperate with each other. Defibrator had spent so many resources on the offer stage and HPC wanted the machines. The power situation had become even more advantageous for Defibrator as HPC could not get final quotations from the competitors.

The First Formal Negotiation Session

The session lasted two weeks and a number of meetings were held. During these two weeks the parties met twice a day, once in the morning and once in

the afternoon. The buyer's consultant took part in the meetings and Defibrator's agent was present without playing an active role. Almost all issues were discussed but most of the time was spent on terms and conditions and real issues. On the whole, the technical problems had already been solved. Defibrator's contract draft was discussed but not accepted. There was disagreement on most of the issues. Whenever a conflict arose, the session was disrupted and the parties went into their chambers and worked separately. In the next meeting, they came with proposals for the disputed paragraph. The following issues were under conflict right from the beginning:

- infringements of patent;
- governing law of the contract;
- technical documents;
- sales conditions;
- arbitration;
- working hours of Swedish engineers;
- price.

The atmosphere was characterized by HPC's realization that they were strongly dependent on Defibrator and by the efforts to make the Department of Industry accept this situation.

Internal Meetings

Both parties started working on contract drafts. A number of contacts were also made through the Indian agent and through correspondence. Defibrator prepared a revised contract draft. HPC also had a number of internal meetings and also, in particular, with the Department of Industry. After many discussions, the Department of Industry approved most of the clauses of Defibrator's contract draft with the exception of

- governing law;
- arbitration;
- technical documents;
- working hours of Swedish engineers;
- price.

The Second Formal Negotiation Session

Some four years after HPC asked for the first quotation, Defibrator's negotiation team visited India for the second negotiation session. The team

brought the new contract draft, which HPC refused to consider, as the previous one had by now been accepted by the government, except for the disputed clauses. This time they could agree on all issues except that of price which remained the single source of disagreement. The price discussion ended when HPC announced that “if you give 7% discount, the order is yours”. Defibrator’s team leader said that it was such a big discount that he had to phone his head office for advice. In the telephone discussion, the sales director and even the managing director took part and gave their approval.

It seems that both parties were definitely determined to complete the deal during this session. There were some critical points but, on the whole, they moved forward in an atmosphere characterized by cooperation. HPC’s consultant played an important role in this respect and made a number of suggestions. The atmosphere was quite clear with regard to power/dependence, and the formal obstacles to an agreement related to the power relation had been removed. The parties were strongly committed to a deal.

Concluding Remarks

It seems appropriate to describe and analyse the negotiation process as an interaction in which the atmosphere gradually, as the distance between the parties slowly diminishes, gets differentiated with regard to conflict/cooperation, power/dependence and expectations. The above-mentioned case study is a good illustration of the impact atmosphere can have on the negotiation process. As the case revealed, with a few interruptions, the expectations of a future deal were raised and the parties eventually committed themselves to the deal. The main and perhaps critical — interruption had to do with the power relation. It seems as if the parties had a similar perception of their relative power but that one of the parties had no authority to act in accordance with its perception of the situation.

The perceptions of the parties influenced the cooperation/conflict situation, which resulted in a deadlock and then one more formal session. In particular, the rules of the Indian government were a critical factor. Perhaps it is important for suppliers from industrial countries to acquire a better understanding of the relations between the state and the industrial companies in a particular country. The consultant also played an important role in this process. He had a mediating role, contributed actively to the decrease in distance and to the cooperative atmosphere during the final stage. The Indian agent of the supplier, on the other hand, seems to have played a surprisingly passive role.

Finally, it seems as if the resources of the parties were the dominating factor behind the power/dependence relation. The lack of competitors probably decisively affected the whole process as well as the outcome. Thus, we can conclude that, whereas the power/dependence perceptions of the parties had an influence on the negotiation process, it seems that the perceived power relation had a greater impact on the outcome of the negotiations.

Part III:

Negotiating Different Type of Projects

Chapter 10

Negotiating Sales, Export Transactions and Agency Agreements

J. B. McCall

Introduction

The principal export transactions are those which involve sales direct to users and to resellers in open marketing channels, to distributors in an established channel of distribution and through agents. They are characterised by a mutual dependence which can be transitory or enduring and regulated by the agreements which legitimise them. The parties seeking to enter these agreements do so because they have simultaneously a reason to cooperate and, because their expectations differ, a reason to be in competition. Competition begets conflict, and bargaining and negotiation take place to help resolve the conflict. Negotiation outcomes depend on how the parties interact with, and on, each other and these hang on the behavioural predispositions of the negotiators, the situational and environmental influences on them and the influence strategies and skills they use (McCall & Cousins 1990: 10–13).

Characteristics of Export Sales and Distributorship/Agency Agreements

Export sales agreements and distributorship/agency agreements differ in a number of respects. Thousands of sales agreements are negotiated every day whereas distributorship/agency agreements are made (and terminated) much less frequently. The agreement of sale is characterised by its capacity to create profit or meet other objectives of the selling organisation while that of

distributorship/agency provides the basis under which profit may be created in the future and is normally seen as long term in its strategic view. A sale can be a one-off episode or linked with others which precede or follow it; distributorship/agency is an on-going relationship subject to the pressures of change in the context in which it is played out. This chapter addresses the fully negotiated sales/purchase transaction which subsumes other and more limited kinds of sales transaction. Issues to be negotiated in sales contracts range from contract scope, delivery, terms of payment, performance, specification, service and arbitration to simple reduction in price or minor revision in terms; in distributorship/agency contracts, negotiations are dominated by issues such as exclusivity, extent of territory, supplier support, terms of payment, commission and commitment to the relationship in terms of investing in it. The process is one in which confrontation is more likely to occur in the actions of people brought up in certain cultures and is also more likely to happen in sales negotiations than in distributorship/agency ones.

Agreements of Sale

The Bargaining Framework

Sellers will normally know their costs and will have established a minimum price below which they are not prepared to go while buyers will have determined a maximum amount over which they cannot or will not pay. The range within which they will settle will lie between that figure and the price of asking/offer. Where these ranges overlap is the area of negotiation. Karrass (1974) makes the point that the settlement range is “the buyer’s estimate of the seller’s minimum and the seller’s estimate of the buyer’s maximum”. The heart of the negotiation process is the information the parties can extract from each other and use for mutual influence. This can change the seller’s and buyer’s perceptions of what the other will pay or receive and is the strategic function of the face-to-face situation.

A seller’s level of first offer will be affected by factors such as need to cover fixed costs, maintain cost/profit/volume advantages, long term aspirations, contractual risk, contingency amounts and the relationship between the parties. A Norwegian, coming from a country with a low power distance and a consensus tradition will expect the offer to be close to the final price. In Brazil, a high power distance country with high uncertainty-avoidance, there is

evidence that the readiness of Brazilians to make concessions leads to the perception that prices are inflated. The dilemma confronting the seller is to pitch the offer at a level that takes these factors into account but will not shut out the business. A buyer has to consider his level of first offer in relation to time costs as any delay brought about by extended negotiation times may result in higher costs or cause delay in completion. The relative power residing with the buying/selling parties will bear on levels of first offer and hence on outcomes. This can change over time and can be affected by environmental factors such as changing market structures, alterations in consumer preferences and varying exchange rates; and also situational factors like the degree of the seller's need for the work and the buyer's need for the product or service. Power can often be built into a situation by the collection, analysis and use of all relevant information, e.g. data on tariff reductions on the occasion of the accession of Austria to the European Union.

Face to Face If the selling organisation has a good reputation in the buyer country and/or has put forward a quotation based on prior contact with the buying organisation to establish what it really wants and has supported this with appropriate selling and influence activities, then the invitation to enter negotiations is a foregone conclusion. Even at this early stage there are differences in what constitute appropriate influences. Attempts to go over the head of the person responsible for negotiations may be quite acceptable in low power distance places like Israel or Scandinavia but unacceptable in places where hierarchy is strong as in France or relationships vertical as in Japan. A seller, in advocating his product, may sell its consideration by stressing its innovativeness in the USA or France where technical advances are welcomed, its assistance to performance in Germany where dependability is valued highly or what it will do for the buyer's or influencer's standing in England where image is an important attribute in establishing an individual's power base.

The Agenda The negotiation agenda can itself be negotiated and can be used to strengthen the position of one or other of the parties. For example, if the sellers have discovered in pre-negotiation contact that the potential buyer puts a premium on performance guarantees and wants to use this leverage on performance to draw out a better price, then they can ask to have performance guarantees put ahead of price on the agenda and put up strong resistance when guarantees come up for discussion. After this has gone on for some time to no avail, the suggestion can be made that it might be better to return to the issue after price has been discussed, the implication being that if the customer gives

on price, they might be prepared to give on performance guarantees (MacMillan 1978). But not everyone likes to negotiate an agenda. Many Swedish businessmen consider it honest and efficient to prepare an agenda in advance and keep to it and see such activity as sharp practice (Philipps-Martinsson 1981).

Finding the Negotiation Range At the opening stage of discussions, negotiators seek to explore the entire area covered by negotiations through the taking up of extreme positions which include their hopes for outcome plus the concession factors built in to their levels of first offer. The kinds of question asked and statements made will be conditioned by attitudes created by prior knowledge the participants have of each other and experience of prior negotiations with their organisations. If a quotation or offer has been made, this will form the starting point for the dialogue. The language used at this juncture will, certainly for Europeans and Americans, be forthright and uncompromising: "Do you mean to say that you cannot supply for less than . . .?" "We couldn't possibly agree to such a low price — you don't appear to appreciate the quality built into our product". The problem for negotiators in these skirmishes is to identify if there is a gap between what the other says and is prepared to do. If the other's language is strong and simple, there is a presumption that the commitment is considerable. The less ambiguity there is in their statements, the greater can the other's commitment be taken to be. Where there is an overlap in the bargaining zone, the negotiator should be able to identify all the individual issues which comprise the negotiating area. Where there is no overlap, the lowering of aspirations is of critical importance. If either of the parties is convinced that the degree of movement needed can be achieved, this they may do by negotiating with their own management or team for a revision of authority or seeking to get the other party to obtain revised authority.

Such confrontational means of determining the negotiation range sit uncomfortably in an East Asian setting. Confrontation threatens face and other means are employed to establish the issues that separate the participants in the negotiation. Similarly, the Latin American or Arab buyer often bases his buying decision on the personality of the salesman and not on the quality of the product (Muna 1980: 30). It is the salesman's ability to strike chords in him that makes the buyer decide and confrontation is not the way to the relationship that aids this decision. In these circumstances, the opportunity should be provided to start in a more cooperative or relationship-inducing mode. People of other nationalities adopt similar behaviour if they have had a good relationship and shared satisfactory recent transactions. When the people involved in the

negotiation take up their positions strongly and reinforce them with harsh and unyielding repetitions of their basic position or variations on the same theme, the situation can rapidly deteriorate into what has been called “attack/defend spirals” from which it can be difficult to escape although technically agreement is still possible.

Escaping Impasse

Playing the strong negotiator can be overdone. If a negotiator is compelled to withdraw from a position of extreme firmness in the face of an opponent’s pressure, the loss of image will be carried over to other issues and subsequent negotiations. A buyer or seller has to strike a balance between firmness and credibility. If on the other hand they have got themselves into an attack/defend spiral, then to escape this dilemma they have to signal a willingness to move from initial stances they have taken up. It is encapsulated in the phrase “to convey without commitment”, e.g. “If you were prepared to accept a later delivery, we might consider a reduction in price”. A suitable reply might be “We might consider such a step should you find it possible to . . .”. The possibility of agreement has been created without the parties committing themselves. Not only the words spoken but the pitch and stress used and signaling action such as that shown in negotiating the agenda, are indications of a willingness to move.

When one of the parties is of a very different culture, the time taken is likely to be longer and cues are likely to be more specific: “This is what we did in the case of . . .” Where a practical demonstration is required as a signal of intention, this can often be given by conceding a “straw issue”.

Identifying Common Ground

When movement has been initiated, the negotiators can test the assumptions they have made concerning the commitment of the other side to the issues on which they appear to be adamant and can ensure that the commitment to the issues that matter most to themselves is maintained. The example below is of further probing behaviour into the other’s commitment to the issues taken to be important at the stage of exploring the negotiation range.

“How reliable are your new drive motors in high ambient temperatures?” Here the buyer is asking an apparently innocuous question. If the reply is a general one about the high quality, a supplementary question might be asked: “Have you had any problems with them in installations similar to the ones we are considering?” The question is now more specific. “If the questioner possesses information about problems at such installations, then the question is loaded. It is designed to force an admission. A wise seller would assume knowledge by the buyer and perhaps turn it to advantage by demonstrating a cooperative and open attitude: “We did have problems at the plant of X Company. That was a fabrication problem which we have now overcome”. He might go on to emphasise the lengths to which his company had gone to resolve the problems, so demonstrating commitment to the customer’s interest. “The problem was one of breaking rotor bars that tore the windings of the stators. What we did was to recheck our designs and ask an independent engineering laboratory to perform a similar exercise in parallel. Having confirmed there was no design fault, we then checked our construction methods and found that a new machine being used to fit the rotor bars to the rings was leaving a certain play in operation which led to breakdown. Our current methods positively preclude this”. The seller’s position may have been slightly weakened but nothing like the extent to which it would have been had he denied the existence of a problem.

“In that case the buyer might have come back: “Do you deny that you have had problems at X Company?” The question is now a pointed one, framed in a way that requires a simple “Yes” or “No” as an answer. These are perhaps the words which best show how great the commitment is. The buyer was reasonably sure, or should have been, before putting the question in that way, of the answer he was going to receive. From a position in which he was seeking information, he has moved to a position where he has forced an admission and is now poised to extract a concession. “In our business down-time of any equipment is revenue lost. You are asking us to pay these prices for machinery which we would have to take largely on trust?”

If the seller in the above exchanges denies that a problem exists or has existed until recently, he loses credibility as a negotiator on this and any other issues in conflict. He has been

caught out because of the information held by the buyer and his bargaining position has been weakened (McCall & Warrington 1989: 198).

The negotiation seeks progressively to sort out those issues on which the parties are obdurate and those on which they are ready to concede provided there is an equivalent concession in the overall package eventually agreed.

It may not be possible to find concessions of equal worth on individual issues. It is more likely that equitability is obtained by relating the issues to the overall agreement. For this reason good negotiators do not seek to obtain a fair exchange of resources on individual items. They reserve their positions until they know what the extent of all the issues is and achieve perceived equitability in the overall package agreed.

In Western Europe and the USA in particular, the more precisely a position is defined, the stronger is the definer's commitment likely to be. If an Arab speaks like a person from one of these parts of the world, he is either attuned to Western culture or his commitment is not great. Because his language, built as it is on the beautiful style of the Koran, is not perfectly suited to the demands of modern commerce, he has to exaggerate and elaborate on it to create meaning (Shouby 1951). The Chinese do not seek to identify where common ground exists by confrontational means. To avoid possible loss of face they set about obtaining information by an apparently endless string of questions to build up a picture they feel will be acceptable to both parties. It tests to the full the cultural sensitivity of the foreign negotiator.

In all these exchanges it is important to create the climate of understanding by communicating as far as possible in a way in which the utterance of one party has a true reflection in the felt meaning of the other. Even in places as geographically close as some European countries, there can be wide difference in business thinking (Laurent 1983) and in the wider national perspectives (Hofstede 1991; Hampden-Turner & Trompenaars 1994). The skill is to match what is being said to what is understood.

In support of a commitment and in defence of any attack made on it, a negotiator can plead limited authority. One of the weaknesses of high level negotiators is that, while they can exercise more discretionary judgement, they are less able to appeal to limited authority as a source of negotiation power. A buyer who cannot approve an order over a certain value, or a salesman who does not have the authority to vary terms, is more difficult to deal with than someone who has. Restrictions on authority like budget limits, credit limits, cash discount limits, house rules against divulging costs, fair trading laws, specification changes, all give their user negotiation strength. Like any strength,

if played too hard it may result in no bargain. Used with judgement, authority limits provide a negotiator with a face-saving way of testing the firmness of an opponent's stance and providing him with a face-saving way of giving in. Officials in the Republic of China, because of their bureaucratic need to diffuse responsibility, use such behaviors widely. Businessmen in countries with non-convertible currencies often use it deliberately to exert pressure for price concessions because of the need to conserve hard currency earnings as far as possible.

If the other party is perceived to be making unfair demands on the negotiator, then the latter may appeal to some form of legitimate power or moral rules related to social norms of equity, equality, need, opportunities, equal concessions and historical precedent (Magenau & Pruitt 1979). Such appeals are emotional and may be successful if the parties share a culture where people express their positions through appeals and emotions, e.g. in most Latin American and African countries. A Mexican, for example, may find it hard going to convince someone from a Germanic or Anglo-Saxon culture whose style of persuasion is more influenced by hard facts or expert opinion. A person with an action or process dominant style may find it difficult to interact with someone having a people style (Casse 1994) unless aware of it.

Trading-Off The very fact of identifying common ground isolates those areas where there is no common ground and there is conflict to be resolved. Once commitments have been demonstrated and tested the participants can proceed to the bargaining process in order to bring the two sides closer together. A seller might agree to an earlier delivery provided the information allowing him to proceed could be produced within a stipulated period. A buyer might agree to a reduced penalty for late delivery if the seller would requote and accept payment in the buyer's country currency. A negotiator from a Muslim country might insist on disputes being taken to local courts, but may be less resistant than a Western counterpart on issues of warranty. By such means the gap separating the parties is narrowed until they see the possibility of the ultimate bargain.

To come to an ultimate bargain, a negotiator has to assess what constitutes a fair outcome. If all issues are to be part of an overall package, then a judgement has to be made on the spot. This hangs on earlier preparation, both in relation to the costs of possible trade-offs and the communication arrangements between negotiators and the team that they are representing for quick handling of queries on such things as specification amendment and delivery. If a potential purchaser is required by his central bank in Chile to pay no more than 6% interest on an extended payment contract, and the supplier

has a going rate of 10% in his offer under negotiation, then the supplier's negotiator has to be able to recalculate the offer including the unwanted 4% in the capital sum and showing an interest rate of 6% to meet the customer's needs. He is expected to have the authority of the company to do this and the capacity to do so without hesitation.

Some elements which are traded off are worth less than, or more than, any figure determined by an accounting convention. If a seller is less interested in immediate profit than in a long range goal like obtaining a foothold in a growing market, then he may be prepared to trade it off for a value much less than cost. If a buyer in Poland is prepared to pay up to ten times the value of an essential part because that was the cost of the loss of a week's production, a seller might just take advantage of this and charge above the going rate.

The problem of setting a value on concessions is made more difficult by the fact that some aspects of a concession are not measurable in money terms. With penalty clauses in contracts, for example, these "should bite into the profits of the seller" to encourage the seller to maintain promised delivery or performance. But if the rates normally used are 3% up to 10% per month or more, and what is asked is well in excess of what is normal, then this combined with the probability of a penalty being incurred, may raise the monetary equivalent value.

Neither buyer nor seller knows exactly how far he can maximise his advantages. A negotiator can only make assumptions about an opponent's preferences, expectations and goals. It is the testing of these assumptions that is a prime function of negotiation and the interpretation made will vary with the experience of the tester.

In testing assumptions negotiators are careful to mitigate the extent of any apparent disagreement by revealing, or appearing to reveal, what is going on in their minds, as in "I am very concerned that we seem to be so far apart on . . .". There are two forces at work on the seller and buyer. One is the esteem motivation that drives them to strike the best possible bargains and provide the satisfaction of a job well done, perhaps establishing a precedent for future negotiations. The other is the security motivation to settle when a reasonable bargain is identified, rather than seek a more advantageous outcome at the possible risk of not reaching agreement.

It is against this background that buyers and sellers convey to each other, by the moves and countermoves they make, how they see a resolution of their differences. This is the time when they have to bring together all those items they have promised to "consider", "bear in mind", "take account of" — and all the other phrases used when waiting to establish the full negotiating range

before making a commitment on issues and put forward a package for the consideration of the other party.

In Western cultures the negotiator may look his opponent straight in the eye and speak with a tone of complete finality supported by corresponding non-verbal language like sitting back with arms folded and putting papers in order. The language is terse and to the point, confirming the finality: Sometimes, perhaps during a break, the negotiator may have signalled intentions by treating the opponent with a greater degree of familiarity, using cordial expressions and similar manifestations of intimacy. Phrases like "I have done as much as I can. Now it's up to you".

In Eastern cultures signals may not be so apparent. It has been reported by Pye (1982) that Chinese negotiators never telegraph their next move through a show of emotions. The level of friendliness or impersonality remains the same whether negotiations are approaching agreement or failure. To Western eyes a sudden move to agreement following the seemingly endless quest for information comes as a considerable element of surprise.

Making the Agreement The position has now been reached where the area of conflict has been reduced to a point at which the negotiators are in a position to assess the possibilities of early agreement. One or the other will put forward his proposal for the final bargain. This will normally be in the form of a package because issues have been kept linked while matters in conflict have been addressed. In major sales agreements characterised by some complexity, more than one package may be proposed.

To bring a negotiation to a conclusion many negotiators find that summarising the steps through which they have proceeded is a convincing way of getting agreement. This may be a repetition of the concessions that have been exchanged and proposals made which a weaker party may accept entirely: "Let me summarise what I think we have agreed". Often, agreement is achieved by a final concession. It has to be big enough that it is not considered trivial, but small enough to convince an opponent that there are no more concessions to be had. The opponent may also wish something in return. The opponent may try to conclude by posing some such question as "Do we understand that if we do what you ask us you will reduce your price by . . .?" An agreement is about to be made. In the process the participants will have, knowingly or not, tried to resolve the negotiator's eternal dilemma of whether to go for the best possible deal or settle for an acceptable but not optimal outcome. East Asians have less feeling for the drama of agreement than Europeans and Americans and view it as the beginning of a relationship rather than the culmination of a commercial process.

“Memorandum of agreement” is a term commonly used for the recorded bargain. It emphasises intent rather than the language of lawyers. A simplified form summarises what has been agreed under heads of agreement. This makes it less threatening for Chinese negotiators than an agreement put in the framework of a legal contract.

Agreements with Governments and Government Sponsored Agencies

Despite galloping privatisation of the public sector, there will always remain a substantial government market for suppliers. Negotiations with government departments go through a similar process to that described above but they are played out to a different set of rules and assumptions. The differences are set out in Table 10.1.

The Law and the Negotiation of Sales Agreements

The eventual contract which seals the agreement is the conclusion of a legal process in which the export sales negotiation has been embedded. Because it may affect eventual outcomes, the knowledge of the law under which an agreement is made is essential for international negotiators. It is within the framework of national, supranational and international laws that businessmen make their agreements. So knowledge of the commercial law of one’s own country is not enough. Required knowledge covers the UN Convention on Contracts for the International Sale of Goods which a purchaser might wish to regulate the contract the law of the country under which a contract is agreed, and the custom of the merchants which has been a successful source of the harmonisation of international trade law and is embodied in “INCOTERMS 1990” (International Chamber of Commerce 1990) which forms part of a contract of sale if so agreed.

The minimum knowledge required is the process of offer and acceptance and how it varies in different jurisdictions and how offer and acceptance are usually excluded in formal contractual documents; the performance of contracts especially as it refers to delivery, the passing of property and the passing of risk and how arbitration rules and practices change to meet the cultural needs of different countries.

In most circumstances good practice in addressing the legal environment of contracts of international sale will not be measurable. Should however the contingencies they are intended to cover come to pass, then the negotiator who

Table 10.1: Negotiating international sales agreements in the private and public sectors. (Table does not apply to contracts of relatively low value.)

| | Private sector | Public sector |
|-------------------------|---|---|
| Philosophy | Market forces determine outcomes; best deal in the circumstances | Fair and reasonable price; value for money in the circumstances |
| Scope of supply | Arm's length or special relationship; often open to all suppliers to try for business | Approved list of suppliers; selective tendering in certain circumstances; open procurement for large public contracts in EU |
| Original contact | Direct approach to suppliers often as result of selling activity; invitation to tender | Open call for tender; direct approach to selected suppliers |
| Basis of negotiation | Seller's offer/quotation or large buyer's standard conditions of purchase based on known seller price | Standard form of contract based on tendered selling price |
| Transaction constraints | Varying national practices; extent of negotiators' authority | Procedures, methods, rules; extent of negotiators' authority |
| Nature of compensation | Price based on bargaining process | Price based on lowest offer; price based on cost plus management fee often including element of negotiation |
| Price criteria | Structure of buyer's costs or unique advantages of seller's product; investment appraisal | Investment appraisal as mediated by policy factors; lowest prices |
| Selection criteria | Cost; degree of differentiation | Policy dictated choice |
| Level of first offer | Reasonable to high; profit objective leaving room for trade-off | Reasonable to meet the needs of competitive tendering |

Table 10.1: Continued.

| | Private sector | Public sector |
|---------------------|--|---|
| Issue emphasis | Specification, price delivery, service level | Specification and cost; formula for profit |
| Mode of negotiation | Cooperative to competitive; often confrontational at early stages; effort frequently required to escape impasse; information seeking for mutual influence; often need for closing concession | Cooperative; confrontation unlikely to be important; easy transition to identifying common ground; open exchange of information; little need for closing concession |
| Legal framework | Almost invariably contract law; not highly developed in some countries | Contract law in different stages of development; in certain jurisdictions there are administrative contracts/special rules |

has taken the appropriate steps will have left his organisation in a strong position should litigation ensue.

Distributorship/Agency Agreements

The Relationship

Companies attempt to enjoy the benefits of specialisation whenever and however possible. When they have been involved in a regular course of dealing which has been marked by a series of sales agreements and acknowledge that it is in their mutual interest to perpetuate what is a dependence relationship, this is generally viewed as an indication that a channel of distribution has emerged.

The parties are committed to a cooperative arrangement which takes the form of fulfilling a negotiated role in the channel. The arrangement is regulated by the distributorship agreement.

The relationship is more likely to be characterised by unequal rather than by equal power. One party to the relationship will therefore enjoy a relative power advantage. Under conditions of unequal power, the party possessing the greater relative power tends to behave exploitatively while the less powerful tends to behave submissively. For the supplier in distributorship negotiations the temptation to exercise that power has to be held in check. The supplier seeking to develop a market through a distributor depends on the performance of that distributor for the success of company plans. If, from a position of strength, he arbitrarily sets targets at an unattainable level, his actions will be against his own interests.

Because organisations wish to work with others to achieve goals, cooperation is the most commonly observed behaviour in channels of distribution. It exists either on a voluntary basis or as a result of conflict resolution by the channel leader through the exercise of power that he holds. If cooperative behaviour is necessary between organisations, it is equally so between the individuals who represent their organisations. Mutual goodwill is a prerequisite to the establishment of lasting relationships.

Agency agreements similarly depend on relationships. In this case the agent is an arm of the principal promoting sales of the principal's products in return for payment by commission or retainer plus commission.

Negotiating Original Agreements

The agreements made in distribution channels provide the foundation for channel management. The purpose of original agreements is to define the terms of operation and the ground rules by which conflict may be resolved. The legal issues involved have been examined and frameworks around which different agreements may be drawn up have been provided (Ezer 1993).

The negotiation of an original agreement begins with the necessary preparation for a satisfactory outcome. It presupposes the choice of distributor or agent has been made. It starts with identification of where the power lies. Where alternative intermediaries are in short supply, the apparently weaker has a strong negotiating base. This will be strengthened further if it is established during the course of negotiation that the distributor or agent has a special relationship with key customers. A supplier's or principal's hand will be strengthened if his product is covered by patent, trademark or copyright.

The Negotiation

There is not the same degree of extreme position posturing and hard language or bluffing as in many sales/purchase agreements since the supplier/distributor relationship is normally perceived as one of trust arising from agreement on roles and rewards for joint marketing performance. Nevertheless, the cooperative nature of relationships does not mean there cannot be a competitive element to the negotiation. What might be seen to be an outrageously demanding proposal in a mature channel can be viewed much more tolerantly when the people are meeting for the first time. To that extent there is scope for settlement within a bargaining area perceived to be reasonable and for varying the bargaining area by reducing the other party's aspirations.

Areas of potential dispute can relate to factors like the stake the distributor or agent will hold in the joint activity. A manufacturer of consumer durables might see an investment in specialist staff an immediate necessity to service the product(s) while the distributor/agent might see that as an imposition until a large enough customer base has been built up to justify the expense. A distributor of branded consumer goods might be interested in price and discounts, payment terms, the stocks to be carried, exclusivity in a defined area, how far the supplier will assist in advertising, tight conditions under which an agreement may be terminated and protection under the law and arbitration in the event of unresolved conflict. On the other hand, the supplier may be interested in agreeing quotas, feedback on market conditions, promotion plans of the distributor and in getting the distributor's agreement to his standard contract of distributorship. The outcome may eventually be agreement based on a variation of the standard contract in return for a higher quota for the first year than originally envisaged by the distributor and perhaps an undertaking to provide information according to the supplier's format in exchange for some concession on levels of discount for different quantities and contribution to advertising in the overall settlement.

An agent, like a distributor, is interested in the area covered, exclusivity, products handled, duration of agreement, conditions of termination and the law under which it will be interpreted. He will, in addition, be concerned with his own remuneration by way of commission, the basis of its calculation and the terms of its payment and any other duties and expenses to which he will be committed.

In practice, the distinction between agent and distributor is not quite so clear cut. An agent may act as such for his principal's products but as a distributor for spares and consumables. A distributor may act as such for his supplier but

may be paid commission when required to service accounts of competitive distributors being supplied by the same manufacturer.

Negotiating the Continuity of Agreements

The distributorship/agency agreement is not a one-off transaction. It can be viewed as a continuing series of episodes, the original agreement holding good only for that moment in time in which it was made. The relationship moves on and clouds the original objectivity. It can be put under stress by a variety of factors requiring the agreement or specific aspects of it to be reviewed.

Economic changes, like a change in the exchange rates (as with the volatility of the U.S. dollar and the Japanese yen in the mid-nineties, which varied between 80 and 130 yen to the dollar necessitated new arrangements to accommodate for example the fall of the distributor's/agent's country currency in relation to the supplier's. Revised arrangements need to be put in place to counter the loss of competitiveness in relation to domestic and other country suppliers whose currencies have not moved to the same extent.

Political and legal changes can also affect the relationship and require the agreement to be modified in some way as when countries joining the European Union in 1995 needed to ensure their agreements complied with the competition laws whose principles were set in the Treaty of Rome and are clarified in different situations by decisions of the EU Commission and judgments of the European Court of Justice.

Changes in the perceived strengths of the parties as a result of working together can enrich a relationship and produce a mutual regard and dependence arising from the more effective use of mutual resources and may sometimes change the nature of the power relationship between them. A Latin American agent had close contacts with *financieros* or development banks and was able to obtain for his customers finance for large projects not normally available. As a result he made the supplier more dependent on his services and could ask more in return which was likely to be reflected in any revised agreement. Agreements should have a relatively short term put on them to ensure they meet current conditions but should be long enough in the first instance to encourage a new distributor/agent to invest in the relationship.

Negotiations Arising Within Agreements

Once the parties have experience of operating an agreement, they are able to establish whether the objectives of the parties really coincide. The supplier may

be seeking to exploit the market through a distributorship or agency. If either chooses to have a spread of distributorships or agencies rather than develop a core of related ones, then there may be something to be negotiated which could well end in termination if there is no evidence of changed behaviour.

Most of the issues to be negotiated during the course of a mature agreement are associated with the marketing mix. Modifications to product, packaging or service level may need to be made to meet the requirements of the distributor or agent. Channels may have to be revised or extended to accommodate new strategies derived from changes in the environment, and new communication arrangements made.

When product modifications are made, discount structures are adjusted, terms of payment changed, or amended distribution and communication arrangements introduced, price is rightly seen as the value placed on these changes.

Termination of Distributorship and Agency Agreements

Even long-standing agreements can be brought to an early end by changes in circumstances which no longer support the common objectives on which the original agreement was founded or they can be terminated by a specific act of one of the parties, usually the supplier, for failure to perform.

There are problems to be resolved by negotiation in dissolving an agreement. If a distributor or agent holding stocks has his agreement terminated, he should not have to be left with stocks to dispose of as he can. A good agreement will have made provision for this, e.g. by stating that in the event of termination by the supplier, they will be bought back at the price paid plus any charges of carriage if quoted in the supplier's standard catalogue. But this does not resolve everything. An intermediary may be carrying stocks that are obsolete but held as a service to customers using old equipment and may wish this goodwill element to be recovered in the termination arrangement.

As in the approach to new and revised agreements, information bearing on the negotiation is crucial. If the agent or distributor has consistently failed to meet agreed targets written into the contract, that has to be established. If the supplier terminates but has himself failed to meet the terms, such as failing to deliver outstanding orders, his position has been weakened. A critical aim is to terminate in such a way that the outgoing agent or distributor assists in the transfer, for example, of stocks, customer enquiries and information on

customers and markets. It is often necessary to concede on things like buying back stock to obtain this continuity.

The Law and the Negotiation of Distributorship/Agency Agreements

Agency and especially distribution are embedded in a web of national and transnational laws. Competition policy varies from country to country and laws vary accordingly. It is therefore in the interest of anyone making one of these agreements to know the appropriate law. This allows, when circumstances permit, for this knowledge to be used as a negotiation counter.

In the USA contracts are surrounded by a complexity of laws stemming from the Sherman Act which prohibits contracts in restraint of foreign trade and monopoly. Agreements the sole effect of which are to restrict competition, are void. The granting exclusively to a distributor of a territory or product/brand is increasingly seen as violation of the law irrespective of its competitive effects.

In most Arab countries there are commercial codes in which provision is made for disputes to be taken before local courts but it is normal for disputes to be referred to arbitration for quick settlement. This can either be at the International Court of Arbitration in Paris or locally. The local court has discretion to set aside arbitration according to certain rules.

Under EU law agents are exempt from a general prohibition on agreements likely to affect trade between states. Distributors are only exempt from such prohibition where they have a market share below a certain percentage and combined turnover of under a given value of ecus. Equally, under the concept of parallel imports, there are certain restrictions on what may not be included in an agreement, e.g. forbidding a distributor to re-export his products to another EU country.

Where an agreement is not considered to affect trade between countries, then the law that is relied on in the event of dispute is the law agreed between the parties. In the United Kingdom the law of agency is weak; in France, Germany the Netherlands and some other countries, the law presumes the agent the weaker of the parties and provides for compensation if an agent's services are dispensed with. It is therefore to the interest of a British agent to have an agreement with a French supplier under French law; for the French supplier English or Scots law provides an advantage should that supplier wish to terminate the agreement. If a French supplier can establish that an English agent is unaware of this then he can trade off to his advantage an apparent concession to agree to English law in return for a substantial one. In Belgium there is a law specific to distributorship which provides for compensation under

specific rules for the goodwill which the distributor is assumed to have built up for the supplier.

Conclusion

Export sales agreements and distributorship/agency agreements are subject to similar processes and depend for their effectiveness on how well the agreements are made. They do, however, differ in a number of respects.

Power, usually asymmetric, exists in both cases, but the nature of the power tends to differ between the two. In major sales negotiations there is considerable power in the system and the party exercising the greater power usually has the advantage whether or not the latent power which exists is exercised. In distributorship/agency negotiations there is not the same power as these negotiations usually take place in a context of a relatively low level of investment of resources. As a result there can be, in distributorship/agency negotiations, much less of the hard and confrontational bargaining necessary in large sales contracts to ensure all details of the proposals of the parties are exposed. The cooperative mode is more likely to be met in distributorship/agency negotiations which presume a longer relationship than in one-off sales negotiations. In either case assumptions have to be tested. In the case of sales we do not know whether our assumptions are correct as these are based on a judgement derived largely from an on-the-spot assessment of the other side's use of language in the negotiation. The objective is to get the best possible outcome in the circumstances. In distributorship/agency negotiations the objective is to establish firstly goal congruence which is to a considerable extent dependent on what the would-be distributor/agent says and which is only testable in the light of future operation of the agreement.

Sales and distributorship/agency negotiations take place within a legal framework on the basis in most cases of contract, but where the applicable law differs considerably. Sound agreements are made within a legal framework by salesmen and buyers, suppliers and distributors and principals and agents by businessmen acting in these capacities. Sound agreements for these form the basis of good working relationships. It has been said that arbitration is better than litigation, conciliation better than arbitration and prevention of legal disputes better than conciliation. Such prevention is the responsibility of executives negotiating and drafting the relevant agreements.

Chapter 11

Negotiating Licensing Agreements

Vernon Parker

Introduction

Licensing has, as its aim, establishing in a receptive business enterprise (“the licensee”) a technical capability presently lacking and which is denied to it for want of enabling knowledge or necessary permissions which another enterprise (“the licensor”) can supply.

The prospective technical capability might be

- making a new or improved product (for use or sale);
- making an existing product in a new or improved way;
- providing a new or improved technical service.

This is not an exhaustive classification and within each category there are numerous different types. But in every case the licensee acquires an enhanced technical competence, based on transferred knowledge or on legally recognised permissions under what are called intellectual property rights or, very often, on a combination of both. We shall need to amplify this statement in the course of this chapter but the reader may care at this stage to read the brief descriptions of relevant intellectual property rights that appear in the appendix to this chapter.

By far the most significant IP Right in technology licensing is the patent right. In summary, a patent is an exclusive right, recognised and enforceable

under National Statutes, which grants to the patent owner for a period the sole right to allow others to work within a defined technical area. The technical area must embody a unified technical advance (“an invention”) which is new, non-obvious and industrially applicable. The patent documentation must fully and sufficiently describe the advance such that at the end of the exclusion period (up to 20 years, if designated National fees are paid) the public may freely enjoy the benefit of the advance. The bargain with the state is, therefore, a temporary “monopoly” in return for a full disclosure of the invention in enabling and scope-defining language. A person who is allowed to work the patented invention during the exclusion period is truly a licensee. Strictly, a person who is supplied with confidential technical knowhow (also commonly referred to as proprietary technical information and trade secrets) for his commercial use is not a licensee (although the misnomer is too well established and too convenient to be changed now). This is because there is, in law, no property right in information as such, as is further explained in the appendix. Essentially, in the case of licensed technology, the licensee is prevented from disclosing or making any use he chooses of information received only by the terms of the contract he accepts as the preconditions for the disclosure of that information to him. The distinction between the right to use published but patented information (only as licensed by the patent owner) and the right to use confidential but unpatented knowhow (unrestricted except to the extent agreed otherwise) is fundamental in licensing and it shapes the relationship between licensor and licensee, their mutual obligations and rights, and the process they go through to arrive at an agreed licence position. So, to repeat, the aim of the licensing agreement is to make it possible for the licensee to acquire a new technical capability through supplied knowledge and/or IP licences.

The issues confronting a technology licensor and his licensee find echoes in the world of real estate. An architect and his client will agree the general shape and form of a building which the architect will design. The design must meet the client’s purposes for the building, will draw on the proven experience and competence of the architect, and will take account of environmental circumstances, all necessary planning permissions and building regulations. The detailed design which is ultimately presented to the builder will be an aggregation of component elements. It will specify materials of construction and unit designs that are well established as suitable for their role in the overall design. It will reflect the architect’s and client’s agreement on details and their personal preferences. It will conform to the requirements of the various regulatory authorities. Aside from the design and the legal/regulatory framework, there are other aspects of the relationship between architect and

client that have counterparts in a licensing agreement between licensor and licensee. Thus, the architect will be paid a fee for his services which will reflect the quality and value of his product. The licence agreement will similarly specify what the licensor is to be paid both for his services and for the value to the licensee of the transferred technology and rights in the form of licence fees or royalties. The architect will accept responsibility and liability (at least to an extent) if his product is not fit for the agreed purposes, does not meet regulatory requirements, or infringes the rights of third parties. This would also be expected from a licensor.

The building of a house is a step-wise process over a substantial period of time. The performance of a licensing agreement can also be in planned stages, particularly in the case of a technology licence for a new plant, and in such case the licensing agreement must deal with needs for checks, reviews, possible break points, contracting with others, project management responsibilities just as for a building project.

In broad summary, a licensing agreement must specify: What the licensor is to do and permit the licensee to do, what the licensee has to do, how and when they are to do these things, and how costs, expenses, licence fees (or royalties proportional to the extent of use of the licensed technology) are calculated and borne. Especially it must define the scope of licence grants under IP Rights and regulate disclosure and use of the licensor's "proprietary" information. It must deal with what may happen if performance of the licence agreement, or ultimate exploitation of the licensed technology, does not turn out as intended, for a variety of innocent or culpable reasons.

What we have considered so far is the ultimate objective of a process of focused business activity comprising a sequence of stages which the prospective licensor and licensee must go through, separately and jointly, before they arrive at a consensual conclusion. It is this process we shall now discuss, keeping in mind, as we must, the point and purpose of it. For those readers wishing to have a deeper appreciation of what technology and patent licensing entails, of the business motivators and implications for licensors and licensees of offering and seeking technology/patent licences, of pre-licence corporate technology evaluation and assessment, of the common types of licence agreements and of the typical content, structure and wording of licence agreements with annotated examples, they may usefully refer to *Licensing Technology and Patents* by V. Parker, published by the Institution of Chemical Engineers (U.K.). (ISBN 085295 277 5) and derive added perspective in the context of international, cross-border, licensing from *Introduction to International Licensing* by G. W. D. Karnell and E. M. Andersson, published by Intellectual Property Publicity Ltd (U.K.) (ISBN 1870497 02 3).

Box 11.1

Contract negotiations were well advanced in the former Soviet Union between an International Contractor and the FSU Authorities on a proposal to supply and install a TV-tube factory. As usual in such cases, the processes for technology selection and contract negotiation were lengthy and detailed. The factory was to be located some 250 miles from Moscow on a rail terminus, and the principal market was the Moscow region. At a late-stage pre-contract award, the Contractor casually enquired where the necessary suitable packaging material would be supplied from. That need had been overlooked. The TV-tube project was aborted.

The lesson from this is to consider at the earliest stage the industrial and social infrastructure into which the licensed technology is going.

Types of Licence

The range of possible licence subject matter is enormously varied in type and complexity. At one extreme it may be a simple non-exclusive patent/design/software licence. At the other it may be a major production technology licence envisaging multi-national investment, global sales, and design, engineering, and training services. Realistically, this presentation must select a few representative types of licence as the object of the preliminary phases and the eventual negotiations towards the licence. We shall, therefore, select as our ultimate targets:

- (1) A patents-only licence, as an example of an IP Rights licence;
- (2) A knowhow-only licence;
- (3) A combined patents/knowhow licence to the extent the combination introduces new factors in the negotiation process beyond those inherent in 1 and 2 above.

These selections will nevertheless provide us with a framework within which to relate the core issues that are common to all technology licences of these types to strategies for negotiation of more general application.

Within each section, we shall consider the various things prospective licensors and licensees must do before openly declaring to each other an interest in pursuing particular licensing opportunities, meaning to offer licences or to seek licences as applicable. The quality of this preparation will ensure that both parties go in to preliminary enquiries and evaluations with eyes open, alert to the business impact, especially the competitive consequences, of what is being envisaged. Additionally, when the negotiating forum becomes a window

on each organisation's competence and professionalism, a showing of thorough preparation by the negotiators will reflect well on those they represent. Early questions in the mind of negotiators are always, Are these people serious? Are they people we can do effective business with?

We shall then consider the enquiry and assessment stages when the prospective licensor and licensee are in direct dealings, and are answering the question, Is there a realistic basis for the parties to agree a licence in both their interests? It must always be fixed in the minds of representatives of the parties that no licence will result unless both parties wish it to and they are able to agree a basis for doing so. In these stages, the potential licensee's requirements and the prospective licensor's capacity to license confront each other.

Patent Licences

General Patents are a spin-off from R&D activities undertaken for reasons other than to generate or license patents. The patent owner ("patentee") may be a University, Research Institute, or Corporate body, even an individual. Patentees who are not in the business of manufacture and sales of goods (or a service industry) will have embarked on the patenting route in the expectation that licence revenue will accrue. At the outset, they must devise a patent acquisition strategy that balances financial risk (the cost of patenting) with realistic prospects of interesting potential licensee enterprises. Seldom will they have the resources and financial backing (or the product market knowledge) to be able to take the patented technology to the point of demonstrated market relevance. Statistically, the chances of this happening are in any case low. Very few inventions reach the market place or the factory. Therefore, such parties are well-advised to seek a development partner from commercial enterprises already in the relevant field and at the earliest realistic time. Early market research is imperative. Such parties would be advised to initiate the patent acquisition process by filing a priority application which can provide the basis for a follow-up process of appropriate international filings. Prospective licensee companies are loath to receive unsolicited invention disclosures before a priority filing has been made. They fear embarrassment if they are engaged in similar investigations through unintentional contamination of their ongoing research and exposure to charges of bad faith. An initial enquiry on such companies might request permission to submit an outline confidential disclosure (having indicated the general field in which the invention falls) making it clear that a priority patent filing has been made. Leaders in a particular industry sector are not renowned for receptivity to

externally generated inventions although their curiosity will often lead them to entertain an outline submission on a non-confidential basis or on the basis of short-term confidentiality, meaning that period (1 to 2 years) within which the patenting process would lead to publication of the patent specification describing the invention. The aims of such submissions are to attract an optimum commercial partner (or more than one where the global market is regionalised and not truly international), to grant it (or them) rights in the invention, including most importantly the right to seek international or regional patenting at their cost and expense as they see fit, and to receive in return a lump sum fee or royalties measured on extent of exploitation or, better, a combination of these. Periodic royalty returns enable the inventor entity to monitor the extent of exploitation and can be a determinant of whether or not to trigger a right (which should be provided for) to cancel any exclusivity granted, or require reversion of control of the patents, or invoke independent sublicensing rights. The inventor entity should ensure it maintains an up-to-date schedule of the patent portfolio for the invention. In this way, it can ensure patents are being kept alive by annuity payments. Once a patent in a country has been allowed to lapse it is difficult and expensive or, if long delayed, impossible to recover it. The commercial partner's interest will usually be to keep control over the patent portfolio and use it, or not, as it sees fit to serve its business interests. Acquisition of all rights in an invention that is a genuine threat to a vested interest in order then to suppress it is sadly a known strategy. Bona fide abandonment of a development programme because the invention cannot satisfy a practical need or deliver a profit or cost savings is very common.

In contrast to the above class of patentee, a company in the business of manufacture, sales or services on a regional basis, but which is not well placed itself to exploit all major market opportunities, will have a quite different patent licensing strategy which may be offensive or defensive or just opportunistic. The difference in this corporate setting is that the licensor knows the relevant product/service field, at least within its market sector. The patents he will be seeking to license will be relevant to today's business activity — not possibly of value in some years' time if all goes well! The patent portfolio will be in place and not further extendable. It will already be of several years' standing. It commonly takes a minimum of 5 to 8 years to achieve proven commercialisation of an invention that is one of the blessed few (<1%) that survive the rigours of development and market testing.

Licensing Strategies; Enquiries; Responses An offensive patent licensing strategy is one that confronts a perception (even conviction) that other

companies in the same industry sector, whether direct competitors or not (e.g. companies in remoter market regions whose products and services do not directly compete) are infringing one's patents.

The first step that must be taken is to confirm that patents in the relevant territories are in force (i.e. annuities have been paid). It is very embarrassing to seek to assert a patent that has been allowed to lapse, perhaps during an earlier phase of corporate cost-saving. The next step is to take advice on the enforceable scope of each such patent. What does this mean? It means, for example, that patents in different countries often have differing definitions of the exclusion field reserved to the patentee. This is not a reflection of nuances of translation but arises because of the different standards of challenge applied to patent applications by National Patent Offices on behalf of the public interest. Some do not consider the merits of the invention or the scope of monopoly sought, but leave that to the industry to sort out for itself. Others, like the European Patent Office, are rigorous in defending the public interest in not having patents granted for subject matter which is in fact already available to the public in some retrievable form? Or is obvious in the light of what is known. In some countries, the semantic limits of the patent language are not necessarily applied strictly when assessing an alleged infringement. In some countries, there will be presumptions that a distinctive product has been made by a patented process, so reversing the burden of proof. The advice that has to be sought is whether the patent can be enforced in the present form, whether in any case it may usefully be asserted in its present form, or whether remedial steps should first be taken, including the prospects of success.

Remedies for patent infringement are solely civil remedies (almost everywhere) and significantly include an injunction as well as the expected award of damages. It is this possibility that induces infringers to trade for a licence and provides leverage to a patentee in his efforts to get fair recompense. Most patent infringement actions end in settlement, even if they do not usually start out with that intention. It is an important consideration for patentees contemplating "a vigorous defence of their patents" to estimate realistically what the alleged infringer could afford to pay in royalties for a licence. They should also consider and evaluate the benefit to them of obtaining, as part of a settlement, access to any improvements the infringers have made or may well make later as licensees. It should not be presumed that infringers are always knowingly so; often they are not. Patent infringement can be like trespass on what you believe to be public land but which would be shown not to be if proper enquiries had been made. By contrast, for copyright infringement there must be copying.

The recommended first approach to the assumed infringer is a letter drawing the attention of the alleged infringer to the existence of the patent and expressing a willingness to discuss any issues it may raise. Threats of legal action are to be avoided (and may be actionable). However, if the patent owner is willing to consider licensing on some reasonable basis, he would indicate this in his letter. This approach does not guarantee the maximum in damages for past infringement which the law might award but it is still considered wiser than more aggressive alternative strategies and is more conducive to achieving agreement for licensing, cross-licensing, or other mutually beneficial arrangements.

The alleged infringer before responding to the patentee's letter will set in hand an enquiry as to the status and validity of the patent and assemble for use in negotiations any arguments for invalidity/non-infringement. He will also assess the cost and effort and necessary time it would take to "design around the patent" (i.e. secure a realistic technical evasion) in order to see what his fall-back position is. He is not likely to wish to simply withdraw from the patented field.

A defensive patent licensing strategy is one that responds to a perceived threat to one's product/services/production base from another's alternative technology known to be under serious consideration for development or which is actually being developed. There have been many cases in the chemical industry where the leading technology has been made technologically obsolescent 'overnight'. Indeed, in some cases, the old could not compete against the new despite written-off production plant. Knowledge of potential new technologies is provided by the early publication that flows from the patenting process. Many companies routinely evaluate new ideas and proposals revealed by an international patent-watch service, which covers most of the industrialised world's patent literature as it issues.

An offer of a licence under these circumstances can seem like an admission of vulnerability. But properly planned and presented it need not. The target company might welcome a licence. It might give it an immediate position in the market; it might remove the need for, or at least the urgency for, developing its new technology; it might open up avenues for technology cooperation, say, in the embryonic new technology to the parties' mutual advantage. The target company may not have any sound understanding of the competitive resilience of the current technology nor of the market barriers that any new product or differently made product may face. This is especially the case for effect materials, such as films, fibres and pharmaceuticals, and for products which downstream industry is tooled up to use in its operations and knows well.

Defensive patent licensing can also secure clear divisions of product markets because a licensee is less inclined to risk infringement when he has agreed a limited territorial licence and benefits from home market protection. Additionally the granting and taking of a licence adds stature to a patent and can dissuade other would-be infringers.

Opportunistic, revenue-generating patent licensing by companies only makes sense when a thorough assessment of the competitive impact of such licensing is undertaken and it is shown to be non-threatening. It is a feature of mature industries and markets. Licensing revenue is mostly extra profit; licence fees paid buy in to the fruits of creative R&D at a price usually much less than the true cost of developing equivalents. The patent owner would ordinarily indicate his terms for a licence, as a basis for negotiation. They will, of course, be optimistic but they should not be utterly unrealistic.

Scope Issues In any patent licensing the issue arises whether the licence should be exclusive (i.e. even of the patent owner), in respect of manufacture or both manufacture and sales; whether it should be sole (i.e. no other licensee to be appointed); or whether it should be non-exclusive (i.e. the patentee can license others as he wishes). There are many conceivable variants and combinations, especially as between manufacturing licences (e.g. local, exclusive at least for a period) and sales licences (e.g. international, non-exclusive). Prior to negotiations in earnest for a licence, the parties must assess their needs, their preferences and what they could accept. A patent owner may need to realise that any licence to a major player in a market may be in effect exclusive even if legally non-exclusive because that licence exhausts the opportunity to license, and export sales or direct entry into that market by him will confront insuperable barriers and economic resistance. Typical contents of patent licence agreements are discussed in detail in Parker *op. cit.* above.

The Post-Negotiation Period Once the negotiations are successfully completed, execution copies of the licence agreement will be prepared and duly signed by the parties in such manner as their corporate statutes or the relevant laws prescribe. The agreement may become binding at that time or it may first need to be approved or “taken on record” by the relevant authorities or central banks. The agreement will anticipate such conditions precedent and will usually set a time limit for achieving them. It may further specify that the licence grants will only be perfected when a down-payment is made. Given competent planning and preparation, these conditions precedent need not be a problem.

The agreement may have specified that the licensee will wish to register his licence to establish precedence in law over others who may claim a right under the patent. In that case the licensor will have agreed to cooperate as may be necessary for that purpose.

Unless a fully-paid up licence is bought by a lump-sum payment (or phased instalment), the agreement will have specified the licensee's obligations to report extent of working of the licensed patent and pay stipulated royalties, and perhaps to pay at least certain annual sums to keep the licence, or any special concession such as exclusivity, alive.

Other common post-agreement issues will relate to future grants of rights (or cross-licences) under so-called improvement patents, and what is to be done if the licence grant is "devalued" by unabated infringement of the licensed patent by third parties. These matters cannot be left for "agreement on the day". The agreement made must anticipate needs and must moderate unreasonable expectations. Provisions on future improvements call for knowledgeable definition if the parties are not to be disappointed. The importance of considering improvement patents derives from the reality that the patent system rewards the first to make and patent a new discovery. It is a "first past the post" system. The licensor and licensee are both in the race; the possibility of both discovering the same advances independently is real. Provisions to deal effectively with abating infringement are especially difficult to draw up. Indeed, they are always an uneasy compromise because the parties approach the issue from totally incompatible (but subjectively quite reasonable) positions. The licensee wants the licensor to stop all infringements by all necessary action at his cost and, meantime, the licensee would wish to be relieved of his royalty obligation (this is the level playing field rationale). The licensor wants to remain free to take such steps as he alone thinks fit in the

Box 11.2

A company made and sold a specialist plastic material. The company had developed and patented a particular coating application for that material and had a separate patent licensing arm that was profitably licensing the patent in different markets exclusively to selected coaters. An unlicensed coater had been buying the specialist plastic material from the company and sought assistance from the sales staff to help him make best use of the plastics material in his proposed coating application. Help was given until the patent licensing arm was asked by the local exclusive coating licensee to explain what was happening. There was much embarrassment and ill will.

The lesson here is ensure consistent policies are established and fully understood for sales of products, customer technical support, and licensing of product applications.

circumstances. In the case of an exclusive licensee, there may be a statutory right to pursue an infringer. Any licensee can by agreement be empowered to challenge an infringer, usually by the patentee “lending his name” to the action. This is one common compromise arrangement.

Finally, another necessary agreement provision will be one setting out respective rights of termination of the licence unilaterally either from choice or for specified cause such as an uncured breach of a condition of the licence.

Knowhow Licences

General We have seen that, in the case of patent licences, the preparative enquiries are objective; factual as to the status of the relevant patents and with the patent documentation there for all to see. The issues of patent validity and enforceability, though demanding the services of expert advisers and being rarely totally unequivocal, are nevertheless ones capable of determination sufficient to shape negotiating strategy. There is no need to involve the patentee in this, nor would it be helpful to do so. Additionally, patents announce to the relevant industry sector, “Here we are”, and by implication, “What are you going to do in response?” They advertise themselves.

The position is quite the opposite for knowhow. It is hidden within a product; it is confined within factory walls; it is held in confidence by company employees under their employment contracts; it is recorded in company reports to which access is controlled. The presence of leading edge knowhow is merely suggested to other companies in the same industry sector by the quality of the owning company’s products, their competitiveness and other indicia of a particularly successful company or business. Individual items of knowhow can seem small and insignificant, but if you put a lot together and make them cooperate you have a powerful technology force.

There are no statistics but trading in knowhow is likely to come about as a result of enquiry from a company in the same industry sector, if not the same market region. Unless an exchange of knowhow were proposed the enquirer would not be expected to be a direct competitor of the company perceived to have desirable knowhow. In an exchange of knowhow (cross-licensing) there might be exchange of research and development information as well as applied operating information but in a one-way supply of knowhow it will surely be for applied information of proven utility in products, processes and services. The benefit to an acquirer of such knowhow is the economic impact of it on his business less the price paid (i.e. its utility value) or it is the saving in cost, effort

and time which would have otherwise had to be expended in order to generate equivalent information independently (i.e. its investment saving).

Pre-Enquiry A factor in any consideration of whether to seek acquisition of knowhows (or for that matter a patent licence) is the added time element implicit in alternative strategies. This is the great uncertainty. R&D is unpredictable; success cannot be assured. The company is in what the Americans call “catch up mode” and inexorably the market moves on while the company is about it.

Another consideration for any company seeking to acquire technology-enhancing knowhow for privileged use in its market regions will be the impact of anti-competition laws if there should be restrictive conditions attaching to the licence (or effects ensuing from it) such as might distort or foreclose market competition. It is possible to relinquish a patent licence and you will know exactly where you stand, but you cannot unlearn confidential knowhow. You might box it in and abandon it, perhaps, if either you have a well-documented record of your pre-licence technology position or you have an opportunity to make a sideways or forwards leap in your technology portfolio as a result of distinct R&D, or business acquisition, or even another licence from an independent source. We shall revert to this later.

The Enquiry Phase During the preparative and enquiry stages the suitor company cannot know what the target information in fact consists of. Since the best way to keep something secret is not to tell anyone, the owner company will be at pains not to reveal the nature of the information he possesses. A strategy has therefore to be devised which can bring the parties confidently to a deal, trusting it is the right thing to do, or alternatively before the position of either is compromised to call a halt to negotiations at any stage, and part on good terms. A word of caution is appropriate here. There is a compulsive desire amongst the technical and engineering fraternity to know details of how things are done. This commendable inquisitiveness must be curbed during negotiations towards a knowhow licence.

When an initial indication of interest in its knowhow has been received the target company will first satisfy itself that the enquiry concerns knowhow which it is prepared to licence and, further, that it is willing, in principle, to license this suitor company. The next step will be to put in place a non-disclosure agreement which will have two purposes: first, to structure and control the information flow so that it meets (and not more than that) the information needs of the companies to answer the question “Is there a fit between the knowhow that can be offered and the realistic needs of the

enquiring company?" and, secondly, to stipulate the confidentiality obligations regulating disclosure, dissemination, copying and use of received information which must be accepted as a condition of its disclosure by the owner company.

The evaluation/assessment phase to which the non-disclosure agreement applies may involve a two-way flow of confidential information, or at least of information neither would wish to see broadcast, cost bases, efficiencies, scale of production, effluents and emissions, etc. The company possessing the targeted knowhow will strive to accomplish the evaluation/assessment without revealing too much of what its knowhow is while being forthright about what its knowhow could achieve for the enquirer, albeit without guarantee. It will not wish to be contaminated with any information about the technology base of the enquirer than that necessary to satisfy itself that the type of facilities, resources and skills possessed by the enquirer company are suitable for absorbing its knowhow (duly packaged).

The enquirer company must, at the very latest when the terms of the non-disclosure agreement and any enquiry questionnaires are being settled, ensure that its present knowledge is suitably fully recorded in a provable form as of a date prior to receipt of confidential information from the target company. This knowledge comprises that which is being used commercially, that which has been used on occasion as demand required, that which is in R&D reports, and that which describes plans, targets, approaches and methodology for R&D programmes in progress and intended to be implemented when space and funds allow. This is a major exercise but vital, since it is possible that the target knowhow will be found not to be significantly different as such but that what has made the difference in the perception of relative technology competence has been attention to detail, quality standards and controls, a skilful and experienced production team, and other such factors outside the technology "tool kit". A recommended practice is to deposit a sealed and dated package of the significant already possessed knowledge with a reputable outside body (a bank, or a leading firm of lawyers) with instructions that it is to be released only on the written request of the company solicitor or secretary, or corporate counsel.

No matter how close or far apart the technology "tool kits" of the two companies are, this provable record will be relevant to the effect of the confidentiality obligations accepted by the enquiry company both at the enquiry stage and more importantly (since then useful specific technical information is received) after the knowhow package has been purchased under licence.

The Assessment/Evaluation Agreement The reader will find in Parker *op. cit.* (above) a detailed review of the contents and effects of technical non-disclosure (“confidentiality”) agreements but a brief outline is appropriate here of what a typical assessment/evaluation agreement would say.

Sometimes the agreement merely recognises that the prospective licensor will be supplying information of a certain class, without legally obliging him to do so. More usually, the prospective licensor undertakes to supply information of a certain class but only that which, in his sole judgement, will be sufficient to enable the recipient party to make a preliminary assessment of the technology and to determine his interest in acquiring a right to practise the technology. In some cases, the agreement will define by type, category, and depth of treatment, as well as form of presentation, the information to be supplied.

Even when the information to be supplied will have no practical utility but will be relevant only to a decision-making process the prospective licensee’s non-disclosure obligations will consist of an undertaking not to disclose to other persons (individuals or companies) any received information and, perhaps additionally, the fact that the technology is being evaluated. There may be an obligation to confine received information to those regular employees, officers and directors who reasonably need to have it for the purpose of the evaluation.

Occasionally, individual recipients are required to countersign a copy of the agreement to acknowledge their understanding of their responsibilities. Sometimes, but not often, licensors insist on knowing who these individuals are. There is merit, in suitable cases, in limiting confidentiality to information supplied in written form, or promptly confirmed in writing.

The non-disclosure obligations should expressly not apply to, or should cease to apply to, information corresponding in substance to

- (1) Information already in the public domain by publications or otherwise (e.g. discernible by study or analysis or dismantling of things publicly available).
- (2) Information subsequently coming into the public domain except by default on the part of the recipient, his servants or agents.
- (3) Information which the recipient can show was in the recipient’s possession at the time of receipt of the evaluation/assessment data, being information which is at the recipient’s free disposal.
- (4) Information lawfully acquired by the recipient from a third party and which the recipient is no longer required to keep secret under the terms of acquisition from the third party. (Sometimes it is stated that the third party

shall not have himself acquired the information directly or indirectly from the licensor).

One further exclusion should always be considered at the technology assessment stage. It is information which has been developed within the recipient's organisation after receipt of the received information, or alternatively, by persons who did not use or materially rely on received confidential information in the planning and execution of the development that generated that information. This provision is a shield not a sword to use against the licensor. What it does do is seek to exempt from restriction information acquired by duplication that has no causal connection with received information. If development of similar technology on similar lines is going on in the recipient company, but lagging behind perhaps in some or many aspects, the prospects for eventual honest duplication are real, certainly within the life of many confidentiality agreements. It ought to be possible for evaluating companies to avoid undue prejudice by some such provision backed up with tight administrative segregation of information and security practices. It involves 'proving a negative', but the evaluator should give himself a clear chance, in good faith, to answer effectively the charge that, but for receipt of the licensor's information, he would not have pursued this or that line of development or made this or that development. This added provision is particularly important when restrictions of use obligations are considered. These are always present and ordinarily consist of a straightforward undertaking to use the information for the purposes of the evaluation and not otherwise. Again there must be exclusion of independently available information in categories 1 and 2 above and, if possible, independent developments should be excluded. Two further exclusions are needed.

First, a recipient should not be denied by contract the right to use as he pleases information already in his possession which was developed by him, however similar it may be to information he receives from the licensor.

Secondly, a recipient should not be denied the right to use information acquired by him at any time from a third party in whatever ways his arrangements with that third party allow. Sometimes, it is stated that the third party information should not have been obtained by the third party directly or indirectly from the licensor. The rider, which was also mentioned under non-disclosure obligations, will ensure that disclosures by contractors or other licencees in the course of discussions of previous experience of the licensor's technology will not defeat the letter of the secrecy agreement.

The agreement will have additional general provisions. These may deal with allowed disclosures to consultants/contractors and government agencies, and

the terms governing such disclosures. The right, on terms, to pass the information to the licensee's parent or to subsidiaries may be conceded. A release to make disclosures required by a court in legal proceedings may be given. They may also deal with procedural matters such as the return of information after decision or after a set time period or even on demand, express limitations on copying, the right in any event to retain one copy of record in corporate confidential records, and reporting back the results of the evaluation. They often stipulate ("for avoidance of doubt") that no right or licence under any patent or patent application is implied or granted by the evaluation agreement.

The parties should always consider placing a time limit (a back-up date) on "non-disclosure" and "restriction of use" undertakings. Perpetual obligations are a legal and administrative nuisance. The shortest time that reasonably protects the licensor from prejudicial use or disclosure of his confidential information is the minimum period; say 5 years for economic assessment data. A reasonable period in most cases, bearing in mind that technologies keep advancing or get replaced, and recognising the limited practical utility of information supplied to the potential licensee at the assessment stage is 10 years, exceptionally 15.

External Constraints It has been presumed in this section that licensor's patents are not relevant. We shall see later how the eventual licence agreement may deal with such matters, as a precaution. However, there is a need, at the evaluation/assessment stage, for the parties to feel comfortable that third-party patents will not be a problem. From the discussion on patents earlier it will be recalled that patents are national. National bodies of patents differ from one country to another, as different patentees have different patenting policies, some choosing to patent process technologies, others preferring to rely on secrecy and a local "right to work". This local "right to work" is not licensable or transferable, except with transfer of an entire business. So, the potential licensor should assure himself that the territory in to which his knowhow may pass for commercial use is indeed as patent-free as presumably his own is. Additionally he should expect to give an appropriate assurance to the prospective licensee at the evaluation stage because the prospective licensee is in no position then to assess the situation himself (because, as we have noted, he will not be given details of what the technology is). The prospective licensee may have done a general patent search and may seek specific assurances, but this is not a substitute for a clear general assurance from the prospective licensor based on his detailed search and enquiry in the clear knowledge of what knowhow is under consideration.

National governments subject exports of technology to controls of varying degrees of severity. Usually, the severity of control depends on the field of the technology and will vary from no controls (or a general licence) to notification and consent necessary. In some cases, a distinction will be made on the basis of the country to which the technology is being exported. But some national governments also control the import of technology and will seek to determine the terms on which technology is acquired. (This also applies to patent licences.) It should be noted that unapproved agreements may be void or unenforceable (even occasionally illegal). Accordingly at the evaluation/assessment stage the parties need to satisfy themselves that the contemplated transaction will be allowed by their national governments and they must

Box 11.3

A technology owner decided to license technology to a foreign company through its own wholly-owned subsidiary in the same country as the licensee. Agreements were drawn up and signed, which then had to be submitted to the Authorities for approval. The local subsidiary was essentially a promotional and sales-brokering company; its people knew nothing of technology licensing. The Authorities gave their approval subject to a reduction in the specified daily rates for technical/engineering services. The MD of the local subsidiary company agreed without reference back to his principals and the licence agreement took effect. As a result, services performed in support of the licence were rewarded at less than actual cost, seriously eroding the profit on the licence.

The lesson is of course to set proper controls in place if the technology owner who will perform the licence services is not the licensor.

identify any approval processes that may have to be gone through with the relevant authorities and any controls there may be on the eventual transfer of licence fees and royalties.

Payment and Tax Issues At the assessment/evaluation stage it may be helpful if the parties give consideration to the tax regimes they are subject to for an international transaction. Certainly, during the purchase negotiations these issues will need to be clear and provided for. A detailed discussion of the tax treatment of patent licences, payment for documentary information supply, service fees, and licence fees for use of knowhow in different countries is beyond the scope of this work but an outline of the common treatment is given later in this chapter. It will be possible at the assessment/evaluation stage for the prospective licensor to indicate the fee he would seek to charge for assembling and transferring a defined package of information. This fee would

include compensation for the effort involved in assembling the package (with a profit element usually) and, importantly, would reward the disclosure of useful knowhow to another with an option (or licence) to use it. It would not reward the value of the knowhow package to a prospective licensee. That value is difficult to quantify at this stage and must be left to the detailed licence negotiation stage when an objective (or at least a sensible pragmatic) basis of determination will emerge as the relative capabilities of the two technology positions can be economically compared.

A possible distorting influence on the negotiation of licence fees arises when the prospective licensor had already licensed essentially the same technology or IP rights to another on terms such that, if more favourable terms should be offered to a later licensee in equivalent circumstances, those more favourable terms must be offered to the existing licensee.

Box 11.4

A small Central American company sought a technology licence from a European company in order to upgrade its production technology to higher safety standards. It was a minor matter for the European company, which produced and submitted a simple licence agreement specifying US dollar payments to a US bank account and its preferred choice of law of contract. The agreement language was accepted, after perfunctory changes, but almost as an afterthought before signature the European company sent the proposed licence document to reputable Central American lawyers only to be advised that the agreement would be void unless approved by sundry government departments and the reserve bank and that it would have been an illegal act for the licensee to execute the agreement and make payments under it.

There are two principal lessons. Firstly, do not assume the local licensee knows the laws and regulations surrounding licensing, which for him may be a rare occurrence. Secondly, when licensing to an unfamiliar environment take local independent advice and do not assume the norms of the industrialised world apply.

The Licence Agreement and Beyond When the negotiation process has reached a satisfactory consensual conclusion, the agreement capturing in binding contractual form the parties' undertakings and promises will be put in place, much as described above. Space does not permit a discussion of the typical full contents of such an agreement, but again details may be found in Parker *op. cit.* Two points of difference from patent licences deserve mention, however. First, the scope of the licence, as between the parties, might be as discussed earlier in this chapter but the critical factor here is that there can be no exclusivity against an independent processor of similar knowhow. Secondly, the licensee will be concerned if he finds his freedom to use the acquired knowhow in the intended way is prevented or hampered by third party patents.

The licence agreement must address this issue in some acceptable, but inevitably compromise fashion.

Combined Patents/Knowhow Licences

General It is indeed possible to envisage a knowhow only licence as being the entire licence basis of a major business venture by a company in an industry sector which is entirely new to it. Such is the diversity of industry and the maturity of sectors within it. Additionally, the world is not a single market; there are regional markets existing alongside each other at different stages of technology and product development and with different customer needs and preferences. The barriers to entry confronting a company in one region that has an eye to doing business in another can be insuperable. Technology can cross the barriers where companies may not.

It is likewise possible for combined knowhow and patent licences to have as their primary aim to supplement and enhance existing capabilities. In this treatment, however, we shall focus on a total technology licence comprising a structured, investment focused package of knowhow and patent rights the object for which is to establish a production capability with technology entirely new to the prospective licensee. We shall assume the product is either also new to the licensee's business or is in material respects significantly different from its current counterpart in the licensee's business. We shall assume there are to be export sales.

The matters already discussed above are relevant but what adds a new dimension of depth and complexity to the assessment and evaluation stages in this instance are the substantial financial and market risks on not getting the choice of technology right, not enjoying the rights and opportunities that were expected, not establishing the production facility properly and on time, and not being able effectively to market the products. The assessment and evaluation stages must anticipate all these issues even though it will be the ultimately negotiated designed to assure, so far as practicable, that desired outcome. Licensees need success, but licensors desire success too — and not merely to avoid legal disputes and liabilities.

A major investment in new production technology forces early decisions on

- What kind of technology to use?
- Whose version of it to acquire?
- What scale and location for a first plant?
- Are suitable raw materials/feedstocks, utilities and services available?
- What by-products, effluents and wastes have to be disposed of?

- How new to the licensee are the component unit operations?
- Are skilled operators available?
- Is there a certain market for the principle product(s)?
- Does the existing customer base need to be weaned onto the new/different product(s)? and of course,
- Does the prospective initial investment outlay make financial sense?

Pre-negotiation Planning and Enquiry A company seeking to license in technology will seek to shortlist types and sources of appropriate technologies from which a choice is to be made. This will involve enquiries on the major international engineering contractors who offer their own technologies or provide conduits for operating companies' technologies where those companies do not have the resources, or inclination, to be involved directly in licensing. It will involve enquiries on operating companies who do license their technologies direct. It should further involve enquiries on leaders in the relevant technology in other market regions who may not, so far, have considered licensing their technologies. This is a resource-consuming activity and consideration should be given to engaging a consultant firm to make these enquiries on the prospective licensee's behalf. This may be more efficient and effective and has the further advantage that it may be possible to preserve licensee anonymity during the general enquiry phase.

A licensor company that is itself in the product business may seek through its licensing policy to dissuade particular prospective licensors from investment because of a perceived threat to its product business. However, if it becomes convinced that the prospective licensee is determined to invest it may prefer to license its technology rather than see another's technology used. This is not just about possible earnings. A licensor inevitably knows the scale and technology basis of his licensee's plant. He controls the extent to which the licensed technology may be used for expansions or additional plants, and where those may be located. He may also impose a feedback (or exchange) of operational improvements, even R&D advances in the field, made by his licensee. All these benefits impact on relative competitiveness.

An advantage of having the basic design of the licensed production plant supplied directly or indirectly by an operating company licensor (even if detailed engineering procurement and construction are contracted out) is that the technology is likely to work as intended and the investment and unit product cost will be reasonably predictable. If the prospective licensor is not itself an operating company, even though it may have apparently successfully licensed its technology, there are significant risks to a potential licensee. First,

the licensor's knowledge of precisely what his licensees have done, for example to solve problems inherent in the technology supplied to them, may be limited. Secondly, such licensors use new licensees as test beds for technology- or design variants which have not been proven at the commercial scale. Licensees may have little contractual redress and may not have the knowledge and skills to solve encountered problems.

If the proposed licence is a one-plant licence, from licensee choice or because that is all that is offered, there will be a tendency to go for a larger plant size. Indeed, the relationship between investment capital and plant capacity is usually favourable to increasing size. However the so-called "break even" occupancy of a production plant may be high, say >60% even >80%. So, the licensee needs to be confident in his market projections for product sales and needs to consider the impact of having to shut down older capacity.

Evaluation A strategy which should always be considered by a prospective licensee is to purchase from a preferred potential licensor a package comprising a basic process- and outline engineering design together with a clear licence option in which all the essential provisions are spelled out. (This option is the fall-back position of the licensee; it can be renegotiated when the technology has been fully evaluated). Of course, the package will be supplied only on strict confidentiality terms and will cost money. But, what it does is: enable the licensee himself to evaluate and cost the technology; to have an informed debate with the licensor and consider alternatives; to assess the patent position thoroughly; to visit other licensees and see how the technology has been implemented by them; to confirm that the licensor can transfer the technology effectively; to confirm capital cost estimates; to confirm suitability of other sources of raw materials; to confirm that the product will sell; to establish effluent and emissions standards. This process is enormously confidence building.

Of course, if the prospective licensee decides after such a detailed evaluation not to proceed with the offered technology and later elects to proceed with another's technology for his investment, he is exposed to challenge from the disappointed licensor that there has been mis-use of the knowledge provided by that licensor. It is therefore vital that a prospective licensee has well-understood control policies in place so that such a challenge can be rebutted and further that he secure an assurance that the ultimately chosen licensor will cooperate in the defence of any such challenge, e.g. by agreeing to an independent arbitrator or expert being engaged to determine or advise on the dispute and even, if unavoidable, cooperating in a court defence.

It was mentioned earlier that a remedy available to a patentee for infringement is an injunction. Indeed if there is a prima-facie showing of infringement, an interim injunction may be granted by a court before there has been any serious consideration of the merits of the patent. A major investment must not be exposed to such risks. Most licensors will make bland comfort statements during the evaluation phase but responsible licensors know they must do more. It is fairly straightforward to deal in the eventual licence agreement with the licensor's own patent portfolio, by express licences and so-called hold-harmless undertakings related to use of classes of information or defined kinds of activity. Opportunity should also be taken to discuss with an operating company licensor whether licences or cross-licences might be granted for significant patented downstream uses of products such that the licensee may use products in these ways or may sublicense his customers to do so. A hold-harmless undertaking is a contractual promise not to sue under any patents that may cover the use of defined information in defined ways for defined purposes or against defined acts (e.g. product sales or downstream uses). A pure knowhow licence may include such an undertaking for the licensee's peace of mind.

Box 11.5

A technology consultant had, by report, successfully licensed new production technology for a special industrial solvent. A company negotiated to buy a basic design package on strict confidentiality terms together with a licence option which could be brought into force within an allowed review period. On review and as confirmed by a visit to an existing licensee, the technology was shown to suffer from significant unsolved problems. The company proceeded with a combination of its own technology and technology acquired under licence from another operating company. The rejected licensor sued for mis-use of his confidential information. He was unsuccessful but the publicity was unwelcome and the defence costly in lawyer's bills and technical assessors' fees.

The lesson here is to ensure the technology record is clear and complete. Be especially diligent in recording your own technology position before receiving evaluation packages from others. Lawsuits are a fact of business life, so make sure you can defend yourself effectively.

Scope Issues During the enquiry phase the prospective licensor and potential licensee will have discussed the extent to which the licensed production technology might be used to establish further production plant and where these might be located. (Obviously, expansions of the first plant must be accommodated.) Likewise, the potential licensee will have clarified where

export sales of product will be allowed. This subject has a number of distinct aspects to consider. First, a right to use knowhow supplied as a design package of a first plant for the design of further plants is an empty right if the licensee does not have the competence to design such plants. So, a potential licensee should ensure that he will acquire from the licensor not merely an instruction kit to engineer, build and operate a particular plant but also an insight into the basis of its design. Additionally, he may seek assurances that the licensor will provide design services for a new plant. The eventual licence agreement will have to clarify and define this service and, in particular, address the question of whether the new design will embody licensee's and licensor's improvements subsequently developed and on what terms. A licensee would be expected to implement R&D — and production process support programmes for any technology underpinning a core business activity. Secondly, licensors may seek to prevent, by imposing contractual undertakings, product sales in given territories or outside a defined licensed distribution area. The legality and enforceability of such impositions will need to be researched before they can be agreed. However, it is legitimate for licensors to reserve the right to enforce their patents in territories where they wish to prevent, so far as the law permits and their patents allow, imports of licensee's products. These patents might be for production processes/operations or for products possessing certain distinguishing characteristics. Major consumer uses of the products may also be under the licensor's control through their patents in export territories. A

Box 11.6

A company in the Far East made and sold chemicals of the kind known as plasticizers. It used a classical production technology. A European company had devised a new, more economic technology that also produced a different quality product. The Far East company sought a basis for design ("design package") for a "greenfield" plant of nominal 15000 tes/yr capacity. It explained it would use the information to design and build a plant capable of using both the new technology and the classical technology, in campaigns, as product demand required. It was agreed to license the Far East company, but on a clear legal basis that the licensor would not be responsible for the outcome. The new plant did not work well and the licensee complained to the licensor's Chief Executive that the information supplied had been inadequate. For business reasons, the licensor chose, at its cost and expense, to send specialists to the Far East to assist, successfully, in resolving the problem. Fortunately, the licensor was very familiar with both technologies.

The lesson here is that, as a legal matter, you may have a contract that shields you from all responsibility and liability but in the wider context it may avail you nothing. There is probably another lesson. Be very circumspect about licensing technology for other than the specific purpose the design was produced for.

clear understanding of all these proposed restrictions, impositions and limitations (and their legal effectiveness) needs to emerge from the enquiry and evaluation stages.

As a further assurance to a prospective licensor and the potential licensee, it may be agreed that the prospective licensor or one of his existing licensees should process raw materials or feedstocks of the sorts intended by the licensee for the licensed plant to ensure they will be suitable. Likewise, it may be agreed that the potential licensee will purchase products from the prospective licensor or one of his licensees to ensure that the products will be suitable for the intended market or downstream consuming units. This might be part of an assisted market development strategy.

Financial Issues

The financial provisions of a licence agreement will receive much attention during the negotiation process. The magnitude of service fees (including the payment for an information package) and of licence payments on a present worth (DCF) basis will be set by finally reaching congruence between what the respective parties felt they could impose or afford in the particular circumstances facing them. External influences may have constrained free choice, such as Government intervention in the approvals process and any prior undertakings to other licensees (“equal treatment clauses”). The sums that the licensee has to pay for exploitation of his licence may be certain in amount and timing (licence fees) or be periodic payments based on the measured extent of use (royalties). The tax impact and the risk will be different in the two cases. The method of calculation of sums due to the licensor, how they are paid (how frequently, what currency and by what route) and how tax withholdings are treated will be specified in detail. Of concern to the licensor will be the levels of withholding taxes applied to payments by the licensee for information packages prepared and delivered in the licensor’s home country, for services performed in the licensor’s home country (design reviews, operator training), for services performed in the licensee’s country (construction reviews, commissioning, operations support) and for the exploitation of the licensed technology and patents. The existence of a Double Taxation Treaty or legislation granting credit unilaterally will be significant. Additionally, for tax reasons or because of the particular contributions made to the value of the licensee by patents and knowhow respectively, it may be important to either party to deal with the financial provisions of the patent licence separately from those for the knowhow licence. Any payment consequences of the future

supply by one party to the other of improvements to the licensed technology (patented or not) will be agreed.

Box 11.7

A licence was granted to an Asian company through an international contractor who was given a right to licence by the technology owner and who had a contract with the technology owner for necessary technical and process engineering services. The contractor would collect the licence fees and would transfer them to the technology owner under the back-to-back arrangements. There would be a 30% withholding tax on licence fee payments by the Asian company. The contractor became concerned, after contracts had come into force, that its trading position might result in it not being able to use all the certified tax withholding as a credit against its domestic tax liability. The technology owner stood to make a budget loss because the contractor was only obliged to pass on benefit received. A new set of agreements had to be put in place urgently to replace the contractor by the technology owner as the licensor of the rights. Fortunately, all parties and the Asian Government authorities cooperated to achieve this promptly. Subsequently it was discovered that wrong assumptions had been made as to the effective levels of tax withholdings on payments for information packages produced abroad and on payments for certain types of services. Under the agreement's payment clauses this gave rise to a budget loss to the Contractor and an unforeseen bonus to the licensee.

The lesson is that the parties need to give thorough attention to the peculiar tax regimes that can apply to technology licences and services, and to ensure the benefits of tax credits for tax withholdings can be taken.

The Legal Significance of the Negotiation Process

It is critical that neither party to the negotiations give undertakings or make promises that are legally enforceable except in those specific agreed respects which are necessary for the parties to determine whether a basis for an effective licence of technology or IP Rights exists. There should be no warranties or guarantees given during the negotiations. What is to be supplied/granted, its scope, form, restrictions, limitation and timing are determined by the ultimately executed agreement, as are the financial terms for services, options, and exploitation of licence grants. Responsibilities and liabilities for performance and non-performance, including excuses and capping, are also set by the executed licence agreement, nowhere else so far as understandings between the parties are concerned. Indeed, it is a common provision in licence agreements to declare and agree that the licence agreements and their schedules contain the

entire understanding and agreement between the parties, excepting for an earlier confidentiality agreement which may not be wholly superseded by the licence agreement. All that preceded will be declared of no relevance or effect.

Prior to negotiations, the parties should make it clear in a written memorandum or exchange of letters that they intend to negotiate in good faith but that nothing of legal effect will arise unless recorded in a duly signed memorandum expressed to create legally enforceable obligations.

Too cynical a view of this practice should not be taken. It is legally necessary (because some legal systems will otherwise impute legal obligations before a party is consciously ready to accept them) and it is practically useful because it frees up the negotiations and allows the parties to work through proposals in some detail on a “what if” basis.

Each party to the negotiations will wish to be assured that those who act for the other party have capacity and authority to negotiate in good faith. This can be achieved at a suitable initial face-to-face meeting of the parties when a senior corporate or business general manager is present for each side. The negotiating team would typically comprise a Project Manager or Licensing Manager, as the case may be, who will have a technical and business background, and they may be supported by technical, engineering, legal and IP specialists as appropriate to the demands of the negotiations.

The negotiations should be periodically face-to-face to ensure that misunderstandings are aired openly and to maintain the momentum. In parallel, there will be written communications conveying information, and making considered proposals for discussion by the parties. In particular, at an appropriate stage the prospective licensor (usually) will table a pro-forma outline licence agreement for consideration. This will be an indication of one party’s view of the matters on which there needs to be ultimate agreement, neither a check-list nor an offer. Indeed specific essential matters will be left blank. Depending on progress in the negotiations, this outline draft licence agreement will be worked up by both parties usually by their legal/IP specialists at Head Office, and drafts exchanged. These drafts will both reflect “agreed” matters and progressively become an agenda for the hard-nosed debate to fix the bargain in a legal and contractual format. They will also deal with uncontentious issues that must be specified but need not occupy the attentions of the principal negotiators, e.g. reporting and payment routings for fees and royalties, currency exchange calculations, tax withholdings and certificates, the effective date of the agreement, any necessary government or central bank procedures and approvals, and what the Americans delightfully call “the boiler plate”: *Force Majeure*; choice of law of contract; Assignment;

Termination for Default; right of independent audit of royalty-relevant facts; dispute resolutions. A discussion of the typical full contents of different types of licence agreement and of the different ways in which essential matters may be expressed as well as of the different contractual and legal effects of different language is beyond the scope of this work. Again the reader is recommended to refer to Parker (op. cit.) for a more detailed exposition.

Culture Traits

A discussion of the manner and style of the negotiation process cannot conclude without brief reference to cultural impediments to smooth progress. Cultural impediments can be corporate as well as national. A U.S. Attorney once blurted out in a meeting with the writer, "There is morality in business". This certainly set the tone for subsequent meetings since there is much in the performance of licensing agreements which, though couched as a legal obligation, cannot be ordered to be done by a court, the only remedy being damages if provable. Damages are not equivalent to performance, if performance is what you must have. Generally, it might be inferred, perhaps wrongly by Europeans, that in the USA lawyers have a greater role and influence in business dealings than their value would justify. Certainly, the USA is a litigious country and the burden and expense of litigation in the USA is daunting, so much so that U.S. lawyers are prone to use this as leverage for opportunistic settlements of disputes. More importantly, a U.S. company sees a licence agreement as an entirety. Nothing is agreed until all is agreed. Their negotiators will readily revisit earlier seemingly settled points whereas the British tend to be embarrassed to do so without some clear reason that can now be seen to necessitate it. A bad trait found in British companies is for a senior executive to "agree" with his opposite number "the deal" without proper consideration of the full implications and to delegate it to "the lawyers to work out the details" like a master artist or composer might let his prodigies fill in his canvas or manuscript. In other cultures (and the writer has met this in France and Japan) a senior executive who does evidently have the power to commit his company will insist on leading negotiations for his company. His team cannot allow him to lose "face" and neither may they negotiate independently to facilitate progress. The importance of "face" in some Eastern countries is always emphasised to western negotiators. A recommended practice is to engage as translators and facilitators persons who have lived and worked in both relevant cultures, and to do serious negotiations of contentious points by exchange of documents.

Appendix IP Rights

Patents

- (1) A statutory monopoly for creativity in applied science and engineering. Patents for new products and industrially applicable techniques/processes are granted, country by country, on application. A block European Application designating chosen countries is possible. The Patent Cooperation Treaty (PCT) also offers a valuable procedural option for multinational protection.
- (2) The term of monopoly is set by National Statutes but is now mostly 20 years from the application date (if fees paid).
- (3) There must be an invention step (i.e. not obvious) over “prior art”. The challenge in the patenting process is to conceive of and define a generic class of thing or method/process, all embodiments of which (and not just those you have tried) would be reasonably expected to show the demonstrated new, non-obvious inventive quality. It is this definition which determines the scope of the monopoly granted. To achieve its purpose it must not make a free gift to the world of easily devised equivalents to what has been shown to work by using language that is too restrictive, but at the other extreme it must not be covetous and, say, seek to monopolise all solutions to a problem.
- (4) “Prior art” means all public knowledge at date of application for patent (not at date of making invention). U.S. rules still treat invention date as controlling if patenting is not too long delayed.
- (5) Own non-confidential disclosure will destroy patentability, if before date of priority application, except for USA patents if applied for within one year of first disclosure or commercial public use.
- (6) A patent is infringed by working within the claimed monopoly, including importation of product made abroad by a process covered by the patent. Relief includes an injunction, damages or an account of profits.
- (7) A patent does not give the patentee the right to work his invention. Other earlier local patents of third parties could prevent working, e.g. where the later patent is for an inventive improvement on an earlier patented system.
- (8) A patentee does not (unless local statutory conditions on inexcusable non-working/inadequate working are met) have to license his patent.
- (9) Secret commercial use by a third party gives him a personal right to continue use in the EEC and in some countries will even invalidate the patent.

In the USA, if the prior use is not such as to defeat the patent, the prior user has no rights under the patent.

- (10) Patenting is expensive say up to £2000 per country for an initial 5 years cover. (Includes agent's fees, translations, official fees.)

Registered Designs/Design Rights

- (1) A monopoly for aesthetic designs applied to articles of manufacture and granted, country by country, on application.
- (2) The term of the monopoly is broadly similar to that for patents, again if maintenance fees are paid but this is not an expensive form of protection.
- (3) To be registrable, the design must be new as judged by its appeal to the eye. Function is irrelevant and purely functional designs are not registrable.
- (4) Newness (whether in form, shape, ornament or pattern) at date of application is essential.
- (5) Rights are infringed by making or producing articles to that design (or moulds or patterns) without consent. No requirement to prove copying. Relief is as for patents.
- (6) Design copyright can be important for articles that are artistic works and may give similar automatic rights without formality, if there has been direct or indirect copying of the design.
- (7) Additionally, design right protection may be available for purely functional designs and designs devoid of aesthetic appeal. Must fit/must match designs will probably be excluded. The U.K. Design Right period of protection is 10 years from date first applied industrially. Design must be original but need not be new.

Registered trade marks

- (1) Effectively a perpetual national monopoly (if fees paid), but an honest concurrent user is protected. In Europe, the new Community Trade Mark has been introduced — a single registration of effect throughout the Community.
- (2) A registrable trade mark is any invented word, any pictorial device, symbol or logo, any name written in a distinctive way (e.g. a signature) or any other distinctive mark.
- (3) Prior use — no bar. Indeed helpful.
- (4) Purpose of trade mark to indicate a connection in the course of trade between particular goods and the owner of the trade mark.

- (5) Registration is for classes of goods.
- (6) Use of the mark by others without consent (if used as a trade mark on goods within the class or classes for which it is registered) is an infringement actionable by the owner.
- (7) Not too expensive to get.

Copyright in Literary Works

- (1) Copyright in literary works exists automatically when the work is fixed in some form.
- (2) It is an internationally recognised right of authors and those who commission such works.
- (3) It is free.
- (4) It is a long term right to prevent copying of the work (or any substantial part of it) for public or commercial purposes.
- (5) Licence documentation is copyright.
- (6) Significantly, computer programs/software are increasingly being granted copyright on the same basis as for classical literary works.

The Protection of Confidential Information

None of the above statutory intellectual property rights directly gives protection for confidential, secret and proprietary technical knowledge either against prejudicial disclosure or publication (since design and copyright concerns form of expression not intellectual content) or against prejudicial use (except to the extent a field of use is dominated by patents still in force). Were there not such protection available, or were it of application only to higher orders of information such as uniquely held trade secrets, licensing would not be the major international activity that it is.

When information is acquired as a result of confidential dealings, or through the performance of a contract, and it was implicit in the relationship or expressly or implicitly agreed that the information was supplied only for a specific purpose and was not to be used for other purposes and was to be held in confidence, legal obligations are created not to disclose or use the information except in approved ways and these will be enforceable under contract law or, as the case may be, through an action under “fair dealing” laws where there has been prejudice to supplier of the information.

This is the legal basis for the protection of a licensor’s confidential and secret information. The protection rests solely on the true construction of the

licensee's self-restricting obligations, normally as determined by express contractual undertakings but sometimes by a necessary implication the law reads into the relationship and the nature of the transaction. There is not a property right in knowledge. Thus, another person may possess the same information independently. He can publish, use, license or sell it as he sees fit. Independent publication would ordinarily cancel a licensee's duty not to disclose (or not to use in unlicensed ways) that information. Even a licensee may find he already possesses some of what the licensor has disclosed to him and ordinarily he would not be further constrained by the licence agreement on to what he may do with it.

Chapter 12

Bolter Turbines, Inc. Negotiation Simulation

John L. Graham

Principles of effective negotiation and negotiation skills are seldom part of the curriculum in business schools. This article describes a business negotiation simulation involving the purchase of capital equipment. The exercise includes three buyer and three seller roles and bargaining over several issues — pricing, product and service options, and terms and conditions. The simulation provides an excellent context for experiential learning and practical discussion of business negotiations.

Negotiation is the most frequent means of resolving conflicts between organisations. Particularly in industrial marketing, when “big-ticket” and/or high technology products are involved, sales are most often negotiated. Yet principles of effective negotiation and negotiation skills are seldom part of the curriculum in business schools. The Bolter Turbines, Inc. (BTI) Negotiation Simulation has been developed specifically to provide a context for experiential learning and practical discussion of business negotiations. Through the simulation and associated debriefing, participants are familiarised with the complex bargaining issues, strategies and pressures typical of relationships between industrial firms.

The presentation of the BTI Negotiation Simulation to follow is divided into five parts. First, the simulation is briefly described. Next, instructions for participation and administration are detailed. Third, instructions for debriefing are outlined. Fourth, variations in the use of the game are suggested. The last section, the Appendix, consists of the student materials.

A Brief Description of the Simulation

The simulation and debriefing can be accomplished during a four-hour period. Two two-hour sessions are ideal. The BTI Negotiation Simulation involves a final sales negotiation between two industrial companies. The product is a \$3 million natural gas compressor set for installation on an offshore gas platform.

Six representatives of three firms are participating in the discussions: (1) a sales representative, a regional sales manager and an applications engineer from Bolter Turbines, Inc.; (2) a purchasing agent and a production engineer from the client firm, Maverick Natural Gas, Inc.; and (3) a consulting design engineer working with the Maverick group, but employed by PARTEX and Associates Construction Company. Each participant has somewhat different (and in some cases conflicting) personal and professional motives regarding the deal. For example, the PARTEX consultant believes the recuperator, a Bolter product option, to be very important. Alternatively, the Maverick production engineer considers it to be an unnecessary frill.

Previous to the negotiation, BTI has submitted a price quotation for the gas compressor set, including several product options and Bolter's standard terms and conditions. The Maverick purchasing agent has established certain purchasing objectives which would require substantial concessions from BTI. Both sides are supplied with similar amounts of information about various environmental constraints (e.g. time schedules, market conditions, etc.). Additionally, each side has been instructed to come to an agreement during this meeting. The final agreement will consist of a completed purchase agreement, signed by representatives of both companies.

Instructions for Participants

There are six roles to be played in the simulation (see the Appendix): three for the Bolter sales team and three for the Maverick purchasing team. Groups of six students (smaller groups also work) are given the appropriate materials, and the three Bolter representatives are sent to a different location to plan bargaining strategies. The role-playing instructions are self-explanatory; however, a few questions of clarification should be anticipated. The Bolter team is instructed to return at the end of the 30 minutes (30-minute time limit for negotiation preparations) and begin the sales discussions.

The bargaining session is limited to one hour. If facilities allow, private intra-team conferences are permitted. In any case, the 60-minute time limit for

bargaining is strictly adhered to. The simulation is complete when the final contract terms are specified and approved by the appropriate representatives of both firms (the form is included in the Bolter sales representative's materials). Usually bargaining is concluded very near the end of the time limit.

Debriefing Instructions

The simulation debriefing can be accomplished in approximately two hours and consists of three parts: (1) written student evaluation of the negotiations; (2) instructor-led class discussion; and (3) student discussion of the negotiation within the six-person groups.

Two forms should be prepared for evaluation of the negotiation by students. One is a negotiator evaluation form. Each participant is instructed to evaluate the performance of one member of the opposing team. The form consists of twelve dimensions of negotiator skill to be rated and includes room for brief comments. The twelve five-point items are: (1) well prepared/unprepared; (2) high aspirations/low aspirations; (3) good listener/poor listener; (4) asks good questions/doesn't ask good questions; (5) makes powerful arguments/makes weak arguments; (6) quick to respond/slow to respond; (7) honest/deceptive; (8) exploitive/accommodating; (9) patient/impatient; (10) avoids concessions/readily makes concessions; (11) creative/not creative; and (12) would be interested in working with person again/would not. On the second form the students are asked to comment on both negotiation teams' performance. The group evaluation form is much less structured and asks for more general comments about "strong points" and "weak points". The forms require about 10 to 15 minutes to complete and should be filled out immediately after completion of the negotiation.

The instructor-led discussion includes three topics: (1) a comparison of the various groups' results, including disclosure of the Maverick purchasing objectives; (2) a description of the different and conflicting motives for each of the six roles; and (3) possible effective bargaining strategies for each side. The Maverick purchasing objectives should be disclosed first, followed by comparison of bargaining outcomes among student groups. However, it is important to point out during the discussion that any evaluation of negotiation outcomes is in itself a difficult task and is very much dependent on one's point of view. Any deviations from standard terms and conditions or price or purchasing objectives almost always requires explanation once representatives return to their respective headquarters.

Following the comparison of results, the individual motives of each role should be shared with the group. For example, the Maverick production engineer does not want the recuperator product options, while the PARTEX design engineer thinks that the recuperator is important. All such individual motives should be revealed to the group. It should be pointed out to the students that such contrary personal and professional goals are typical of industrial sales negotiations.

The last topic to be discussed during the instructor debriefing is possible bargaining tactics. The list below is not intended to be exhaustive, but exemplary only.

Bolter Tactics

The following are a few of the more important bargaining tactics that the Bolter team might have employed during the simulation.

- (1) Market research at the negotiation table. Initially maximise questions and carefully sound out Maverick's position. Get them to make a counter offer.
- (2) Break, then counter-punch. Once you are certain of Maverick's position and priorities, break for a private "strategy adjustment", given the new information.
- (3) Raise your price. "Things have changed since we prepared the quote". If this seems too risky you may want to add, ". . . but we'll leave the price as it is". The ethics of such a tactic should be discussed.
- (4) Avoid concessions. Avoid making any further commitments or concessions until you understand the full picture. "I can't say for certain until we've discussed the other issues".
- (5) The mouthpiece routine. Let the sales representative do the talking. This gives the sales manager the opportunity to change things and correct mistakes if necessary.
- (6) Creativity. Suggest concessions on issues not listed — future purchases, for example.
- (7) Use all the time. Make no concessions until near the end of the bargaining session.

Maverick Tactics

The following bargaining tactics might have been used by the Maverick purchasing team.

- (1) Why so high? Has the Bolter side explained “why” on every item in the quotation. Explore for weak points.
- (2) Break, then counter-punch.
- (3) No counter-offer. Avoid making a counter-offer if possible. Your first offer is your first concession and sets limits on your profits from the deal.
- (4) Start low. If the other side forces a counter-offer, then start lower than your purchasing objectives. If you start with your listed price there is no room for the necessary compromise and no way to achieve your goals.
- (5) Use all the time.
- (6) Good guy/bad guy routine. Don’t settle the recuperator issue ahead of time. Let the production engineer weaken Bolter’s position.
- (7) Creativity.

Usually 45 minutes is adequate to accomplish this second part of the debriefing.

The final step in the debriefing includes discussion of the various students’ evaluation forms within the groups of six. Each student reads his/her comments about the group and then the six amplify, clarify or disagree. Sharing the information from the group evaluation forms serves as an excellent discussion stimulus. Following this group discussion, each person is given his/her individual evaluation form to review. Here again, the students usually ask questions and clarify the others’ ratings of their own negotiation performance. Ordinarily this second step in the debriefing can be accomplished in about 30 minutes.

Variations in Usage and Structure of the Simulation

There are a number of ways in which the BTI Negotiation Simulation might be changed. Below are listed just a few of the possibilities.

International bargaining. With minor changes in the game instructions the setting may be transformed to a negotiation across cultures. Such a simulation would provide an excellent context in which to “surface” and discuss cultural differences in bargaining and communication styles.

Smaller groups. The simulation is ideally conducted with groups of six students. However, groups of five (the PARTEX engineer’s information is given to the Maverick purchasing agent) or four (the Bolter sales representative’s information is given to the Bolter sales manager and the PARTEX engineer’s to the Maverick purchasing agent) also work well.

Use of videotaping facilities. The availability of videotaping facilities dramatically enriches the BTI Negotiation Simulation experience. Each

bargaining session would be videotaped. Following completion of the evaluation forms, each student would be required to review the negotiation and “correct” his or her evaluations. Such an exercise allows the students to view themselves as others do. Moreover, our limited capabilities of perception and memory are demonstrated by contrasting the recollections of events to the “reality” of the videotape. Videotaping also allows the instructor the opportunity to view and evaluate the performance of each team, even when several simulations are conducted simultaneously. The videotapes might be used during the debriefing to demonstrate successful or unsuccessful tactics. Finally, students absent from class on the day of the simulation might be required to view one of the tapes and fill out the evaluation forms. Such an assignment would enrich their participation in the instructor’s debriefing.

Appendix: Student Materials

Each of the six role descriptions requires a different set of support documents. See the bottom of each for a list.

Bolter, Inc. Regional Sales Manager

You will be playing the role of a regional sales manager for Bolter Turbines, Inc., a manufacturer of industrial gas turbine engines and natural gas compressors. You will be heading up a team of Bolter representatives in the final sales negotiations for a \$3.65 million compressor set project for Maverick Natural Gas, Inc. Your salesperson has been conducting preliminary sales and technical discussions. During this final session with the client personnel you will be expected to make the necessary decisions to conclude the agreement with Maverick.

During the past few weeks, some large contracts with other firms have been won by competitors making this project particularly important to your firm. The opportunity to include a recuperator makes the deal doubly important. The recuperator is a new fuel saving device which Bolter is promoting heavily.

Your salesperson has already submitted a price quotation to Maverick (see the attached copy). Company policy allows up to a 10% price reduction at your discretion. Any further reduction in price will require substantial justification on your return to headquarters. Additionally, a large part of your annual compensation depends on achieving profit objectives established at headquarters. Finally, according to market research, Bolter’s competitors have

recently raised prices on comparable products, thus making your bid very attractive.

Recently, several customers have requested an arbitration clause as part of the terms and conditions. Your legal department feels that such clauses are not necessary. Indeed, in the past when Bolter and client disagreements have gone to arbitration by a third party, Bolter has consistently lost out. Thus, the legal department has asked you to actively avoid arbitration clauses of any sort.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all the information provided above in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities in order to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Maverick. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

(price quotation)

Bolter, Inc. Applications Engineer

You will be playing the role of an applications engineer for Bolter Turbines, Inc., a manufacturer of industrial gas turbine engines and natural gas compressors. You have been selected by your firm to participate in negotiations with representatives of Maverick Natural Gas, Inc. regarding the purchase of a Model JR2000 Natural Gas Compressor Set. A price quotation for the basic machinery and associated product options is attached.

As a member of the Applications Engineering Department of your firm, you are very interested in communicating to the client personnel the advantages of the product options listed. It has been the experience of those in your department that when Bolter supplies such options, fewer engineering difficulties are encountered during installation and use of the machinery. Service contracts have proven advantageous in avoiding warranty work possibly caused by improper servicing by client field personnel. Bolter is recognised in the industry as the leader in providing equipment for offshore installations including durable shelters and reliable salt water spray filters.

The recuperator (an option which uses exhaust heat to substantially reduce fuel consumption) is a particularly important part of the project because it is a new product offering for Bolter. As such, your firm is actively seeking

experience in installation and servicing the product, and establishing a proven track record of performance to use in future sales. Given the ever-increasing cost of natural gas, your client will be increasingly concerned about the fuel consumption characteristics of your product. The recuperator option should prove to be an attractive part of the project.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all the information provided above in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities in order to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Maverick. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

(price quotation)

Bolter, Inc. Sales Representative

You will be playing the role of a sales representative for Bolter Turbines, Inc., a manufacturer of industrial gas turbine engines and natural gas compressors. You have arranged a meeting between representatives of your company (your sales manager, an applications engineer and yourself) and representatives of your client firm, Maverick Natural Gas. The purpose of the meeting is to negotiate the final details of a contract you have been working on during the last six months. This particular contract is personally important to you because it will push your sales performance for the year into the bonus area.

You have submitted, with headquarters' approval, a price quotation to the client (a copy is attached). It has been Maverick's history to ask for price reductions below original quotes. You have the opportunity to "trade off" machinery price for other favourable terms and conditions which are part of the standard agreement. Bolter's standard terms are listed as part of the attached price quotation. In the past you have found that sticking to the standard warranty is considered most important by your headquarters. Particularly when installations are located offshore, costs of labour on warranty work can be extremely unpredictable. Also, at a recent sales meeting your managers pointed out the importance of terms of payment and inflation escalators in times of high inflation.

The product options selected by Maverick are not particularly important to you. You are very concerned that an agreement be reached on the basic machinery, as it dramatically affects your annual bonus. However, the product extras have no effect on your performance evaluation or compensation.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all the information provided above in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities in order to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Maverick. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

The terms of the final agreement will be recorded on the attached contract and signed by representatives of both companies.
(*price quotation, blank contract*)

Maverick, Inc. Purchasing Agent

You will be playing the role of a purchasing agent for Maverick Natural Gas, Inc., a producer of natural gas from offshore fields in the Gulf of Mexico. You will be heading up a team of Maverick representatives in the final sales negotiations for a \$3.65 million contract for a Bolter JR2000 natural gas compressor set for a new offshore production facility. A sales representative from Bolter has submitted a bid for the contract, which you feel, will potentially solve your purchasing problem. However, final details must still be worked out.

You consider the price quoted by Bolter to be out of line with comparable products. You recognise that Bolter turbines are by far the best product available in the time frame required. However, because Bolter has recently lost sales to competitors you anticipate that Bolter might be persuaded to substantially lower prices to the level you have set forth in the attached purchasing objectives.

Of the terms and conditions included in the initial bid, you feel that three are critical to Maverick. First, in recent months Bolter has had difficulty meeting delivery dates. Therefore, the penalty for late delivery will be an important issue during discussions. Second, a new company policy of delayed payments has been published. The Controller at Maverick has “come down hard” on other

purchasing agents agreeing to terms of payment other than those listed in the purchasing objectives. Finally, your firm has recently cut back on legal staff and has adopted a policy of third party arbitration in contract disputes. A third party arbitration clause will be a key part of your agreement with Bolter.

The final issue of concern is the recuperator option. The consulting firm involved in the design of the platform project feels the recuperator is a must given the anticipated increasing costs of fuel. Alternatively, the production department predicts major engineering headaches caused by the use of an unproven option such as the recuperator.

Your specific assignment is to resolve all these issues during the negotiations so that the project can be completed on schedule.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all the information provided above in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities in order to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Bolter. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

(price quotation, purchasing objectives)

Maverick, Inc. Production Engineer

You will be playing the role of a production engineer for Maverick Natural Gas, Inc., a producer of natural gas from offshore fields in the Gulf of Mexico. You will be participating in the final sales negotiations for a \$3.65 million contract for a Bolter JR2000 natural gas compressor set for a new offshore production facility. You have worked on details of the entire project with the Bolter sales representative during the last few months. You will be involved in the day-to-day use of the product, thus you are concerned primarily with product performance. Commercial details are less important to you.

Based on your 20 years experience in running offshore production facilities, you consider JR2000 to be the best product available for offshore production. From your point of view the marine shelter and salt spray filters are critical product options. However, you feel the recuperator (an option which uses exhaust heat to substantially reduce fuel consumption) to be a potentially large headache and an unnecessary frill. In your experience other such product

innovations require two to three years of field testing to remove engineering bugs which represent significant down time. Finally, you consider the service contract to be substantially overpriced in the Bolter price quotation. Your own personnel can service the machinery for the cost estimated in the Maverick purchasing objectives.

Regarding terms and conditions, inclusion of labour in warranty is very important. Travel time to and from the offshore production platform will prove to triple the costs involved in warranty repair work, and you feel the vendor should be responsible for covering those expenses.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all of the information provided above in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities in order to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Bolter. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

(price quotation, purchasing objectives)

Partex Consulting Design Engineer

You will be playing the role of a consulting engineer from PARTEX and Associates Company. You are presently working on the design of an offshore natural gas production platform for Maverick Natural Gas, Inc. As part of your responsibilities you are to represent Maverick in the final sales negotiations for a \$3.65 million contract for a Bolter JR2000 natural gas compressor set for the offshore project you have helped design. You have worked with the Bolter sales representative during the last six months on this particular job, as well as several other jobs in previous years. You are a firm believer in the high quality of Bolter products and personnel.

Regarding the price quotation for the JR2000 and the associated options you feel it to be reasonable. You have found that generally you get what you pay for.

Delivery within three months has recently become a critical issue from your point of view. In order to complete the entire natural gas production platform as per the schedule you developed, the Bolter machinery is needed earlier than anticipated. Deliveries of other components of the production facility have been

delayed unexpectedly, thus “making room” for early installation of the Bolter machinery.

Finally, you feel very strongly that recuperated gas turbines (the recuperator is an option that uses turbine exhaust heat to reduce fuel consumption) are the way of the future. You believe that it is in the best interests of Maverick to include this important product innovation in the Bolter purchase. Additionally, you have a personal interest in such technological advancements and their use.

You have thirty minutes to plan bargaining strategies with the other members of your negotiation team. Feel free to use part or all of the information provided in shaping your strategies. Create additional arguments to bolster your position if you so desire. It is important that you play the assigned role to the best of your abilities — to maximise the learning of all participants. Although you can exchange information from these forms, please do not exchange forms with the other members of your negotiation team. You will have one hour to reach an agreement with the representatives of Bolter. Feel free to make notes on these forms and ask questions if clarification of the instructions is needed.

(price quotation, purchasing objectives)

Bolter Turbines, Inc.

PRICE QUOTATION

For Maverick Natural Gas, Inc.
7 Euwing Avenue
Dallas, Texas

Installation: Offshore
Production Platform #6
Gulf of Mexico

| | |
|---|--------------------------|
| Model JR2000 Natural Gas Compressor Set | \$2,500,000 |
| Product Options | |
| Custom-built Marine Shelter | 400,000 |
| Recuperator | 500,000 |
| Salt Spray Air Filters | 100,000 |
| Service Contract (2 years normal maintenance, parts and labour) | 150,000 |
| TOTAL PRICE | <hr/> \$3,650,000 |

STANDARD TERMS AND CONDITIONS

| | |
|--|-----------------------|
| Delivery | 6 months |
| Penalty for late delivery | \$ 10,000/month |
| Cancellation charges (if client cancels order) | 10% of contract price |
| Warranty (for defective machinery) | parts, one year |
| Terms of payment | COD |
| Inflation escalator* | 15% per year |

* In the event that delivery is delayed by client, the quoted price will be increased at a rate of 15% per year, computed on a monthly basis.

MAVERICK PURCHASING OBJECTIVES

| | |
|----------------------------|-------------|
| JR2000 Compressor Set | \$2,200,000 |
| Marine Shelter | 300,000 |
| Recuperator | 400,000 |
| Salt Spray Filters | 60,000 |
| Service Contract (3 years) | 90,000 |

| | |
|-------------|-------------|
| TOTAL PRICE | \$3,050,000 |
|-------------|-------------|

| | |
|--------------------------------|--|
| Delivery | 3 months |
| Penalty for late delivery | \$75,000/month |
| Cancellation charges | 2% of contract |
| Warranty | parts and labour, 2 years |
| Terms of payment | 4 equal payments, 1st at delivery, 2nd at start-up, 3rd and 4th at 90day intervals |
| Inflation escalator | 10% per year |
| Third Party Arbitration Clause | included |

FINAL CONTRACT TERMS

JR2000 Compressor Set
Product Options (circle those
selected)

- Shelter
- Recuperator
- Filter

TOTAL PRICE \$ _____
Service Contract(list conditions)

PRICE \$ _____

Terms and Conditions _____
Delivery _____
Penalty _____
Cancellation Charges _____
Terms of Payment _____

Inflation escalator _____
Warranty parts _____
labour _____
years _____
Arbitration clause yes _____
no _____

Signatures

Maverick Representative Bolter Representative

Chapter 13

Negotiating Mergers and Acquisitions in the European Union

Viviane de Beaufort and Alain P. Lempereur

Introduction

If two people want their marriage to succeed, they often need to know each other well, *before* the wedding, disclosing enough information to each other about their real qualities and “the rest”. Cooperation between potential future spouses at this preparation stage will help both partners, during their life together, strengthen their respective qualities and overcome the challenges of the weaknesses they have identified. *During* the marriage, this cooperative spirit and two-way truthful communication remain key for ongoing success of the common endeavor.

Drawing further on the marriage metaphor, we will analyze its relevance to the *intercorporate* level for thinking about how mergers and acquisitions, in the case of cross-cultural European ones, can be made more successful by efficient communication and information exchange between corporations, defining thus a strategy of negotiation. In planning for a negotiated M&A in the European Union, there are many elements to prepare about one’s own company, and about the other’s. A multi-dimensional audit must be conducted to learn more about each other. We hope to give evidence that, under many circumstances, this multi-faceted knowledge — the possession or the refinement of which often depends on both companies’ willingness to adopt a cooperative approach

—, as well as its mobilization by parties during M&A negotiation, including with EU competition regulation authorities, will condition the likelihood of determining each side's interests, and searching for negotiated solutions to overcome identified constraints and to achieve a successful deal. Hopefully these multiple elements will reinforce our conviction that a successful M&A is strongly correlated with early and ongoing cooperative negotiations until the deal is actually signed, and authorized. On the contrary, we will assert that many failures of M&A may find their cause in the lack of fruitful contacts and information exchange between the two sides at various stages. The risk of failure may be increased for hostile takeovers, where negotiation is excluded a priori for strategic reasons and where subsequent contacts are kept to a minimal level and often remain tense afterwards. Many opportunities for companies to learn about each other, prepare, and implement a deal-making strategy together are lost in the absence of cooperative negotiation.

Communicating Effectively Across Cultures¹

While preparing for any negotiation, company agents must think of how to communicate effectively with the other side, and therefore increase the chance of common understanding. They need to develop early strategies to get the relevant information from the other side, and to give away the information that will also be helpful to their prospective partners. The highway needs to be paved both ways. On one hand, potential offerers need to really strive to empathize with potential offerees, *actively listen* to their concerns and constraints, ask appropriate questions. On the other hand, they have to consider how to *actively speak* to the other side, in such a way that they develop a persuasive argument to assert their own concerns and constraints, and make sure they are understood by the other side and are perceived as convincing (Mnookin *et al.* 2000, Chapter 2).

In cross-border M&A — in Europe as in anywhere in the world —, the operation is not simply taking place between two different corporate cultures, it is also cross-national, increasing the risks of miscommunication (Frank 1989; Foster 1992; Faure & Rubin 1993; Véry 1995; Brett 1998, 2001). Managers

¹ See Fisher & Ertel (1994) for seven key elements for negotiation preparation.

must focus on some further learning, in view of coping with a potential *double ignorance*:

– *Managers may not know well about the other side's culture:* Dealing outside of their usual context, managers have to learn the underlying elements of another culture, in terms of organizations, labor relationships, conventions of accounting, etc. They need to go beyond ready-at-hand caricatures of the other's general and corporate culture, and to get acquainted with elements of detail that they may not be familiar with, as difficult as putting themselves in the shoes of the other company may be. This a priori knowledge and empathy effort will help them communicate better, as they will understand any prospective partner better and can tune their speech to the other better too. As they will have shown early curiosity about the other side in preparation, and later during the first contacts, in turn it will also be easier for the other side to understand them.

– *Managers may not know about their own culture either:* This looks like a paradox, but the commonsensical following story easily explains: a fish does not know it is in the water. Cross-national managers have to learn to be more explicit about the underlying elements of their own culture, with its routines, legal habits, usual operations, etc. Beyond the superficial level, they need to reflect on what is so much part of their corporate identity (like the accounting rules) that they do not see it anymore when they are abroad, and would not even think of wasting their time talking about it. They need to resurface much of what they have internalized as obvious, without reflection, under the assumption of having everyone all over the world proceeding the same way. This self-awareness about corporate values, norms and expectations in their own culture helps expatriates understand, and even adopt an outsider's perspective about themselves and their culture, but more importantly, it can help them make someone from another culture understand them better. It takes somebody to somehow be "foreign" in one's own culture in order to have it explained to someone else from another culture.

In a word, managers, preparing for communication outside their own culture, need to bridge the gap between the other and themselves: they need to reduce

the difference between the other and them, by knowing more about the other's culture, and distance themselves from their own culture. It means opening ourselves to others — opening ourselves *and* opening to others, making a trip inside and outside ourselves, adopting what Dean Allen Foster calls a *global mindset* (Foster 1992). This double work is first and foremost for managers to put their assumptions to the test, questioning the answers that they hold about others and themselves. What goes without saying, for example, in their company, in their national corporate law, in their taxation system must be scrutinized: what they would have hastily assumed to exist elsewhere as such may not, and may not be accepted there so easily.

What does global mindset mean concretely? How can it contribute to strategy? It helps turn assumptions into doubts, doubts into inquiries, inquiries into checked information, this information into strategy, strategy into behaviors, and hopefully appropriate behaviors into good outcomes. It helps find differences where only the existence of similarities was presumed. However insignificant some information can look at first sight, it may prove useful later in a strategy.

Despite EU Directives, major differences remain and will remain in Europe, from one legal state system to another (Beaufort 1994). Managers need to adapt to these situations, and learn for example that legal conditions for limited companies still vary in the European Member States, despite the common rules of First and Second Directives (Table 13.1). Minimum capital investment range from 2,500 Euro in Finland to 105,000 Euro in Italy; minimum number of shareholders from one to seven; Articles of Association need to be notarized in some countries only. More importantly, management structures may be *monist*, with only a board of directors ruling the company, like in the U.K. or in France, or *dualist*, where it shares the power with a supervisory board, involving workers' participation, like in Germany or Sweden. The Fifth Directive, the purpose of which is to harmonize national legislations in that field, has not yet been adopted. Only to mention this last difference of monist or dualist structure, it will bear consequences for later negotiation strategy, as we will show.

From one angle, the existence of such legal differences makes the preparation longer and more exhausting. From another angle, it opens *windows of opportunity*. If well-prepared in terms of information, some managers may become aware of what others may miss, and therefore benefit from a competitive advantage. We can illustrate this hypothesis with the following example. Let us assume that a French company wants to buy a small Belgian company. The two companies are labeled SA (*Société anonyme*) in each of

Table 13.1: Comparative approach to public limited companies in the EU.

| | Denomination | Minimum Number of Shareholders | Minimum Authorized Capital | Paying up Capital | Independent Auditor | Articles of Association | Board |
|----------------|---|---|-------------------------------------|---|------------------------------------|--|-----------------------------|
| Austria | A. G. Aktien- Gesellschaft | 2 at creation; 1 afterwards | 729,992 EURO | 25% at creation | Obligatory | Notarized | Dualist |
| Belgium | S. A./N. V. Société Anonyme Naamloze Vennootschap | 2 | 30,998 EURO | 25% at creation with 30,998 EURO minimum | Obligatory after a threshold | Notarized | Monist |
| Denmark | A. S. Aktieselskap | 3 founding members, plus 1 shareholder | 500,000 DKK or 66,160 EURO | 50% at creation with 300 000 DKK minimum | Obligatory | Notarized or under private agreement | Monist |
| Finland | O. Y. Osakeyhtiö | 1 | 15,000 FM or 2,542 EURO | 50% at creation | Obligatory after a threshold | Notarized | Monist |
| France | S. A. Société Anonyme | 7 | 38,112 EURO | 25% at creation | Obligatory | Notarized or under private agreement | Monist (some dualist) |

Table 13.1: Continued.

| | Denomination | Minimum Number of Shareholders | Minimum Authorized Capital | Paying up Capital | Independent Auditor | Articles of Association | Board |
|-------------------|---------------------------------|--|-----------------------------------|--|----------------------------|--------------------------------------|--------------|
| Germany | A. G. Aktien-Gesellschaft | 5 founding members, plus 1 shareholder | 52,080 EURO | 25% at creation | Obligatory | Notarized | Dualist |
| Greece | A. E. Anonymos Eteria | 2 | 34,480 EURO | Immediate until 34,480 EUROS | Obligatory | Notarized | Monist |
| Ireland | P. L. C. Public Limited Company | 7 | 38,460 EURO | 25% at creation | Obligatory | Notarized or under private agreement | Monist |
| Italy | S. P. A. Società per Azioni | 2 | 104,340 EURO | 30% at creation | Obligatory | Notarized or under private agreement | Monist |
| Luxembourg | S. A. Société Anonyme | 2 | 31,017 EURO | 25% at creation | Obligatory | Notarized | Monist |
| Netherland | N. V. Naamloze Vennootschap | 1 | 45,454 EURO | 25% at creation with 45,454 EURO minimum | Obligatory | Notarized | Dualist |

Table 13.1: Continued.

| | Denomin- ation | Minimum Number of Shareholders | Minimum Authorized Capital | Paying up Capital | Independent Auditor | Articles of Association | Board |
|---------------------------|---------------------------------------|---|---|------------------------------|---------------------------------|--|-----------------------------|
| Portugal | S. A. Sociedade Anonima | 5 | 24,950 EURO | 30% at creation | Obligatory | Notarized | Monist (some dualist) |
| Spain | S. A. Sociedad Anonima | 3 | 60,240 EURO | 25% at creation | Obligatory after a threshold | Notarized | Monist |
| Sweden | AB Aktiebolag | 1 | 10,470 EURO | Total | Obligatory | Notarized | Dualist |
| United Kingdom | P. L. C. Public Limited Company | 2 | 50,000 GBP or 80,000 EUROS | 25% at creation | Obligatory | Notarized or under private agreement | Monist |

Source: Beaufort (1994).

their respective countries. Let us also assume that the representatives of the French company ignore that contrary to French Law, for Belgian limited companies, auditors (*commissaires aux comptes*) are not required in all cases, but only beyond a certain threshold, one that the Belgian target company does not cross. The French representatives may not verify the accounts of the firm with the same accuracy as they would have, had they known books do not have to be reviewed independently in Belgium in such a case. This lack of consideration for that legal difference may have an impact on the evaluation of the target company.

Even if some references, like legal structures, are similar from one culture to another, they can still be submitted to different assessments. Two people, sharing the same reference, may not attribute the same value to it. Some structures will be more frequent in some countries than others. For instance, the United Kingdom or the Netherlands have a tradition of listing companies that is not as developed in other countries, in particular in Germany. If the managers of a British corporation hope to extend their activities in Germany and limit their search to companies on the stock market, they may miss the right partner that a German bank, often involved in corporate controls and well informed about a specific market and its players, could have easily cited.

On top of legal structures and of their uses which frame many aspects of a company life, there is another set of assumptions that managers may hold about *corporate functioning and operations*: about how shareholders monitor a company, about who they are, about the role of institutional actors, of trade unions, about what is considered fair trade practices, or reasonable flows of capital, or fair and true review of accounts . . . Such a descriptive set has the tendency to become quickly normative in the minds of those who hold it: what *we* usually do in our corporate or national culture is what we — and others — *ought to do*. Yet, *what should be done here to be successful* may not be shared in other cultures as keys of success. Managers need to check the validity of their descriptive set, before any automatic transposition to another context. This prudence reduces the risks of erroneous strategy, resistance and backfire.

For instance, in the United Kingdom, some favored structure, like company listing, can be in close correlation with some specific operations, like takeovers. In a context of quicker flow of capitals, many British managers may not have as much difficulty in accepting and practicing takeovers at home, even hostile. They can simply view them as acts of good management, with consequent restructuring and lay off. These managers can be tempted to export such techniques, and lobby their government to denounce barriers to takeovers in other member states. However, some of these “barriers” that the British

Department of Trade and Industry may inquire about,² and complain about in Brussels, in the name of freedom of commerce, may be seen as legitimate “protections” in other member states. In Germany, high stability of capital and long term mandate for managers are viewed as conditions for economic growth, while takeovers, with purchaser’s possible swift disinvestment, are often considered as unproductive.³ In pursuance thereof, at least two views of takeovers can coexist in European corporate cultures, both asking for more integration, but in different directions (Booz-Allen 1989: 53 sq). Partisans of the Anglo-American model will look at takeovers more from the acquirers’ viewpoint, promoting quick competition and restructuring, fighting protectionism, inefficiency and labor impediments. Partisans of the German-Japanese model will rather side with the target’s viewpoint, promoting shared cooperation, business relationships and labor participation, fighting aggressive raiders and social carelessness. Wherever their heart lies, future acquirers must anticipate what their future business counterparts likely believe in that respect. Informed of the repulsion against hostile takeovers that prevails in the target culture, acquirers may even have stronger incentives to prefer negotiated offers and a cooperative approach to its implementation. In addition to cultural sensitivity, acquirers will rarely be wrong to expect that their counterparts, as potential targets, may naturally feel more empathy with tender offers.

For this example, as for many others, working towards a European model will probably mean to accommodate many tendencies, and integrate many perspectives (Booz-Allen 1989: 53 sq). This is the hope of the Thirteenth European Directive on takeovers and other general public bids, that has not been adopted for obvious reasons. The challenge for preparing a M&A is to precede European law, and for better success, on this topic or another, to embody the qualities of *successful European managers*, who regardless of their origin, integrate as *many national perspectives* as possible, with careful respect

² One of the most exhaustive studies in the field of barriers to takeovers was realized by Coopers & Lybrand (1989) for the British Department of Trade and Industry.

³ The difference between these two assessments of hostile takeovers is coherent with how corporation is viewed in each country. In the United Kingdom, a company is seen as a transmissible good. The shareholder prevails, sanctioning the good or bad health of a corporation by selling or not. Financial information is accurate. The flow of shares, which are in many hands, is fluid and ample. The role of the banks is limited. In Germany, a company is rather seen as a close and closed group, with some financial lack of transparency, a slow pace of share flow, and fewer shareholders. Managers as well as banks are key players.

for, knowledge, and mobilization of the *perspective of their actual counterpart*, in creative tension with a deepened knowledge of *their own perspective*.

Integration of references and evaluations of one's counterpart is not simply a matter of knowledge or even of acknowledgement; but of genuine acceptance, sharing and also strategic use. In the best case, this wide capacity involves a deep empathy with another culture, with a willingness to learn more about it, and to confess ignorance at times. The reality offers many occasions to put this capacity to the test, for spontaneous reflex of rejection and dismissal is common.

The capacity for perspective-taking may be highly helpful in transactions. At a stage of preparation of an offer, it enables managers to reframe their strategies, in terms which are likely to be better understood by prospective negotiating partners. It is a ground rule, from Ancient Rhetoric to current psychology and marketing: any argument or speech must fit its audience. This other-centered behavior goes beyond language; it applies to all the elements of an environment.

Managers can learn, for instance, from the simple observation that in "Latin" regions of Europe, meeting people informally outside the office, and building personal relationships through the "old boy network" are often more appreciated than exchanging precise, unemotional faxes through anonymous channels (Newman 1989: 280). More unusual times and places to negotiate can be discovered, which would have been dismissed otherwise with impatience "to get to business". Managers, who are conscious of cultural differences, take seriously what may influence unexpectedly the success of negotiation itself: they do not simply focus on the formal technical discussions at the office, but incorporate meals and pauses, smile and leisure in what becomes a wider vision of what negotiation is all about: building relationships and trust. Wide knowledge becomes a tool for awareness of oneself and of the other; it maintains alertness to a multi-faceted environment and encourages more appropriate action.

If such knowledge helps adopt (or confirm) a course of action, it may also prevent from considering (or continuing) one. In some European regions, where the power of notables and ruling families is recognized with formality, a higher respect for hierarchical authority is expected (see the concept of "power distance" in Hofstede 1980 and Véry 1995). It can be expressed through the use of titles, or seating at the table, for instance. Managers, who make these apparent details part of their negotiated strategy of M&A, will not be long to discover the key players to pay attention to. They will keep on looking for their approval, asking for their advice; they will not forget to report to them, at a crucial stage of the process. In permanence, they will remain

attentive to how their arguments are received by these authorities. Whenever skillful managers observe that one of their recent moves has provoked some unforeseen tension or rejection, they will redirect their argument accordingly, apologize for not having explained their point clearly, propose to restate it in another way, making explicit one more time that they are engaged in a friendly, and not hostile, operation. Rather than sticking to a particular frame, they will always promote their interests through a more appropriate formulation, which increases their persuasive power.

When cultural references and their evaluations as positive or negative warnings are integrated in a personal equation like a “second nature”, they contribute simultaneously to improve understanding and arguments, and to lower the risk of miscommunication. They help us as listeners, for they decrease the noises that we would otherwise perceive in a foreign culture. They help us as speakers, for they increase the harmony of our own sounds in the other’s ears. Listening and speaking are involved in a virtuous circle of communication, where heightened empathy becomes a tool for persuasive assertiveness (Mnookin *et al.* 2000; Callières 2002).

To summarize: understanding one’s own culture and expanding toward the other involve a complex program. It requires an investigation into the objectives and constraints of one’s company, but also, when cross-cultural M&A are considered, into one’s own possible limited knowledge about somebody else’s culture, references and evaluations. All of these elements can be gathered by managers, before even collecting particular information about a specific target. Managers understand better what the interests of their company can be *in particular*, and how they can be worked on, having learnt more about the culture of their counterparts *in general*. The next task is for the managers to inquire about who the targets are *in particular* and how to *actually* behave with them to build a working relationship.

Building a Working Relationship with a M&A Prospect

Communicating effectively with a potential prospect is not simply done through a careful analysis of the prospect’s cultural context, it is also important to know the prospect as such and see how it is possible to build an effective relationship in order to know if this prospect is as good as was thought to further a strategy of external growth.

In early stages of a M&A strategy, managers have to face many questions relating to potential prospect(s).⁴ They can try to answer some of them through self-help, resorting to publications from the ministry of foreign trade or some chambers of commerce, or to consultants' reports. All of this could remain private preparation. In this first act, the prospect has not officially entered the scene yet.

Undertaking early communication with one or several prospects and building a working relationship for limited information exchange, instead of abstaining from any contact as in a prospective hostile takeover, can be an asset to usefully learn more about the target and check that beyond this basic relationship, there can be space on the actual M&A deal. Potential acquirers, with their short list of possible prospects, need to learn as much as possible about them. Accurate, complete information is not easy to collect; its quality and quantity often depends precisely on the type of strategy and relationship that the future acquirer chooses to establish with prospects. The more open and cooperative it is, the more disclosure and accuracy can be expected.

A careful approach to the prospect — possibly secret — may discover which general strategy — conservative or audacious — the possible partner has followed during the last few years, which products and markets they developed, what external communication policy was adopted, which labor management they strove for, etc. It is a first opportunity for managers to confront the general cultural image, that they have formed, with actual practices of this particular

⁴ The word “prospects” can be kept in the plural at this stage. For the process of auditing to dispose of comparative data, it often needs to apply to more than one potential offeree, even if in many cases, there may not be more than one in a specific market. Even if managers consider that one of them would be a more attractive target, they need to determine with precision what makes this company so relevant to their needs. Managers are led to check their intuitions, by comparing this company with its competitors, as to already define its strengths and weaknesses, its objectives and constraints, its corporate structures and habits, in contrast with these alternative targets. Another reason to audit the prospective target with other possible targets is to be provided with possible back-up target companies in case the negotiation or the takeover with the prospective target fails. It may sometimes be judicious to associate with a so-called “second best” — who is a cooperative challenger and has a potential and a will to grow — rather than with a current “first choice” — which could be ultra-protectionist, and frightened by changes. Contacting this back-up company and even discussing an offer with it may also be part of a strategy to improve one’s “best alternative to a negotiated agreement” (BATNA, Fisher & Ury 1991) with the “first choice” target. Preliminary side-contacts with the “second best”, i.e. with a competitor, may often be sufficient to make the “first choice” target lower its expectations, or think twice before rejecting an offer. Note however that, in countries like Germany, negotiating with different prospects can be considered as negotiating in bad faith, which may be sanctioned by financial compensation. See also Reed (1989: 534–535). For more, see last section on the hostile takeover, as an alternative to negotiated M&A.

company, and of its managers. Yet, managers may need more than this unrefined view of the prospect to prepare an efficient integration plan, if the M&A deal is not to take place effectively. They want more than public data. Then, preliminary careful contacts — careful in order not to uncover all their objectives — become nearly imperative. Progressively, as a working relationship is founded, potential acquirers will likely have access to many more elements of the prospect than otherwise, and mainly they will examine them in comparison with these respective elements in their company. The goal is to distinguish areas in which the fit would work probably better, and other areas where further work is required. Through early negotiations on information disclosure, managers will therefore gather sharper information that directly relates to the post-M&A context and addresses problems that could have been ignored otherwise. Managers of the prospect can also be involved in joint problem-solving.

It may be difficult for potential acquirers to get some information for confidentiality reasons. Knowing how challenging it is to speak about one's own company with others helps realize, and acknowledge in less judgmental ways how uneasy it is for the prospects' managers to give away some of the requested information. Cultural norms can differ in that respect too. For example, in Germany, target managers or owners will not likely disclose any information, before potential buyers sign a *letter of intent*, i.e. a clear commitment to purchase the target.

Let us consider four areas where information is capital to start auditing.

Accounting and Financial Audit

Cross-border, more than national M&A give rise to difficult evaluation of prospects (Perez 1995). Accounting transparency is supposed to have been established by various European directives,⁵ through compulsory schemes for annual reports, profit and loss accounts, and annexes, including also rules of accreditation for auditors, and a requirement of harmonizing rules of disclosure for holdings.

Again the reality is blurred. In EU countries, multiple methods of evaluation and of write-offs survive, with serious consequential discrepancies. A striking study showed that the application of the accounting rules of five EU countries (plus the United States) to a hypothetical company led to six different

⁵ Fourth Directive No. 78/660; Seventh Directive No. 83/349; both complemented by Directives 90/604 & 90/605 (*JOCE*, L 317, November 16 1990); Eighth Directive No. 84/253.

statements of accounts: the “same” company would turn a profit in France, while having less profit in the Netherlands and in Belgium; it would be slightly in deficit in the United Kingdom, while having a higher deficit in the United States, and the highest deficit in Germany (Kerdellant 1990). More or less leeway in accounting explains this spectrum, that must be kept in mind as a prospective buyer while evaluating the target from a financial viewpoint. A buyer must be aware of unusual accounting methods. The same study also insists on not rushing to conclusions, i.e. attributing more or less laxity to such country. Indeed, with different hypothetical companies and figures, the results could have been reversed. However that may be, managers must pay extreme attention to the particulars of target accounts, translating nearly step by step what it means into their financial schemes. For example, in France and the Netherlands, research and development costs can be listed in fixed assets, whereas they can appear as expenses in the United Kingdom or Germany (Perez 1995: 553). Awareness of these possible differences at an early stage, before the M&A is signed, is important; managers may want to set up a harmonization plan of accounting structures, which will be quickly implemented after the M&A. Such a plan may also serve as obvious techniques to later verify more easily that financial objectives are reached.

Commercial Audit

The analysis of current turnovers must be complemented with a dynamic view of the target business. How have past contracts been implemented and honored? Which prospective clients and growth can be hoped for? Who are the creditors and debtors? Are the latter dependable? What is the state of the stock? In some sectors, like mass marketing, taking over a stock also means being liable for defective products for a period of ten years.⁶ It is better for acquirers to know what they can become responsible for. Again, this information may not be grasped by only examining compulsory accounts. Opting for an early cooperative behavior, prospective buyers may want to disclose some relevant information about their firm and interests, in order to also learn elements from a prospective target that are essential to their assessment, namely such aspects of liability for defective products.

⁶ This non-fault liability stems from the Directive 85/375, (*JOCE*, L 525, July 25 1985). See Beaufort (1995a: 525–526).

If acquirers intend to operate in European countries where the tradition of fair and true review is recent, like Portugal and Greece, there are even more incentives to favor a cooperative approach (Perez 1995: 552; Coopers & Lybrand 1989: Vol. 3). Moreover, through an extensive commercial audit, friendly bidders may also develop better arguments to justify their will to buy or to be associated with the company in question; they may find for instance “objective” opportunities for complementary productions or skills, and therefore ensure a strong *commercial or industrial* dimension to the M&A, which otherwise could have seemed purely *speculative*.

Legal Audit

Legal audit in a broad sense can encompass some of the previous aspects of auditing, as well as the ensuing social audit. The following examples will focus on a narrower conception of legal audit, involving more precisely corporate law. Whatever form corporations adopt — limited company or not, listed company or not — as suggested above, there can be many variations in legal requirements from a country to another and therefore in legal latitudes. The Articles of Association of the target may reveal the intent to use these latitudes in several fields. This point can be evidenced by statutory clauses which are allowed for example in Swedish corporate law, and which may be included to protect all or some current shareholders. These clauses may hinder or even stop some takeovers which are protected by Swedish law (Beaufort 1995b: 22 sq. Statutory defenses are also very common in the Netherlands, for example):

- *Pre-emption clauses*: Shareholders have a pre-emptive right to repurchase shares sold to a third party. For public limited companies, shareholders can even agree to forbid themselves to sell their shares to a third party, before other shareholders agree to it.
- *Voting rights clauses*: Some “A” shares may have up to 10 votes, whereas “B” shares may only have one. Hence, one shareholder with 10% of the shares could control an entire company.
- *Clauses for preferential subscription rights*: Some shareholders are authorized to be granted preferential rights of subscription, by a board of directors who wishes to increase the corporation capital. This clause can prevent “A” shareholders from being threatened by “B” shareholders.

Managers auditing a company must pay close attention to the Articles of Association, and assess whether or not they can effectively control their acquisition. They must also examine the conditions of other major contracts, like commercial leases, loans, franchising.

Social Audit

Target evaluation should also include human resources and labor relationships. It is important to identify some of its main elements, like labor requirements, pension plans, internal disruptions. What is the content of labor contracts? Which principles regulate the salary: seniority, productivity, etc.? Which benefits are included? Do workers participate in the firm's profits? What is the age pyramid, the ratio between young and old employees? What are their qualifications? How are retirement pensions calculated and funded? If personnel is to be laid off, which procedure and compensation are required? In Italy, for instance, severance compensations can be very high. What is the ratio between executives and non-executives? How are workers involved in the management of the company? What is the role of trade unions? How does collective bargaining work? What kind of labor conflicts has the firm known? How were they solved? How frequent were strikes?

Answers to these questions evaluate how labor contracts and work forces may be assets for growth, or costly obstacles. Again, offerers must avoid a priori negative judgments, namely about the lack, or the excess of, participation or workers' rights in the prospect. Indeed these judgments can be rooted in their own cultural references and assessments. A company stressing workers' participation and sharing firm's profits with them may well be well-off *thanks to* these features. Deciding to curtail these human resources assets may well increase owners' profits for a while, but prove to be disastrous in the long run in terms of motivation.

On the other hand, in some settings, well-known conservative trade unions may have a deeply embedded strategy of confrontation with the management, escalate demands despite the difficulties of a company, refuse any change to *droits acquis* ("acquired rights"), repeatedly go on strike, and be real impediments to productivity, by their deficient liability. Management may play the same game, considering confrontations and hierarchical authority as the only solution to all problems, also refusing to engage in serious collective bargaining. Resting upon the social audit of this company, acquirers may already diagnose the need for substantial changes at the HR department. They may plan to remove some of its managers, replacing them with more skillful

negotiators who can improve the communication and relationship between management and the workforce. A new “social contract” can also be offered to trade unions to restore a sense of responsibility on all sides.

After this multi-dimensional preliminary audit, managers may determine more accurately some *price range* for the operation. It is an estimate based primarily on the financial audit and on the potential for growth that the commercial audit assessed. Legal and social audits help qualify the price, rectifying it according to how much, for example, the shareholders' structure or the workforce can be trumps to manage the society. Managers may now proceed knowingly with a partner.

Determining Underlying Interests of Each M&A Partner

What are the objectives that drive a company board to suggest M&A in the first place or to accept it from the prospect's point of view? (Fabre & Marois 1992: 24–28). The main interest is generally expansion, but if one digs deeper, M&A's are realized for many more motivations, the possible combination of which often requires a well-crafted strategy: investing cash flow productively, reinforcing one's position on a market, gaining access to new markets, benefiting from complementary skills, restructuring, diversifying activities and risks, integrating up- or down-stream, controlling the costs of production or the prices of distribution, etc.⁷ With a better knowledge of such interests, it is possible to examine key factors of success and possible impediments. The multiple objectives of a company often require a multidimensional synergy for future departments to work together with compatible goals and methods, with comparable instruments of evaluation, etc. Yet, especially when financial buyers are involved, “unsynergistic” strategies can also coexist (Salk 1994; Anslinger & Copeland 1996)

In order to determine their strategy beyond simple company expansion, managers need to clarify their interests early on, and to continue to do so as the M&A process takes shape. Yet, clarification of purpose does not exclude flexibility. *Strategic objectives* must leave room for decentralized maneuvering: agents must be free to invent satisfactory solutions during intermediary stages of the M&A operation, avoiding deadlocks, but also during later stages of implementation, avoiding obsolete answers. However, this flexibility to invent

⁷ Next to, and often complementary to, these positive respectable goals that satisfy various corporate needs, some can be perceived as more negative: an industry may just want to eliminate a competitor, sometimes anticipating a takeover by the coveted target.

solutions at multiple stages may need to be contingent upon reaching precise *financial objectives*. Negotiators or, later, managers of the target may be assigned precise results, determining a satisfactory outcome of the M&A transaction or of its implementation, according to “reasonable” standards (Tanneau 1993: 67). For example, when the M&A has occurred, the criterion of financial success can be measured by the return on investment that the company or its competitors get for similar activities. Fixing such financial targets avoids easy contentment with narrow margins, and opens the way to other more successful policies, if necessary. It also adds incentives for agents to be more inventive, all the more so if a substantial part of their compensation depends on reaching these financial targets (Anslinger & Copeland 1996: 131).

Searching for M&A Negotiated Options to Increase Synergies

While, or after, completing the audit, which often tend to apply to both sides, and after carefully determining both sides’ interests, managers can conclude that it is in their interests to collaborate in view of a M&A. It is time for them to transform preliminary contacts into actual deal-making, with the hope to reach a satisfactory agreement for both parties.

By their thorough and continuing preparation, both sides are empowered as negotiators. Yet they have not made up their mind about the type of agreement that would satisfy their needs; they have simply investigated strengths and weaknesses. They have made every effort to also be informed about their future partners. Now they will need to extend their joint problem-solving approach to determine the substance of the deal. Acquirers will have to negotiate with the target managers or directly with the owner. Legally only the owner needs to be contacted, though practically target managers may be involved for the sake of future management. At this time, potential sellers of the target must also be aware of the possible conflict of interests that their own managers may face, knowing that they may have a personal interest in favoring the future owners, with whom they are going to work, at the expense of the present owner, or on the contrary, being afraid for their future job, preventing the M&A from taking place.

How should this negotiation be framed to be more efficient? Even if M&A are not joint ventures or strategic alliances, owners and managers of both companies have a strong interest in working together in order to ensure a negotiation as balanced as possible, and to preserve the relationship with each

other. Beyond the deal with the target owner, the representatives of the acquirer will be better off involving early on in the process of M&A the managers of the prospect. The latter must view the success of the M&A as their success and continue to explain its legitimacy to their CEO, the shareholders, and the workers, i.e. everyone whose support is either required or beneficial to the operation. It is often an error for the acquirers to come with a pre-cooked plan and to present some “take-it-or-leave-it” offer to the target owners and managers. It may be the best way to make the latter perceive a tender offer as a hostile bid, and to have them raise these defenses which were exposed in the previous section.

Whenever it is necessary, managers of the offerer should also find imaginative ways of bypassing the principal/agent problem, reinforcing the responsibilities of the prospect managers whenever it is possible. As a rule of thumb, managers of the offerer should practice the *principle of reciprocity*, proposing to learn from their counterparts, before even asking them to learn from them. This way everyone can get acquainted with the other's methods of accounting, practices of production or distribution, etc.

Managers of both companies will be confronted with objectives and interests which may not be easy to reconcile. This may require sessions of brainstorming, to generate creative options. At the end of this process of invention, hopefully, some solutions will appear more susceptible to meet both parties' interests. These *integrative solutions* create value for both (Fisher *et al.* 1991: 56–80; Lax & Sebenius 1986: 88–116; Haspeslagh & Jemison 1991). Some appropriate techniques may also need to be developed to solve smoothly distributive issues, like the price determination. Rather than being preoccupied only by guarantees of liabilities — legal or contractual —, the options will have a broader scope, encompassing all these categories that were envisioned in the multi-dimensional auditing. Though a true image of the *past* matters, it is however more appropriate to mobilize them for the *future*, and imagine a common strategy to be followed after the agreement is signed. The talks also need to determine which degree of autonomy should be maintained, which changes should be operated, which systems of decision making and of communication should be carried out (Rostand 1993: 58; Tanneau 1993: 64).

Above all, while they are working on producing satisfactory options for the two companies, managers of both should feel committed to foresee, as much as possible, the problems that may emerge at each integration stage. They should focus on their respective assets, and how each company can benefit from them, seeing the third identity of their relationship as expanding their own identity: in the interest of both entities, they can merge or federate some of their offices, and keep some others entirely separate (Salk 1994). Managers, when possible,

should also fix clear strategic objectives and financial results. They should also talk about changes to cope with weaknesses. Otherwise, “antisynergies” will work their way through, where only synergies were expected (Frank 1989: 99). Weaknesses can be worked on through exchange of personnel, methods and technologies, rather than through cash flow poured by the acquirer for instance. If restructuring is seen as necessary, it should be looked at from all the relevant dimensions; not only in commercial and financial terms, but also in human terms. Communication matters with all relevant agents. How will a restructuring plan be explained to, and accepted by, the personnel? How can workers be associated in this reflection?

The key of success of M&A can be linked with the degree of care with which integration has been prepared prior to the agreement, as much in terms of strengths and weaknesses (Beckers 1989: 448; Rostand 1993: 56). Agents drafting contracts (Reed 1989: 541 sq.; Newman 1989: 285 sq.; Fabre & Marois 1992: 176–178; Poulain de Saint-Père 1995: 538) could nearly use the four rules of Cartesian methods: accepting to question or raise doubts about every issue (*rule of doubt*); going from the most complex context to the simplest manageable issues, dealing with each carefully in auditing (*rule of analysis*); recomposing all these elements of the puzzle together as a consistent whole to work on the identity of the new entity (*rule of synthesis*); and checking that no issue has been forgotten (*rule of enumeration*).

As we have just illustrated, in view of achieving the M&A deal, a cooperative approach to negotiation seems to be the most appropriate. It aims at creating value for both partners and not simply at claiming it for one, at reconciling present methods of joint problem-solving with future expectations of mutual gains (Lax & Sebenius 1986). In brief, it makes integrative ends and means coincide the most up-stream, in the least costly and most convenient way. Through the initial stage of self-scrutiny and general investigation about potential offeree’s culture, that we examined in detail in the previous parts of the chapter, managers have prepared themselves for this deal-making part. Progressively, as information is collected and exchanged, prospective partners can refine the content they gave a priori to all their preparatory negotiation tools. For example, was the objective of having the target market the acquirer’s own products such a feasible idea, when the audit reveals that the prospect’s marketing department is overloaded? How must this previously unknown constraint in the target company change the acquirer’s strategy? Does it mean that they should abandon this objective, or think of expanding the department? What kind of option should be discussed later at a negotiation stage to solve this problem? Who will pay for it? Should they think of another prospect after all?

Other aspects may restrain managers' capability to develop a M&A. They rest on the situation of a company, both internally and on the market. As illustrations of *internal constraints* that limit expansion, suffice it to quote the lack of funds to finance the operation, or knowledge about the targeted market, or know-how in the target activity, or skilled personnel to supervise the post-M&A stage in the future target. All these elements require a relevant report that evaluates their impact on the planned M&A and prevents them from becoming the causes of later failure. This report must also determine if these constraints may or may not be tackled within the company by appropriate measures. Managers of a company must strive to progressively overcome these constraints. If extra funds are needed to finance a M&A, could alternative ways of paying for the operation be imagined? Can a share of the benefits be used as cash? Can an interested bank participate? Because of the liberation of capital and of financial services within the European internal market, could local banks help better, or a subsidiary your company would create? Are there European structural funds or state subsidies available? Is cross-ownership an option? (Fauquet 1995).

Creative ways of coping with internal conditions of financing for instance could also depend on *external constraints*, over which acquirers have a limited influence or no influence at all. If the M&A is to take place in Belgium or Spain, cross-holdings are legal; they are not in the United Kingdom or in Germany. For any "out-of-the-box" option, there may thus be an "in-out" loop: solutions to internal constraints can sometimes be found through a careful study of the external conditions of a market that imposes in return its own limits on our imagination. These "limits-opportunities" will be even more obvious and interesting to consider, when preparing cross-cultural M&A.

The most prominent external constraint, one that reduces or even suppresses freedom of action for M&A in the European Union, refers to the present position of a corporation on the market, be it national or European. Henceforth, a M&A is submitted to European *or* national concentration authorities. Thresholds determine if the M&A is to be examined by the Commission,⁸ *or* by national anti-trust authorities, like the British *Monopolies and Mergers Commission*, the German *Bundeskartellamt*, the Swedish *Konkurrensvverket*,

⁸ Three thresholds must be crossed for the European Commission to intervene: companies involved in the M&A must have: (1) a world-wide turnover of more than 5 billion Euro; (2) a EU turnover of more than 250 million Euro for both parties at least, and 3) realize at least one third of their turnover in more than one member state [Regulation 4064/89 (*JOCE* L. 291, December 21 1989)]. Until 1997 these thresholds were lower if the operation concerned three countries or more: 2,5 billion Euro; 100 millions Euro and in each Member-State 25 million Euro.

etc. Managers, preparing for a M&A involving a EU company, need to inquire about its probable impact on competition, checking that their future position on the market, as a likely result of the M&A, does not imply market distortions. Whatever mode of growth is chosen, negotiations may be compulsory with the national anti-trust authority or with the European Commission, that will need to consider that the M&A is congruent with legal criteria.⁹

Other creative solutions can be offered for instance by a good knowledge of the taxation system attached to acquisitions (Poulain de Saint-Père 1995: 539–543). In France, rather than purchasing an entire business (*fonds de commerce*) and having to pay up to 11.4% of registration taxes beyond about 105,000 Euro, it may be preferable to acquire the property of the assets majority with an act of transfer (4.8%, or slightly over 1% if it is a *Société anonyme*) or even better without any act of transfer, or to operate a merger which, though not easy across borders, benefits from tax exemption (Directive 90/434 (*JOCE*, July 23 1990); see also Beaufort 1994). In order to find the least costly option, managers need to ask their services to check the various tax modes attached to the multiple ways of acquiring or sharing company control in the diverse legal systems.

When some options have received full support from both negotiating teams, it is time for the relevant agents to report the results of the negotiation process to their respective principals, as the options must be translated into the reality of a future agreement. A good advice is to keep the channels of communication widely open between agents and principals during the whole process, from letters of intent, memorandum of understanding, and preparatory convention, to the final agreement (Reed 1989, pp. 530–586). It helps clarify the mandates of the respective negotiation teams. In mergers, it also avoids a last minute grandiose flop, when CEO's disapprove of the ready-to-be-signed contract.

Negotiators who have cooperated during previous stages have accumulated a capital of trust, that will serve the M&A implementation. Integration, so to speak, occurs before the M&A even starts. Initiating as early as possible the process of integration is proved to be essential for post-M&A success (Haspeslagh & Jemison 1991). Through early joint problem-solving and information disclosure, managers from both sides have not simply built a working relationship, but also workable options for the deal and for its successful implementation. Thanks to this key advantage, though our

⁹ If a hostile takeover is envisioned, one may well expect the target company to be the opponent in legal argument, whereas if negotiated offers are preferred, the prospective partner is expected to be cooperative, and to provide his or her help to overcome this barrier. It is one more reason to favor the second mode.

hypothesis still needs checks by further empirical studies, we may guess not only that success is more likely to occur for the M&A, but also that there will be a better capacity to adapt to future conflicts and needs for changes. If a problem arises in the execution of the integration program, negotiation methods may just be called for again, and used to solve it.

Evaluating Unnegotiated Alternatives to Tender Offers: The Special Case of Hostile Takeovers

It is never an easy task for a company to determine its strategy for external growth. Before managers engage into any M&A strategy, they need to investigate very carefully possible alternatives to M&A (Newman 1989: 282–285). For such strategy to proceed, it must be clear to decision-makers that there is *no better alternative* to M&A. Such alternative could be creating oneself a branch or a subsidiary, rather than acquiring or merging with an existing company, or building a strategic alliance without any cross-equity.

Why, in the European Union, has the ratio M&A/creation of subsidiaries grown to two to one during the last fifteen years? Building the EU internal market has provoked a fast decompartmentalization of European economies. A context of emergency caused swift external growth. In this context, though M&A can prove costly operations, they often appear as better, quicker options, than creating subsidiaries. Who knows better, for example, how to market a product in Spain than existing Spanish companies? Acquiring one of them often turns out to be more efficient than creating a subsidiary, which always takes time, and involves the typical operational risks in a foreign maze.

If M&A is deemed the appropriate strategy for a company's external growth, a decision must still be made as to go for a negotiated M&A and a hostile takeover. This question will be examined in this last chapter part. We will argue that, though hostile takeovers are often available as an alternative, company strategists have nonetheless strong incentives to opt for the negotiated options that we explored earlier. There are indeed a series of risks associated with this alternative, and they must be carefully assessed.

The key advantage of a hostile takeover is that, if successful, it grants the purchasers a broader control in the target company, and allows them to define the terms of the new company and of its management as they please. Acquirers do not have to negotiate the bid with the target and feel free to negotiate or not within the acquired company at a later stage, during implementation. Accomplishing a *coup* in secrecy, without disclosing anything publicly until the

last minute, bidders can catch not only the target by surprise, but also the market and the competitors. The prevalence of a non-negotiation strategy at the bid time can persist later when the M&A is for example to be approved by European or national regulation authorities, or during the post-acquisition stage. Beyond obvious advantages, however, a hostile takeover often produces three types of counter-effects, linked with three lost opportunities of communication and information exchange, before, during and after the operation itself: the absence of negotiation, or the lack thereof imply first a financial risk in the evaluation of the target, then an increased risk of failure of the operation because of the defenses that are raised by the target, and finally a risk of arousing an hostile atmosphere in the new corporation if the bid initiator succeeds. Let us examine these risks in detail.

Risks before the Takeover Bid: Approximate Target Evaluation

In order to keep the whole bid initiative discrete and to maintain the effect of surprise, prospective bidders keep their distance from the target, limiting all contacts. In doing so, they prevent themselves from accessing information that they could have obtained, had they initiated pre-negotiations. Their knowledge of the target, however substantiated, tends to be limited to what is publicly requested or communicated, i.e. in reality to what is known from professional outsiders. As was shown earlier in a negotiated M&A, a thorough audit of both the prospect and the initiator is essential for the M&A to make sense and then to succeed. However well the bidders know their own company in its diverse dimensions (financial, commercial, legal, social), they will not know as well the target it wishes to acquire. Many gaps are due to happen in a hostile bid, as investigating them would uncover the raider's intentions that by definition are to remain secret. The audit of the target remains general, mostly provided by public accounts, and therefore does not benefit from insiders' data. The potential buyer may not be fully informed of what is needed to serve its interests. As the lawyer's old Latin maxim goes: "*Caveat emptor*".

Getting such limited information is coalescent with an *ivory tower effect*, which frequently persists in following steps of the takeover. Bidders claim to know how a target is good to further their strategy and what is good for the target. These assumptions often remain unchallenged, as target managers do not participate in any review process — that would likely happen otherwise — and therefore are not provided with reality checks, or cannot refine any integration strategy, that they conceived of, for the target.

In that context, bidders' preparation on how their real interests really connect to those of the target is often limited. With no prospective negotiating partner in mind, potential acquirers tend not to fully incorporate the target interests in their own strategic vision, which remains sketched in too narrow ways. As none is to be persuaded, there is no real incentive for initiators to really challenge their own views of the acquisition, and no need to ever change their convictions that this company is a good candidate for acquisition, even if it may not be, and that the match will then work well, even if it does not.

As hostile takeovers are often started as a fight, without much testing of the accuracy of one's strategy and assumptions, with a lack of relevant information about the target, they have a tendency to remain a fight. As in the prisoner's dilemma (Axelrod 1984), the hope, in being the first to strike, is to get some competitive advantage without giving the other any time to retaliate. When the first mover's advantage is credited, the rest of the game is often for each party to only claim more value for self, at the expense of other, while keeping the differential at one's advantage, without much value creation with the other.

Risk during the Takeover: Failure to Realize the Acquisition

When the hostile takeover is launched, things do not necessarily follow the course initiators predicted. First, bidders may have underestimated the influence of some financial regulations and the will of the target managers to defend their company's independence, as well as their capacity to resist the assimilation. The ensuing battle may be costly to both sides. This can prove even more ominous if other possible contestants, beside the bidder and the target, enter the scene.

In theory, understanding the risks of successive, mutual defections and aggressions, detrimental to both companies, prospective buyers, who had chosen a hostile takeover as their best strategy, may now decide to turn to negotiation with the target managers, in order to explain their acquisition strategy and share what they see as the advantages for the target. To serve the same purpose, they can use additional communication channels — documents to the target shareholders, to the press, to government authorities, etc. This strategic change towards cooperation can prevent much trouble and waste of energy. Yet, it needs to be accepted and reciprocated by the target, which is far from being common.

In reality, most often, once a relationship has been played from the start on the mode of a power struggle, rarely either side of the contest will easily shift to, and engage into, cooperative negotiation, unless it can be justified by some

obvious advantage for one's side. The target managers, frustrated by what they perceive as a first aggressive move, may want to block the bidders' first strike, and by some one-sided tactics, may then defect too, returning in kind what may have been taken away from their control. As will be shown, they also dispose of several non-negotiated alternatives to hinder or stop the raider's acquisition. As for the managers in charge of the interests of the acquiring company, they will probably want to keep the competitive advantage of the first surprise move. Consequently, this second possible negotiation moment is often missed with one more lost opportunity of establishing productive contacts between parties. What happens instead is an increase of financial risks and the rise of what has been called in M&A literature "takeover defenses".

Financial Rules to Protect Minority Shareholders and Inflated Global Cost of the Operation As long as the takeover costs remain close to the initiator's early aspirations and far from a calculated reservation value (a bottom-line that keeps the acquisition profitable in the long run), the operation remains attractive. However, the influence of the financial rule that requires an "equitable" price can change the whole picture. In statutes of some European Member States and in the European Commission's new project of directive (cf. see annex 1 for European Directives relevant to M&A), a reference is made to the equitable price that initiators must propose in their offer.

This price is most often calculated with respect to the average market price on a given period of time. Bidders will have to respect this price as their lowest bid, corresponding to the lowest cost estimate for them. At the same time, in order to persuade shareholders' to sell their shares, the proposed price will often have to be more attractive than the market price.

The operation will have a superior cost if bidders have to engage in a mandatory takeover bid. More and more European legislations oblige a bidder to make an offer to *all* the shareholders. The text, which is currently discussed at the European Parliament extends the rule to other Member States. Thus, the initiator must have the financial capacity to acquire all the shares, whereas most often simply acquiring a block of shares that would have been negotiated with one or several reference shareholders would have been enough to exert control on the target.

The same EU text also evokes a "sell-out" to protect the minority shareholders who wish to get rid of their stocks, once the bid has been completed and once its outcome has been published. This rule means some additional costs for the bidder who normally, with 90 or 95% of shares, would not need to buy these shares, which have no value of control whatsoever. Nonetheless, bidders will have to buy them, and respect the equitable price

standard, i.e. a minimum price that is henceforth superior to their real value, as these shares are deprived of any control power.

Finally, the operation financing has to be mentioned. In a negotiated process, financing the M&A goes along with special guarantee clauses, including sometimes a price reduction, if unidentified costs or expenses are discovered. In a process involving stock exchange authorities, national regulations totally define the parties' possibility of maneuvering. For instance, in the United Kingdom, financing must be made through cash payment.

The risk that is inferred from regulatory mechanisms, which aim at protecting minority shareholders, will even be amplified in the case of a hostile takeover with auction.

Target's Resistance Capacity Through Takeover Defenses There are many other ways of countering a hostile takeover. Next to the financial barriers that we saw and which use the market and the business community as final decision-maker, there are legal barriers using regulatory authorities for the same purpose of defeating the takeover.

One way of trying to stop the raider's acquisition is to propose a higher bid, very often by means of a *white knight*, a "savior" with whom it will be possible to negotiate a better deal. The white knight may assist with the escalation of the bid itself or participate in reserved capital increase, as in the case of Société Générale de Belgique and Suez. This outbidding can be costly for the target. For example, the takeover of Mannesmann by Vodafone shows how opposition to an initial offer leads to a higher price: C. Gent launched a takeover bid on Mannesmann at a price of 202.65 Euro per share for a total of 103 billion Euro, which corresponds to a 8.6% premium, compared to the market value. The target resistance led to an auction by the target, where its share would rocket to 266 Euro for a total of 124 billion Euro. Some of the most recent publicized M&A stories, involving France Telecom and Vivendi Universal for example, demonstrate this financial risk of such operations for an entire group, sometimes at the expense of its own future as a whole. Without any preventive discussion with the target, there is a risk of also underestimating the target's resistance capacity.

Beyond this financial counter-offer with auction risks, if managers, most often helped by shareholders, consider the offer to be hostile, i.e. contrary to the company's interests, they have other takeover defenses at their disposal, many of them using legal means. It is worth reminding that EU regulation is not unified on this issue and that this additional risk is therefore variable from State to State. It is important to distinguish the States where managers are authorized by law to take actions beyond daily matters, when a bid is launched, and states

where such actions would violate the principle of day-to-day matters left to managers and require prior shareholders' acceptance.

In the U.K. and France, the managers' duty of neutrality, once the takeover bid has started, obliges them to limit their actions to daily matters, and, if they want actions to oppose the bid, they must summon an extraordinary general assembly of shareholders. A reaction against a hostile takeover is therefore less likely to succeed, by definition, as the deadlines of takeovers make such summoning difficult. Sometimes the *capital increase defense*, which consists in a capital dilution of the raider's shares, can be authorized in advance, though the European Commission proposes that such operation receive the agreement of an extraordinary general assembly. These rules also limit many other defenses, like the *pac man defense*, where the board members themselves launch a takeover bid against their raider, the M&A version of the TIT FOR TAT strategy (Axelrod 1984); or the *fat man defense*, where the target acquires the assets of its subsidiaries in order to become more difficult to swallow (Cf. Time Warner). The *crown jewels defense*, where the target gets rid of its most coveted element, is also difficult to play in the European Union, where corporate law prohibits selling of essential assets. It failed when the Agnelli, Perrier owners, tried to use it to prevent Nestlé from a takeover. The bidders may have to face one or several of these barriers that target managers are able to raise. The consequence of this struggle is often unpredictable (Booz-Allen 1989: 17–19). Neither the potential acquirer, nor the target can predict where maneuvers and counter-maneuvers will end up.

In the States of the Rhenan tradition, like Germany, where companies are considered as social entities with a group of stakeholders, managers are entitled to act, within dualist structures where all the parties are represented (shareholders, employees, creditors), in the interest of the company. The attempt for LVMH to take over Gucci illustrates that point. As Gucci refused all cooperation with LVMH, it uses all available means to discourage LVMH from taking control, using several legal tactics to dilute the votes of the potential acquirer Gucci, like a stock plan for the employees or a capital increase through a white knight. All these tactics would not be legal in other European legal cultures, focusing more on the financial sides, where the shareholders play a more active role.

Thanks to the use of regulations from anti-trust law, stock exchange law or corporate law, other legal battles can also be fought to delay the takeover or prevent its success. In Table 13.2, we recall some legal means specifically provided for by legislation or regulations and, which can be brought in Europe before various authorities. Some legislators introduced these defenses in order to limit hostile takeovers. In some cases, the target may resort to courts, or to

Table 13.2: Legal battles against hostile takeovers.

| MEANS | ISSUES | EXAMPLES | OUTCOME* |
|--|---|--------------------------------|----------|
| • Referral to concentration or merger control national or EU authorities | • Offeree/counter bidder tries to have bid blocked on competition grounds (national or EU level) | • Gold Fields (United Kingdom) | W |
| | | • Irish Distillers (Ireland) | D |
| | | • MBB (West Germany) | L |
| | | • Rowntree (U.K.) | |
| • Referral to courts (commercial or others) | • Unfair trading/insider trading cases referred by stock exchange authorities investigations | • BAM (Italy) | L |
| | | • Bénédictine (France) | W |
| | | • Compagnie du Midi (France) | L |
| | | • Epéda (France) | |
| | | • Irish Distillers (Ireland) | W |
| • Referral to stock exchange authorities | • Offeree/counter bidder tries to have bid blocked on unfair trading/insider trading shareholders equal treatment grounds | • Télémécanique (France) | D |
| | | • Assubel (Belgium) | W |
| | | • Banesto (Spain) | W |
| | | • Epéda (France) | L |

Table 13.2: Continued.

| MEANS | ISSUES | EXAMPLES | OUTCOME* |
|--|--|--------------------------------|----------|
| <ul style="list-style-type: none"> Referral to foreign direct investment control authority specific control authorities | <ul style="list-style-type: none"> Have the offer blocked/delayed on foreign investment control or sector control grounds | • Assubel (Belgium) | D |
| | | • Britoil (U.K.) | L |
| | | • Compagnie du Midi (France) | L |
| | | • Grupo 16 (Spain) | D |
| | | • MBB (West Germany) | D |
| <ul style="list-style-type: none"> Referral to authorities outside the EU | <ul style="list-style-type: none"> Appeal to foreign legislation when possible (i.e. subsidiaries in foreign countries, intern. Laws) | • Gold Fields (United Kingdom) | W |

Source: Booz-Allen Acquisitions Services (1989: 19).

* OUTCOME EXPLANATION

L Lost battle (acquired by contested bidder)

D Delayed/pending result or partially by first/second bidder or totally acquired by second bidder

W Won battle/remained independent or partially owned by white knight

national concentration or merger authority to prevent the operation on the basis of abusive dominating position. In Sweden (Beaufort 1995b), for example, the case may be brought before the *Konkurrensverket*, which first, tries to negotiate the case with its *Konkurrensombudsmannen* and later, if conciliation fails, will ask the Tribunal of first resort of Stockholm (*Stockholms Tingsrätt*) to decide the case. If some thresholds (Fauquet 1995) are reached, the European Commission (DG IV), may also intervene, and decide if the proposed M&A affects competition in the European market.

Moreover, preventively, under more or less extended conditions according to Member State legislation, an arsenal of “poison pills” may have been introduced by the shareholders in the Articles of Association in order to block the acquisition of titles by a potential bidder of a hostile takeover, or limit its will to control the company, despite the share acquisition.

The last proposition of the EU Commission restricts the limitations to the acquisition of shares (agreement clause, pre-emption right), but does not harmonize the remaining national differences on power transfer: the limitations of voting rights, the possibility of blocking a M&A in a dualist structure, where the members of the supervisory board cannot easily be removed and continue to influence decisions. For example, in Sweden, a board, where one third of the members represented the employees, blocked the merger between Renault and Volvo (*Fusions & Acquisitions*, Dec. 1993: 11); today, a similar decision could still take place if the board was not convinced by the soundness of the merger.

Therefore, M&A operations can fail, either because of skillful anti-OPA maneuvers, or through activating structural defenses, which the bidder cannot always anticipate. Last but not the least, a hostile takeover bid is more likely to encounter a refusal from anti-trust authorities than a negotiated merger, since the acquirer could not predict some merger consequences and propose relevant arguments to the authorities' approval. The European anti-trust law prevents concentrations on the basis of abusive dominating position. When the mentioned thresholds are reached, the European Commission may decide whether the proposed M&A affects competition in the European market. Companies have to argue on economic grounds, which is more difficult when both parties are foes. The absence of preliminary negotiation has an impact at this level too. The threat of having the merger finally prohibited by anti-trust authorities can be illustrated by the Schneider/LeGrand case in France.

In brief, preferring a hostile takeover to a negotiated merger remains risky. Even an apparent victory can be deceiving: the acquisition may finally be realized at a higher price than expected for the bidder, or prevented only at a high cost for the target (Mnookin & Wilson 1989; Mnookin & Ross 1995:

420–421). The refusal to negotiate may often be detrimental to both corporations.

The Risks after the Takeover: Facing the Coalition of the Defeated

If bidders have overcome all the previous obstacles at their advantage, they are now controlling the highly coveted company, or at least sitting at the board with a comfortable majority. Yet, their hardest time may still lie ahead, particularly if they still discard a negotiated approach. They may view the implementation of their post-M&A strategy as their private business, without paying attention to whom it applies. This third refusal to negotiate may have an adverse impact, which may be equally unpleasant or risky for the acquirers as in prior settings. The danger in this post-acquisition stage is a covert confrontation of the acquirer with a likely tacit coalition built around the different defeated forces of the target. This coalition gathers minority shareholders, old managers, trade union leaders and workers. Minority shareholders may fear for their profits, and rights. Managers, trade union leaders and workers may fear for their jobs. This coalition of discontent, that is ready to corner the new acquirers, raises the *principal/agent problem* (Pratt & Zeckhauser 1985; Mnookin & Susskind 1999; Mnookin *et al.* 2000), i.e. a possible conflict of interests between the owners (the principals) and those supposed to manage or work for the company (the agents). In this context, within the company, agents may be tempted to optimize their personal interest rather than the company's interest. The results may be catastrophic, for the working atmosphere, as well as for the profits.¹⁰ Various strategies serve to quickly limit the effects of the principal/agent tension. Immediately after taking control the most essential is to provide the target company with a renewed management, who will unmistakably act in the interest of the acquiring company (Anslinger & Copeland 1996: p. 130. Often protections of corporate interest exist to prevent this new manager from abuse of corporate assets). Yet, if some of the target managers cannot be easily removed, acquirers may need to resort to negotiation. They can offer them "golden parachutes or handcuffs", i.e. strong incentives to remain on board and to work for, rather than against, the M&A. These incentives can be high salaries, but also profit shares or compensations that are contingent upon reaching some given objectives (Anslinger & Copeland 1996: 130–131).

¹⁰ Beckers (1989: 444 sq.) Studying post-M & A consequences, the author has shown that bidding companies could even be worse off in the long run than target themselves, especially if the raiders have not reached the majority control they envisioned.

Conclusion

After this catalogue of drawbacks of hostile takeovers, it is clearer *a contrario* why a negotiated approach to M&A offers many advantages in the EU. Hostile takeovers are dangerous at a pre-contractual stage with the deficit of information, and later during the bid and implementation, by lack of attention to the target's "reception". The risks of such an alternative to negotiation should not be underestimated. For tender offers to be successful, on the contrary, we suggested that negotiations have to be well prepared and conducted skillfully. Communication effectiveness must be developed across cultures both in terms of awareness of self and empathy towards the other. A working relationship between M&A partners help disclose information for an extensive audit. Finally, a good understanding of both sides' interests help overcome some constraints and generate creative options that will not simply contribute to deal-making, but also to prepare the implementation stage.

ANNEX 1. EUROPEAN HARMONIZATION¹¹

- **First Directive (March 9 1968):** On safeguards required by all companies, i.e. basic requirements for registered private companies, including the publication of the Articles of Association, director names and their responsibilities.
- **Second Directive (December 13 1976):** On safeguards for the formation of company capital, including conditions for capital maintenance, increase and reduction, in view of a minimal protection of shareholders and creditors.
- **Third Directive (October 9 1978):** On mergers of public limited liability companies, which oblige managers to prepare and publish drafts of mergers.
- **Fourth Directive (July 25 1978):** On annual accounts of some companies, defining evaluation rules, some specific content, auditing and publication of annual accounts for public and private companies.
- **Fifth Directive** On the SE (*Societas Europae*), structure of public limited companies (not quoted) and the powers and obligations of directors, shareholders, supervisory boards, employees + a directive on social aspects.(to be applied in 2005).
- **Sixth Directive (December 17 1982):** On the de-mergers of public limited companies, and the special risks for shareholders and creditors.
- **Seventh Directive (June 13 1983):** On consolidated accounts, important in particular for the financial transparency of groups of companies.
- **Eighth Directive (April 10 1984):** On the approval of auditors.
- **Ninth Directive (proposed on January 25 1983, but not yet adopted):** On cross-border mergers of public limited companies.
- **Eleventh Directive (December 21 1989):** On the disclosure requirements of branches in another Member State.
- **Twelfth Directive (December 21 1989):** On single member private limited companies.
- **Thirteenth Directive (proposed on October 3 2002):** On takeovers and other general bids.
- **Fourteenth Directive (not proposed yet):** On the transfer of social seat.

¹¹ Coopers and Lybrand (1989), Vol. 1, Appendix D1.

Part IV:

Negotiating in Different Parts of the World

Chapter 14

The IBM-Mexico Microcomputer Investment Negotiations

Stephen E. Weiss

In July 1985, the Government of Mexico approved an IBM Corporation proposal to assemble personal computers in a wholly-owned plant near Guadalajara. President Miguel de la Madrid praised the plan as an “expression of faith” in the country’s economic progress and a “most significant milestone on Mexico’s road to self-sufficiency in electronic technology” (MEU 1986). Approval had come after seventeen months of negotiation reported in news headlines such as “IBM threatens Miguel de la Madrid’s Government” (Martines 1984) and “Mexico Rejects IBM Control For New Plant” (Meislin 1985b) and after widespread debate over whether Mexico’s review of the IBM proposal constituted a “test case” or “special case” of its treatment of foreign investors (Economist 1985a: 62; Orme 1984b).

Such observations raise questions about the process of the negotiation and the determinants of the final outcome. How did the parties interact? Why did they agree upon those terms? These queries apply to most cases of negotiation, but they are reinforced here by the prominence of the parties and the publicity that attended their talks.

There is additional impetus for studying this case. The issue of its generalizability aside, the case offers researchers and managers a vehicle for insights into multinational enterprise (MNE)-government relations, international corporate strategy, contemporary government attitudes toward national computer industries and the bilateral, U.S. Mexico relationship. More directly, the literature on international business negotiation to date comprises large-scale, statistical studies of MNEs’ capabilities and achievements vis-à-vis

governments (e.g. Fagre & Wells 1982; Kobrin 1987) that do not evidence the intricacies and dynamism of such negotiation; strategic analysis focusing on organizations as units (e.g. de la Torre 1981; Lecraw 1984) that neglect aspects of individual negotiator's behaviors (e.g. Graham 1983; Tung 1982), and vice versa; and a few case studies (e.g. Stoever 1979; Young & Hood 1977) whose dissimilar or unspecified analytic frameworks hinder cross-case comparisons. This article attempts to complement and extend this literature as well as deepen understanding of the IBM-Mexico negotiation itself.

Existing Literature

Research on international business negotiation includes studies on three areas pertinent here: MNE bargaining power, governmental review of foreign investments, and cultural aspects of negotiation.

The "bargaining school" of MNE-host government relationships (see Grieco 1982) asserts that terms of these relationships, at point of market entry and over time, are negotiable. Often these researchers examine MNE bargaining power. For example, in their study of U.S.-based MNEs in Latin America, Fagre & Wells (1982) found that an MNE's percentage ownership of foreign subsidiaries (a proxy for overall outcome of negotiation) positively, albeit weakly, correlated with the MNE's level of technology, product differentiation, product diversity, and access to foreign markets. For subsidiaries in Mexico specifically, these variables combined with size of the MNE's investment, which carried a negative but not significant value, explained 25% of the variation in actual foreign ownership.

Lecraw (1984) modified Fagre & Wells' approach, obtained consistent results and demonstrated further that the relationship between percentage MNE ownership of a subsidiary and subsidiary success (or effective control) is J-shaped, not linear. Thus, he advised MNEs and governments to consider joint ventures that do not evenly split ownership. Discussions of international corporate strategies, such as the worldwide integration strategy (Doz 1980), bear upon these findings and suggest additional MNE bargaining objectives and sources of power (see also Holt 1978).

De la Torre (1981) stands out from the aforementioned studies, while still remaining within the bargaining school, by exploring entry negotiations from both sides for governments and MNEs. In his view, an MNE that perceives high market attractiveness (or great fit with corporate strategy) and a good investment climate should commit maximum resources and pursue establishment of a wholly-owned affiliate. For governments, de la Torre recommends

explicit statement of national development objectives, social cost-benefit analysis, and centralization of foreign investment decision-making. (For another bilateral view, see Grosse & Aramburu 1989).

Studies in the second major area have emphasized government perspectives and behavior. Among four Southeast Asian countries, Encarnation & Wells (1985) found four organizational structures for foreign investment review "coordinated" (one interministerial body), "abstention" from negotiation (straightforward application of rules), "diffused" (serial negotiations), and "delegated" (to one ministry). Internal politics influenced the effectiveness of all of them in one way or another. Further, contrary to the defensive, empowering rationale offered by several writers (e.g. de la Torre 1981), the two researchers found that governments adopted centralization (coordinated or delegated structures) in order to smooth the way for foreign investors.

Details of experiences especially relevant to the IBM-Mexico case have appeared in at least two studies. Grieco (1982) describes the Indian government's negotiations with MNEs from 1960–1980 as it sought to develop the country's computer industry. With respect to IBM, the government advised the company in 1966–1968 and 1973–1974, to share ownership of its local subsidiary with Indian nationals. Instead, in the mid-1970s, IBM offered increased manufacturing operations and technical assistance, a trade-off that the government rejected. IBM chose to leave the country by June 1978. By then, however, the industry seemed well established, and Grieco concluded that "assertive, upper-tier developing countries" like Mexico might also achieve India's "bargaining success".

Mexico's experiences negotiating with MNEs during the early development of its auto industry (1960–1964) have been analyzed by Bennett and Sharpe (1979). They argue persuasively that actual bargaining power is not easily discerned because potential power tends to be constrained or augmented by various contextual factors and relationships. With auto MNEs, the bilateral U.S.-Mexico relationship limited Mexico's power, as did Mexico's intra-governmental disputes (see also Story 1982). Nevertheless, neither the Bennett and Sharpe (1979) nor the Grieco (1982) study treats its subject as a case of negotiation, with process and outcome, from start to finish (cf., Bennett & Sharpe's later work 1985: 80–93).

Third and lastly, a small body of literature has described cultural aspects of Mexican negotiation. Weiss & Stripp (1985: 31–35) highlighted the significance of status and formality, relationship concerns, an open orientation toward time, and centralized decision-making. A recent comparative investigation based on experiments (Adler *et al.* 1987) demonstrated that Mexicans place greater emphasis than do Americans on the quality of relationships

between negotiators. (For characteristics of Mexican diplomatic negotiations, see Fisher 1980; Grayson 1987.)

These studies reflect the thrusts of the embryonic literature on international business negotiation. They provide a background for considering IBM and Mexico's strategies, relationships, and behavior. At the same time, they reveal the need for and value of a detailed, integrative case study. A case study can suggest confirmation or modification of some "ideas and stereotypes prevalent in current theory", generate hypotheses, and indicate "interconnections between various relevant factors" (see Gulliver 1979: 64; see also Yin 1984: 15–23).

Analytic Approach

The following account of IBM and Mexico's negotiation draws on a framework for analysis of complex negotiations. It was designed to organize rich description of parties' interactions and to stimulate formulation of broad-based explanations of negotiation outcomes. The framework thus highlights primary parties' relationships, behaviors, and relevant conditions, and various facets and levels of analysis within each of those elements (for a full exposition, see Weiss 1988).

This case study follows a form derived from the framework and previously applied to the GM-Toyota talks of 1982–1984 (Weiss 1987). It begins with the factors that motivated IBM and Mexico to negotiate (including the conditions that shaped their respective "interests" (Lax & Sebenius 1986) and possible courses of action). Then the analysis explores the issues arising from the parties' relationships, pre-negotiation preparations, the negotiations (that is, issues, players, conditions, process and outcome for each round), and the post-negotiation period.

Besides organizing the discussion below, these categories provided foci for gathering and selecting relevant information about the case. The varied sources used included author-conducted interviews of negotiation participants and knowledgeable observers,¹ proprietary industry studies, news articles and other periodicals, and a few academic writings on the case (e.g. Cline 1987; Miller

¹ Those interviewed in primarily open-ended formats include fifteen individuals from the American Chamber of Commerce in Mexico City, IBM organizations, industry analysts, the Mexican business community, the U.S. Commerce and State Departments, and the U.S. Trade Representative's office. Mexican government negotiators did not respond to requests for interviews, but some general documents were provided to the author. Unless otherwise stated, however, the author takes responsibility for views in the text.

1986; Whiting & Shank 1986). In line with the recommendations of Lincoln & Guba (1985: 268) and Yin (1984: 137), the author asked interviewees to review a draft of the case study and incorporated their feedback in what follows.

Figure 14.1 guides the discussion by identifying significant actors. The primary organizations involved, Mexico's Secretariat of Commerce and Industrial Development (in Spanish, SECOFI) and National Commission on Foreign Investment (CNIE), and IBM Corporation's wholly-owned subsidiary,

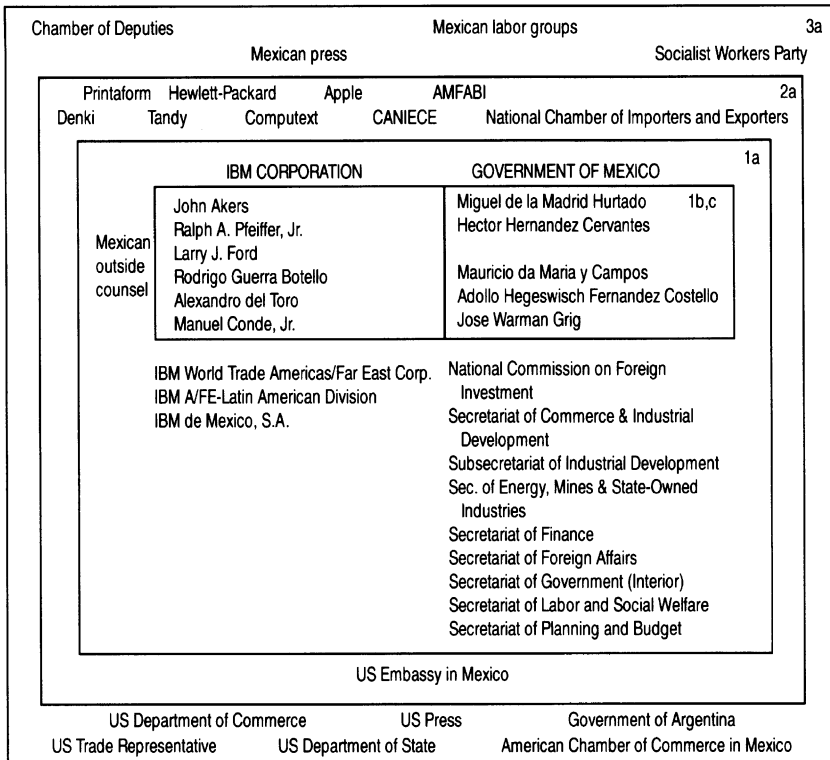


Figure 14.1: Actors and audiences in the IBM-Mexico negotiations. Notes: Larger rectangles (rings) represent diminishing of involvement: 1-primary actors: 2-secondary parties to the negotiations: 3-interested, not directly involved audiences. Letters designate levels of behavioral analysis: a-organizations; b-groups; c-individuals. Except for Akers and de la Madrid, Boxes 1b, c contain negotiating teams as well as primary individual players.

IBM World Trade Americas/Far East (A/FE), and specifically A/FE's Latin American Division (LAD) and IBM de Mexico, S. A., appear at the center of the diagram in the center of activity. Other organizations, whose actions conditioned the talks, are listed according to their degree of involvement (Rings 1a–3a). In addition to treating these organizations as wholes (Level a), Figure 14.1 recognizes two other types of actors: groups (b) and individuals (c).² Almost every organization's activities could be described on each of the three levels, but for clarity, the figure specifies only the most active representatives of IBM and SECOFI (Boxes 1b, c).

Motivating Factors

The negotiations that began in March 1984 followed important steps taken by both IBM and the Government of Mexico in late 1981. On August 12, IBM introduced its first personal computer (PC); in September, the Mexican Bureau of Industries issued a set of regulations and incentives that became known as the "Computer Decree". These actions and the parties' subsequent negotiations and agreement were motivated by noteworthy, underlying interests and organizational and environmental conditions.

The Global Computer Market

By 1980, the computer market had increased five-fold since 1970 to \$53.5 billion, and industry analysts in the U.S. expected it to "explode" to \$145 billion by 1985 (*Business Week* 1981). The microcomputer segment (a stand-alone computer whose central processing unit consists of a single microprocessor), which Apple Computer, Inc. opened in 1978, looked particularly promising. From 1980–1983, its worldwide value more than doubled each year. In 1983, worldwide shipments exceeded 11 million units for an if-sold value, according to Dataquest, of nearly \$15 billion.³

² As subsequent text shows the negotiators did not pair off in as clear an IBM team-Mexico team format as Figure 15.1 may convey. But the figure systematically highlights key organizations and can be readily compared with the figure used for the GM-Toyota talks (Weiss 1987).

³ Statistics on computer markets vary by source and sometimes for the same source, by date (see Table 15.1, Notes e, f). Some statistical differences stem from specified and unspecified definitional differences. Some market researchers count as microcomputers only single-user systems, while others also include low-end home computers and high-end multi-user systems. This article relies on respected sources and notes discrepancies.

IBM Performance

Although IBM had long dominated the computer industry (its 1984 total revenues exceeded those of its closest competitor, DEC, by 7.4 times), it delayed entry into microcomputers. Then the company made up ground quickly. At the end of 1983, only the second full year of its microcomputer production, unit shipments hit 572,000 (a 266% increase over 1982) for revenues of \$2.6 billion (420% greater than in 1982). IBM held 8.2% of the U.S. market (in terms of unit shipments) and 5.1% of the world market. In 1984, demand for its PCs would continue rising at that pace — even as those geographical markets' growth rates slowed.

Mexico's Computer Industry and Market

In 1981, Mexico had a computer market estimated at \$600 million (Miller 1986: 176) and an import market for computers and office equipment ranked second to Brazil's in Latin America and twentieth in the world (Sauvant 1986: 24). Analysts expected the computer market to grow 25% annually into the mid-1980s (Rout 1982). Imports had tripled from 1979–80 (Cline 1987: 78), with the U.S. supplying 70% of them Jacobsen (1983: 1172). According to the U.S. Department of Commerce (U.S.DoC 1981), Mexico itself produced no computers or peripherals.

In response, in 1981, the Mexican government created the “Development Program for the Manufacturing of Electronic Computer Systems, Their Main Modules, and Peripheral Equipment. “Not officially published, it was nevertheless implemented and has been informally referred to as the “Computer Decree” or “Warman Plan”, after its main architect, Natan Warman. The Decree set broad goals for national technological development as well as specific ones such as locally supplying 70% of the country's computer needs within five years (Cline 1986; Jacobsen 1983). Import shares permitted to distributors dropped over time and rose for manufacturers. Mini- and microcomputer makers faced performance requirements for research and development, local content, and exports and were offered incentives such as tax credits and preferential treatment in government procurement.⁴

⁴The first foreign plans for local computer production, from Hewlett-Packard for its HP3000 minicomputer, were approved in March 1982. By May, over forty other U.S. companies had applied for such permission.

Microcomputers drew special attention from the government. Introduced to Mexico in the late 1970s, their importation had “surged” (Cline 1987: 78). Apple and Tandy held 40% and 30% shares respectively of a market estimated at 8,000–20,000 units per year (Gardner 1984; Whiting & Shank 1986). Further, because of import duties, Mexicans were paying two to three times the U.S. price of microcomputers (*Business Week* 1983). Some writers (Junco 1985) estimated that 50% of Mexico’s installed base had been smuggled across the U.S.-Mexico border.

Two years later, at the end of 1983, several former Mexican distributors (e.g. Micron, Computadoras y Asesoramiento) and one U.S. Mexican joint venture, Computext (minority-owned by Franklin) were assembling microcomputers in Mexico (Infotext 1985). Computext was making 300–400 microcomputers a month, according to one interviewee. Imports had dropped, local production reached \$34 million, and market revenues amounted to \$30 million (see Table 14.1).⁵ At the same time, from 1981–1982, Mexican exports of peripheral equipment to the U.S. sank from \$4.67 million to \$8,000 and from 1981–1983, annual exports of all types of computers to the U.S. (breakdowns are not available) doubled, then plummeted to \$281,000 (U.S.DoC telephone interview; cf. U.S.DoC 1981).

In June 1983, Apple, IBM’s chief microcomputer competitor in Latin America at the time, filed with the Mexican government a plan to begin locally assembling its model IIe (*Business Week* 1983). Six months later, the company announced the establishment of its minority-owned joint venture, Apple de Mexico.

The State of Mexico’s Economy

Mexico’s economy in 1983 was in dire straits. Heavily dependent on exports of oil, the price of which had collapsed in 1981, unable to make the late 1982 payments on its foreign debt, and now bound to an IMF-sponsored austerity program, the country saw its gross domestic product shrink 5.4%. That had not happened since the Crash of 1929 (de la Madrid 1984: 66). Inflation was running four times the 1980 level, and 1983 payments on its \$93 billion foreign debt had reached \$13 billion (Bartlett 1989). During the year, new foreign direct investment dropped 72%.

⁵ In their market report for the U.S. Department of Commerce, however, Wallace y. Asociados (1988: 10) caution that “There are no official statistics covering the production and sale of computers and peripheral equipment in Mexico”.

Table 14.1: The microcomputer industry: Corporate and market profiles, 1981–1986.

| | IBM | Apple | Mexico | U.S. Total | World Total | | | | |
|---|---------------------|-------|--------------------|------------|-----------------|--------------------------|-----|------------|-----|
| Corporate Net Sales/Net Income ¹ | | | | | | | | | |
| (US\$ mn.) | | | | | | | | | |
| 1981 | 29,070 ^a | 3,610 | 334.8 | 39.4 | — | — | — | — | — |
| 1982 | 34,364 | 4,409 | 583.1 | 61.3 | — | — | — | — | — |
| 1983 | 40,180 | 5,485 | 982.8 | 76.7 | — | — | — | — | — |
| 1984* | 45,937 | 6,582 | 4,515.9 | 64.1 | — | — | — | — | — |
| 1985* | 50,056 | 6,555 | 1,918.3 | 61.2 | — | — | — | — | — |
| 1986 | 51,250 | 4,789 | 1,901.9 | 154.0 | — | — | — | — | — |
| Microcomputer Revenues ² | | | | | | Shipments' If-Sold Value | | | |
| (US\$ mn., % change) | | | | | | (US\$ mn.) | (%) | (US\$ mn.) | (%) |
| 1981 | ... ^b | ... | 401.0 ^d | 143.0 | ... | 1,633.4 | ... | 2,674.1 | ... |
| 1982 | 500.0 ^c | — | 664.0 | 65.6 | 31 | 3,757.7 | 130 | 6,623.1 | 148 |
| 1983 | 2,600.0 | 420.0 | 1,064.7 | 63.4 | 30 | 8,680 | 131 | 6,623.1 | 148 |
| 1984* | 4,000.0 | 53.8 | 1,897.9 | 75.0 | 34 | 14,273 | 64 | 24,710 | 68 |
| 1985* | 5,500.0 | 37.5 | 1,603.0 | – 15.4 | 43 | 16,005 | 12 | 30,414 | 23 |
| 1986 | 5,650.0 | 2.7 | 1,781.0 | 11.1 | 91 ^e | 16,183 | 1 | 30,685 | 1 |

Table 14.1: Continued.

| IBM | | Apple | | Mexico | U.S. Total | World Total |
|---------------------------------------|-----------------|-----------------|-----------|---------|---------------------|-------------|
| Microcomputer Shipments ³ | | | | | | |
| (units) | (% world share) | (% world share) | | (units) | | (units) |
| 1981 | 17,500 | 1.0 | 210,000 | 13.0 | ... | 750,500 |
| 1982 | 156,000 | 3.0 | 323,000 | 7.0 | 10,270 ^g | 2,545,000 |
| 1983 | 572,000 | 5.1 | 745,000 | 6.7 | ... | 6,199,000 |
| 1984* | 1,881,000 | 12.5 | 1,397,000 | 9.3 | 27,780 | 7,768,000 |
| 1985* | 2,052,000 | 14.0 | 1,272,000 | 8.6 | 36,700 | 6,072,000 |
| 1986 | 1,854,000 | 12.3 | 1,177,000 | 7.8 | 92,156 ^h | 6,814,000 |
| Microcomputer Production ⁴ | | | | (units) | (US\$ mn.) | |
| 1981 | | | | 0 | ... | |
| 1982 | | | | ... | 26 | |
| 1983 | | | | ... | 34 | |
| 1984* | | | | ... | 51 | |
| 1985* | | | | 27,600 | 66 | |
| 1986 | | | | ... | 128 | |
| Microcomputer Imports ⁵ | | | | | | |
| (US\$ mn., % change) | | | | | | |
| 1981 | — | — | — | — | ... | ... |
| 1982 | — | — | — | — | 7 ⁱ | — |
| 1983 | — | — | — | — | 6 | - 16.7 |

Table 14.1: Continued.

| | IBM | | Apple | | Mexico | U.S. Total | World Total |
|-------|-----|---|-------|---|--------|------------|-------------|
| 1984* | — | — | — | — | 6 | 0 | — |
| 1985* | — | — | — | — | 10 | 66.7 | — |
| 1986 | — | — | — | — | 8 | − 20.0 | — |

Sources:

¹ IBM, Apple annual reports. For IBM: consolidated figures, year end Dec. 31. For Apple: consolidated figures, year end between Sept. 27–28 for years above;

² *Datamation* (June 1, 1984, June 1, 1985 and June 1–5, 1987 Issues). For Mexico, see Source 4. For shipment: If-sold value, see Source 3;

³ Dataquest's Personal Computer service binders (April 1988). Dataquest defines micros as systems priced up to \$10,000. For Mexico, 1982, and 1984. W.R. Cline, *Informatics and Development* (Washington, DC 1987: 88–89; for 1985–1986, U.S. Department of Commerce, *Market Research Summary for Mexico* (4/87);

^{4,5} Wallace y Asociados, *Profile of Mini and Micro Computer Systems Market* (Mexico City, June 1988). For units, *Information and Development*.

Notes:

— Irrelevant or not meaningful; . . . Unavailable data.

^a IBM's column figures represent gross revenues rather than net sales.

^b IBM introduced its first microcomputer (the "PC") on August 12, 1981.

^c For IBM's 1982 revenues, cf. estimates of \$566 (Dataquest), \$1500 (Data Dialogues), and \$1800 (Gartner Group).

^d Apple's column figures, which are for calendar year, are compiled from quarterly reports to facilitate comparison with IBM figures.

^e Cf. \$140 million for 1986 and \$74 million for 1984 in 1985 report by same source (Wallace y Asociados).

^f Cf. estimates for \$5,391 (International Data Corp.) and \$3,447 (data Dialogues) in HBS Note (1984).

^g Cf. estimates for 1982 of 2,245 and for 1984 of 11,410 (Infotext).

^h Sales (not shipment) figure.

ⁱ Cf. estimate of \$26 million (*Information and Development*: 88).

* Indicated main years of negotiation between IBM and Mexican government.

Table 14.2: The economy of Mexico: Internal and external indicators.

| Internal | GDP | | Central Bank Reserve | | | Inflation (CPI) (1980 = 100) | Unemployment ¹ (%) |
|----------|-------------------------------|---------------------------------|---|---|-------|--|-----------------------------------|
| | (US\$ bn.) nominal | (% growth) real ^b | Government Budget Balance (US\$ bn.) | (US\$ bn.) | | | |
| | | | | For. Exch. | Total | | |
| 1980 | 186.34 ^a | — | − 5.82 ^{a,c} | 2.69 | 3.81 | 100 | ... |
| 1981 | 239.58 | 7.7 | − 15.99 | 3.71 | 4.93 | 127.9 | ... |
| 1982 | 171.25 | − 0.6 | − 26.43 | 0.83 | 1.66 | 203.3. | 13.0 |
| 1983 | 142.73 | − 5.4 | − 11.35 | 3.80 | 4.74 | 410.2 | 14.0 ^d |
| 1984 | 171.33 | 3.6 | − 12.48 | 7.27 | 7.99 | 679.0 | 14.0 |
| 1985 | 177.46 | 2.8 | − 15.49 | 4.91 | ... | 1,071.2 | 15.6 |
| 1986 | 127.13 | − 3.8 | ... | 5.66 | ... | 1,994.9 | ... |
| External | Current Account (US\$ bn.) | | Petroleum Exports (US\$ bn.) | Foreign Debt ² (US\$ bn.) | | Foreign Direct Investment (US\$ bn.) | Exchange Rate (Pesos per US\$) |
| 1980 | − 8.16 | | 9.83 ^a | 57.5 ^e | | 2.19 | 22.95 ^f |
| 1981 | − 13.90 | | 13.80 | 78.3 | | 2.54 | 24.52 |
| 1982 | − 6.22 | | 17.13 | 86.1 | | 1.66 | 54.99 |
| 1983 | 5.42 | | 15.17 | 93.0 | | 0.46 | 120.1 |
| 1984 | 4.24 | | 16.41 | 96.4 | | 0.39 | 167.8 |

Table 14.2: Continued.

| External | Current Account (US\$ bn.) | Petroleum Exports (US\$ bn.) | Foreign Debt ² (US\$ bn.) | Foreign Direct Investment (US\$ bn.) | Exchange Rate (Pesos per US\$) |
|----------|-------------------------------|---------------------------------|---|--|-----------------------------------|
| 1985 | 1.24 | 14.79 | 97.1 | 0.49 | 256.9 |
| 1986 | - 1.27 | 6.37 | 101.7 | 0.91 | 611.8 |

Sources:

For all except 1 and 2. *International Financial Statistics*. 1983 and 1987 Yearbooks, and May 1988 edition.

¹ World Political Risk Services, *Fact Sheet: United Mexican States* (Frost & Sullivan). 10/1/86 edition.

² *World Debt Tables* (World Bank). 1987–1988 edition.

Notes:

— Irrelevant or not meaningful.

. . . Unavailable data.

^a Converted from pesos using the appropriate exchange rates within this table.

^b Base year is 1980.

^c Column figures are year end, December 31.

^d This year carried the highest rate of urban unemployment (in Mexico, Guadalajara, and Monterrey) for 1980–1986: 6.8%.

Source: Yearbook of Labour Statistics (International Labor Organization), 1987.

^e Column figures represent total disbursed external data, including IMF debt.

^f Column figures represent IMF rf series (Par Rate/Market Rate).

Computer Industry Shakeout

In late 1983, competition among microcomputer makers stiffened. IBM had set a standard PC compatibility – but even IBM had to slash prices. The PC's initial 1981 price dropped 39% by March 1983 to \$3,339, not counting upgrades (*Business Week* 1985). Apple's share of U.S. shipments went from 28% in 1981 to 9.4% in 1983; in September, Osborne Computer went bankrupt; and in October 1983, Texas Instruments withdrew from the market. During the next year, even IBM would face slower growth in its microcomputer revenues — despite the dramatic climb of unit shipments.

IBM's Interests

In light of the foregoing conditions, in early 1984 the IBM organization as a whole had several basic interests:

- surviving even profiting from the microcomputer shakeout;
- meeting demand for PCs;
- maintaining the integrity and efficacy of its worldwide integration strategy;
- establishing a PC presence in “every country in the world”;
- countering negative publicity about its predominance, and with respect to Mexico and Latin America;
- pursuing new business opportunities; and
- maintaining its relationship with the Mexican government and its already established Mexican operations.

The first interest dovetailed with a company-wide emphasis for the 1980s on low-cost production, which was reflected in an \$11 billion investment in new plant and equipment from 1979–1983 (*Business Week* 1981: 85; IBM Corp. 1983: 31; Marbach *et al.* 1983: 40). In 1984, four plants in Florida, Texas, Scotland and Australia produced the PC. There were customers and competitors (Apple, Hewlett-Packard) to respond to in Latin America, Canada, and Asia as well as the U.S. Coincidentally, IBM undoubtedly desired to maintain its well-known integration strategy, whose economic and managerial benefits have been discussed in depth elsewhere (Doz 1980).

IBM also wanted to join in virtually every government's national efforts to computerize (Meislin 1985a). In 1983, it operated in 131 countries. Yet the company was portrayed negatively in prominent news articles (see Pollack 1982; later, *Economist* 1985b; Pollack 1985), sued on antitrust grounds by the U.S. Department of Justice (1969–1982), and under investigation since 1977 by

the Commission of the European Community for abusing its market position (de Jonquieres 1984).

Finally, the growing Mexican market and some provisions of the Computer Decree presented IBM with new opportunities. The company entered Mexico in 1927, enjoyed dominant market shares in mainframes and minicomputers (many of them purchased by the government and public enterprises), and was already assembling minicomputers and typewriters in its Guadalajara, Jalisco plant. Wholly-owned IBM de Mexico, S.A. was exporting to up to 30 countries and reportedly had sales of \$245 million in 1984 (Sanchez 1984).

Additional, specific interests could be enumerated for other organizations affiliated with IBM Corporation (i.e. IBM de Mexico, IBM World Trade A/FE Corporation, and A/FE's Latin American Division) and for the numerous groups and individuals within each of them (recall Figure 14.1). Such interests are too sensitive to detail here. Still, one could reasonably assume the existence of certain interests for each of these parties and of some typical differences and similarities between them, e.g. control by headquarters, autonomy for the subsidiary (see Egelhoff 1984; Prahalad & Doz 1981) and career advancement for individuals (Walton & McKersie 1965: 281ff).

The Government of Mexico's Interests

The Government also had decipherable basic interests. They included:

- generally strengthening the economy (e.g. increasing GNP);
- expanding exports to improve the balance of payments;
- increasing employment;
- maintaining control over key sectors, meeting commitments to foreign lenders and the IMF, and with respect to the computer industry in particular;
- developing capacity to supply 70% of local needs within five years;
- acquiring leading-edge technology, and diversifying investment.

Economic concerns and goals were publicly expressed by President de la Madrid (de la Madrid 1984; *Business Week* 1984b: 78). They derived from and would affect domestic politics, social conditions, and foreign relations. The Computer Decree signaled computer-specific interests (Jacobsen 1983). What linked the two areas, according to an American interviewee, was the Government's belief that the nation's falling behind technologically would weaken all sectors of the economy.

Not every individual or organization within the Government assessed or ranked the interests similarly. Differences arose within and between secretariats

because of functions, jurisdictions, and the ideologies evidenced in an intense debate during this period over the extent to liberalize the Mexican economy (see below). At the same time, this picture was complicated by ubiquitous family and other personal ties between government officials (e.g. brothers Natan & Jose Warman), and between officials and constituents.

Mexico's Strategic Options

On a broad plane, the potential bargaining power with which IBM and the Government could pursue their respective interests in joint talks depended partly upon the number and desirability of their options (Bennett & Sharpe 1979; Holt 1978). Mexico had traditionally followed import substitution policies, but President de la Madrid, without entirely rejecting those policies, called for export promotion, especially of non-oil products. He upheld government control of certain sectors as stipulated in the Constitution and the 1973 Law to Promote Mexican Investment and to Regulate Foreign Investment, but sought foreign investment as a “complement” to national investment (*Business Week* 1984b: 79). Upon entering office in 1982, he reportedly instructed bureaucrats to apply the foreign investment guidelines “flexibly” (*Economist* 1985a: 61).

That directive, coupled with the status of the Computer Decree (see below), gave the Government at least three options for directing computer industry development and evaluating investment proposals:

- formally establishing the Decree and adhering strictly to its terms;
- modifying the Decree or allowing for major exceptions; and
- developing an entirely new computer policy.

Consistent with the 1973 Foreign Investment Law, the Decree restricted foreign mini- and microcomputer manufacturers to minority ownership in local ventures. On the other hand, in 1984, the Decree had still not been published in the *Diario Oficial*, which led some observers to believe that its terms were not legally binding (cf., Jacobsen 1983: 1172).

IBM's Strategic Options

From an outsider's perspective, IBM also appears to have had more than one possible course by which to pursue its global and Latin America interests. The conceivable options included:

- expanding capacity at existing PC assembly plants;
- building a new PC plant outside Mexico (e.g. in Argentina or South Korea);
- building a new plant in Mexico as a wholly-owned operation;
- with a minority- or split-ownership position, forming a joint venture to produce PCs; and
- influencing Mexico's computer policy via operations based on other product lines (e.g. minicomputers).

The exact capacities of IBM's four existing PC plants have not been publicly reported, but the annual output of such plants, which are highly automated, ranges from 240,000–1,000,000 units.⁶ Thus, the four plants seem to have had the capacity to meet worldwide demand for IBM PCs, and their continued use would have been consistent with a global, low-cost strategy. And yet, Mexico held considerable appeal as host to an additional plant.

Choosing to Propose a Wholly-Owned Plant in Mexico

According to IBM interviewees, the company decided to pursue a micro-computer plant investment in Mexico because of the country's strategic position as a major Latin American market and the not-yet solidified status of its computer policy. At this point, IBM was producing mainframes in Brazil, printers in Argentina, and minicomputers in Mexico, so establishing a PC plant in Latin America that would give the company the capability to produce its full product line locally. Mexico, in particular, represented the largest, quasi-open microcomputer market (Argentina's domestic market was only one-fourth of Mexico's size (Cline 1987: 121)), and as a member of the Latin American Integration Association, it also promised preferential tariff treatment within the region.⁷

Further, Brazil had already expressly embargoed computer imports, excluded foreign firms from local production (IBM's mainframe plant notwithstanding), and specifically rejected previous IBM investment proposals (Cline 1987: 36). IBM sought an opportunity to demonstrate to governments the benefits of its participation (see also Akers quoted in Meislin 1985a). On

⁶ In 1988, Apple's Fremont, California plant, working on one shift, made one million Macs (Kindel & Teitelman 1988: 28). In 1986, IBM's fully automated Austin, Texas plant made one PC Convertible every two minutes (Saporito 1986). On the assumption that two lines work one 8-hour shift a day, 250 days a year, the plant could produce 240,000 PCs.

⁷ Mexico's renowned low-cost labor was not a major plus, given the high level of automation in microcomputer assembly operations.

February 17 1984, SECOFI Secretary Hernandez announced that “priority industrial activities” including computing equipment would be open to 100% foreign ownership. This receptiveness in Mexico, as opposed to other sites, could also enable IBM to maintain its longstanding policy of 100% ownership.⁸

Issues

IBM and the Mexican government would face numerous interorganizational issues, from business topics (e.g. type of venture, ownership and control, level of investment) to economic concerns (e.g. export markets, foreign exchange), and interpersonal and procedural matters as well. The parties’ underlying interests and provisions of the Computer Decree suggested issues such as the technological sophistication of products, production volume and site (in order to decentralize industry, the Government had set priority development zones), employment levels and government procurement. There were also sourcing and local content issues, which called for discussion of microcomputer components ranging from high-value semiconductors and disk drives to low-value items like cables and cabinets.

Pre-Negotiation Preparations

IBM

IBM began studying the Computer Decree in January 1982 and sounded out the de la Madrid government shortly after its formation. A proposal for local production of the System /34 minicomputer followed. It was approved, and production got under way in late 1982. Then in early 1984, to prepare for formal submission of a microcomputer proposal to the CNIE, the body charged with review of foreign investment applications, IBM hired Mexican attorneys, consulted other local experts such as the American Chamber of Commerce and the U.S. Embassy, and met several times with CNIE representatives. (For more on this process generally, see Miller 1986; Radway 1980.)

⁸ At this time, IBM reportedly had only seven joint ventures worldwide (Jeffrey 1984: 17). Moreover, an IBM interviewee stated the corporation simply would not consider a joint venture with a main line product.

At the time, according to an IBM interviewee, there was little information on the Mexican microcomputer market. (Statistics in Table 14.1 have appeared since then.) IBM's deliberations undoubtedly touched on the company's sources of bargaining power, e.g. its level of technology, differentiated product, and access to foreign markets (recall the literature review above). IBM expected Mexico's key concern to be export volumes.

Mexico

Within the government, officials and staff who prepared for the IBM proposal resided in the CNIE and within SECOFI's Directorate of the Electronics Industry and Industrial Coordination. An American analyst interviewed by the author said the latter studied the computer industry intensively during the early 1980s, starting from a position of little familiarity. These officials attended to local needs and capabilities. Other officials and bureaucrats viewed the upcoming IBM proposal in the context of Mexico's overall trade and foreign investment.

The Negotiations

In March 1984, IBM President John Akers presented to Secretary of Government Manuel Bartlett, a personal representative of President de la Madrid and member of the CNIE, a proposal to expand IBM's Guadalajara plant with a wholly-owned operation for PC assembly. Despite the CNIE's ostensible authority simply to grant approval or deny it, negotiations ensued. This went on for some seventeen months and another six thereafter. This period divides into four rounds: March–July 19 1984; July 20 1984–January 19 1985; January 20–July 23 1985; August 1985–January 1986. The negotiations usually took place not in formal sessions in conference rooms, but by letter and telephone and in spontaneous meetings. Specific actions during the four rounds are outlined in Table 14.3. It serves as a companion reference to Figure 14.1 for accounts that delve into issues, players, conditions, the negotiation process and the outcome of each round.

Round One: March–July 19 1984

The first round of negotiation extended from the top level, Akers-Bartlett meeting to the CNIE's first, formal rejection of IBM's proposal.

Table 14.3: Chronology of the IBM-Mexico negotiations.

| | |
|----------------------|--|
| Pre-negotiation 1983 | |
| | Pursuant to Computer Decree (Sept. 1981). IBM sounds out Mexican government on a possible investment |
| March 8 | IBM introduces PC XT in the US |
| June | Apple Computer, Inc. begins investment task with Secretariat of Commerce & Industrial Development (SECOFI) |
| 1984 | |
| Jan. | IBM Introduces PCjr in the U.S. |
| Jan. | Apple establishes minority-owned joint venture (Apple de Mexico) with Grupo Manzanera to produce model IIe |
| Feb. 17 | SECOFI issues revised guidelines for foreign investment |
| Round One | |
| March | Akers meets with Bartlett in Mexico and presents specific IBM proposal to assemble PCs locally |
| April | National Commission on Foreign Investment (CNIE) leaning against proposal but agrees to postpone decision |
| June 30 | Deadline set by IBM for reply from SECOFI |
| July 9 | Trade groups AMFABI and CANIECE publish letters opposing policy exceptions in <i>Excelsior</i> , <i>Novedades</i> , and <i>Heraldo</i> |
| July 19 | CNIE rejects IBM's initial proposal |
| Round Two | |
| August | IBM extends its June deadline for a final settlement but threatens to approach Argentina with its proposal |
| August 10 | Apple de Mexico produces its first Mexican IIe in Nancalpan and projects annual production of 7,000 units |
| August 14 | IBM introduced PC AT in the U.S. |
| Oct. | IBM submits revised proposal, raising local content and financial and technical aid to local computer industry |
| Oct. 25 | Tentative agreement on several issues announced by government |
| Nov. 26 | <i>New York Times</i> City Edition reports rejection of IBM's proposal based on report from Socialist Deputy Gobela |
| Nov. 28 | Mexican officials deny reported rejection and declare that formal approval will be made the following week |
| Nov. 29 | IBM begins contacting Mexican ad agencies for campaigns to promote its PCs |

Table 14.3: Continued.

| | |
|-------------|---|
| 1985 | |
| Jan. | Argentina announces Resolution 44 to protect and stimulate small computer and peripherals industry |
| Jan. 19 | Mexico officially rejects IBM's latest terms but invites another IBM proposal; IBM intends to continue dialogue |
| Round Three | |
| Feb. 9 | Hegewisch reportedly threatened to resign because of the rejection of IBM |
| March 11 | Conde announces IBM is improving offers on level of investment, jobs, exports and technology |
| March (mid) | Pfeiffer meets with de la Madrid, Akers meets with Argentina's Alfonsin to discuss IBM Investments. |
| July 23 | CNIE announces approval of IBM's investment plan |
| Round Four | |
| 1986 | |
| Jan. | Details of agreement finalized |
| Feb. 3 | Guerra publicly announces IBM's program in Mexico City; de la Madrid publicly applauds it the next day |
| May | IBM begins production of PC XT in El Salto, Jalisco (Mexico's "Silicon Valley", near Guadalaajara) |

Issues At the outset, all of the issues described above lay before IBM and Mexico.

Players On the part of the Mexican government, the interministerial CNIE carried responsibility for the government's decision concerning IBM. Each of the seven member secretariats' representatives (see Figure 14.1) had to sign off on the company's proposal. Within SECOFI, which provided the staff support for CNIE, the individual officials most actively involved in the review process were: the Secretary himself (Hernandez), the Executive Secretary of the CNIE (Hegewisch), who served concurrently as Undersecretary of Foreign Investment and Regulation of Technology Transfer; and the Undersecretary of Industrial Development (Maria y Campos). Under him, the chief of the Electronics Directorate (J. Warman), which included a Computer Section, also

played a role. Each of these officials and Secretary of Government Bartlett could speak English fluently. President de la Madrid generally listened to his American interlocutors in top-level meetings in English but responded through an interpreter. CNIE and Industrial Development staffs carried out day-to-day activities.

IBM was represented by IBM de Mexico. Although the subsidiary pursued plans previously agreed upon with A/FE's Latin American Division and IBM Corporation, its role also reflects A/FE's confidence in the effectiveness of representatives who shared with their counterparts a cultural affinity and familiarity with local conditions. The individuals most involved were IBM de Mexico's President (Guerra) and other executives (del Toro, Conde) and LAD's President (Ford). Beyond them, the senior IBM executive responsible was A/FE's Chairman and CEO (Pfeiffer). Ford, Pfeiffer and IBM President Akers were not fluent in Spanish.

Conditions The setting for talks during the spring of 1984 differed notably from pre-negotiation conditions. On Mexico's economic front, between the first and second quarters, inflation rose 13% and the current account surplus dropped by almost half despite devaluation of the peso. In January, Ford Motor Company announced plans to build a \$500-million plant to assemble cars, but foreign direct investment generally continued to decline. In February, the Government issued a decree restricting the role of foreign MNEs and urging self-sufficiency in pharmaceuticals. (There had also been an Auto Decree in April 1983.) This decree, separate negotiations over a bilateral subsidies pact, Mexico's entry to GATT, and multi-year debt rescheduling July 16–September 8 1984), and long-running issues such as immigration policies all appeared on the bilateral, Mexican-U.S. agenda. When U.S. pharmaceutical companies and government representatives complained, many Mexicans no doubt felt anew their historical resentment and suspiciousness toward their northern neighbor (Grayson 1987).

In the Mexican computer industry, in April, Hewlett-Packard linked up with the Mexican conglomerate Grupo DESC to assemble microcomputers. They produced their first HP 150 on July 17. Other assemblers (e.g. Printaform, Denki, and soon, Apple de Mexico) were also operating and adding to local capacity.

IBM continued numerous activities worldwide and initiated others while negotiating with Mexico, but two are particularly noteworthy. First, IBM began a publicity drive in Brazil, whose small-computer market was eighth in the world and expected to grow to fifth, to counter the government's hardening of its restrictive informatics policy. According to one report (Michaels 1984), the

company approached twelve Brazilian companies about possible joint ventures and licensing agreements. Then, in April 1984, the company engaged the Hyundai Group in South Korea in talks concerning joint production of a small, high-performance computer (Schiffman 1984).

One more aspect of context deserves mention: internal decision making of the two primary parties. In the Mexican government, the president had traditionally wielded tremendous power by virtue of his office and his role as chief representative of the long dominant political party, the PRI. Indeed, that power ultimately came to bear on this negotiation. At the same time, administration was handled by a formidable, not always unified bureaucracy (Frazier 1984a) and constituencies and interest groups (e.g. the private sector) had been able to influence presidential actions (see Story 1982).

In the IBM case, conflict and negotiation occurred between departments close to local companies and those not, among officials, between officials and staff, and within Congress (Orme 1984a). Industrial chambers, which have semi-official status as designated representatives of the private sector before the Government (without being controlled by the PRI), also became involved and wielded considerable influence. According to one interviewee, however, Mexican businessmen in the computer industry were not united. A split developed between low-technology component producers and young, foreign-educated Mexicans who wanted access to new technology. Government and industry representatives thus debated among themselves and with each other, and Mexican and U.S. mass media coverage sustained them.

IBM's decision making involved IBM de Mexico, A/FE's Latin American Division, A/FE executives, and the parent IBM Corporation. Each of them contributed to planning for external negotiations. IBM Corporation itself was guided by some nineteen members of a Corporate Management Board, one third of whom constituted a "management committee" that made decisions about mergers and acquisitions, financing, new sites, capital investment, and product introductions. As a member of this board and an IBM Corporation Senior Vice-President, A/FE Chairman Pfeiffer personally linked these organizations.⁹

In the talks with Mexico, the heaviest internal negotiations occurred within A/FE. LAD had primary decision-making responsibility and worked closely with IBM de Mexico before conveying plans for Mexico to IBM headquarters. As negotiations with the Government intensified, so, too, did the movement of

⁹ The top PC executive at IBM Corporation, Entry Level Systems President Philip D. Estridge, also had to approve LND's PC plans.

LAD officials to Mexico and of IBM de Mexico officials to LAD headquarters near New York City.

That was the context for Round One.

The Negotiation Process After preliminary meetings with government officials in March 1984, IBM submitted to the CNIE for approval a written proposal prepared by IBM de Mexico. The plan included:

- \$6.6 million expansion of IBM's El Salto plant;
- wholly-owned operation to produce 603,000 PCs over five years;
- exporting 88–89% of production (leading to export revenues of \$528 million over five years);
- balance of payments surplus estimated at \$103 million;
- local content levels of 35% for Year 1, 50% for Year 4 (in terms of pure content, i.e. \$35 for each \$ 100); and
- jobs; 80 direct; 800 indirect (Business International 1985a; IBM interview; Montes 1985).

Such an application usually contains descriptions of the company and its technology, financial analyses and import/export projections in order to persuade officials of the justification for the terms of the proposed investment. With this submission, the Government's formal review process got under way.

Ensuing talks went on in various arenas. IBM de Mexico representatives met separately with representatives of the CNIE, the Department of Technology Development, Patents and Trademarks, the Industrial Development Sub-secretariat and then the industrial chambers. Besides SECOFI, other CNIE-member secretariats such as Finance each met with IBM (all of which suggests some "diffusion" rather than a straightforwardly "coordinated" review process (Encarnation & Wells 1985). At this stage, IBM took the lead in trying to justify its proposal.

In this approach, according to an IBM interviewee, the company's representatives were following recommendations of top-level government officials who had assured them, at the outset, that IBM's investment would be approved. They had said the process would take time. On the other hand, a leading Mexican businessman interviewed by the author felt the Government's final decision was far from a foregone conclusion.

In April, existence of the proposal was reported in the Mexican press. Those opposing "special treatment" for IBM — opposition that would build in subsequent months — included the National Chamber of Electronic Industry and Electric Communications (CANIECE), which represented most of the 22 foreign and Mexican firms authorized to make microcomputers in Mexico, and

the Mexican Association of Manufacturers of Computer Products (AMFABI) established by Apple and Hewlett-Packard.

Within the Government, a number of bureaucrats responsible for industries, especially electronics and computers, enunciated longstanding concerns about local producers' displacement by MNEs and asserted, moreover, that Mexico only needed local firms to build the computer industry. The 11–12% of IBM's proposed annual production set aside for local consumption represented over 65% of the largest estimate of Mexico's microcomputer market. Further, in comparison to IBM's offer, Apple de Mexico had committed to 54% local content (cf. pure content and Mexico's GIN formula¹⁰) by the end of its first year of production (Clark 1985).

On the other hand, officials favoring IBM's proposal could point to Apple Computer, Inc.'s mere \$600,000 initial investment, the joint venture's production of 7,000 units per year and its use of dated technology (the IIe debuted in 1977). IBM underscored its proposed export levels and the consistency of the plan with SECOFI's February 1984 announcement on foreign investment and later (July) with the National Development Program for Promotion of Industry and Foreign Trade. The company also reportedly augmented its original proposal at least once by offering to donate \$20 million in computers to Mexico's educational system (Oster 1984). In the late spring, three months after submitting their proposal, IBM representatives thought they had completed negotiations.

No decision was announced, however. In June, an IBM executive was quoted saying a decision could be made "tomorrow, days, or weeks away" (*Business Week* 1984a). The company gave SECOFI a June 30 deadline for a reply. By that summer, according to one market analyst who was interviewed, government planners for the computer industry were "euphoric" about having weathered the low early years and witnessing now the rising capabilities of local assemblers. On July 12 1984, CANIECE and AMFABI sent letters to President de la Madrid and three newspapers underscoring the contributions and progress of local manufacturers to date and reminding the Government of its prior request that CANIECE help to implement the Computer Decree.

These proceedings apparently ran counter to both parties' expectations and preferences. Some Mexican observers felt IBM was "squeezing concessions" from the Government (Gardner 1984). On the other hand, an American participant observed that government representatives did not present their

¹⁰ The GIN formula, which stands for Degree of National Integration and is stipulated in the Computer Decree, can differ from the actual ratio of domestic to total physical inputs by more than half (Cline 1987: 83).

views with the level of detail and information to which American negotiators were accustomed. Like their compatriots in other international negotiations (see Weiss 1987), American IBM representatives also appear to have viewed time as much more pressing than their counterparts did.

The Outcome On July 19, the CNIE rejected IBM's plan. The reasons cited vary with the observers and account. Some interviewees pointed to internal politics (e.g. the degree of dissent, the amount of decision making done by staffs); others pointed to the economics of the proposal. Mexican officials communicated to IBM a desire for much broader plans, plans that entailed more than PC production.

Round Two: July 20 1984–January 19 1985

Despite the formal rejection, the Government made clear to IBM its interest in new proposals. Thus, the July 19 1984 rejection doubly ended Round One and initiated Round Two. This round, which would also end in a government rejection, lasted six months, until January 19 1985.

Issues The parties' agenda went beyond export levels to include local content levels, specific PC models and other issues concerning technology transfer (e.g. developing local capacity to design logic boards). Limiting IBM's share of the Mexican microcomputer market and price ceilings on PCs came up in the talks. So did job creation.

Players In this round, Mexico's economic ministers and other members of the President's economic cabinet, aided by their direct subordinates, became more active. Hegewisch and Maria y Campos played prominent albeit opposing roles. IBM continued to be represented by IBM de Mexico executives and LAD President Ford and in high level meetings by A/FE Chairman Pfeiffer. In addition, U.S. Commerce and State Department officers, particularly those posted to the U.S. Embassy in Mexico, and U.S. Ambassador John Gavin became involved. Some of these individual players' personal relationships bridged the two sides (e.g. IBM's Conde is related to Finance Secretary Jesus Silva Herzog).

Conditions As IBM and Mexico negotiated during this round, significant features of the context shifted. The Mexican economy made some gains over its 1983 performance. For 1984, real GDP growth hit 3.6%. But the trade surplus shrivelled between the second and third quarters, and inflation continued to

rise. At year end, inflowing foreign direct investment was even lower than in 1983 (see Table 14.2).

President de la Madrid, long in favor of Mexico's accession to GATT, took greater strides toward trade liberalization. This view developed momentum against the strictly statist position assumed by some officials within the Government. In the same vein, the President voiced concern in the fall about the U.S.'s "growing protectionism" toward Mexico (de la Madrid 1984).

With respect to the Mexican computer industry, Apple produced its first Mexican microcomputer on August 10 1984. By then, the Government had approved some thirty companies' plans to assemble microcomputers in Mexico and was still receiving new ones (e.g. Tandy's). During 1984, demand for low-end home computers rose dramatically with the high-volume strategies and promotions of Mexican companies like Sigma/Commodore (Infotext 1985).

Worldwide, the pace of microcomputer revenue growth dropped by half compared to 1983, although demand continued to climb. In 1984, IBM cornered 20.1% of the U.S. market, up from 1983's 8%. The second half of the year Round Two of the talks brought two other developments for IBM, both in August: its introduction of the PC AT in the U.S., and an agreement with the Commission of the EEC that ended its seven-year long antitrust investigation of IBM.

Lastly, the IBM-Mexico talks were monitored and assessed by secondary parties and others not directly involved in the proceedings. Beyond CANIECE's efforts, local computer companies such as Apple individually took the position that "[IBM should] play by the same rules" (Frazier 1984b; Meislin 1984). Mexican businessman Richard Hojel, the Chairman of Apple de Mexico, was prominent in such efforts. News editorials also appeared, foreseeing threats to national sovereignty (see *New York Times* 1984b; Martinex 1984). The national debate over IBM's plan and foreign investors' concerns about government decision making intensified when shortly after the rejection of IBM, the Government approved an investment plan by McDonalds restaurants.

The Negotiation Process IBM representatives met with CNIE and Industrial Development counterparts during this round. They also saw Ambassador Gavin several times, and he as well as other U.S. government officials pressed Mexican counterparts to give IBM a "fair hearing". A U.S./government interviewee said even President Reagan's cabinet members raised this point when they met with their Mexican counterparts. And yet, according to two interviewees, IBM itself had decided by this stage to pull back from active advocacy to a quiet strategy and to take cues from government officials.

Some among them urged the company to produce the new PC AT in Mexico (Meislin 1984) and to limit its share of the Mexican micro market to 25% (Cline 1987, p. 84; Orme 1985). In a published interview not specific to the IBM case in September, CNIE Executive Secretary Hegewisch, who favored the IBM proposal, set forth his criteria for approving foreign investment: export potential, furthering technological development, and a high level of investment per employee (*Wall Street Journal* 1984). Two weeks later, IBM de Mexico issued a press release underscoring the contributions of its El Salto plant to date (e.g. export earnings of \$50 million, parts purchases of \$12 million between 1982–1984 from some 120 local vendors) and potential benefits to Mexico from its microcomputer plan, benefits including business for local firms representing 80% of the national computer industry (IBM Mexico 1984).

By the fall of 1984, the U.S. and Mexican press had become part of the negotiation process. They not only covered the parties' actions but were used by the parties to bolster their own commitments and to signal or float new views. But the press also confused the participants, their constituencies, and audiences with misinformation — whatever its source. In October, one U.S. newspaper article reported that IBM would invest “more than \$300 million” (Meislin 1984); another stated that IBM agreed to use 65% local content in Year 1, rising to 95% in Year 4 (recall note 10), and to produce three models, the PC AT, PCjr and PC (Frazier 1984b).

Tensions rose. As early as August, IBM representatives had told SECOFI Secretary Hernandez that the company was running out of time and would have to consider Argentina as an alternative site. To Mexicans, that came across as a threat (Junco 1985; Orme 1984a). As one Mexican legislator said: “Welcoming IBM's project ‘would weaken Mexico's negotiating position with big companies that will see us as a vacillating, not-very-serious adversary susceptible to giving in to pressure and willing to turn its back on national investment’ ” (Orme 1984b). By this stage, however, IBM was also receiving invitations from other national presidents to invest in their countries.

Still, by late October, IBM had augmented its offers and reports circulated of agreement in principle on many aspects of the project (Frazier 1984a). These points included 100% ownership, 50% local content in Year 1, exporting 92% of production, and \$40 million of funds to develop local supplies. Opponents expected imminent approval, and IBM reportedly began contacting advertising agencies (Orme 1984a). (See Table 14.3).

On November 28, the *New York Times* City Edition (1984a) reported government rejection of the latest IBM plan. In contrast, an edition of the paper later that day (*New York Times* 1984b) stated a 100%-owned plant would be

permitted if IBM met “certain rules”. The first report cited as a source an advance copy of a recommendation from SECOFI; the second, “top government officials.” Hegewisch had formally proposed approval (Orme 1985). Apparently, the rift within the Government continued, sharpened by reactions to the government positions having been announced in the U.S. before they appeared in Mexican press.

To some Americans monitoring the talks, the Government appeared unpredictable. As one interviewee stated, it kept changing — escalating — its demands. That image may have stemmed in part from intragovernmental differences. Another interviewee felt that IBM and its supporters did not clearly see the Government’s key concerns. A number of Mexicans continued criticizing IBM tactics such as threatening to go to Argentina and appealing to the U.S. government. These attitudes and reactions, coupled with the nature of the media coverage, complicated the negotiations considerably.

The Outcome On January 19 1985 some ten months after IBM’s initial submission and exactly six months after its rejection, the CNIE formally rejected IBM’s latest proposal. The CNIE cited the inconsistency of the plan “with the central government’s economic objectives” and concern about the displacement of “national capital” (Orme 1985; Business International 1985b: 42). Some observers pointed specifically to the low level of IBM’s offer on local content and to the nature of its lobbying (Business International 1985b; Economist 1985a).

Round Three: January 20–July 23 1985

Just after the CNIE announced its decision, a spokesman stated “The door isn’t closed” (Orme 1985). At the same time, IBM issued a statement that its officers would “continue . . . [their] dialogue with the Mexican government . . .” (Frazier 1985a). So began Round Three, which would last six months.

Issues CNIE Executive Secretary Hegewisch revealed some outstanding issues to the public in February, saying, “If IBM comes back here tomorrow with more to offer in the way of research and development, domestic content, and exports, they will be welcome” (Economist 1985a: 62).

Players After the January rejection, Hegewisch offered to resign but did stay on for Round Three (Economist 1985a). Undersecretary Maria y Campos also continued to play a role. More importantly, President de la Madrid directly re-entered the process and guided decision making.

On the IBM side, in addition to IBM de Mexico negotiators, there were A/FE Chairman Pfeiffer, LAD President Ford, and to a small extent, John Akers, now Chairman of IBM Corporation. U.S. government officials remained in the picture.

Conditions During this round, Mexico's GDP grew, though not at its 1984 rate. Furthermore, by the end of 1985, inflation increased 58% over its 1984 level and the government deficit increased 25%. Most dramatically, from the first to second quarters of 1985, Mexico's current account changed 200%, dropping to -\$424 million.

Mexico's negotiations with the U.S. concerning a subsidies agreement, which had been forestalled by U.S. reaction to the 1984 Pharmaceutical Decree, concluded with an agreement in April. The U.S. Trade Representative's press release announcing the agreement also included a statement of the two governments' intent to pursue a bilateral framework for general principles of trade. Thus, the Mexican government abolished its incentive program for foreign computer makers and in July, announced a substantial trade liberalization policy (Miller 1986: 193).¹¹

Relevant events and conditions in the Mexican computer industry during this time included Sperry and Tandy's entering into separate joint ventures to produce microcomputers in May. By this point, all MNEs in Mexico sourced printers locally; some used local monitors. Even some 3.5-inch disk drives were being made in Mexico (Infotext 1985: 4). Mexican demand for micros rose 32% over the 1984 level (see Table 14.1); the business segment was booming (Infotext 1985: 50). Apple led vendors of single-user systems with a market share, in units, estimated at 35.9%. Further, Mexico's exports of all types of computers to the U.S. during 1985 increased more than ten times, to \$2.82 million.

Elsewhere, however, microcomputer markets contracted. World total revenues continued to grow, but at a much slower rate (see Table 14.1). From 1984-85, Apple's micro revenues slipped 15.4%; Hewlett-Packard's dropped 21.6%. By the end of 1985, unit shipments in the U.S. dropped 22% from their 1984 volumes. Still, IBM managed to ship more units and to increase its U.S. and world market shares.

After the January 1985 rejection, the intensity of public debate in Mexico and the role of the press faded. During the next six months, only one news

¹¹ November 1985, the Mexican government announced its intention to join GATT (which it finally did in September 1986).

article (Frazier 1985b) and one op-ed piece written by a Mexican newspaper editor Junco 1985) appeared in major U.S. newspapers.

The Negotiation Process Top-level meetings took place during this round. A/FE Chairman Pfeiffer met with President de la Madrid in Mexico. IBM officials realized that exports was, in one interviewee's words, the "hot economic issue" but not the "hot *political* issue", which was jobs.

In March, IBM de Mexico Director General Conde told an American reporter (Frazier 1985b) that IBM was increasing levels of investment, jobs and exports, and improving offers on technology. He even mentioned IBM's considering a smaller, minority-owned joint venture as a "last option", a statement which subsequently surprised a LAD interviewee (see also note 8).

The company's representatives still faced some government and public resistance to their plans and negotiating efforts. The latter included a reported meeting in mid-March between IBM Chairman Akers and Argentinian President Alfonsin Junco 1985). But opposition was less vociferous.

Overall, the process led participants who were interviewed to emphasize the impact of individuals' status and personal contacts in negotiations in Mexico (recall Adler *et al.* 1987; Weiss & Stripp 1985). Interviewees also cited the Mexican president's power (Grayson 1987). Indeed, when IBM formally resubmitted a revised plan that summer, President de la Madrid himself acted on it.

The Outcome On July 23 1985, CNIE announced approval of the following IBM plan:

- wholly-owned operation to produce 603,000 PCs over five years;
- jobs 240 direct; 1,460 indirect;
- local content levels of 51% for Year I, 82% for Year 4;
- exporting 92% of production (leading to export revenues of \$620 million over five years);
- balance of payments surplus of \$280 million;
- introducing new products within six months of their U.S. debut;
- limiting differences between U.S. and Mexican computer prices to 10–15%; and
- total investment of \$91.1 million, consisting of (in millions):
 - \$6.6 for fixed assets;
 - \$535 to local research and development;
 - \$20 to develop local suppliers;
 - \$12.9 for national dealer and international distribution networks;

- \$11.5 for a new, government-run Semiconductor Technology Center; and
- \$5.1 for a Spanish-speaking software center, university partnerships, and a packing system (Business International 1985a; Montes 1985).

Negotiations had not yet ended, however.

Round Four: August 1985–January 1986

It took several more months for IBM and government negotiators to finalize details. Under markedly quieter conditions than before, they worked on a delimited agenda comprising the items of the July plan. According to an interviewee at the IBM LAD, the final agreement reached in January 1986 entails:

- wholly-owned operation to produce 603,000 PCs over five years;
- 240 direct jobs;
- increasing local content levels, going from 51% up to 71%;
- export revenues of \$620 million over five years;
- balance of payments surplus of \$200 million;
- introduction of new technology within six months of its U.S. debut;
- limiting differences between the PC's list price in the U.S. and Mexican prices to 10–15%; and
- total investment of \$91.1 million, consisting of (in millions):
 - \$14.5 international procurement/software/distribution;
 - \$11.5 semiconductor technology center;
 - \$10 MLT-SMT card technology;
 - \$22.5 vendor development program;
 - \$22.0 academic partnership (human resource development); and
 - \$19.6 manufacturing plant.

Note the major differences between the January and July accords: indirect jobs, percentage export of production, and dollar amounts for balance of payments, academic partnerships, and the manufacturing plant. Final agreement was publicly announced by IBM de Mexico President Guerra on February 3 1986 and by Mexican President de la Madrid on February 4th (MEU 1986).

Post-Negotiation

Only the implementation of the IBM plan will enable the parties to assess the real individual and joint gains and the degree to which the agreed terms satisfy respective' original motivations and evolving interests. IBM de Mexico began

production of the PC XT in May 1986. By mid-1988, the facility had switched to assembly of the PS/2 and accounted for 10% of IBM's worldwide PC production.

The Mexican government has had to continue wrestling with broad economic problems and attraction of foreign investors.¹² After July 1985, Apple, Hewlett-Packard and UNISYS all applied to the CNIE for 100% ownership of their Mexican ventures and received approval. Apple later withdrew from Mexico altogether, but computer industry statistics putting 1987 microcomputer production at \$210 million, market revenues at \$154 million (Wallace y Asociados 1988) and 1986 exports to the U.S. high above 1985's (USDoC, tel. interview) indicate significant developmental gains.

Conclusions

Motivated by questions about negotiation process and outcomes, this article traced in detail the March 1984–January 1986 talks between the IBM Corporation and the Government of Mexico. The account bears upon existing international business negotiation literature and goes beyond it by hinting at topics for future research. Thus, both case-specific observations and implications for negotiation research deserve reconsideration here.

The Case Study

With respect to IBM and the Government's interactions, this study has most strikingly shown their complexity. "IBM" and "the Government" served as shorthand labels, for numerous actors were involved, and they ranged in type from individuals and groups to departments, organizations and "constellations" of organizations (Allison 1971). Both sides went through significant internal negotiations. In their negotiations with each other, different representatives played prominent roles at different stages.

They negotiated via consultations and informal communications as well as proposals and responses, and for a long period of twenty-three months — through two publicized rejections. They educated each other about computer technology and local conditions, respectively, but also used tough tactics like threats and unyielding postures. Secondary parties and the media took actions that further complicated the proceedings.

¹² In May 1990, SECOFI announced major liberalization of foreign investment regulations and streamlining of review procedures.

That IBM and the Government reached an agreement is not surprising, though, given the fit between their underlying interests, the options, and the stakes involved by July 1985. Mexico was a valuable, strategic market within Latin America for IBM. Besides IBM's intrinsic qualities, top-level Mexican decision makers who had favored the initial investment plan and by this point re-entered the review process, could base their approval on the Government's responsiveness to local interests in past months, the additional commitments from IBM, the importance of foreign investors' impressions, and pressures from the U.S. government.

The particular terms of the agreement, however, are more difficult for an outside analyst to explain. In the U.S., industry observers found the extent of IBM concessions reported in July "surprising" (Sanger 1985). Indeed, the ostensible cost of the final investment plan to IBM exceeded by fourteen times the \$6.6 million of the original plan. But then \$91.1 million looks quite different relative to IBM's corporate resources and to projected earnings of the venture itself.¹³

On Mexico's part, some of the augmented and added items (e.g. jobs and human resources development, the semiconductor center and date of technology, price ceilings) clearly correspond with the interests of groups inside and outside of government concerned with local industry. Increased figures for exports, balance of payments and local content had to appeal to officials responsible for trade and investment who had favored even the original IBM proposal. In short, the last proposal held the promise of widespread and substantial benefits for the Mexican computer industry and economy.

More generally, as mentioned at the outset, this case study has illustrated facets of MNE-host government relationships, the contemporary, strategic concern of developing countries for their domestic computer industries, and the intricacies of bilateral ties. It relates to literature on the power of the Mexican president, cultural differences in negotiating styles, and MNE bargaining power and ownership of foreign subsidiaries.¹⁴ The case also elucidates the process of foreign investment review and substantiates Encarnation & Wells' (1985: 62ff,

¹³ Assuming production of 120,600 units per year, a unit price of \$2000 and a conservative gross profit margin of 40%, IBM's PC venture in Mexico would yield an annual gross profit of \$96.48 million.

¹⁴ The bargaining school (e.g. Fagre & Wells 1982; Grosse & Aramburu 1989) informed the identification in this analysis of resources held by IBM and the Mexican government. This perspective is generally used to explain the relative amounts gained on an item (e.g. ownership position) of an already concluded agreement, rather than the occurrence or non-occurrence of agreement itself. For the latter, this analysis showed the value of additional considerations such as players, interests and conditions, coupled with a basic assumption of rational self-interest.

75) assertion that salient investment plans elicit diffused organizational review even when an interministerial body exists. Conclusions specific to foreign investment in Mexico that stem from this case have been drawn by other observers (e.g. Business International 1985a).

Future Negotiation Research

At least as importantly, this study raises questions for the budding research literature on international business negotiations. Thus far, that research has flowed in two separate streams: the macro-strategic, which treats organizations as units and addresses static variables such as MNE bargaining power (e.g. Fagre & Wells 1982); and the micro-behavioral, which focuses on tactics of individuals not situated within organizations (e.g. Graham 1983). This analysis of the IBM-Mexico negotiations drew on both streams and propounds their confluence in order to better understand such negotiation. Richer understanding may also come from future research in four areas.

Complexity of Party Behavior As the IBM-Mexico case suggests, large, organizational parties may not be internally unified. How can cohesiveness be systematically described, and what is the nature and extent of its effect on interparty negotiations? An interviewee for this case suggested, for instance, that disunity allowed the Government to use competing demands and hard-soft tactics against IBM. Unpublicized intermediaries are often involved in such cases, and their influence deserves more attention. More generally, the various actors and multiple levels of behavior call for the development of methods by which to identify, describe and evaluate parties to these negotiations.

Audiences One participant estimated that publicity and media coverage protracted the IBM-Mexico negotiations by six months (26%). When can and should publicity be minimized? Similarly, the influence of secondary parties like home governments on allied and opposing primary parties deserves study.

Conditions of Negotiations Interorganizational negotiations, like most behavior, occur within contexts. How do parties and their representatives evaluate markets, economies, and intergovernmental relations and use those results in negotiations? Conditions directly affecting negotiators' relationships also need to be explored in systematic ways.

Dynamics and the Long Term of Negotiators' Relationships Conditions, like other factors, usually change over time, as the worldwide microcomputer

market and the Mexican computer industry did in this case. When do such factors alter parties' original motivations and their ongoing relationship? More broadly, the parties' relationship may be more usefully viewed across periods before, during and after negotiation. Then researchers can study the effect of negotiation behavior on the implementation of an agreement in the post-negotiation period.

Other substantive areas and theoretical concerns such as model development also deserve attention in the future. There is ample opportunity and need for more extensive and varied research on international business negotiation. It is the detail of a substantively rich, systematically organized study of a case like the long IBM-Mexico negotiations that brings these points to light.

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Chapter 15

Negotiating with East and Central Europe

Pervez N. Ghauri

The end of the cold war and liberalisation of East and Central Europe are perhaps the most dynamic and exciting events of recent years. The introduction of Perestroika in 1985 and the fall of the Berlin Wall in 1989 have created enormous opportunities for the world economy and for the western firms. However, more than half a century of communists regimes have left their mark over these societies, so that western standards for doing business cannot fully apply. This chapter first reviews the economic transition in East and Central Europe, presenting data on the countries in the region, particularly those that have been invited to join the European Union, we would discuss entry of foreign firms into these markets. The second section presents key factors influencing market entry: the leftovers of the communist regimes, the consequent gaps between western and eastern economies, the necessity of a long-term commitment and the points to be checked in order to make an appropriate entry decision. The next section is devoted to the negotiation aspects, presenting key issues to be considered when negotiating and the common features of Eastern and Central Europeans when working out business deals, such as the pace of negotiations, their strategic orientation or their decision-making process. The final two sections of the chapter focus on specific countries: Russia, Poland, Hungary and Czech Republic, as these are the most important markets. Poland, Hungary and Czech Republic are particularly important, as these countries are now a part of the European Union.¹

¹ At the time of writing (early 2003), The entry in the European Union of eight Eastern European countries (including Hungary, Poland and Czech Republic) is planned for mid-2004. The entry into the EU of Bulgaria and Romania is planned for 2007.

Doing Business in East and Central Europe

The Economic Transition

The importance of East and Central Europe, with a population of 429 million people, cannot be questioned. It is 30% more than the European Community (EC) and almost double that of the United States. The new situation has enhanced the importance of the entire Europe, now it has a population of 720 million people. The inclusion of eight East European countries (in total 10 but Cyprus and Malta are not from Eastern Europe) into the European Union is very important as these countries will soon come closer to the same standards as in EU15. Eastern Europe has huge raw material production and reserves including metal ores, coal, oil, gas and agricultural products, while Western Europe has the technology (Buckley & Ghauri 1994). The countries that are referred to as Eastern Europe are listed in Table 15.1.

The German Democratic Republic (GDR) became a part of Federal Republic of Germany in 1990, and is transforming very fast. The former Soviet Union countries have strong regional differences in commitments to reforms.

Table 15.1: The New Members of the European Union from Eastern Europe (2004* 2007**).

| Country | Population (Million) | GDP (\$ per capita) | GDP (% growth) | Inflation rate (% growth) |
|--------------------|-------------------------|------------------------|-------------------|------------------------------|
| 1. Bulgaria** | 7.6 | 6,200 | 4.0 | 7.5 |
| 2. Czech Republic* | 10.3 | 14,400 | 3.4 | 4.7 |
| 3. Estonia* | 1.4 | 10,000 | 4.7 | 5.8 |
| 4. Hungary* | 10.1 | 12,000 | 3.9 | 9.2 |
| 5. Latvia* | 2.4 | 7,800 | 6.3 | 2.5 |
| 6. Lithuania* | 3.6 | 7,600 | 4.8 | 1.3 |
| 7. Poland* | 38.6 | 8,800 | 1.5 | 5.3 |
| 8. Romania** | 22.3 | 6,800 | 4.8 | 34.5 |
| 9. Slovakia* | 5.4 | 11,500 | 3.0 | 7.4 |
| 10. Slovenia* | 1.9 | 16,000 | 4.0 | 8.4 |
| <i>TOTAL</i> | <i>73.7</i> | | | |

Source: The World Fact Book 2001 figures.

Commonwealth of Independent States (CIS) is still struggling with political instability and Asian Republics have different levels of ambitions and goals depending upon their location, resources and political leaders. The eastern European countries comprise two groups; the Northern part has built an alliance called Visegrad group (Hungary, Czech Republic, Slovakia and Poland). The group of Southern Balkan states has been traditionally less developed and highly parcelled. National identity is privileged over co-operation in an area where ethnic and religious diversity has always been quite strong. The Bulgarians, for instance, do have poor relations with all their neighbours except the Serbs. Eastern Europe, and more generally ex-communist countries, are experiencing quick changes. Countries such as Romania and Bulgaria are standing in queue to enter the EU in the next round that can start as early as 2007. Table 15.1 shows these countries.

Today in most of East European countries there are democratically elected governments which are committed to establishing market economies based on free competition. Most of the countries are desperately trying to attract foreign companies in order to establish technology transfer and trading links. However, the situation in many of the countries is uncertain, complex and difficult to predict and is considered an enormous challenge for companies planning to invest in these markets. The eight countries that are entering the EU are considered the most advanced ones and are expected to achieve some GDP and standard of living as that of a number of EU15 countries, see Table 15.1.

Although most countries of Eastern Europe are committed to improving their economies, there are still many inter-related obstacles in the path of growth to be dealt with. Issues such as trade barriers, development of banking and loan systems, pricing mechanisms, property and contract law all need immediate attention. Privatization is considered a solution to achieve market economies and growth, but there is no easy way to achieve privatization in Eastern Europe. Over-optimistic estimates have been revised and people have started realizing that it might take a decade or two before a privatised market economy is achieved (Lindsay 1992). An important issue for negotiation is whether the potential partner for a common venture is a state-owned company or not. Taking over a state-owned company implies that negotiation will take place directly with public authorities. As emphasized by Djarova (1999: 14), "There is one particular risk involved in joint venture deals with Eastern European companies that are still state property. Sooner or later the company will be privatized, which will reflect on the joint venture. It will change the owner, which might give rise to conflicting interests."

Due to the above reasons, reactions from Western companies have been rather cautious in the beginning. However, in spite of this reluctance, most

multinationals have entered these markets. Companies such as McDonalds, Pepsi Cola, Coca Cola, Statoil, Ericsson, Ikea, Fiat, Nokia, Volkswagens, Estée Lauder, Philip Morris, almost all pharmaceutical firms and several small and medium-sized companies have already established operations in these markets. The governments are providing a number of incentives to foreign companies to invest in their countries. For example, most of the Western retailers are active in Eastern Europe (Tietz 1994). In spite of the reluctance from Western Companies to invest, there has been a considerable increase in registered Joint Ventures. Already by March 1992, there were 34,121 registered Joint Ventures between Western Companies and organizations from Eastern Europe. While this figure was 12,512 in 1989, it reached to 106,295 in 1994 (Van Berendonk, Oosterveer & Associates 1992).

As a consequence of the difficult implementation of business agreements with eastern European partners, M&A and joint venturing with local partners has slowed down during the mid-1990s. However, M&A activity is moving up again in central and eastern Europe, but more prudently and under the guidance of investment bankers and corporate executives that have gained more in-depth experience of dealing with former communist countries (Brewis 1999). Many M&A deals take place such as Pernod Ricard, the French beverages group which agreed to a joint venture with Tiga, the majority shareholder in Polish beverages group Agros; Coca-Cola which bought Romanian bottler Ozgorkey Coca-Cola for \$24 million; and Danish brewer Carlsberg which bought a 95% stake in Lithuanian brewer Svyturys for \$45 million (Brewis 1999).

These problems are listed as follows:

- Difficult to dismantle existing power structure from earlier years;
- No clear priorities;
- Black markets;
- Political instability;
- Obscure legislative systems;
- Unlimited, however partly unsolvent demand;
- Extremely high inflation;
- Lack of infrastructure;
- Ineffective Banking and Monetary system.

All these problems are critical, but cannot be solved simultaneously and immediately. The companies which want to enter these markets have thus to handle these problems. We will discuss the above problems respectively for each country we analyse separately. Here we will first discuss the problems that are common to all these markets. It is, however, important to point out that the countries that are entering the European Union would be the first ones to handle

these problems. These countries have started a process of achieving some parity with the rest of the EU. This involves some negotiation between the EU commission and each country for achieving basic adjustment to the EU standards (see Box 15.1, concerning Lithuania).

Box 15.1

On freedom to provide services, Lithuania wants transitional periods for some of its credit unions to the end of 2005, for its deposit guarantee scheme until the end of 2009 and its investor compensation scheme until the end of 2007, and for compulsory third party liability insurance of owners and users of motor vehicles until the end of 2009. On free movement of capital, Lithuania is seeking no transitional periods or derogations, but at present, its constitution does not fully ensure the free movement of capital related to the acquisition of land by foreigners, and the possibility of a transitional period is mentioned in its position paper. On company law, Lithuania is working towards improving the system of copyright enforcement by 2003. On transport policy, transitional periods are still being sought on tachometers in the road vehicles until the end of 2007; financial capacity for licensing road transport until the end of 2006, technical requirements for railway wagons transporting dangerous goods until the end of 2009 and limitation of aircraft noise until the end of 2005. On social policy and employment, Lithuania requests no transitional periods adoption of a revised labour code is foreseen by the end of 2001, and work is under way on development of the social security system and pension reform. On telecommunications and information technologies, Lithuania will provide additional information on dates secondary legislation on telecommunications, plans for licensing UMTS services, and functioning of the communications regulatory authority. On Environment requests for transitional periods — because of major investments — include volatile organic compound emissions until the end of 2009; urban waste-water treatment until the end of 2014; quality of water intended for human consumption until the end of 2014; protection of water against pollution caused by nitrates from agricultural sources until the end of 2010; packaging and packaging waste until the end of 2009; landfill of waste until the end of 2014; conservation of natural habitats and of wild fauna and flora until the end of 2009; and conservation of wild birds until the end of 2009. An assessment of Lithuania's ability to implement the EU rules sulphur content of liquid fuels is under way, and a final position is still to be adopted.

Source: "EU enlargement: Czech Republic misses out on its negotiations", *European Report*; Brussels; Nov. 18 2000.

There is an unlimited demand for products such as Coca Cola, Levis Jeans, Canon Cameras, branded cigarettes, Bata shoes and McDonalds. It also reveals

that there is a demand for high quality products. McDonalds inaugurated its restaurant in Moscow in 1990 and on the first day an estimated 30,000 customers were served, beating the previous record of 9100 for one day in 1988 in Budapest. McDonalds had 700 seats (indoor) available and opened in January, a very cold month. Although McDonalds did not use advertising for the opening, people stood in lines for hours. Moreover, in order to avoid black marketing of hamburgers outside the restaurants McDonald's had to limit the number of Big Macs per customer (Daniels & Radebaugh 1995).

Considering the population and demand opportunities, until 1992, Eastern Europe accounted for less than 10% of world imports and exports including the trade they conduct with each other. This reveals the potential of marketing and business opportunities in these countries (Franklin & Moreton 1994). According to one estimate by Michael Palmer, former Director General of the European Parliament, an investment package of US\$16.7 billion a year is needed from the advanced industrial nations if the economic reconstruction of Eastern Europe is to be completed within the next two decades.

The large area and population in Eastern Europe lead to an optimistic perception of commercial opportunities, but it is also, in some ways, a hindrance to marketing activities of Western firms. The population is scattered in smaller cities and towns, while the communication, distribution channels and infrastructure is not there. Moreover, due to the fact that there was no stable price mechanism in these markets, it was very difficult to use the same marketing planning and strategies as used in the West in early years of liberalisation.

In almost all Eastern European countries there is still a grey and black market sector. It is hoped that once the problem of excessive demand and scarcity of goods are solved and the infrastructure is improved, the grey and black sector would automatically disappear.

Factors Influencing Market Entry

Communism meant collective property of production means. In most countries, except Poland, a large part of agriculture was state owned and managed. The same was true for foreign trade that was the monopoly of sectoral agencies. Administered trade was the rule in the Comecon where both production and trade were centrally organised. Ikarus Busses were made in Hungary for the whole of Eastern Europe as well as Balkancar forklifts by the Bulgarians. As emphasized by Naor (1986) in the case of Romania, distribution was

admonished to be as cost efficient as possible, that is, direct distribution from producer to retailers was advocated to the extent possible. But distribution was very poor and parallel, informal distribution often replaced state-run retail outlets where people had to wait long for finding the few products available.

In the recent years, since 1989–1991, marketing infrastructures have been increasing with the de-communization of eastern European countries (Doman-ski 1992), the same being true to a lesser extent for Russia (Holden 1995). Such a process is however a lengthy one. A big comparative advantage of ex-communist countries is their good level of general education, with a high percentage of university graduates, and the proximity of Eastern European values to West European values. This is evidenced by the rapid implementation of Western style training programs and the quick adjustment of local consumer behaviour to Western European lifestyles (Djarova 1999). Another comparative advantage of Eastern Europe is a favourable ratio between labor costs and productivity. A study by the European Bank for Reconstruction and Development showed that the salaries of skilled workers in export investments were at 16% of their Western parent-company level, while average productivity level was reported to be at 72% of the Western level (EBRD 1997). This is a key advantage which, combined with qualified engineering staff, explains the success of some industrial take-overs such as that of the Czech Skoda by Volkswagen.

A fundamental condition for the development of markets and marketing is the change in ownership structure. The highly centralised organisational forms in Eastern European do not stimulate their market orientation. Western companies are generally attracted by the core businesses of Eastern European companies, but are uninterested in a number of non-performing peripheral activities. As a consequence, the takeover of such companies means launching an immediate restructuring process that mainly proceeds through selling the loss-making parts of the company (e.g. the case of Sara Lee/Douwe Egberts in Hungary). As emphasized by Djarova (1999: 23), “In some cases, this may be a protracted process because of the social sensitivity of the restructuring. Some restructuring processes require completely different organizational formulas where the vertical dependence of the company’s parts is abolished. Of course, in this process one should not lose the functional expertise of the employees, which is one of the advantages of the functional corporate structures. The transition toward decentralized organizational forms in Central and Eastern European companies will have to be attended by a process of change, primarily of their human capital. If they are unaware of this need, Western partners may encounter conflict with employees and local management”.

“Gaps” Between Western and Eastern Economies

Now that it has been established that there exists vast opportunities for Western firms to market their products and technologies in Eastern Europe, we must realise that the marketing situation is quite different from Western countries. It is not as simple as selecting a market and apply one of the existing market entry strategies. There exists a new set of problems and situations to be handled in these markets. These countries are quickly moving towards market economy, starting from a situation where people have little or even no idea of what is a contract, a price, delivery times. However, the introduction of market mechanisms and marketing knowledge is a long-term process. For instance, Russian marketing textbooks either present marketing knowledge in relatively intellectual terms based on a Russian penchant for searching for laws that govern social and economic behaviour (Khrutskogo 1991) or reinforce the conviction that marketing knowledge is mainly applicable to foreign business interactions and not so much to home-market activities (Zavyalov & Demidov 1991). The absence of rules, which is even stronger in the ex-USSR than in many eastern European countries, further helps the development of corrupt behaviour in business. However, this is only a transitory situation. Some authors characterise these problems as “gaps” that exist between Western and Eastern economies such as marketing gap, technology gap, capital gap and motivational gap (see for example Kraljic 1990; Jain & Tucker 1994).

In addition to these gaps, there are some fundamental differences between marketing to the West and the East. In Eastern Europe, despite the fact that most countries have democratically elected governments and that there is a high degree of privatization, government still plays a major role in the business sector. This role is even greater when a foreign company is involved. The most important difference between the West and Eastern Europe is the fact that there exists at least two or three generation gaps in terms of productivity and infrastructure. In the most advanced countries; Hungary, Poland, Slovakia and Czech Republic, there is some progress in maintaining property rights and removing some market imperfections, but this progress is far behind the West, there are three important factors that would influence whether Eastern European economies would achieve some parity with the West (America and Europe) or not:

- (1) The ability of governments to promote and influence the restructuring and to convince their people that they have to suffer through a transitional period before they can see some real benefits of market economy.

- (2) The development in the Commonwealth of Independent States (CIS) and the course it will take. If the transition were smooth in CIS, it would have linkage effects to other East European countries and would encourage foreign investment to the entire region. As we know, until now CIS has not been able to achieve political or economic stability.
- (3) The investments and capital flows coming into this region are important factors. These factors will be realised if the global economy is prepared to allocate some finances in the long-term development of this region. The support expected from EBRD, IMF and the World Bank is very crucial, but still not wholehearted (for more discussion of this issue see Dunning 1994).

In spite of all this, there exist numerous examples of successful entries such as: Siemens (Germany), Alcatel (France), ABB (Sweden/Switzerland), General Electric (U.S.A.), McDonald's (U.S.A.), Coca Cola and Pepsi Cola (U.S.A.), Tesco (U.K.), Casefour (France), VW (Germany), Fiat (Italy), Statoil (Norway). Only VW has delivered huge investments, \$3 billion in Czech Republic and \$1.5 billion in Eastern Germany. These are only few examples, so there are great opportunities and the companies should not be reluctant to enter due to some transitional problems. Even if we assume a doubling in the standards of living and completion of some major privatization schemes by year 2010, Eastern Europe would require an investment of \$100 billion (Dunning 1994). Moreover, with the excessive demand, discussed earlier, companies that establish at an early stage would have greater benefits. They should however be prepared for a *lean period of 3–5 years*. The investments in these markets by international companies would have also linkage effects on their global marketing and positioning activities (Buckley & Ghauri 1994).

Entry Strategies: A Long Term Commitment

To be successful in these markets the companies should demonstrate *long-term commitment and seriousness*. It is not possible to travel to these markets occasionally and expect to establish successful business operations. It is important for companies to have a long-term representative in these markets. The managers involved in marketing should stay there for longer periods in order to understand the market and culture of the respective countries. We have already discussed that there are some differences in the development and commitment levels of different countries of Eastern Europe and it is not advisable to treat all countries in the same manner. The companies thus have to have innovative approaches.

Box 15.2

McDonalds is a good example of a company that developed its own infrastructure to manage its business in Eastern Europe. McDonald chose Moscow City Council as a partner (51% Moscow city council, 49% McDonald, as at the time of contract this was the maximum a foreign company could own). McDonald considered the infrastructure, especially for supply procurement, as a major problem. This problem is faced by most foreign companies and is due to rigid bureaucratic system, shortage in supplies (due to production, distribution), and quality of supplies. The company had to be sure that it would get sufficient supplies of different raw material such as sugar, flour, meat, mustard, etc. Moreover some of the supplies such as Iceberg salad, pickled cucumber and special type of potatoes were not available in Russia. To handle these problems, McDonald trained its suppliers and built a US\$40 million food-processing center close to its restaurant. To handle the distribution problems, it provided its own trucks to carry the supplies. As a result, today McDonald has its most successful restaurant in Russia serving an average 50.000 customers per day.

Source: Daniels & Radebaugh (1995), *International Business: Environments and Operations*, 7th Edition, Reading Mass, Addison & Wesley: 117–119.

As far as entry strategies for doing business in Eastern Europe are concerned, one has to choose *the right alternative for the right reason*. The first step is to be clear about why we want to enter that market. There are two basic alternatives: Do we want to enter the market in order to simply market our products? Or, do we wish to utilise the low cost of labour and raw material? In the first case, one can use the traditional entry strategy analysis to determine whether to trade, manufacture in one's own country and sell in these markets through export, agents or distributors. In case the market is attractive enough, one can start manufacturing in the particular market through a joint venture or a wholly-owned subsidiary. However, countries that are entering the EU are important markets but can also serve as an easy/cheaper alternative to enter the European market as these countries are full-fledged members of EU.

Joint Ventures or wholly-owned subsidiaries are considered the best entry strategies. This can be achieved through greenfield companies, takeover of a local company or by obtaining majority ownership in a local company. Companies such as IKEA (Sweden), Tesco (U.K.), Statoil (Norway), VW (Germany) are good examples. The financial state of local companies is such that it is quite beneficial for a foreign firm to acquire a local company. This favourable situation has arisen due to changes in price structure, exchange rate variations, interest rates or credit possibilities. For a foreign firm, it is quite

easy to gain control of an existing company or to create a mutually beneficial partnership (see Box 15.2).

Joint ventures as market entry have particularly been popular in these markets and are still a preferred form of East-West partnership (Djarova 1999). As mentioned in the earlier section of this chapter, foreign companies, as well as local organisations, have been very keen to register and start joint ventures. In this case, the evaluation of local partners, contribution is the most difficult aspect. Sometimes the local government is the local partner, which leads to contradictory objectives between partners. Quite often, a local partner wants to come up with a contribution in the form of technology or know-how which is obsolete or of no value for the new operations. However, although many East European countries allow wholly-owned subsidiaries, foreign companies are more interested in joint ventures. Foreign companies need assistance in handling these markets and bureaucratic environments. The companies have realised the synergetic benefits of these cooperative agreements.

Companies approaching Eastern European markets and negotiating with local partners that have more critical resources than theirs must be aware that greater bargaining power will be exerted by the local partner in the negotiation of a joint-venture (Danis & Parkhe 2002). As a consequence, the balance of critical resources brought by each partner will be essential in determining the balance of management control within the common venture. However, while strategic and organisational fit may important determinants of cooperation and effective integration of both partner's resources within the joint venture (Brouthers & Bamossy 1997), it has been shown that fit may be less important in the context of transition economies (Uhlenbruck & De Castro 2000).

Joint-ventures with non-state partners have to be distinguished from the case where the foreign partners get involved through the privatization of a state-owned company. In the case of a privatization, public authorities generally require from the potential buyers that additional investments be made for modernizing the company. They may also set limitations to the layoff of workers, and require that some business units be kept despite their poor financial performance. The process is all the more difficult for foreign buyers to carry out that they are often perceived as invaders. As a consequence, a foreign firm may have to pay first for the shares and second for the fulfillment of an investment program since, in most cases, company restructuring is badly needed (Djarova 1999). Even though, the prices of shares for Eastern European companies may be perceived as low in comparison to Western Europe, investors have to take into account the cost of the follow-up obligations, especially in the case of a privatised company.

When entering these countries, a company should consider the following step-by-step approach (Cavusgil *et al.* 2002):

- (1) *Checking Priorities*: Learning about the priorities of the government and business sectors to determine whether the goods or projects at hand are among the priorities of the market.
- (2) *Checking Regulations*: What rules and regulations apply to the import of goods. Are import licenses or other documents necessary? In the case of a joint venture, check all applicable rules and regulations. Is it allowed to have a majority owned joint venture, property rights, etc.?
- (3) *Checking the local Agent/Partner*: Is it difficult to check the validity of the claims made by the local partner or agent? If the claims are valid, how can they be evaluated?
- (4) *Checking the Competition*: It is very important to establish who your competitors are. Local government or another foreign company. It is important to check the potential competitors and what your position would be in the long-term. Would you have the same competitive advantage in five years from now?
- (5) *Check the Financial Implications*: Check to see whether you would be forced to participate in Counter-Purchasing or bartering. This should be controlled/checked at an early stage in order to avoid surprises. In this case, you should also check the financial position of your counterparts to determine whether they would be able to fulfil their financial obligations.
- (6) *Negotiations*: It is very important to determine whether the objectives of both parties are complementary. If you can see that the other party has totally different objectives, then you should analyse that situation and determine whether it is acceptable to you. In this case, you should also evaluate whether you would be able to achieve your objectives and commit yourself accordingly. This issue is also discussed separately.
- (7) *Implementation*: It is very important to carry out the project wholeheartedly and think in the long term. The potentials and opportunities should be evaluated at every step or implementation and matched with the company's objectives.

Firstly, due to an excessive demand, the price mechanisms are not functioning at this moment which could lead to overestimated profit expectations. In the long-run, when the gap between supply and demand will be filled, market pricing would start functioning automatically. The same is applicable for labour, raw material and component pricing. It is therefore important for companies to realise that factor while selecting sectors to invest in. Secondly, these markets are not, in the long-run, typically low-labour cost economies.

The standards of living are improving fast and there is a great chance that within a couple of decades the standards would come quite close to those of Western Europe. The investments in plants and technology, based primarily on low-labour costs, could very well backfire in the long-run. Finally, sectors that may appear attractive at this moment may not survive in the long-run. When the economies are stabilised and standards of living have improved, then these countries might also buy their wine, shoes or garments from the same sources where Westerners buy theirs.

To summarise, the process of foreign market entry in Eastern Europe differs to a great extent from a traditional market entry process in a foreign market. In a normal market entry, a foreign firm faces a lot of problems in the earlier stages of the entry process, as they need to establish contacts at a macro level which is quite difficult. They have to have middle men to get access to government officials and departments. In Eastern Europe however, it is very easy to get access to government officials at most highest levels, in the early stages of entry process. The doors to ministers' offices are wide open. This aspect often leads to over-expectations on the part of a foreign firm. As the real problems start in the later stages of the process. Supposing we have three phases in an entry process: (1) feasibility stage; (2) project phase; and (3) establishment phase, in Eastern Europe, a foreign firm will face most problems in project and establishment phase. During these stages a firm has to deal with the problems caused by infrastructure and gaps discussed earlier in this chapter.

Negotiating in East and Central Europe

In reality, it is not possible to provide some standard conditions and guidelines for negotiation with customers/parties from Eastern Europe. The conditions have been rather volatile in most of these countries. Rules and regulations have been changing. Though every transaction involves different type of negotiation process and factors, some degree of uniformity in the process and the factors influencing this, is possible.

Price adjustments due to *inflation* is one such factor. In almost all these countries there have been rocketing inflation. Even in countries such as Poland and Hungary, relatively the most advanced markets, inflation has hovered around 30% and is a little bit under control (see Table 15.2). In Russia, the biggest market, the inflation has been 15% per month at times (decreasing to 21.9% per annum in 2001). In some other eastern European countries, inflation is even worse (Bielorussia with 46.1% and Romania with 34.5% for 2001).

Table 15.2: Nature of Negotiation in Eastern Europe.

| Negotiation Factors | Comments |
|---------------------------------------|----------------------------------|
| 1. Pace of Negotiation | Slow |
| – Value of time | Moderate & punctual |
| 2. Negotiation Strategy | High initial demand |
| – Offer vs. agreement | Group issues may be presented |
| – Presentation of issues | Quite formal |
| – Presentations | Argumentative |
| – Discussions | Rather direct, little small talk |
| – Communication | necessary |
| – Interpreters | |
| 3. Emphasis on personal relationship | Very low |
| 4. Influence of third parties | High |
| 5. Distance | Personal space shorter |
| 6. Decision making | Somewhat impulsive |
| – Overall | Logic & long-term benefit |
| – Emphasize | Top down decision-making |
| – Hierarchy | Emphasis on group & team |
| – Collective vs. individual behaviour | work |
| 7. Administrative Factors | |
| – Need for agent or local partner | Average |
| – Degree of details | Moderate specificity |
| – Degree of bureaucracy | High |
| – Need for agenda | High |
| 8. Emotional Aspects | |
| – Degree of rationality | Rather high |
| – Sensitivity | Low |

Source: Cavusgil et al. 2002.

Exchange rate variations is another factor which should be kept in mind while negotiating business deals with these countries. The countries that are entering the EU, are believed to be quick in joining the European Currency (Euro) and will stabilise their inflation and currency problems.

In most cases, a foreign firm requires a distribution channel to sell its products within these newly available markets. In these cases, a local partner is essential to represent the foreign party and to engage in marketing and customer service functions. In this relationship a mutual dependence exists. The parties have to go through a negotiation process to agree on the mutual dependence and the contribution to be made by each party. *Finding the right partner* and evaluating each other's contribution is thus a crucial issue in this process. Establishment of this relationship is difficult and time consuming, but it is even more difficult to terminate or modify the relationship. As the process of negotiation should foresee the future complexities of a relationship, this is typically an issue to be efficiently handled in a negotiation process. The power/dependence aspect of the atmosphere discussed earlier, is most relevant here. Power or dependence perceived by one of the parties may have long-term influence on the relationship, with one party always demanding better performance by the other. In short, it is difficult to enter these markets but it can be even more difficult to exit from one particular relationship. For example, in case the company wants to enhance its involvement, start manufacturing or gain more control over its operations.

The firms entering these markets should have *clear objectives*, in short-term and in the long-term. The information on present legal criteria and future expected changes thereto, is very important and should be matched with the objective mentioned above. In most of these countries, the *rules* regarding foreign ownership (minority, majority or wholly-owned foreign operations), remittance of profits, property rights and tax exemption are still changing.

Sometimes these negotiations are undertaken only for a single transaction. This is particularly true in case of project marketing. A project sales negotiation is apparently different from a process where a long-term relationship is being negotiated. In project based negotiation, a foreign firm should be very specific about what they can and cannot do. In case an agent or a local third party is involved, his role should be properly defined and related to one particular deal.

So far, joint ventures have been the most popular entry mode in these markets. In this type of entry mode, selection of a joint venture partner is considered the most complex issue. Facilities and resources, market position, personnel and local capital to be offered by the local partners are important criteria. The distribution of tasks and responsibilities between the parties

should be clearly specified. Otherwise this can be a major source of conflict in future relationships. The parties should be open to each other and the agenda for negotiations should be mutually prepared. The negotiation process for joint venture with Eastern Europe should have an *inbuilt flexibility* and allow renegotiations due to change in circumstances outside the relationship. Table 15.2 sums up the main aspects of negotiations with Eastern Europeans.

In the following two sections we are presenting a brief analysis of the most attractive emerging markets of this region. Although we have selected Russia, Poland, Hungary and Czech Republic from Eastern and Central Europe, countries that are entering in 2004 and 2007 (see Table 15.1) are equally important and carry good prospects.

Negotiating Business with Russia

Russia with a population of more than 200 million is the most important market of the former Soviet Union. After the collapse of the Soviet Union and the communist party, Russia has become more democratic. Different members of the government, the army, regional politicians and industrialists, all are fighting openly for power.

Although it has brought enormous political instability for the time being, it is expected to lead Russia towards normalisation. A new constitution has been adopted by referendum in December 1993. Prices have been liberalised, large and medium-sized manufacturers are being privatised, lavish government subsidies to inefficient producers have been cut, the companies are paying normal or positive interest rates, i.e. above the rate of inflation. All these changes are forcing massive restructuring of Russian industry (*The Economist* 1994). The major problem for Russia however, is instability. "If you could remove uncertainty, there would be a major investment boom, leading to sustained and rapid growth to the end of the century" (Laynard cited in *Economist* 1995).

In spite of all these problems and irregularities, most foreign firms have invested heavily. Most foreign products are available, from automobiles such as Volvo and BMW to consumer products of Unilever, Mars, Procter & Gamble and Chiquita Bananas. And most of these products are doing enormous business. To conclude we can say that in spite of political and economic instability in Russia, foreign firms have great opportunities and first mover advantages while entering this market. A key to success in Russia is the understanding of the organisational culture of Russian partner firms (Fey *et al.* 1999), especially in the case of joint ventures where former Soviet Union

managers form their expectations on the basis of the embedded norms in their institutional environment (Randall 2000).

The private sector is booming, 90% of small companies are in private hands, 80% of all service companies are private and overall more than 70% of the total economy is privately held. Employment is rising and two-third of jobs are in the private sector. All these factors are encouraging foreign investors. In 1994 foreigners have been investing at a rate of \$500 million per month. Moreover, many of American products such as cigarettes (Marlboro, Winston, Pall Mall) are produced under license in Russia. In September 1994, BP/Statoil signed a \$7.4 billion contract to develop three large off-shore fields with Azerbarjan. The production at peak is considered to reach 700.000 bbl/day. Current Azeri production is 160.000 bbl/day (*Business Week* 1994a and *Business Week* 1994b).

In short, the Russian market is for the bold companies as uncertainty still prevail Russians as consumers admire Western, especially American products. A number of smaller firms from countries such as Sweden, Finland, Norway, Italy and the Netherlands are successfully doing business in garments, dairy products and other consumer goods. Due to above uncertainty and trade finance being the key to success in this market, smaller firms are relatively at disadvantage. The cost of entry and general difficulties of doing business, severe infrastructure problems and mounting crime and corruption are some other factors that are frightening for smaller firms (see Box 15.3). In spite of these difficulties, there are enormous opportunities. The infrastructure is also improving. There are now direct flights, for example from Frankfurt to Russian Urals (Yekaterinburg) and to Siberia (Novosibirsk) which has stimulated Western investments in these areas. United States has also opened its Consulate Generals in Urals and in the Russian Far East. There are now tens of American Business Centers in Russia.

In addition to the features depicted in Table 15.1 above, the following points must be noted as concerns the Russian negotiation style (Usunier 1999; Brett *et al.* 1998):

- Given the more than 70 years of communist regime, the Soviet system has left some deep imprints on the Russian society. As emphasized above, this results in a lack of understanding of basic economic concepts such as that of free-market price, company valuation or balance sheet. Russia has a deep-seated tradition as an inegalitarian society, reflected in the practice of peasant slavery up to the 19th century. Power in Russia continues to be institutionalised in the form of rigid class structures and hierarchical rule systems (Lawrence & Vlachoutsicos 1990; Lewis 1996).

Box 15.3

Design Talo is a small firm making wooden houses for private clients in the northern city of Kemi in Finland. The company was a typical victim of Finnish depression as Finnish market for private housing fell from 10,000 houses to 2000 houses. Design Talo a company with 300 employees building 500 houses a year was badly hit. At this point Mr. Kurkela, the owner and manager, started looking for other markets. In 1993, he heard from a consultant company that local authorities in Russian city of Cherepovits, 600 km north of Moscow, was looking for a company to supply four municipal guest houses, he travelled with Mr. Erkki Hurtig, the consultant, to Cherepovits. In the words of Mr Hurtig, "We took a car and drove 14 hours to Cherepovits, through the snow and cold. The radiator froze and it was a terrible journey. But we got there, met with the municipality and the building engineer, and looked at the site". At this point Mr Kurkela decided to prepare a bid to build two houses. Drawing up the details, negotiating and reaching a deal took several months. The deal included all the supplies as well as labour from Finland. Kurkela wanted payment in advance in Finnish Markka, which was agreed. But things went very slow, several faxes were sent and received. There were no signs of payment and Kurkela insisted on advance payment. "Finally the Russians said the problem was they didn't have any Finnish Markka, only dollars. We laughed and said just send us the dollars", says Mr Hurtig. The money came and the houses were built. The local authorities were pleased and they ordered four more houses.

Mr Kurkela wants to expand further in Russia, but it is not an easy task for a small firm. In the second contract Mr Kurkela managed to agree on a proportion of labour to come from Russia. The material is still to be imported from Finland to ensure the quality, which is very expensive. Payment is still a problem as Finnish banks are reluctant to accept guarantees from Russian banks. Selling to private newly rich customers is even more difficult as they are not willing to pay in advance and banks are not willing to give guarantees. Design Talo and the consultant thus have problems in expanding in Russia. As stated by Mr Hurtig, "It is too hard. What we want to do more is to sell our know-how to them, rather than carrying out the whole building project. That is what they need in Russia".

Source: Financial Times, Exporter 8, April 18 1995: 8.

- The communication style of Russian negotiators reflects a high-context culture with holistic communication (Hall & Hall 1990). It is sometimes resented by foreigners as being secretive (Rajan & Graham 1991; Lewis 1996) as well as involving subjective information processing (Morrison *et al.* 1994). The use of high-context communication tends to translate into indirect and implicit information sharing in negotiations (Brett *et al.* 1998). Although Lewis (1996) suggests Russians are polychronic, Brett *et al.* (1998) explain that they also display monochronic tendencies in their business dealings due to a monochronic work environment stemming from institutional change that has occurred as a result of rapid industrialisation, high technology advances

and the politics of the Soviet era. This may lead Russian negotiators to sequential consideration of negotiation issues.

- The low level of individual initiative and the strong aversion for risk taking are explained by Beliaev *et al.* (1985: 105) in the following terms: “Each negotiator will be well trained in the party discipline; obedient, with a well-developed sense of hierarchy; hard-working and trained for stress, but with narrow horizons; loyal to the state and fearful of mistakes because of the risk of falling to the level of the average Soviet citizen; cautious, tough, and inflexible because of the strictness of their instructions; and willing to subordinate personal life to the demand of the position”. Russians may be more reluctant than negotiators from other cultures to make decisions beyond the boundaries of their strict authorisation (Morrison *et al.* 1994).
- As a result the Soviet style, still a part of the Russian style even after the Communist regime has fallen down, has been described as fairly tough and unilateral. Negotiators tended to make extreme initial demands, to view adversary concessions as weakness, to be stingy in concessions, and to ignore deadlines (Cohen 1980). On the other hand, the Soviet-style Russians were good payers and did respect contracts which were drafted in a very detailed way.
- Graham *et al.* (1992) note the consensus of description of the Soviet negotiators as ‘competitive’ and ‘uncompromising.’ They show in a laboratory experiment, that Russian negotiators tend to prefer a distributive strategy, and this with minimal negative effects on their (Russian) partner’s satisfaction, which tends to suggest that such competitive behaviour is considered locally as standard practice. With respect to values, norms, and expectations, Russian negotiators tend to achieve low joint gains. They tend also to be hierarchical and not oriented toward information sharing. Russian negotiators’ endorsement of the use of distributive tactics in combination with low information sharing leads them to get easily caught up in power contests over the distribution of gains as opposed to searching for ways of increasing gains (Brett *et al.* 1998).
- The ethical system of Russians widely differs from that of American according to Lefebvre: “Something that an American considers normative positive behaviour (for example, negotiating and reaching a compromise with an enemy, and even any deal with another individual), a Soviet man perceives as showing Philistine cowardice, weakness, as something unworthy (the word ‘deal’ itself has a strong negative connotation in contemporary Russian)” (Lefebvre 1983, quoted in Graham *et al.* 1992: 396).
- Communist centralised planning, based on five-year detailed plans, has not infused the Soviets with a sense of economic time which they lack. Given the

complexity of co-ordination between government bodies, the Soviet had renounced to meeting exact schedules. This is now partly contradicted by a greater emphasis on time tangibility due to the change to a market-oriented society and also by the monochronic tendencies described above. This results in nowadays Russia in a highly present and short-term oriented society where time behaviour during the negotiation may resemble what is described at the end of Chap. 8.

- Russia is now in a deep transition. The bureaucratic controls have been progressively relaxed giving birth to a new society with deep contrasts. New entrepreneurs almost Western-style, full of initiative but lacking professionalism and reliability, may look very far from the Soviet-style described above. However, what has been gained in terms of flexibility is largely compensated by the lack of reliability, opportunistic behaviour and the confusion between business and wild capitalism being largely the rule. Payments incidents and negotiated contracts which are never enforced are now frequent. Many new Russian entrepreneurs do not feel bound by normal business norms and contracts because either they ignore it or they view it as foreign and therefore inapplicable to their context.

Box 15.4

An article, published in an online magazine Executive Planet, lists several mismatches that can arise during the interaction between Russian and Western business people:

- Russian and Western business people tend to approach problems differently. Usually, Westerners will discuss problems only when they have a possible solution in mind. Russians, on the other hand, will bring up problems without necessarily producing a solution. For them, the formulation of a problem is just as important as finding a solution.
- As a result to this approach to problem solving, meetings and discussions often last longer than planned and do not necessarily keep to the agenda. However, at the same time, Russians are ready to accept a variety of outcomes.
- When Russians say “We will try to finish the work on time” or “Perhaps, it will work”, they mean that the outcomes of the venture may or may not be positive and that they are prepared to work in ever changing conditions.
- Because of these ever changing conditions and a highly unstable economic situation, Russians are not only always prepared for the worst. In contrast to Westerners, who respond to bad outcomes with actions — meetings, planning, etc., Russian are more likely to accept these outcomes.

Source: Compiled from “Russia’s Unique Business Environment” (2003) *Executive Planet*, January 24th, <http://www.executiveplanet.com>

Moreover, Russia has a body of contradictory, overlapping and rapidly changing laws and rules which lead to an unpredictable approach of doing business. Independent or impartial dispute resolution is quite difficult to obtain. The courts are not familiar with dealing in commercial and international matters. There have been some cases of dispute with Western firms. For example, in one of the cases an American partner ceased participation in its joint, citing: "A pattern of harassment, physical threats, attempted extortion and misinformation by the Russian partner, aimed at forcing (us) out". In this case the Moscow city government, supported liquidation of the venture and declared that continuous operation of the venture was illegal. According to the American partner, both the city and the Russian partner felt that they could make more money without the American partner, and therefore decided to drive him out. In such cases it is difficult to achieve justice in local judicial system. The only way out is to sell your share and get out of the venture.

Box 15.5

Contemporary Russian social reality is characterised by a growing gap between the rich and the poor. Because of quick enrichment of a small percentage of the population and, in many cases, corruption and connections to the criminal world, ordinary people in Russia have a strong distrust of their business elites. This distrust and dislike is reflected in a folk joke tradition, where the so-called "new Russians" are portrayed as corrupt, criminal and not incredibly educated individuals. Here are some examples:

- During the national "The Most Honest Businessman of the Year" competition, only the second and the third place were taken. The first place remained unsold.
- Novelty in the business literature: Author: A. Kalashnikov. Title: How to Solve Dispute with the Taxation Police.
- A New Russian comes to the government offices and says:
"I want to buy the space base Baikonur. How much?"
An official replies politely:
"You must understand, Sir, Baikonur is in Kazakhstan".
Long pause. . .
New Russian:
"Well, why are you so quiet?"
"Well, is there anything else I can tell you?"
"Of course! How much is Kazakhstan?"
- A New Russian comes to a jeweller and plonks a bar of gold on the counter.
"I need a ring!"
The jeweller takes out a catalogue and starts suggesting the designs:
"Here. I could make a ring with diamonds, and I can also offer you this. . .".
The New Russian interrupts:
"You don't get it. Just drill a hole in this bar!"

Doing Business in Poland, Hungary, and the Czech Republic

The eastern European countries comprise two groups; the Northern part has built an alliance called the Visegrad group (Hungary, Czech Republic, Slovakia and Poland). All these countries are part of the EU (after their entry in 2004), and their prospects are even more bright now. The transition towards full partners of the EU is going very fast and its expected that they will be at par with other EU countries within a decade. The group of Southern Balkan states has been traditionally less developed and highly parcelled. National identity is privileged over co-operation in an area where ethnic and religious diversity has always been quite strong. The following lines centre on the three main countries of the Visegrad group.

Poland Poland was one of the early adopters of reforms and after five years it is showing results. In 1994 GDP rose by 5%, the third growth year in a row. Even though GDP growth has slowed in recent years (0.8% in 2000 and 1.5% in 2001), economic changes have been considerable over a period of ten years. The Warsaw stock exchange was reopened in April 1991 after having been closed for almost fifty years. In the same year new foreign investment law was introduced to make investment conditions more attractive. To attract foreign investment, the finance ministry may exempt a company from income tax if the foreign partner's contribution exceeds ECU 2 million. Poland has received generous help from the West to develop an efficient infrastructure.

Remittance of profits in foreign currency is permitted and private land or property can be purchased or leased on long term (up to 99 years), after permission from the Interior Minister. Most of the investments are coming from Western Europe, especially Germany. Fiat invested U.S. \$2 billion and some \$5 billion have been invested in oil and petroleum sector by different countries. Poland is thus considered to have managed the transition period quite efficiently.

Firms and government from the United States have been very active in Poland. Since 1991 U.S. trade with Poland has been increasing by more than 100% per year. Polish imports from the U.S. reached more than \$1.8 billion in 2000. The trade started with agriculture but now consist also of manufactured goods, machinery, computers, telecommunication equipments, automobiles and even aircrafts. U.S. firms are among the top 10 largest import partners for Poland. However, Germany, Russia, U.K., Italy and France are still on the top. According to U.S. National Trade Board, Poland has been ranked as number one "Emerging Market". Poland is also the largest recipient of U.S. aid and assistance to Eastern Europe. Poland has supported and encouraged the

continuous presence of American and NATO forces in Europe and has supported U.S. towards its policies towards nuclear proliferation, regional cooperation, and in the Gulf war.

Poland is joining the EU (European Union) and making a lot of progress to become compatible with European Union rules and regulations. The new law on copyrights is one such example. Reduction in tax rates providing new tax holidays and controlling inflations are also steps taken toward this direction. The balance of payment is still in deficit but is structured in a way that affords positive interpretation. The main deficit post is merchandise trade, where imports are running about 10% higher than exports. Net inflow of capital is however very positive, showing a surplus of more than \$3 billion. However, nationalistic feelings are always strong in Poland as well as in other Eastern European countries, especially when they are neighbouring countries with which war and conflicts have been very acute over past centuries (see Box 15.6).

Box 15.6

Poland's Foreign Minister, Wladyslaw Bartoszewski, has said Warsaw "will try to respect the interests" of the Ukrainians in negotiations on the route for a new Russian gas pipeline to Europe, but insists that Kiev should continue to "defend its own position itself". He added that Warsaw had not yet taken its final decision on this gas pipeline project. The Kremlin wants a quick response from Poland on the construction of this 600-kilometre gas pipeline, which will enable Russia to boost its gas supplies to Western Europe by about 60 billion m³ a year. For some months now, Poland and Russia have been talking about the construction of this pipeline which should skirt round Ukraine and cross Polish territory from the border with Belarus to Slovakia (where it would link up with another gas pipeline which supplies the West directly with Russian gas). Moscow has repeatedly accused the Ukrainians of stealing Russian gas in transit through Russia, hence the idea of by-passing this former Soviet republic and, at the same time, depriving it of part of Russia's lucrative gas revenue. Warsaw nevertheless sees Kiev as its long-term strategic ally and, despite Russian pressure, continues to insist on including it in plans for gas exports to the EU. (AFP)

Source: "Poland at heart of negotiations on Russian gas pipeline link with EU", *Europe Energy*, July 13 2001.

EU is the main trading partner as there is a tremendous unrealized demand for Western goods. This provides enormous opportunities for not only MNCs but also for small and medium-sized firms from the West. American and

European companies are competing with each other for this market. For some sectors, such as computers and consumer electronics, there is tough competition coming from Asian firms. Due to an agreement between Poland and EU, signed in 1991 and implemented in March 1992, on tariff structure, European firms have been getting favourable treatment. As regard to infrastructure, Poland has developed a programmer for construction and modernisation of its motorways with a total cost of around \$6 billion. This will finish in the year 2007 and includes North-South and East-West highways. The World bank has given a loan of \$150 million for roads and bridges and the European Bank for Reconstruction (EBRD) has given a loan of \$35 million for improvement in some roads. (Cavusgil *et al.* 2002).

Hungary Hungary has been implementing economic reforms since 1968, but after 1989 these reforms aim more at replacing the system of central allocation of resources by market allocation and at the creation of equal legal conditions for local as well as foreign capital and enterprises in line with EU. The aim is also to increase the share of foreign enterprises in the economy as a whole. Attracting foreign capital has thus been one of the prime objectives of Hungarian reforms. Hungary is the only market where USA has invested more than any other single country. However, if we put all European countries together and look at EU vs U.S. investments, European investments are more than double. The largest investments are by Hunslet (U.K.), General Electric, General Motors, Ford and Suzuki (40% stake in a \$10 billion venture).

There is a stiff competition between the U.S. and European companies, while the local companies are not able to compete with foreign companies. Hungary has also signed an Association Agreement with the European Union and with the European Free Trade Association (EFTA). Hungary is also actively working for a revival of trade among former Eastern block countries. The most growing sectors include: telecommunication, pharmaceutical, cosmetics, oil and gas, electric power systems, plastic industry, chemicals, computers and software and food processing machinery. At present GM (U.S.), Ford (U.S.), VW/Audi (Germany) and Suzuki (Japan) are producing in Hungary. All these companies are increasing the local content to comply with the rules-of-origin of European Union. Hungary is also very active in outward foreign investment and Hungarian companies have invested in a number of EU countries, which is now increasing due to Hungary's entry into the EU.

The investment climate has been very favourable for foreign companies. Hungarian enterprises with a foreign partner pay 20% less tax on profit than a locally-owned company, if the foreign capital represents more than 20% of the total capital of at least 5 million forints. Foreigners are allowed free transfer of

funds in foreign exchange, whether the enterprise is in profit or not. Hungary is in advance of most other Eastern European countries, as its legal and institutional framework for foreign investments is developed, adequate and most of all functioning. Foreign investors are allowed to enter in any way they want, they may have a joint venture or a wholly-owned subsidiary. They may also buy state companies or just make portfolio investment. There are no restrictions. The exceptions include, the defence industry, media and acquisition of land. In some cases, foreigners may acquire land with prior permission of the government. There are also some tax exemptions and tax holidays available for some priority industries, firms with a certain level of foreign investment and firms achieving a certain level of revenues related to their gross investment. Duty free imports are also allowed for goods needed to establish a joint venture.

Box 15.7

Organisational culture in Hungary is changing together with the country's economic and legal systems. Legacy of the state-planned and controlled economy is still evident in the culture and unstable business environment exerts its own influence on people's behaviour. However, contact with the West also leaves its own mark on Hungarian business culture.

In formerly state-owned companies, strategic thinking is limited, managers are continuously struggling with liquidity problems, which leads to a short-term orientation, decision power is often confined to the top of the organisation. Difficulty in accessing needed information is a generic problem in Hungarian enterprises. Knowledge is traditionally equated with power and deliberate concealment of information is often used to gain competitive advantage. However, in general, Hungarians value social harmony, preservation of tradition and favourable image. Nevertheless, they do not make as much effort as Westerner to avoid conflict in the workplace, and human orientation is low.

Definition of success may differ between Hungarians and foreign negotiators. While for many western companies success means increased market share, growing share prices, sales and profits, Hungarians define success as survival of the company, solvency, maintenance of market share, job security, avoidance of staff reductions and functioning "according to plan". Such definitions are motivated by the sheer difficulty of survival in a turbulent economy.

A survey conducted in 1998 and based on the work of Hofstede's cultural dimensions discovered that tolerance of uncertainty in Hungary is higher than average, probably due to the constantly changing economic conditions. Power distance is relatively high; however, middle management is striving for its reduction. Some collectivism exists in organisations, however, there is a demand for more. Hungarian business people are slightly more masculine than feminine. At the same time, examination of the prior research shows a growing appreciation of feminine values. In particular, Hungarians dislike aggression.

Source: Based on Borgulya (2002).

Danis & Parkhe (2002) have studied a sample of 17 international joint ventures in Hungary. They show that Hungarian governmental control diminishes over time in partially privatised ventures, that is, when Western MNEs gradually acquire what were initially joint ventures (see Box 15.5). As noted by them (443):

Although governments in transition economies are clearly important stakeholders in negotiations (Brouthers & Bamossy 1997), our data suggest that their control over privatised ventures is likely to wane unless they are able to match foreign partners' contributions of critical resources over time. In one case we studied, for example, the foreign partner's equity stake increased from about a third to almost 70% in a two-year period. In a second case, the partner's stake grew from 40% to 100% within two years. In a third instance, the foreign partner increased its ownership from 51% to almost 100% over several years. In all cases, the Western and Hungarian managers alike cited the local partner's inability to match their partner's injection of capital as the key reason for the ownership realignment.

Box 15.8

Established in 1993, MA was a Hungarian-U.S. (51/49) joint venture and leading provider of mobile telephone products and services. The Hungarian parent was a formerly state-owned telecommunications company and the American partner a U.S. telecommunications firm expanding into new international markets. [...] In fact, managers acknowledged that the American partner's managerial values, practices, and systems strongly (and positively) influenced the venture during the first year, and that the Hungarian parent, lacking the technical and managerial expertise of the Americans, was initially a silent partner. But the influence of the American partner waned as the venture grew increasingly independent of the parent companies. A co-management structure was used initially in the venture, with each partner appointing its own manager. Partly due to some poor marketing decisions on the part of the Americans, and partly due to inherent difficulties in the dual management arrangement, conflicts arose to the point where the venture abandoned this structure. It was agreed that the Hungarian partner would nominate the new general manager (the CEO) and that the Americans would nominate a deputy general manager (the CFO). Both managers were Hungarian, though neither came from the Hungarian parent. As the new CEO gained the trust of the partners, particularly the Americans, expatriates were replaced with locals and the company came to be managed almost exclusively by the Hungarians within the next year or so. It was at this point that the venture began to develop its own unique managerial values, practices and systems. *Source:* Danis & Parkhe (2002: 452).

Czech Republic Czechoslovakia traditionally has had an advanced industrial base and its technology and products have been comparable with those of the West. Before the Second World War Czechoslovakia ranked as one of the most highly industrialised nations in Europe. Until about mid-1960s it was at par with Austria as regards GDP per capita, while at the time of dissolution, its per capita income was about 30% lower than that of Austria. As mentioned earlier, Czechoslovakia, along with Hungary and Poland was considered leader and had made great progress towards Western style market economy. The dissolution of Czechoslovakia into two independent nation states, the Czech Republic and Slovakia, on January 1, 1993 did complicate the task of moving towards a more open market economy. However, the entrance of both Czech Republic and Slovakia into the EU in 2004 has speeded up that task and it is expected that both these countries will be at par with a number of other EU countries.

Since the dissolution in Czech Republic thousands of businesses have been privatised, leased out and some have even been returned to their original buyers. In general, the Czech Republic has been quite successful in attracting foreign firms and huge investment are being made by Western firms such as a \$3 billion investment by VW and most of the famous consumer goods companies. More than 100,000 small and medium-sized trading and services firms were auctioned. There have been several well-publicized cases of both Japanese and Western manufactures switching the location of their new investments from the Iberian peninsula and Greece to countries such as the Czech Republic (Dunning 1994). More than half of the country's trade is with neighbouring European countries: Germany, Austria, Slovakia and Poland. The U.S. holds around 4% of overall Czech imports. American firms are however quite active. In 2002, there was an investment commitment of over \$2 billion by the U.S. firms (Cavusgil *et al.* 2002).

A relatively small size, homogeneous population in favour of reforms and tight monetary and fiscal policies have helped its government to quickly overcome the transition period and division of the country without any political or economic crisis. Czech Republic trade relations with Germany and Austria are very useful. Almost 30% of its exports consist of heavy machinery and equipment and another 30% of semi-finished goods. The products exported from the Czech Republic include: steel, cement, timber, building stones, sand, leather, glass and ceramics. In the case of imports, almost 40% consists of machinery and transportation equipment. Automobiles, computers and service machines make up for another 20%, while consumer products represent only 25% of total goods brought into the country. At present, more than 70% of the total output comes from the private sector.

The Czech Republic's highest priority was a full-membership of the EU, which it has achieved, and Organisation of Economic Cooperation and Development (OECD). The rules and regulations and legal norms have thus been adjusted to be in accordance with OECD and EU. Foreign and domestic investors are treated equally and both are subject to the same taxation and laws.

All sectors of the economy are open to foreign investors — sectors such as defence, industry, national and cultural monuments, salt production and distillation of pure alcohol are the only exemptions. In all other sectors 100% foreign ownership is possible. The country is abiding by international copyright conventions and the government ensures that the protection of intellectual property rights match with the EU, Czech's are however tough negotiators (see Box 9).

Box 15.9

Budejovicky Budvar, which makes the original Budweiser lager beer, is perhaps the most well-known Czech company. Its most famous brand Budweiser Budvar is exported to 30 countries. More than 50% of its production is sold outside the country. The production has risen from 490,000 hecto litre in 1991 to 755,000 hecto litres in 1994 and to 1 million hecto litres in 1995. While its demand is increasing abroad, it is also affecting the local demand. As a result the demand is always higher than supply.

Budvar is a small brewery, even according to Czech standards. The industry is dominated by three other breweries. A bottle of beer is cheaper than a bottle of mineral water or coca cola. Budvar biggest problem is however, its dispute with Anheuser-Busch, the U.S. giant brewery which also makes Budweiser. The decades-old dispute about who has the right to use the brand name, Budweiser, is keeping Budvar from expansion into North American markets.

The Budvar is still state-owned and has no hurry to privatise the company. It is said that first they want to solve the brand name dispute with the American company. At present, the parties are trying to reach an agreement but the Czech side does not seem to be in a hurry. The company is expanding in Europe and has a very sound position.

Source: Financial Times, Exporter 8, April 18 1995.

Conclusion

Changes in the economic and social environment of the Eastern and Central European countries have to be monitored carefully: Poland, Hungary, Slovakia and the Czech Republic are members of the European Union (starting mid-2004), along with some other countries. On the other hand, Russia and many

of the former republics of the ex-USSR are experiencing a more difficult move out of the state-run economy towards a free market economy. The turmoil is not only economic, it is social and political as well. This imposes special constraints on the attitudes of international business negotiators in three areas: (1) only a long-term commitment makes sense in such environments; (2) extreme precautions have to be taken in selecting partners: the written agreements cannot solely be relied upon; (3) the pace of changes in these transitory economies may further speed up when they will have enacted the basic regulations for a free-market.

Chapter 16

Business Negotiations Between Japanese and Americans

John L. Graham and Yoshihiro Sano

More than 35 years ago, anthropologist E. T. Hall (1960: 87) warned, “When the American executive travels abroad to do business, he is frequently shocked to discover to what extent the many variables of foreign behavior and custom complicate his efforts”. Despite Hall’s comments, little attention has been paid to the “typically ethnocentric American” sitting across the table from “inscrutable Japanese customers”, trying to negotiate an acceptable business contract. This chapter attempts to shed light on this circumstance. The topic is most worthy of consideration since business negotiations with Japanese often fail for seemingly inexplicable reasons and because most others have ignored such questions.

Conceptual Framework: A Framework for Understanding Negotiation Processes

The most difficult aspect of international business negotiations is the actual conduct of the face-to-face meeting. Assuming that the best representatives have been chosen, and assuming those representatives are well-prepared, and that situational factors have been manipulated in one’s favor, things can still go sour at the negotiation table.

Obviously, if these other preliminaries haven’t been managed properly, things will go wrong during the meetings. Even with great care and attention

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to preliminary details, managing the dynamics of the negotiation process is almost always the greatest challenge facing Americans seeking to do business with Japanese.

Going into a business negotiation, most people have expectations about the “proper” or normal process of such a meeting. Based on these expectations, progress is measured and appropriate bargaining strategies are selected. That is, things may be done differently in the latter stages of a negotiation than they were in the earlier. Higher risk strategies may be employed to conclude the talks — as in the final two minutes of a close football game. But all such decisions about strategy are made relative to perceptions of progress through an expected course of events.

Differences in the expectations held by parties from different cultures are one of the major difficulties in any cross-cultural business negotiation. Before we discuss differences between the processes of business negotiations in Japan and the United States, however, it is important to point out similarities. In both countries, business negotiations proceed through four stages: (i) non-task sounding; (ii) task-related exchange of information; (iii) persuasion; and (iv) concessions and agreement.

The first stage, non-task sounding, includes all those activities which might be described as establishing a rapport or getting to know one another, but it does not include information related to the “business” of the meeting.

The information exchanged in the second stage of business negotiations regards the parties’ needs and preferences, or, stated more precisely, the parties’ subjective expected utilities of the various alternatives open to the interactants.

The third stage, persuasion, involves the parties’ attempts to modify one another’s subjective expected utilities through the use of various persuasive tactics. The final stage of business negotiations involves the consummation of an agreement which often is the summation of a series of concessions or smaller agreements.

Despite the consistency of this process across cultures, the content and duration of the four stages differ substantially between the two cultural groups (see Table 16.1). Compared to the Japanese, Americans spend little time establishing a relationship.¹

¹ It is imperative that we avoid stereotyping the behavior of Japanese and American managers, In Graham & Sano (1989), we discuss how norms in Japan vary across age groups and industries. Moreover, personalities may be even more important than cultural norms, particularly in business negotiations. Even so, an understanding of norms, particularly when there are major differences, should help negotiators on both sides of the table be more patient.

The typical Japanese negotiation may involve a series of non-task interactions and even ceremonial gift giving. Witness the media attention given to the very large *kosai-hi* (literally, entertainment expenses) that once were typical of business dealings in Japan: “While the Japanese defense budget is 0.9% of the country’s GNP, corporate wining and dining accounts for 1.5% of the total national output” (Time 1981). In the 1990s, since the steep decline in the Japanese economy, Japanese executives have cut back on the “excesses” of the 1980s. Even so, a greater emphasis on business entertainment by the Japanese will be noticeable. To the American critic, this may seem a waste. However, the Japanese make a great effort in the beginning to establish a harmonious relationship.

In America, the second stage (exchanging task-related information) is relatively direct, with clear statements of needs and preferences. For the Japanese, this exchange of information is the main part of the negotiation. A “complete” understanding is imperative. The Japanese are reported to ask

Table 16.1: Four stages of business negotiations.

| | Japan | United States |
|---|--|---|
| 1. Non-task sounding | Considerable time and expense devoted to such efforts is the practice in Japan. | Relatively shorter periods are typical. |
| 2. Task-related exchange of information | This is the most important step — high first offers with long explanations and in-depth clarification. | Information is given briefly and directly. “Fair” first offers are more typical. |
| 3. Persuasion | Persuasion is accomplished primarily behind the scenes. Vertical status relations dictate bargaining outcomes. | The most important step, minds are changed at the negotiation table and aggressive persuasive tactics used. |
| 4. Concessions and agreement | Concessions are made only toward the end of negotiations — a holistic approach to decision making. Progress is difficult to measure for Americans. | Concessions and commitments are made throughout — a sequential approach to decision making. |

“endless” questions while offering little information and ambiguous responses. Japanese negotiators spend much more time trying to understand the situation and associated details of one another’s bargaining position.

Americans tend to spend the most time in the third stage of negotiation — persuasion. Americans openly disagree and use aggressive persuasive tactics such as threats and warnings. Alternatively, Japanese take the time to understand one another during the first two stages of the negotiation, so little persuasion is necessary, and they avoid confrontations and respond to threats by a change of subject, a silent period, or withdrawal. For Japanese, it is more important to maintain the relationship than to be frank and open.

Regarding the fourth and final stage of business negotiations, Americans tend to make concessions throughout, settling one issue, then proceeding to the next. Thus, the final agreement is a sequence of several smaller concessions, and progress is easy to measure. The Japanese tend to make concessions at the end of the negotiation, and agreements are concluded rather abruptly from the American point of view. Such differences are a major point of procedural conflict for trans-Pacific negotiations.

The following presentation of recommendations regarding face-to-face meetings with Japanese clients is ordered according to the four stages typical in most business negotiations. First comes non-task sounding.

Non-Task Sounding

Americans always discuss topics other than business at the negotiations table (e.g. the weather, family, sports, politics, business conditions in general), but not for long. Usually, the discussion is moved to the specific business at hand after 5 to 10 minutes. Such preliminary talk is much more than just being friendly or polite. Before getting to the “business” at hand, it is important to learn how the other side feels this particular day. One can determine during non-task sounding if a client’s attention is focused on business or distracted by other matters, personal or professional.

Learning about a client’s background and interests also provides important cues about appropriate communication styles. To the extent that people’s backgrounds are similar, communication can be more efficient. Engineers can use technical jargon when talking to other engineers. Golfers can use golfing analogies “the deal is ‘in the rough’” — with other golfers. Those with children can compare the cash drain of “putting a kid through college”, and so on.

During these initial stages of conversation, judgments, too, are made about the “kind” of person(s) with whom one is dealing: Can this person be trusted?

Will he be reliable? How much power does she have in her organization? All such judgments are made before business discussions even begin.

So there is a definite purpose to these preliminary non-task discussions. Although most people are often unaware of it, such time almost always is used to size up (or “sound”, in the nautical sense) one’s clients. Depending on the results of this sounding process, proposals and arguments are formed using different jargon and analogies. Or it may be decided not to discuss business at all if clients are distracted by other personal matters or if the other person seems untrustworthy. All this sounds like a lot to accomplish in 5 or 10 minutes, but that’s how long it usually takes in the United States. This is not the case in Japan; the goals of the non-task sounding are identical, but the time spent is much longer.

In the United States, firms resort to lawyers when they’ve made a bad deal because of a mistake in sizing up a client or vendor. In Japan, lawyers are not used for such purposes. Instead, Japanese executives spend substantial time and effort in non-task sounding so that problems do not develop later. Japanese clients and suppliers will want to spend much more time in non-task sounding than Americans will want, and Americans must reconsider, from the Japanese perspective, the importance of this stage of bargaining if negotiations with Japanese are to be successful.

Negotiations with Japanese firms often include three levels of executives — top executives, middle managers, and operational staff. Depending on the level of the negotiations, the process of non-task sounding is somewhat different, so we will first discuss recommendations for non-task sounding among top executives, and then we will discuss the processes among middle managers and operational staff.

Non-Task Sounding for Top Executives

The role of the top executive in Japanese negotiations is usually ceremonial in nature. Ordinarily, top executives are brought into negotiations only to sign the agreement, and this only after all issues have been settled and agreed upon by lower-level executives. On occasion, top executives are included earlier to communicate commitment and importance. In either case, the main activity of top executives is non-task sounding.

The ceremony, formality and apparent triviality will seem very out of place for American executives, because to most Americans it will seem “unnatural” to avoid discussing specific business and to leave the persuasion to others. They need, however, a very clear understanding of their role in the negotiation,

though getting them to make adjustments in their behavior may be difficult. It could be helpful to supply a long list of “non-task sounding” questions for them to ask during such sessions. It is important, too, that American executives understand that *what* is said is not so important, from a Japanese perspective, as *how* things are said.

The Japanese top executive is making gut-level judgments about the integrity, reliability, commitment and humility of his American counterpart particularly if the Japanese is considerably older or if his company is more powerful. The non-task sounding provides a context or vehicle for making such judgments. To the Americans, the “content” of early conversations — words and verbal information may seem inane, but the Japanese regard as critical the non-verbal messages and feelings the *wa* (interpersonal harmony) and *shinyo* (trust) such talk conveys.

Non-Task Sounding for Middle-Level Executives

Establishing business relationships in the United States typically involves certain procedures, such as a letter of introduction, followed by a phone call for an appointment, then a meeting at the client’s office (including 5 to 10 minutes of non-task sounding followed by the business proposal), and perhaps lunch, with more business talk. Almost always, after 5 or 10 minutes of non-task sounding, an American client will ask, “Well, what can I do for you?”

In Tokyo, the typical routine goes something like this: The initial appointment will be set up and attended by a *shokai-sha* (third-party introducer), and the Japanese client will invite the American party, including the *shokai-sha*, for a late afternoon (approximately 4 p.m.) meeting at the Japanese firm’s offices. There, the Americans will meet the concerned operational-level personnel for a “chat”, not to include business talk or proposals. At around 6 p.m., the Japanese suggest dinner. Ordinarily, they will pick the restaurant and pick up the tab. Americans will not have a chance to “fight” for the bill because they will never see one. At this point, business talk still is inappropriate. After dinner, the Japanese will suggest a few drinks, and conversation with the bar hostesses will be the bill of fare. The sessions ordinarily go on at past 11 p.m. and end with the scheduling of future meetings. While the 1990s have witnessed cutbacks in the lavish expenditures of the 1980s, the need for more informal non-task time in Japan persists.

Throughout the introductions, the business of the meeting, the purposes of the visit, are not discussed. Again, vague and indirect references to a future relationship may be made, but only in response to similar comments by the

Japanese. The Japanese will be looking for integrity, sincerity, a cooperative attitude *shinyo* and *wa*. Economics will come later.

Task-related Exchange of Information

Only when the non-task sounding is complete, when *wa* has been established, should business be introduced. American executives are advised to let the Japanese side decide when such substantive discussions should begin. Typically, the Japanese will signal their readiness for an exchange of task-related information, after tea or coffee has been served, by remarks such as, “Can you tell me more about your company?” or “Tell me, what has brought you to Japan?”

A task-related *exchange* of information implies a *two-way* communication process. However, observations suggest that when Americans meet Japanese across a negotiating table, the information flow is unidirectional from Americans to Japanese. The Japanese appear: (i) to ask “thousands” of questions; and (ii) to give little feedback. The first severely tests American negotiators’ patience, and the latter causes them great anxiety. Both can add up to much longer stays in Japan (compared to negotiating in other countries), which means higher travel expenses.

Giving Information

The most obvious problem associated with providing information to Japanese clients will be doing so in another language. It is true that there are many more Japanese executives who understand and speak English than there are Americans who understand and speak Japanese, thus meetings on both sides of the Pacific usually can be handled in English. Americans should be careful, however, of misunderstandings that can arise from the Japanese side’s limited knowledge of English. Often, confusion can result because Japanese executives are too polite to indicate they do not understand. When doubt exists, Americans should use visual media (slides, brochures, videos, etc.), and should provide copies of written support materials.

American negotiators should provide an interpreter, if the Japanese side has not, and even then there may be critical stages when an interpreter should be included on the American negotiation team as well. Even with the best of interpreters, language problems still can be sources of misunderstandings. Sullivan and Kameda (1982: 72–73) suggest that:

Americans and Japanese have different conceptualizations of the word *profit* and that these differences lead to what general semanticists call *bypassing*. Bypassing occurs when two people use the same word. Japanese and American negotiators, usually communicating in English, initially may think they are in agreement regarding profit and profitability discussions when in fact they are not. This false agreement can lead to bewilderment, confusion, frustration, and perhaps failure in future negotiations.

Once comfortable with the language, attention can be turned to more subtle aspects of giving information to the Japanese. The first of these has to do with the order of presentation. In the United States, negotiators tend to say what they want and explain the reasons behind the request only if necessary. That's why the task-related exchange of information goes quickly in America.

Things don't work this way in Japan. Very long explanations come first, then the request/proposal. Accordingly, it is not surprising to hear the American executives' complaints about the "1000 questions". The Japanese expect long explanations.

American negotiators should be prepared with detailed information to back up their proposals and should *include appropriate technical experts on negotiation teams*, as their contribution will be required. Finally, we recommend the Japanese style of presentation, with background and explanations presented first and the actual request/proposal made only toward the end. While such an approach will take longer, with Japanese clients it will obtain better results.

Another reason for the "1000 questions" has to do with the consensus decision-making style of Japanese organizations. Several people on their side may ask for the same information or explanation. Most Americans find this repetitive questioning irritating and even insulting. "Didn't they believe me the first time?" Such tactics should be viewed in light of the Japanese consensus decision-making style when everyone must be convinced, not just the key decision maker. To some degree this questioning may be a tactic to make sure explanations hold up under close scrutiny. A degree of patience with this process is recommended, along with the kind of detailed preparations necessary to prevent inconsistent answers.

Americans tend to make initial offers they consider "fair" or near what they expect the eventual agreement to be, while Japanese executives expect to spend time in bargaining and tend to ask for more initially. Thus, Americans dealing with Japanese clients should *present second lowest offers first*.

The same can be anticipated from them. They initially may ask for more than appears reasonable, but they will move from that position, albeit with reluctance. After each party has supported its “second best offer” with detailed explanations, the Japanese consider it “fair” behavior to move however reluctantly from their initial position. American bargainers should guard against their own tendency to make concessions during the exchange of information. Often they are impatient with the process and make concessions before they have determined what the Japanese negotiators’ interests and positions are. Americans need to constrain their natural urge to get on to stage three, persuasion, via making concessions in the hope that the Japanese will reciprocate.

Getting Information

Hopefully Japanese clients will be the ones seeking American business, because in such situations the Japanese will be the ones making the proposals and supplying more information than appears necessary. In situations where American firms initiate contact or try to make sales, they experience great difficulty in getting feedback on their proposals. For example, if they ask a group of Japanese executives what they think of an American firm’s price quote, the Japanese will often say, “Oh, it looks fine”, even if they think the quote is totally unacceptable. Americans need to consider, for a moment, the Japanese reasons for such “strange” behavior.

In the first place, no Japanese, *especially not the boss*, will venture to speak for the entire group until a consensus has been reached. Second, the Japanese executives wish to maintain the *wa*, and, from their point of view, a negative (albeit honest) answer during the negotiation may disrupt the harmony already established. Finally, even the most experienced American negotiator may not be able to read the subtle, non-verbal, negative cues that another Japanese executive would read (via tone of voice, body movements, pauses in speech, looks of surprise, etc.) along with the politely offered phrase, “Oh, it looks fine”.

Besides their language differences, the non-verbal behaviors of Japanese and American executives differ. The Japanese conversational style in both simulated and real business negotiations includes much less eye contact than the American style. This difference seems to cause problems for both sides. The Japanese report discomfort at the “aggressive staring” of the Americans. Americans suggest that “something must be wrong” because the Japanese won’t look them in the eye. Eye contact and movements, ordinarily a source of

information about the other person's feelings, don't communicate across cultural barriers.

Most people process such information as the facial expression of a client reacting to a proposal, etc., but in the United States such processing often is subconscious. Attention should always be paid to this channel of information, however. Many American executives report great frustration in trying to read Japanese negotiators' "poker faces". In our studies of videotapes of simulated business negotiations involving Japanese we found little difference in the quantity of facial expression. Rather, the inscrutability has more to do with the timing and cultural rules for facial expressions. This, then, is the reason we hear very experienced Americans say, "I make deals all over the world. Everywhere I go I can pretty much tell where I stand with my clients — everywhere, that is, except Japan". How, then, are Americans ever to get at the *honne*, or true mind, of Japanese negotiators?

At the negotiation table, the *tatemaie* (truthful, official stance) often isn't very helpful. An informal channel of communication, which can be established only between and through the lower levels of the negotiation teams, is the only way Americans can become privy to the *honne*. This, then, is the primary reason for including lower-level executives on negotiation teams. Besides, it would be too difficult, without some division of efforts, to handle both formal communications at the negotiating table and informal communications after hours.

Management of the informal channel of communications is critical for efficient and successful negotiations, as it can be a delicate undertaking. During the non-task sounding activities, lower-level members of the American team should be assigned the task of establishing rapport with the operational level managers on the Japanese side. Then, throughout the task-related exchange of information and the rest of the negotiations, they should invest in after-hours nurturing such relationships. They can begin by simply asking the selected and/or indicated Japanese executive(s) out for a drink "to solve our companies' problems". The Japanese will be looking to open such a channel of communication, and the Americans should be alert for such overtures.

Once this informal channel has been opened, it will be used for aggressive persuasive tactics (discussed later) and to learn how the Japanese really feel about proposals and the associated arguments. After hours, such information is communicated in restaurants, over drinks, and at bath houses. It emanates from and is transmitted to all members of the Japanese negotiation team. While everyone knows about this informal channel of communication, it is critical that it remains "under the table", and any reference to such a channel (e.g. "Suzuki-san told Mr Smith last night that . . .") will lead to elimination of the "leak" by immediate dismissal of Mr Suzuki from the negotiations.

The following illustrates the importance of this informal channel. A large American firm sought to acquire a smaller Japanese firm. Talks between executives of the two companies had not been fruitful. Although the Japanese executives showed initial interest in the deal and the American firm had a final proposal ready, the Japanese seemed to be hesitant. The American side decided on a wait-and-see strategy, and nothing happened for almost six months. Then, a lower-level manager of the American firm received a call from an acquaintance (they had played golf and had a drinks together a few times) asking if they could have drinks. When they met, the Japanese explained the delays: “I have something to tell you that just couldn’t be talked about by my boss to your boss . . .” He went on to explain the primary problems, from the Japanese point of view, which were with the acquisition price and the renaming of the company. Once these were out in “the open” (the informal “gut spilling” by these lower-level players was never discussed), the companies were able to deal with both issues. The Japanese side simply felt it inappropriate to voice such objections to a higher-status buyer and potential owner at the negotiation table, using a formal communication channel.

Persuasion

In Japan, a clear separation does not exist between task-related exchange of information and persuasion. The two stages tend to blend together as each side defines and refines its needs and preferences. Much time is spent in the task-related exchange of information, leaving little to “argue” about during the persuasion stage. Indeed, Robert March (1982: 97) reports that Japanese negotiators tend to prepare for negotiations in a way that differs greatly from how Americans prepare:

They [Japanese negotiators] developed defensive arguments with no consideration of persuading or selling or converting the other side. Nor did they consider what the other side might be thinking or offering, nor of anticipated strategies, nor of any concession strategies.

A strong consensus was reached based on the arguments supporting their position after the leader had reviewed these and everyone had noted them down. There was strong group cohesion.

However, from the American perspective, persuasion is the heart of a negotiation. Once it is determined what each side wants, then “the fun” begins

— trying to change the other side's mind and bring them closer to one's own side's proposal. Many persuasive tactics can be applied, and often are, to change clients' minds. Researchers at the Kellogg School of Business Administration at Northwestern University have come up with a list of such persuasive tactics (Table 16.2). We have observed Americans using all such persuasive tactics.

Table 16.3 is a list of persuasive tactics considered appropriate in Japan. One of the primary differences between American and Japanese bargaining styles has to do with the importance of the role or power position of the bargainer.

Relationships in Japan, whether personal or business, are vertical in nature. A simple analogy demonstrates this: bargaining in Japan is like an interaction between father and son, while in America it is like that of two brothers. The point is, the repertoire of persuasive tactics available to bargainers in Japan is prescribed by status/power relations. Buyers, playing the role of "father", can say things to sellers that sellers would not even consider saying to buyers. Alternatively, buyers and sellers in the United States are on much more of an equal footing (although still not completely equal).

Another important factor in Japan is where specific tactics are used. That is, at the negotiation table, bargainers are limited to the use of questions, self-disclosures, and other positive tactics that influence behaviors. Aggressive influence tactics, which can be used only by negotiators in high power/status positions, should be communicated through the low-level, informal communication channel. Even there, threats, commands, etc., are subtle and indirect. This makes establishing an informal channel of communication doubly important to the American side, because it not only can provide a "reading" of Japanese clients but will allow them to employ persuasive tactics that would be completely inappropriate (from the Japanese perspective) at the formal talks.

To sum up, if an impasse is reached with Japanese clients, rather than trying to persuade them in the usual American manner, it is appropriate to use the following nine persuasive tactics, in order and in the specified circumstances:

- (1) Ask more *questions*. The single most important consideration is the use of questions as a persuasive tactic. This is true not only in Japan but anywhere in the world, including the United States. Chester Karrass (1970) in his book, *The Negotiation Game*, suggests that sometimes it is "smart to be a little bit dumb" in business negotiations. Ask the same questions more than once; for example, "I didn't completely understand what you meant — can you please explain that again?" If clients or potential business partners have good answers, then perhaps it is best to compromise on the issue. Often, however, under close and repeated scrutiny their answers are not

Table 16.2: Bargaining tactics, definitions, and examples (Anglemar & Stern 1978).

POSITIVE INFLUENCE TACTICS

Promise. A statement in which the source indicates his intention to provide the target with a reinforcing consequence which source anticipates target will evaluate as pleasant, positive, or rewarding. "If you can deliver the equipment by 1 June, we will make another order right away."

Recommendation. A statement in which the source predicts that a pleasant environmental consequence will occur to the target. Its occurrence is not under the source's control. "If you keep the company name after the acquisition, then your present customers will stay with the company."

Reward. A statement by the source that is thought to create pleasant consequences for the target. "This negotiation is progressing smoothly because you have prepared well."

Positive normative appeal. A statement in which the source indicates that the target's past, present, or future behavior was or will be in conformity with social norms. "Lowering your price in light of the new information will demonstrate your interest in good principles of business."

AGGRESSIVE INFLUENCE TACTICS

Threat. Same as promise, except that the reinforcing consequences are thought to be noxious, unpleasant, or punishing. "If you insist on those terms we will have to find another suitor for our company."

Warning. Same as recommendation, except that the consequences are thought to be noxious, unpleasant, or punishing. "If we can't get together at this stage, few other companies will be interested in your proposal."

Punishment. Same as reward, except that the consequences are thought to be unpleasant. "You can't possibly mean that. Only a fool would ask for such a high price."

Negative normative appeal. Same as positive normative appeal, except that the target's behavior is in violation of social norms. "No one else we deal with requires that kind of guarantee."

Command. A statement in which the source suggests that the target performs a certain behavior. "It's your turn to make a counter offer."

INFORMATION EXCHANGE TACTICS

Commitment. A statement by the source to the effect that its future bids will not go below or above a certain level. "We will deliver the equipment within three months, and at the price we originally quoted."

Table 16.2: Continued.

Self-Disclosure. A statement in which the source reveals information about itself. “My company now requires an ROI of at least 15% during the first year.”

Question. A statement in which the source asks the target to reveal information about itself. “Why are you asking for such a high royalty payment?”

very good. When their weak position has been exposed, they will be obligated to concede. Questions can elicit key information, being powerful yet passive persuasive devices. Indeed, the use of questions is a favored Japanese tactic which they will use against you.

- (2) *Re-explain* your company’s situation, needs, and preferences.
- (3) Use *other positive influence tactics*.
- (4) If still dissatisfied with the Japanese response, try *silence*. Let them think about your proposal and give them an opportunity to change their position. Be aware, however, that the Japanese are the world’s experts at the use of silence and that your Japanese clients are likely to use it frequently.
- (5) If tactics 1 through 4 produce no concessions, change the subject or call a recess and put the *informal communication channel* to work. At this level, it would be appropriate, rather than going directly to more aggressive tactics, to try tactics 1 through 4 again. Continuing to ask questions and offer explanations may cause new information to surface that could not be broached at the negotiation table.

Table 16.3: Persuasive tactics appropriate for negotiations with Japanese.

| At the Negotiation Table | Informal Channels and Buyers Only |
|---------------------------------|--|
| 1. Questions | 1. Aggressive influence tactics |
| 2. Self-disclosures | |
| 3. Positive influence tactics | |
| 4. Silence | |
| 5. Change subject | |
| 6. Recess and delays | |
| 7. Concessions and commitments | |

- (6) Only in special circumstances and with an awareness of the great risk involved should *aggressive tactics* be used with Japanese. They should be used only when the American company is clearly in the stronger position (e.g. monopoly power, larger size, the Japanese company has come courting), and they must be carried out only via the informal channel in the most indirect manner possible. Rather than an American saying, "If your company can't lower its price, then we'll go to another supplier", it would be better if he said, "Lower prices on the part of your company would go a long way toward our not having to consider other options available to us".

Even then, the use of aggressive persuasion tactics probably will damage *wa*, which in the long run may be to the American company's disadvantage. If power relations ever shift, the Japanese will be quick to exploit the change of events. If the American side exercises restraint and maintains the *wa*, then the Japanese, if and when power relations shift, will consider the American company's interests.

This latter point is difficult for most Americans to believe. "Why should they consider our interests?" We have, however, witnessed Japanese executives behave in this way several times. For example, some years ago, International Multi-Food Company (IMFC) sold franchise rights for the Mr Donut chain to Duskin Ltd. in Japan. Initially, IMFC provided the know-how (operations and marketing) for a successful venture in Japan. Indeed, ten years later the franchise revenues from Duskin exceeded the total profits IMFC made from its U.S. operations. When, IMFC executives met with Duskin to re-negotiate the franchise agreement, they anticipated changes in the agreement (reduced royalties, etc.) to reflect the change in power relations. Certainly, an American franchisee would have demanded such an adjustment. However, because IMFC initially had been careful to maintain *wa* with the Japanese clients, the president of Duskin simply offered to renew the agreement. Needless to say, the IMFC executives were pleasantly surprised.

- (7) If tactics 1 through 6 have not produced concessions by the Japanese, we suggest that they employ the *use of time*. This tactic requires the cooperation and understanding of the American home office.

Give the Japanese time to consider new information and time to reach a consensus. They almost never make concessions immediately following persuasive appeals, because the entire group must consult and agree. This takes time. Unfortunately, American bargainers seem to find the use of the time tactic most difficult. "Letting things hang" goes against their nature, but it may be necessary, in the hope that the Japanese will run into their

time limits before you run into yours. Consensus decision making and their long-term approach to business deals seem to enhance the effectiveness of tactical delays for Japanese bargaining with Americans.

- (8) The next persuasive tactic that can be used with Japanese clients is asking the *shokai-sha* to arbitrate differences by calling the Japanese clients and serving as a go-between. Though *shokai-sha* often successfully settles otherwise irreconcilable differences, serious consideration should be given to making concessions before calling in *shokai-sha*, because third-party arbitration ordinarily will work *only once*.
- (9) As a last resort, bring together top executives of the two companies to see if that will stimulate more cooperation using a *top-down approach*. Such a tactic is, however, fraught with danger, particularly if negative influence tactics have been used in the past. A refusal at this stage means the business is finished.

To conclude our discussion of persuasive tactics, we want to emphasize the importance of our recommendations. A mistake at this stage, even a minor one, can have serious consequences for Japanese/American cooperation. American managers will have to be doubly conscientious to avoid blunders here because the Japanese style of persuasion is so different and, apparently, cumbersome.

Remember that the Japanese are looking to establish a long-term business relationship of mutual benefit. Threats and the like do not fit into their understanding of how such a relationship should work. They are not in a hurry, because they are concerned about *wa* and cooperation in the long run. We recommend, moreover, that you adopt a Japanese approach to persuasion when bargaining with Japanese clients and business partners. Such an approach may take longer, but, in the end both companies will benefit by using it. Finally, smart American negotiators will anticipate the Japanese use of the nine persuasive tactics described in this section of the chapter.

Concessions and Agreement

The final stage of business negotiations involves concession making, building toward agreement. Negotiation requires compromise. Usually, both sides give up something to get even more.

However, the approaches used for compromise differ on the two sides of the Pacific. Americans and other Western business executives tend to take a sequential approach to solving complex problems. That is, “Let’s discuss and settle quantity, then price, then delivery, then after-sale service”, and so on. Alternatively, the Asian approach is more *holistic* — looking at all issues

simultaneously and not agreeing on any single issue until the end. Americans often are very upset by such differences in style of concession making.

American managers report great difficulty in measuring progress. "After all, in America you're half done when half the issues are settled". In Japan, nothing seems to get settled. Then — surprise — the negotiation is done. Frequently, impatient Americans make unnecessary concessions right before agreements are announced by the Japanese.

These difficulties reflect more differences than just in decision-making styles (sequential vs. holistic). The differences go deeper than that. In the American view, a business negotiation is a problem-solving activity, the solution being a deal that suits both parties. From the Japanese standpoint, a business negotiation is a time to develop a business relationship with the goal of long-term mutual benefit. For the Japanese the economic issues are the *context*, not the *content*, of the talks. Settling any one issue is not really so important. Such details will take care of themselves once a viable, harmonious business relationship is established. Once the relationship has been established, signaled by the first "agreement", then the other "details" are settled quickly.

American bargainers in Japan should expect this holistic approach and should be prepared to discuss all issues simultaneously and in what may appear to be a haphazard order. Progress in the talks should not be measured by how many issues have been settled. Rather, Americans must try to gauge the quality of the business relationship by watching for the following important signals of progress:

- higher-level Japanese executives being included in the discussions;
- their questions beginning to focus on specific areas of the deal;
- a softening of their attitudes and positions on some of the issues, such as, "Let us take some time to study this issue";
- at the negotiation table increased talk among themselves in Japanese, which may often mean they're trying to decide something; and
- increased bargaining and use of the lower-level, informal channels of communication.

A crucial part of preparing for negotiations is *deciding upon and writing down* planned concession strategies. Americans need to follow such strategies with care, because "trading" concessions will not work with Japanese bargainers who will settle nothing until everything can be settled. After all issues and interests have been exposed and discussed fully, to help establish the relationship, make concessions on *minor issues first*.

Besides following a plan in making concessions, American negotiators in Japan should take care that concessions are made following recesses in the

talks, not at the negotiation table the first time the topic is broached. It is better to reconsider each concession away from the social pressures of the formal negotiations. Again, this is a Japanese practice. Because of the nature of their consensus decision-making process, you will find that the Japanese frequently “have to check with the home office”. This is a negotiation practice which Americans would do well to emulate, particularly in Japan. Having limited authority can be an important check on “run-away” concession making.

In conclusion, American managers will spend more time putting deals together with Japanese clients or partners than with other Americans. If the negotiation processes are handled adroitly, the U.S. negotiators can look forward to long, mutually beneficial business relationships with Japanese partners.

Chapter 17

Negotiating with the Chinese: A Process View

Pervez N. Ghauri and Tony Fang

Introduction

The People's Republic of China (PRC) started to open up its economy to the rest of the world in December 1978. Since then, Western business communities have been enthusiastic about China — the world's largest emerging market with more than one billion consumers. The Western enthusiasm for China decreased somewhat during a period following the Tiananmen Square incident in June 1989. But it rebounded and increased even more vigorously in the 1990s. China's rank in world trade rose from 32nd in 1978 to 10th today. By the end of 1995, China already approved a total of 258,000 foreign-invested enterprises with contractual foreign investment of US\$395.7 billion and actual invested capital of US\$135.4 billion, which makes China the largest recipient of foreign direct investment among developing countries and the second largest in the world next only to the USA. As we are entering the 21st century, China is becoming an active element in world trade and international business.

However, China is also a difficult and risky market for Western business communities to operate in. Stories about some firms getting their fingers burned in China and some others ending up considering withdrawing their operations from the Chinese market can be heard from time to time. The surprises, disappointment and frustration on the part of Western business people are not strange. China is a special challenge: it is the world's largest emerging market, largest Communist bureaucracy and oldest culture. These

unique features make China a unique case in international business that calls for special academic and managerial attention.

Sino-Western business negotiation is a key dynamic of the Sino-Western business relationship. Knowledge about the Chinese negotiating practices in the Sino-Western business negotiation process will generate insight into the Chinese business mindset, increase the success rate of Western businesses with China, and, ultimately, strengthen the Sino-Western business relationship. Based on our in-depth personal interviews, this chapter aims to study Chinese negotiating style in the Sino-Western business negotiation process. We are particularly interested in a process view of how the Chinese negotiate and how the Chinese negotiating style can be explained from the Chinese culture. The chapter intends to answer these questions: What are the meaningful stages of the Sino-Western business negotiation process? What are the main contentious issues in the formal negotiation sessions? How can we understand Chinese negotiating style observed in various stages from the Chinese culture point of view? The chapter also attempts to generate managerial implications for negotiating effectively with the Chinese.

Empirical Base

The empirical base of this chapter is our investigation of the negotiations of the Swedish multinational corporation Ericsson with Chinese customers in the early and mid-1990s. These negotiations concerned Ericsson's mobile systems selling and joint venture establishment and operations in China. Ericsson is a world leader in telecommunications. Ericsson's history in China dates back to 1894 when the company made its first shipment of 2000 desk telephone handsets to Shanghai. Ericsson re-entered the Chinese market in 1984 by delivering its AXE-10 exchange to the Beijing post and telecommunications authorities. In 1985, Ericsson opened its first representative office in China. Since then, Ericsson's China activities have experienced an explosive growth and the company is now a major foreign player in the Chinese telecommunications infrastructure. Ericsson is particularly advanced in mobile system technology and has had a major market share in China. The first author followed one China area manager at Ericsson Radio Systems AB in Stockholm for three years in the early 1990s; a series of in-depth interviews were conducted with him and with one of his colleagues who was functioning as a liaison officer between Ericsson and its Chinese customers. The second author conducted, both in Sweden and China, interviews with more than forty Ericsson managers and their Chinese negotiating counterparts during 1995–1996. The interviews were unstructured

or semi-structured and were designed to maximise the understanding of how the Chinese negotiate in the Sino-Western business negotiation process. The rich empirical materials collected from these negotiation processes, events and situations make it possible for us to use cross-sectional data to synthesise, structure and describe the Sino-Western business negotiation process to best achieve the aim of this research.

Literature Review

Since the early 1980s, a special area of inquiry has been gradually developed in the literature that deals with international business negotiations between Western firms and the PRC organisations (Blackman 1997; Chen 1993; Davidson 1987; Deverge 1986; Fang 1999; Frankenstein 1986; Hendryx 1986; Kirkbride *et al.* 1991; Lee & Lo 1988; Pye 1982, 1986; Seligman 1990; Shenkar & Ronen 1987; Stewart & Keown 1989; Stone 1992; Tung 1982, 1989; Warrington & McCall 1983). The central concern of these works is to arrive at an in-depth sociocultural understanding of Chinese business negotiating style.

Pye (1982) lays the foundation of the area by publishing his seminal work *Chinese Commercial Negotiating Style*. This Rand report represents the first comprehensive Western study on Chinese business negotiating practices. Three major sources of difficulty in Sino-Western business negotiations are identified: problems that arise from the newness of the relations and the lack of experience on both sides, problems inherent in capitalist enterprises seeking to do business with the socialist economy in uncertain transition and reform, and problems that arise from the differences between the Chinese and Western cultures. Pye characterises the Chinese negotiation process into the opening moves and the substantive negotiating session. During opening moves, the Chinese insist on opening negotiation with some general principles which will later be utilised by the Chinese to their own advantage. They manipulate various kinds of negotiating tactics to induce the other party into showing their hand first and then cause “the long wait”. The substantive negotiating session is a stage where the Chinese often display a fascination for tactics, and issues are bargained over, discussions held and agreement reached. In the post-agreement stage, Pye cautions that nothing is ever final in negotiating with the Chinese who believe in “continuous negotiations”. Tung (1982) finds that the differences between the Chinese and American negotiating styles are among the most important factors responsible for the failure of business with China. Her follow-up study (1989) suggests that despite the considerably increased contacts between

American and Chinese negotiators during 1979–1987, marked differences in the Chinese and American negotiating styles still persist and are believed to be “culture-based“. Fang (1999) presents a state-of-the-art survey of the Chinese business negotiating style literature. Five weaknesses in the existing literature are identified: (1) lack of a systematic model; (2) lack of a cultural study of Chinese negotiating tactics; (3) lack of a presence of the Chinese voices in the debates; (4) weak empirical description; and (5) predominance of U.S.-China negotiation literature. To overcome these weaknesses, Fang proposes a model of Chinese business culture to analyse Chinese negotiating style and forty empirical illustrations. Blackman (1997) also provides insightful cases of Western business negotiations with the PRC.

The literature review suggests that although reports on Sino-Western business interactions appear rather regularly, empirically-based analyses of the Chinese negotiating style in the Sino-Western business negotiation process are still few. This chapter therefore sets out to look at the Chinese negotiating style from a process view.

A “Ping-Pong” Model

Given the aim of this chapter, we are in need of a model to structure our analysis of the Sino-Western business negotiation process. Figure 17.1 presents

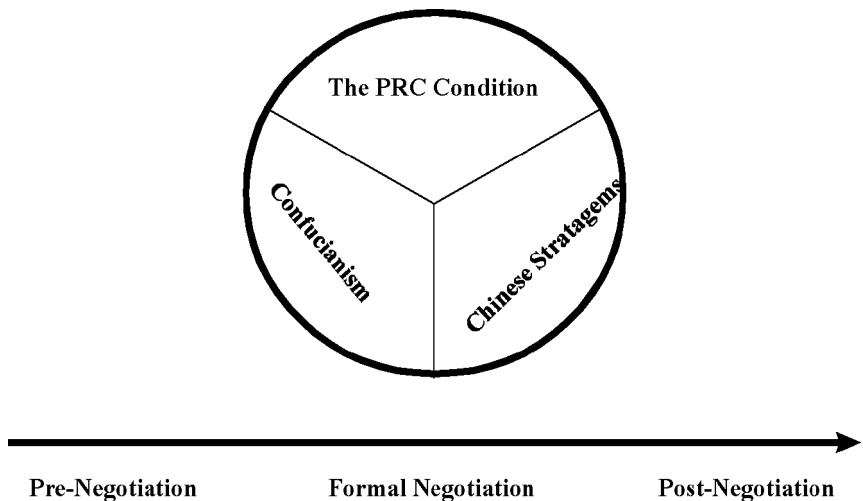


Figure 17.1: A “ping-pong” model.

our “Ping-Pong” model. The model is based on a number of previous studies of international business negotiation and Chinese business negotiating style (Fang 1999; Frankenstein 1986; Ghauri, see Chapter 1; Graham & Lin 1987; Pye 1982) as well as our own observations from the empirical studies. The model comprises two major constructs: (1) stages of the Sino-Western business negotiation process; and (2) dimensions of Chinese business culture. Using the “Ping-Pong” metaphor, we intend to emphasise the continuous back and forth bargaining feature in the Chinese negotiating style and the Sino-Western business negotiation process.

Sino-Western Business Negotiation Process

Negotiation process is a process by which the negotiating parties interact with one another to reach mutual agreements to provide terms, conditions and guidelines for future behaviour. For the sake of analysis, a negotiation process is usually divided into several stages. Ghauri (see Chapter 1) structures the international business negotiation process in terms of the pre-negotiation, negotiation and post-negotiation stages. These three stages are influenced by factors such as culture, strategy, background and atmosphere. Graham & Lin (1987) developed a four-stage model of international business negotiation: (1) non-task sounding, (2) task-related exchange of information, (3) persuasion and (4) concessions and agreement. “Non-task sounding” includes all those activities for negotiating parties to get to know each other, but does not involve core business discussions. “Task-related exchange of information” concerns the parties’ subjective needs and preferences of various alternatives open to discussions; “Persuasion” deals with the parties’ attempts to influence the other party’s needs and preferences by using various persuasive tactics; “Concessions and agreement” involves the accomplishment of an agreement which is often the summation of a series of concessions. Graham & Lin’s (1987) model opens a space for discussion of cultural factors and is considered useful for our study. However, the model does not cover the post-negotiation phase that is particularly relevant for the analysis of the Sino-Western business negotiation process as suggested by the Chinese business negotiating style literature. Combining these two international business negotiation process models with our own investigations, we divide the Sino-Western business negotiation process into three stages from the Western marketers’ perspective: (1) *pre-negotiation* (lobbying, presentation, informal discussion and trust building); (2)

formal negotiation (task-related exchange of information, persuasion, concessions and agreement); and (3) *post-negotiation* (implementation and new rounds of negotiations).

Chinese Business Culture

Furthermore, we adopt Fang's (1999) Chinese business culture framework to analyse Chinese negotiating style in the Sino-Western business negotiation process. This framework consists of three distinctive and interrelated components: the *PRC condition*, *Confucianism* and *Chinese stratagems*. They are discussed in the rest of this section.

The PRC Condition The PRC condition (*guoqing*) is a contemporary social and institutional factor influencing the PRC. It is comprised of eight variables. (1) *Politics*. China is a socialist state with the Chinese Communist Party as the ruling party. Chinese politics has an all-pervasive influence on every aspect of Chinese life; Chinese business and politics can hardly be separated under the current Chinese social system. (2) *Economic planning*. Chinese economic structure is rather centralised, which is characterised by strong state planning and government control. Chinese enterprises are essentially not independent economic entities, but rather "factories" of the Chinese government who is the "biggest boss". (3) *Legal framework*. China's legal system is still young, unstable; law is invariably subjected to ideology and influenced by a great deal of human factors. (4) *Technology*. China is short of modern technology. To import and attract foreign technologies to modernise China and enhance the people's living standard is the reason why China opened its economy in 1978. (5) *Great size*. China's population boasts the world's largest one. To exchange the large Chinese market for advanced foreign technologies is China's state policy. (6) *Backwardness*. China is still a relatively poor country with some 300 million people living under the UN-poverty level (one U.S. dollar per day). Though improved somewhat recently, the Chinese firms' lack of foreign exchange is still cited as one important factor responsible for the failure of Sino-Western business negotiations. Education and infrastructure are unevenly developed and may not be satisfactory in many places. (7) *Rapid change*. Reform and importation of foreign technology since the late 1970s have brought about great changes in Chinese society. Maoist ideology, traditional Chinese cultural values and Western life style exist side by side in today's Middle Kingdom. Market mechanisms are introduced into the Chinese economy and calculated decentralisation can be found in many sectors. (8)

Chinese bureaucracy. At the centre of the PRC condition lies the theme of Chinese bureaucracy which features red tape as well as quick buying (e.g. when your products fit in with the government's priority categories). From the perspective of the PRC condition, the Chinese negotiators are bureaucratic negotiators. They follow the Chinese government's policies and plans to do business. They practise the bureaucratic arts in order to survive. They are tough negotiators because they get trained everyday within the bargaining system of the Chinese bureaucracy.

Confucianism Confucianism is a 2,500-year-old Chinese philosophical tradition that has exerted a fundamental influence on the Chinese and East Asian modes of thinking and ways of behaving. The influence of Confucianism on the Chinese style of business can be studied from the six basic Confucian values. (1) *Moral cultivation.* Confucianism emphasises people's self moral cultivation and lifelong learning. Trust and sincerity are among the most important qualities for being human. Legal power does not feature at all in the Confucian tradition. In Confucian terms, a ruler should govern his state and people by means of moral persuasion and rules of propriety instead of law. (2) *Importance of interpersonal relationships.* Confucianism is a practical teaching of interpersonal relationships and conducts. It sees the human world through the Five Cardinal Relationships (*Wulun*), i.e. the relationships between the ruler and subject, father and son, husband and wife, elder and younger brothers, and senior and junior friends. The seniors must be loving and benevolent to gain the respect and loyalty from the juniors, and vice versa. A Chinese saying that denotes this Confucian notion of reciprocity is *li shang wang lai* which translates as "Courtesy demands reciprocity", "Deal with a man as he deals with you", or "A gift needs to be reciprocated". This relational view of human society defines the Chinese understanding of business, organisation and interfirm adaptations. *Guanxi* (the Chinese term for relationships, connections or contacts) is a major mechanism in the Chinese social psychology. *Guanxi* is closely related to *renqing* (favour) and *li* (etiquette, propriety and rules of conduct) in regulating relationships. (3) *Family and group orientation.* In the Chinese society, family is the most basic and important social unit. In China where there has been lack of a well functioning legal system for thousands of years, the Chinese family shoulders much of the social responsibility. It is within their family and kinship networks that the Chinese get care, protection, insurance and jobs. In the PRC, *danwei* or *zuzhi* ("work unit" or "organisation") plays some of the roles traditionally played by the family (e.g. allocation of housing, arrangement of pensions and other welfare programs). (4) *Respect for age and hierarchy.* In the Confucian tradition, age is wisdom and must be

respected. Hierarchy is honoured through ordered relationships in which every person does his duty to contribute to social harmony and stability. (5) *Avoidance of conflict and need for harmony*. Confucianism stresses the need to achieve harmony in society through moral conduct in all kinds of relationships. Confucius says that a gentleman has no squabbles. When a gentleman is forced to compete, he will then compete like a gentleman. The Confucian ideal is to achieve harmony between Heaven, Earth and Man. (6) *The concept of Chinese face (mianzi, lian)*. Although face is a universal human nature, it is particularly salient for the Chinese culture. Behind the Chinese concept of face, lies the Confucian notion of shame. Confucius teaches a kind of statesmanship that advocates governing people by instilling “a sense of shame” into their mind. Face as a self-regulating moral mechanism has fundamental impacts on the Chinese way of life. From the Confucian perspective, the Chinese negotiators are “Confucian gentlemen” who look more for long-term working relationships to solve problems that may crop up at any time in China than for a one-off legal package. Negotiation is based on mutual respect, trust and benefit and characterised by a considerable Chinese attention to etiquette. However, given the family-centred Confucian tradition, the “Confucian gentlemen” may also appear to be formidable negotiators, when they bargain for the interest and face of their “family” or “group”.

Chinese Stratagems Chinese stratagems, or *ji* in Chinese, refer to a long-lasting Chinese cultural tradition that shapes the strategic Chinese business behaviour. *Ji* is probably the single most important word in the world’s earliest treatise on military strategy – *Art of War* — written 2300 years ago by the most famous ancient Chinese military strategist Sun Tzu. The *Art of War* begins with “Chapter of *Ji*” in which Sun Tzu (1982: 66)¹ writes:

If a general who heeds my *ji* is employed, he is certain to win.
Retain him! When one who refuses to listen to my *ji* is
employed, he is certain to be defeated. Dismiss him!

Chinese stratagems can be understood as carefully devised Chinese schemes which deal with various kinds of situations and gain psychological and material advantage over one’s adversary. A variety of Chinese stratagems can be found in the *Art of War*, such as deception, conquering by strategy, creating a situation, focus, espionage, benchmarking, shared vision, extraordinary troops, flanking, prudence, flexibility, leadership, etc. At the centre of all the Chinese stratagems lies Sun Tzu’s aphorism (1982: 77):

¹ In Sun Tzu (1982), *ji* is translated by Samuel B. Griffith as “strategy”.

To win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the acme of skill.

Hence, the Chinese assert the superiority of using human wisdom rather than engaging in pitched battles to conquer the opponent. This traditional Chinese strategic thinking is diametrically different from its Western counterpart as shown in von Clausewitz's *On War* published in 1832. Whereas the former advocates gaining victory without fighting, the latter teaches winning by applying "absolute forces".

The Chinese have summarised their thousands of years of experience in dealing with various kinds of people and situations into a 138-character compendium titled *The Thirty-Six Stratagems* (The 36 *Ji's*) (see Table 17.1).² The compendium was compiled by an anonymous Chinese in the late Ming (1368–1644) or early Qing (1644–1911) dynasties. These thirty-six ancient Chinese stratagems are theoretically grouped into six categories: Nos. 1–6 to be used when being superior; Nos. 7–12 for confrontation; Nos. 13–18 for attack; Nos. 19–24 for confused situations; Nos. 25–30 for gaining ground; and Nos. 31–36 to be used when being put in an inferior situation. In practice, however, the stratagems may be flexibly used in any possible situation. The thirty-six stratagems all appear in the popular form of Chinese idioms, each of which is made up of less than four (inclusive) Chinese characters, arranged so that when recited they produce a rhythmic effect, making it easy even for school children to remember them. These stratagems provide vivid examples of how the Chinese "subdue the enemy without fighting". Chiao (1981) shows that Chinese stratagems are a strategic force driving the Chinese mind in all Chinese societies the world over, regardless of whether they are Communist or non-Communist. The Chinese can use Chinese stratagems intentionally or unintentionally given the great influence of the stratagem culture on the Chinese socialisation process.

The principal reason why the Chinese can use ancient Chinese military stratagems in modern business world is that the Chinese profoundly believe that *shangchang ru zhangchang* ("The marketplace is like a battlefield"). They hold that business and warfare share many key characteristics; therefore, business and warfare strategies and tactics are interchangeable. The Chinese bureaucratic pressure, the Confucian family/group orientation, the lack of trust in business relationships, for example, may also serve as potential justifications

² For a detailed historical and legendary account of *The Thirty-Six Stratagems*, readers are referred to Chu (1991), Gao (1991), Sun (1991), and von Senger (1991).

Table 17.1: The thirty-six ancient Chinese stratagems.

| | |
|--------------|---|
| Stratagem 1 | Cross the sea without Heaven's knowledge — <i>Man Tian Guo Hai</i> |
| Stratagem 2 | Besiege Wei to rescue Zhao — <i>Wei Wei Jiu Zhao</i> |
| Stratagem 3 | Kill with a borrowed knife — <i>Jie Dao Sha Ren</i> |
| Stratagem 4 | Await leisurely the exhausted enemy — <i>Yi Yi Dai Lao</i> |
| Stratagem 5 | Loot a burning house — <i>Chen Huo Da Jie</i> |
| Stratagem 6 | Clamour in the east but attack in the west — <i>Sheng Dong Ji Xi</i> |
| Stratagem 7 | Create something out of nothing — <i>Wu Zhong Sheng You</i> |
| Stratagem 8 | Openly repair the walkway but secretly march to Chen Cang — <i>An Du Chen Cang</i> |
| Stratagem 9 | Watch the fire burning from across the river — <i>Ge An Guan Huo</i> |
| Stratagem 10 | Hide a knife in a smile — <i>Xiao Li Cang Dao</i> |
| Stratagem 11 | Let the plum tree wither in place of the peach tree — <i>Li Dai Tao Jiang</i> |
| Stratagem 12 | Lead away a goat in passing — <i>Shun Shou Qian Yang</i> |
| Stratagem 13 | Beat the grass to startle the snake — <i>Da Cao Jing She</i> |
| Stratagem 14 | Borrow a corpse to return the soul — <i>Jie Shi Huan Hun</i> |
| Stratagem 15 | Lure the tiger to leave the mountains — <i>Diao Hu Li Shan</i> |
| Stratagem 16 | In order to capture, first let it go — <i>Yu Qin Gu Zong</i> |
| Stratagem 17 | Toss out a brick to attract a piece of jade — <i>Pao Zhuan Yin Yu</i> |
| Stratagem 18 | To capture bandits, first capture the ringleader — <i>Qin Zei Qin Wang</i> |
| Stratagem 19 | Remove the firewood from under the cooking pot — <i>Fu Di Chou Xin</i> |
| Stratagem 20 | Muddle the water to catch the fish — <i>Hun Shui Mo Yu</i> |
| Stratagem 21 | The golden cicada sheds its shell — <i>Jin Chan Tuo Qiao</i> |
| Stratagem 22 | Shut the door to catch the thief — <i>Guan Men Zhuo Zei</i> |
| Stratagem 23 | Befriend the distant states while attacking the nearby ones — <i>Yuan Jiao Jin Gong</i> |
| Stratagem 24 | Borrow the road to conquer Guo — <i>Jia Dao Fa Guo</i> |
| Stratagem 25 | Steal the beams and change the pillars — <i>Tou Liang Huan Zhu</i> |
| Stratagem 26 | Point at the mulberry tree but curse the locust tree — <i>Zhi Sang Ma Huai</i> |
| Stratagem 27 | Play a sober-minded fool — <i>Jia Chi Bu Dian</i> |

Table 17.1: Continued.

| | |
|--------------|---|
| Stratagem 28 | Lure the enemy onto the roof, then take away the ladder — <i>Shang Wu Chou Ti</i> |
| Stratagem 29 | Flowers bloom in the tree — <i>Shu Shang Kai Hua</i> |
| Stratagem 30 | The guest becomes the host — <i>Fan Ke Wei Zhu</i> |
| Stratagem 31 | The beautiful woman stratagem — <i>Mei Ren Ji</i> |
| Stratagem 32 | The empty city stratagem — <i>Kong Cheng Ji</i> |
| Stratagem 33 | The counter-espionage stratagem — <i>Fan Jian Ji</i> |
| Stratagem 34 | The self-torture stratagem — <i>Ku Rou Ji</i> |
| Stratagem 35 | The stratagem of interrelated stratagems — <i>Lian Huan Ji</i> |
| Stratagem 36 | Running away is the best stratagem — <i>Zou Wei Shang Ji</i> |

Source: Fang (1999: 166).

for the Chinese use of stratagems to gain the upper hand in business competitions.

The thirty-six Chinese stratagems provide a useful guide for Western business people to diagnose Chinese negotiating tactics. Linking the concept of Chinese stratagems with the Chinese business negotiating style literature, we find an amazing fit between the patterns of Chinese negotiating tactics and the recipes of the thirty-six Chinese stratagems: Attacking the opponent's vulnerabilities — Stratagem 2 ("Besiege Wei to rescue Zhao"); Playing home court — Stratagem 4 ("Await leisurely the exhausted enemy"); Manipulating friendship and hospitality — Stratagem 10 ("Hide a knife in a smile") and Stratagem 31 ("The beautiful woman stratagem"); Playing the competitors against each other — Stratagem 3 ("Kill with a borrowed knife"), etc.³ From the Chinese stratagems perspective, the Chinese negotiator is Sun Tzu-like strategist who seldom wages a physical business war but rather is keen on a psychological wrestling of wit to create a favourable situation to manipulate his counterpart into doing business his way.

The absence of religious sentiment in the Chinese mind allows the Chinese to be intensely practical people. Fang's (1999) Chinese business culture framework suggests that the Chinese negotiators have a "three-in-one" negotiating style; they negotiate like "bureaucrats", "gentlemen" and "strategists". Trust is a prime indicator showing which role the Chinese are going to play. When mutual trust between the business partners is high, the Chinese will

³ A detailed list is provided by Fang (1999).

negotiate as “gentlemen”; when it is low, they will negotiate as strategists! The PRC negotiators also negotiate as “bureaucrats”, particularly so when the political wind blows.

Analysis of the Sino-Western Business Negotiation Process

In this section, we use the “Ping-Pong” model to analyse the Sino-Western business negotiation process based on our empirical investigations of business negotiations between the foreign firm Ericsson and its Chinese customers.

Pre-Negotiation

The Chinese negotiation process starts with early contacts with the Chinese government authorities. The Chinese show keen interests in getting to know the other party during these initial contacts. They try to ascertain whether or not the foreign firm has: (1) the most advanced technology required for the project; (2) the willingness to sell or transfer it to the Chinese side by way of, for example, joint venture; and (3) the capacity of delivering the products on time.

Lobbying Lobbying before the Chinese government authorities is one of the most important marketing activities facing foreign firms that want to sell large industrial projects in Chinese key industries like telecommunications. Foreign firms must convince the Chinese that they have cutting-edge technologies that suit Chinese government’s priorities, that they have long term commitment to the Chinese market, and that they are financially strong. They must present a highly reliable image before the Chinese, making them feel safe to do business with them. The Chinese said that they liked to do business with “big mountains” like Ericsson which they could trust and rely on in the long run. One Ericsson manager (local Chinese) emphasised that lobbying, though existing in all countries, is particularly important in China. Lobbying must occur not only in Beijing but also in all large cities, both coastal and inland. Lobbying channels include visits to government authorities (e.g. the Ministry of Posts and Telecommunications — MPT), presentations, technical seminars, advertising in Chinese professional journals and informal channels such as dinner parties.

Presentation Giving attractive and reliable presentations to let potential Chinese partners know the company, products and negotiating team members, is an important step toward formal negotiation sessions. Presentations aim to

convince the Chinese of the sincerity of the company in doing business with China and show the Chinese that the company's products are an advanced technology with high quality and reasonable price. Foreign firms need to present themselves and their technologies to a number of authorities. Very often one has to endlessly repeat the same things to different negotiators who may suddenly, without explanation, be replaced by another team. One Ericsson negotiator said:

You have to learn how to make presentations . . . you have to present your technology and company many times to different groups . . . and sometimes the same group comes back, but of course, they do not remember anything from the earlier presentation . . . they ask the same questions . . . I think they do this to check you.

Ericsson provided all the presentation material in English and Chinese, since most Chinese decision-makers were above 50 years of age and did not speak English. Sometimes the foreign team of 3–4 persons had to meet a Chinese team of 10–15 people; one interpreter on the foreign team was not enough to help communicate efficiently with the Chinese. The presentation materials were made available for both potential end-users (e.g. the local posts and telecommunications administrations, the MPT affiliated plants) and various Chinese government authorities (e.g. State Planning Commission, MPT and Ministry of Foreign Trade and Economic Cooperation – MOFTEC). It was at times a problem to duplicate high quality presentation materials quickly in China. A portable PC and printer, along with all the information and calculations when visiting Chinese customers is a necessity.

Informal Discussion Initial and informal discussions with Chinese organisations often occur directly after the presentations. At this early stage, the Chinese already showed a keen concern for *technology* and *price*. For example, they were interested in not only the price but also in comparing the price with competitors. In one case, Ericsson succeeded in convincing the Chinese that although its price was much higher than that of the Japanese, its system capacity was more powerful; and its technology was better and would facilitate future expansions.

Trust Building

The Chinese attach great importance to trust building in business negotiations. One of the Chinese negotiators explained:

They [Western firms] want to come and sign the contract quickly and do not know that [if] we do not understand each other . . . there is no business relationship. First, we have to know and trust each other, then we sign the contract.

Nevertheless, an Ericsson manager observed that it was rather difficult to develop close social relationships with the Chinese. For example, the Chinese seldom invited foreigners to their homes. During the pre-negotiation phase, Chinese organisations sent delegations abroad for fact-finding tours. Being the host, the foreign firm could get many insights into Chinese priorities in industrial policies and development plans. In several instances, the Swedes invited the Chinese to come to Sweden to inspect the technical systems in operation. It proved to be much easier to understand the Chinese priorities and concerns during such visits, because decision-makers were, more often than not, included in the trip. Hosting a Chinese delegation also provides a good opportunity for foreign firms to strengthen friendship with the Chinese. For example, Ericsson invited the Chinese to Sweden not only to show them plants, facilities and technologies, but also to take them sight-seeing and have them participate in social activities. These gestures of hospitality turned out to be greatly valued by the Chinese.

We can link the Chinese negotiating style in the pre-negotiation stage with the Chinese business culture discussed earlier. In Chinese culture, trust is high within but low outside family and kinship borders. The Chinese constantly find themselves being put in such a quandary: business can only be done between people who have a high level of mutual respect and trust; however, business partners cannot always be immediate or extended family members. The pressures from Chinese bureaucracy, “force” the Chinese to deal only with the best in order to feel safe. The Chinese “relying on big mountains” mentality also reflects the deep-seated Chinese psychological craving for face: doing business with second-class firms would make the Chinese lose face. This behaviour can also be explained from the Chinese stratagems perspective: teaming up with a strong foreign partner will help breath new life into “dying” Chinese firms that have many technological, financial and management problems, a stratagem called “Borrow a corpse to return the soul” (Stratagem 14, see Table 17.1). The Chinese sensitivity to price is well known; the average living standard in the PRC and Chinese companies’ lack of foreign exchange are main reasons. That the Chinese do not invite foreigners to their homes should not be blamed on a lack of hospitality. In the PRC, every state employee belongs to a *danwei*, which controls much of the employee’s life. Internal regulations generally do not encourage individuals to receive foreign visitors

alone. Their still crowded housing conditions also embarrass many Chinese who may choose to shy away from hosting foreign guests at home.

Formal Negotiation

Task-Related Exchange of Information Formal negotiation starts when the Chinese show a strong interest in “further discussions” and both parties sign a “letter of intent”. The Chinese tend to send a formal document, informing the foreign party of the composition of the Chinese team and ideas for future meetings. In our cases, the following Chinese organisations were involved in the formal negotiation sessions: Managers from national industrial corporations under MPT, managers from MPT-affiliated plants (end users of the technology to be transferred), officials from the Bank of China (foreign exchange controlling organisation), design staff from research institutes and sometimes local government officials. On the Swedish side, the negotiators were Ericssons’ China area manager, product/technology manager, in-house lawyer, technical support and an intermediary (interpreter or liaison officer). An obvious contrast between the Chinese and the foreign teams was that the Chinese lawyers never participated in the formal negotiation sessions. Five major contentious issues during the formal negotiation sessions are singled out from our investigations: equity share, contribution of each party, management control, technology, price and other financial issues:

- *Equity share.* The Chinese were sensitive to their equity holdings and insisted on having at least 50% holding, because they believed that majority ownership would lead to management control. The Chinese also considered the equity share a matter of “state sovereignty” having political importance.
- *Contribution of each party.* The Chinese side contributed tangible resources like production premises, existing machinery and equipment, labour, etc.; while the foreign side provided intangible resources like technology, managerial training, marketing know-how, international networking, etc. It was relatively easy to estimate the tangible costs but difficult to assess the intangible costs.
- *Management control.* While the Swedes wanted to “teach” the Chinese modern management know-how through keeping as many senior management positions in the joint venture as possible, the Chinese wanted to share senior management positions with the Swedes exactly in proportion to the parties’ equity share. The Chinese were very interested in acquiring financial manager and administrative (or human resource) manager positions.

- *Technology.* The Chinese wanted absolutely to obtain the best technology. They were deeply concerned about the Western firms' willingness to transfer the technology and to train the local Chinese. The foreign side was, on the other hand, very concerned about how to protect its technology and patents. Ericsson spends 18% of its sales on R&D annually. According to one Ericsson negotiator, it was difficult to make the Chinese understand the R&D cost incurred by the foreign firm; they believed that once they had paid for the project they would automatically be entitled to use whatever technologies they pleased. The term "rolling technology" (*gun dong ji shu*) is coined by the Chinese to refer to the newer generations of the technology being "rolled" constantly into the joint venture.
- *Price.* The Chinese demanded very low technology transfer prices, royalty fees, documentation fees, and so on. They thought prices offered by the foreign party were always too high. The Swedes, on the other hand, considered the Chinese the "only take, never give" type. However, the Chinese side considered that they had already given too much — a huge Chinese market — to the foreigners. It seemed that the Chinese keenly knew the value of the Chinese market as well as the value of foreign technology. What the Chinese did was to "trade" the Chinese market for foreign technology. The financial issues such as financing of the project, terms of payment, definition of net sales, counter-trade or buy-back tend also to be a bone of contention between the parties.

Persuasion The Chinese use a variety of negotiating tactics to persuade the other party to do business their way during the formal negotiation sessions: flattery, identifying the opponent's problems, shaming, deception and pitting competing foreign companies against one another. One Ericsson manager gave an example:

Once one of the Chinese negotiators insisted that our project in Thailand had some problems and that our technology did not work well. I did not say anything, but when I came back to the hotel, I called the head office and asked our office in Bangkok to check . . . there was no problem. Next day, in a private meeting, over the dinner, I told the Chinese Manager that his statement about Thailand was not correct and that I did not say anything in yesterday's meeting not to embarrass him . . . I gave him the telephone number of our Thai counterpart and asked him to check for himself. After that he became very friendly and even helped us to get that order.

In another case, the Chinese were driving parallel negotiations with Ericsson and Nokia. These two Nordic “brothers” had a hard time in those days: they not only took their turns to court the same “bride”, but also happened to stay in the same hotel in Beijing, looking into each other’s heavy-hearted eyes over the breakfast tables every morning. Consequently, the Chinese succeeded in getting most of what they demanded.

Concessions and Agreement The formal negotiation ends with an agreement by the negotiating parties through their concessions or compromise. In this stage, the Chinese show a strong inclination to settle all suspending issues in a “package deal”. The Chinese made concessions too; however, their concessions very often turned out to be a disguised gesture devised to attract the counterpart into making real concessions. When drafting the contract, the Chinese weighed words meticulously when it came to the clauses that would affect the Chinese, while treating issues of concern to the foreign party as generally as possible. Agreement was almost always signed in the presence of high-ranking officials from the government authorities and followed by a series of lavish banquets and ceremonies. While enjoying the Chinese hospitality and etiquette, one Swedish negotiator also described a Chinese negotiating tactic:

A tactic which I believe that the Chinese employ is that . . . they set the deadline on a certain week and arrange a banquet long before the contract is actually ready. They told us that things must be ready on Saturday when the mayor would come to the banquet. In this way the Chinese applied pressure on us to reach an agreement. This was common. . . . You became a little disappointed the first time you came across such a situation. But, after a while, when you recognised the same thing happening again in other places, you knew that it was a tactic.

In analysing the formal negotiation stage, we find that Chinese negotiating teams tend to be large; people from many organisations and departments take part in negotiations and ask many questions. From the PRC condition point of view, Chinese companies are not companies in Western terms; rather, they are “factories” of the Chinese government. “Collective participation” facilitates communication among the Chinese and in case something goes amiss, the “collective responsibility” would also allow individuals to escape punishment. The Chinese propensity to ask many questions seems necessary given China’s relatively new involvement in international business and their curiosity about foreign technologies. But the same behaviour may also be understood from the

Chinese stratagems perspective as a tactical move to stimulate the other party to show their hand first: “Beat the grass to startle the snake” (Stratagem 13).

The persuasion tactics used by the Chinese were all of this type: using external forces to influence instead of direct confrontation. For example, the Chinese reference to the Thailand project (a third party) was aimed at attacking the foreign party’s weakness (e.g. quality) in order to gain more bargaining power on other issues (e.g. price). The prototype of this tactic can be found in the Thirty-Six Chinese Stratagems: “Besiege Wei to rescue Zhao” (Stratagem 2) and “Clamour in the east but attack in the west” (Stratagem 6). It turned out that the Chinese attack was groundless, probably because they had not carefully ascertained their source of information. But “Create something out of nothing” (Stratagem 7) is a Chinese stratagem which serves to gain advantage by conjuring illusions. The Swedish manager did not argue with the Chinese in the formal sessions but rather explained to him informally. This proved to work well; the Chinese certainly felt the Swede was honest and sincere and, most important of all, helped the Chinese save face. Therefore, he also became friendly, helpful and did favours in return.

The Chinese way of making concessions is to “Toss out a brick to attract a piece of jade” (Stratagem 17) or to exchange their “small things” with the opponent’s “big things” as the Swedish negotiator remarked. In wording the contract, the Chinese style of dealing with details is a direct outcome of the Chinese bureaucracy. The Chinese are punished if they make mistakes but they are rarely rewarded for their outstanding performance; this rule of the Chinese bureaucratic game prods the Chinese to prefer doing nothing to doing one hundred things with one mistake.

Post-Negotiation

Implementation and New Rounds of Negotiations Our empirical findings reveal that problems in negotiating with China also exist after the formal negotiations are finished, i.e. during the phase of implementation of the agreement. Generally speaking, the Chinese honour their contract; however, cases of Chinese non-fulfilment of their obligations do occur. In one case, the Swedish firm entered a joint-venture agreement with the Chinese. It was agreed by the parties that the joint venture would have a Swedish managing director (MD) and that he would be provided with a Western-standard residence in China. Later, when the Swedish MD arrived in China, he was offered a Chinese-standard residence similar to those of other Chinese senior executives. The Swedish side asked the Chinese to observe what was stipulated in the

contract but the Chinese did not agree. The Chinese argued that providing a Western-standard residence for the Swedish MD was unfair to the Chinese senior executives who worked in the same joint venture. The conflict deteriorated to the point that the Swedish side was about to calculate the consequences of terminating the contract. However, the Chinese were stubborn on their stand, reasoning that the Western-style residence demanded by the MD would cost about US\$70,000 per year equal to the salaries of some 200 ordinary Chinese workers altogether and the joint venture could not bear such a cost. Finally, a compromise solution was reached through new rounds of negotiations.

The PRC condition and Confucian tradition provide the answers to why the post-negotiation stage looks what it is. China is such a large country and in such a dramatic change that *anything can happen*. The experimental nature of China's reforms, unevenly developed infrastructure, scarce natural resources per capita and not least the large Chinese bureaucracy can all result in problems which can crop up anywhere at any time in the PRC. Given these problems, things should never happen in Western eyes do really happen in China. Therefore, the basic Chinese attitude toward contracting is problem-solving based on the changing situations instead of contracts. We believe that the Chinese, in this case, must have known what the Western-style residence meant when signing the agreement. Flatly rejecting the implementation of the agreement certainly violated the "law of Chinese face". The Chinese side might probably have been "forced" by their superiors to make a "fair" adjustment of the contract based on the market conditions, feelings of the Chinese executives and the joint venture's interests.

Managerial Implications

Based on the foregoing discussions, we can draw some managerial implications for negotiating effectively with the PRC. Our advice is organised by way of four P's: Priority, Patience, Price and People.

Priority

Driven by "China fever" and the belief that China needs foreign technologies, Western business people rushed into the Chinese market with various advanced technological solutions. Many succeeded but many others failed. An important

reason for the failure is that the PRC condition has not been paid sufficient attention: Chinese government is the “biggest boss” and all Chinese state enterprises do business according to the government’s priorities, policies and plans. Our research suggests that in negotiating large industrial projects with the PRC, foreign firms should above all, be sensitive to the guiding principles of China’s social and economic development set forth by the Chinese Communist Party and the Chinese government and should also make a careful study of the Chinese government’s priorities and implementation policies. The priorities are also important indicators of what the Chinese want to spend their foreign exchange on. It is therefore vitally important for a Western firm to determine whether its project comes into the priority project category or not. If the project is included in the Chinese priority categories, it will interest the Chinese side and negotiations will proceed relatively quickly; if not, there may be problems in everything. Energy, transportation and telecommunications are among the traditional Chinese priorities. Recently, revitalising China’s deficit-ridden state-owned enterprises is also added to the list of Chinese priorities. Before priorities become public knowledge, foreign firms may still be able to glimpse much of the picture. This chapter suggests that Chinese delegations’ visits to foreign firms help to provide valuable opportunities for the latter to receive insights into Chinese priorities and preferences.

Patience

Patience is the most important qualification for successful negotiations with the Chinese. From the PRC condition point of view, China is large with many yet underdeveloped areas ranging from infrastructure to living facilities and problems of various types are bound to happen. Negotiations in China often take time because different Chinese organisations and different departments within one organisation tend to be involved in negotiation processes and decision-making within the Chinese bureaucracy often takes time. From the vantage point of Confucianism, the Chinese will not rush into any serious meetings with someone whom they do not know; trust and a certain feeling of closeness must be in place for any negotiation to start. The Confucian notions of relationship, face, etiquette, harmony, and so forth, are all time-consuming qualifications. Therefore, it takes time to negotiate with the Chinese because it takes time to communicate with the “Confucian gentlemen”. From the Chinese stratagems perspective, the Chinese are deceptive negotiators who can use, deliberately or inadvertently, a variety of Chinese stratagems to achieve their objectives. When mutual trust is not very high and the Chinese are exposed to

bureaucratic pressures, tricky situations are but common scenes in negotiating with the Chinese. In an interview, one Ericsson manager said that when getting very upset with the Chinese sometimes, he kept telling himself to be patient, patient and patient to work for the long-term interest of his company.

Price

Price is a difficult and crucial factor in international business negotiations everywhere. But it proves to be even more difficult and crucial in negotiating with the Chinese. On the one hand, the Chinese emphasise trust and sincerity; if a foreign firm reduces its price radically, the Chinese negotiators will get suspicious and the risk is high that the firm will lose its credibility in the eyes of the Chinese. On the other hand, the Chinese are face-conscious creatures; if a foreign firm rejects any Chinese request for a price discount, the Chinese will most probably feel insulted. Once the Chinese feel they have lost face before the foreign “evils of capitalism”, they will certainly try to repay your “evils” by using whatever Chinese stratagems are necessary to deal with you the next round. As a case in this chapter suggests, when the Chinese find that the foreign side is “giving face” to them, they will adjust themselves accordingly and be more helpful and friendly in the later rounds of negotiations. Therefore, we recommend that foreign parties calculate prices and bargaining limits carefully, and *always* reserve certain margins to the Chinese to allow them to gain face. Then they should remain firm in the offers, emphasising features (e.g. technological superiority, high system capacity, room for product upgrading and convenient post-sale service) other than price that may bring special added value to the Chinese. Foreign firms can also adopt other strategies to try to influence the Chinese to negotiate the foreign way. Earlier, we mentioned the Chinese delegation visiting Sweden. In Sweden and other Scandinavian countries, business is seldom done on a bargaining basis (of course, buying houses, cars and boats are among a few exceptions). Our observation reveals that after the Chinese had stayed enough time in Scandinavia and discovered that Scandinavian people do business in a different cultural ambience, the Chinese could reduce their bargaining tone to a certain extent. Another issue concerns the cost of foreign personnel. The Chinese do not seem to be willing to pay for the huge cost of foreign expatriates. The daily cost of a foreign expatriate could be as much as the yearly cost of a dozen Chinese employees. We suggest that the parties exchange views on both the PRC *and* the Western *conditions* in a frank and supportive manner to find win-win solutions to the problems.

People

Because of the deep Confucian aversion to law and orientation toward interpersonal relationships, the Chinese believe in people more than contracts. Foreign firms need to take a people-oriented approach and try to establish a high level of trust with their Chinese partners. A trusting relationship is also the best way to neutralise the Chinese stratagems. Chinese teams' foreign visits are probably the best time for the foreign party to develop rapport and *guanxi* with the Chinese decision-makers. Travelling in Western countries is still considered by many Chinese a privilege and, if offered with special hospitality, will be greatly appreciated by the Chinese. According to the Confucian rules of relationships, the Chinese will reciprocate your hospitality when you visit China next time. Relationship marketing with the focus on people has become a buzzword in Western marketing theory since the late 1980s and a competitive advantage sought by many Western firms recently. In China, everyone will answer the question of what marketing is all about without hesitation: *Guanxi*. Therefore, we highly appreciate the business philosophy of a senior Ericsson executive in China (local Chinese) who said: "To do things in China, you must do people first".

Conclusion

This chapter has proposed a "Ping-Pong" model to analyse Chinese negotiating style in the Sino-Western business negotiation process which is divided into three stages: pre-negotiation (lobbying, presentation, informal discussion and trust building), formal negotiation (task-related exchange of information, persuasion, concessions and agreement), and post-negotiation (implementation and new rounds of negotiations). Five major contentious issues in the formal negotiation sessions are identified: equity share, contribution of each party, management control, technology, price and other financial issues. The Chinese negotiating behaviours observed in the negotiation process are explained from the perspectives of the PRC condition, Confucianism and Chinese stratagems. The chapter has also drawn managerial implications for effective negotiation with the PRC in terms of four P's: Priority, Patience, Price and People. These four P's should be considered in all the three stages of the Sino-Western business negotiation process; yet, some are more stage-specific. For example, a Western firm has to find out, in the pre-negotiation stage, whether or not its China project falls into the Chinese priority category. Patience is required throughout the entire process. Price needs to be calculated as early as the pre-

negotiation stage, and to be negotiated carefully in the formal negotiation sessions. Although people and trust building are most critical in the pre-negotiation stage, they should be handled and further developed during the later stages of negotiations.⁴

⁴ An earlier version of this paper was published in the *Journal of World Business*, 2002, 36(3), pp. 303–325. Printed with permission.

Part V:

General Guidelines

Chapter 18

Ethical Aspects of International Business Negotiations

Jean-Claude Usunier

“Mouth smiles, money smiles better”, says a Ghanaian saying. Money is always at the very centre of business negotiations, as price is discussed as well as “side price”. This is all the more important when the whole process takes place across borders, that is, with a limited control of national regulatory authorities as compared with the domestic scene. Most laws, including tax and anti-corruption regulation, do not apply beyond national borders. It is always tempting to win a deal by offering a bribe rather than by fair competition. Moreover, significant price and performance advantages over competitors are sometimes not enough to win, some greasing money may be discreetly asked by the buyers.

Bribery is considered by most business people as the key ethical issue in international business negotiations. According to Mayo *et al.* (1991), more than one third of a sample of U.S. executives ranked bribery as the top ethical concern out of ten possible ethical problems that may arise when negotiating international business. However, there are other ethical concerns in international business negotiations. Apart from buying the contract (through bribes), a party can:

- buy information in order to get strategic insight into the other party’s basic interests, situation and organization;
- buy the influence of members of the adversary negotiation team or of their principals;

- use instrumental communication to mislead the other party and gain advantage in the process, for instance by disclosing erroneous information on costs, investments, dates, etc.;
- negotiate and sign clauses which, although legal in principle, will grossly disadvantage the other party in the future; by doing this, a party exploits the ignorance of the other party;
- network with people and firms in the opposite negotiation group and do a number of reciprocal favours such as hiring their relatives, granting privileged access to positions that would normally be open to all applicants, etc.;
- negotiate, knowing in advance that they will not respect their commitments toward the other party.

In the first section we examine the main ethical issue when negotiating large deals internationally, that is, bribery. In a second section, a number of other ethical issues are examined. While they do not involve criminal activity as large bribery does, they are important because the views of what is ethically acceptable or not may differ across parties to the negotiation. The third section reviews the basic ethical standpoints for international business negotiations and explains when particular ethical issues must be appreciated from a universalistic, culturally relativist or morally pragmatic perspective. Finally, we propose some recommendations for action based on a compromise between the moral/legal and the pragmatic/competitive perspectives.

Bribery in International Business Negotiations

Forms of Bribery

The practice is widespread and takes various forms:

- *small and large gifts*: for instance, a multinational company offers to a leading foreign politician a two weeks stay in a nice resort; the whole affair, including receptions, restaurants and pretty hostesses for evenings, quickly reaches a cost of \$50,000.
- *percentages*: based on the contract value itself. Here the form of illegal payments result in much larger sums being paid because of the size of the contract such as the sale of a turnkey plant. In the United States, in the public disclosure of the illegal payments involving American multinationals in the 1970s, sums of up to 70 million dollars were mentioned. The companies involved were, amongst others, Lockheed, United Brands, Gulf Oil. There

were many other firms implicated, principally in the mining, aeronautic and engineering sectors.

- *Tips*: when civil servants are poorly paid, but hold authority and responsibility it may be “implicitly understood” that in exchange for carrying out poorly rewarded public duties such officials may supplement their income. Thus, obtaining information for the negotiation process or a tax form for a mandatory declaration may require some greasing payment, which can be assimilated to an implicit salary, in many cases, the authorities are well aware of the existence of such practices. In China in 1993, more than 60,000 cases of civil servant corruption were unveiled, with more than a half million people being under investigation and more than 10,000 already tried before a court (Galtung 1994).

Whether illegal payments are made and what sums are involved varies very widely from one country and one industry to another. Bribes will be much more substantial, for example, in the construction industry or in Nigeria than in electronics or in Australia. Also, the important caveat must be added that not everyone is corrupt. There is nothing worse than attempting to bribe someone who strongly disapproves of such immoral behaviour. This last point is clearly illustrated by Aggar (1977) who quotes the case of the Managing Director of a large American multinational who offered 500 Saudi Riyals in cash to a Saudi police officer (about 140 dollars) so as to ensure that a decision on a fairly minor offence against labour law would be favourable. In a fury, the officer reported the attempted bribe to his superiors. After spending 20 days in prison, the businessman was sentenced to a fine of 25,000 Riyals and was fortunate to escape a more serious penalty.

The direct method of passing cash from one hand to another is dangerous and ineffective. Accordingly, more indirect methods are often used:

- *Slush funds* are set up to effect small payments by cheque, nominally as payment for services rendered. In the 1980s, for instance, Braniff Airlines sold 3,500 plane tickets in South America for a total of 900,000 dollars without making any record of the transactions in their accounts. This money was used to set up a slush fund that in turn fed a secret bank account. This money was neither mentioned in the parent company accounts, nor in those of the subsidiary. This secret account was used to pay additional commissions to organisers and travel agents in clear breach of the Federal Aviation Act.
- Nominee and local consultancy companies, to whom “phoney” consulting contracts are given, may be used in different ways. For example, an approach

may be made to an advisor of the Transport Minister for country X who is well placed to influence the decision on an underground railway project in town Y. It will be suggested that he be made a part-time employee of the Luxembourg-based nominee company. Without having to move an inch, he will receive a salary each month which, for reasons of discretion and convenience, will be paid into an account in Switzerland. When going skiing with his family, the advisor/consultant will take the money out of his bank account in Geneva, then discreetly spend it in an exclusive ski-resort. Money spent abroad is less visible than money brought back home.

- Two other solutions are frequently employed: the over-invoicing of certain transactions, expenditure or receipts and the recording of fictitious transactions. For example, the American Hospital Supply company was obliged to pay a 10% commission to obtain the contract for the construction of a hospital in Saudi Arabia. AHS artificially inflated the price of the contract, then recorded a commission for consultancy fees, even though no service of this type had been rendered. This allowed the 10% commission to become a tax deductible expenditure, and made the payment apparently legitimate (Daniels *et al.* 1982).

The Process of Illegal Payments

The process of secret payments involves the negotiators (briber/bribee), the way their relation is sealed, the authorities to whom they report, as well as the style of communication they use in this sensitive and precarious business. Both the donor and the recipient of the illegal payment take risks, bribery being punished in some countries by the death penalty. Donors, as individual negotiators, are poorly rewarded for the risks they take as they may be prosecuted while their organisation wins a large contract. On the other side, the bribee's reward depends on the ultimate allocation of the money. If it goes into the bribee's own pocket, risk-taking can be viewed from the perspective of individual interest, opportunism and moral standards. If the money goes to a political party, it is more difficult to assess the nature of individual responsibility because of the lack of direct and personal benefits.

Bribers and bribees are not isolated individuals. They work in negotiation teams and report to higher authorities. Whenever they personally request the bribe, they most often have to share it with other people. In turnkey contracts, both the contractor and the owner are complex organisations which assemble various companies, ministries, utilities and agencies, all of whom are involved in the decision making process. A key issue is to keep the bribe secret when

dividing it up within the owner's group which acquires the project. A single individual rarely receives everything for it would be difficult to avoid this fact becoming disclosed quickly because of jealousy. Anyone who could potentially exert blackmail, such as a secretary who types a compromising letter or a minister who has to sign a letter related to the deal, must therefore be "paid off".

Messages exchanged during the bribery process will never be straightforward. First, communication between the potential parties serves to set the rules of the game, and to ensure that relationships will be "fair" (if fairness can ever exist in such affairs). Potential bribees may discreetly signal their willingness to be bribed by casually mentioning with a certain emphasis their personal acquaintances and the influence they have over them, as well as the information they can obtain. This will be worded softly, without once raising the subject of money. It may even be explicitly stated that money does not matter, the offer of a bribe being largely implicit. Other potential bribees may complain about the poor salary earned as a customs officer, then hint at a missing document, and ultimately, mention their effectiveness at granting customs clearance. This is an implicit call for remuneration to the business people who are seeking to obtain clearance of equipment imported for a factory whose construction they are negotiating. Negotiators on the buying side may state authoritatively that they are responsible civil servants, not motivated by money, and are seeking only to select the best supplier, adding that the choice is ultimately theirs. This may be a concealed reminder to the foreign contractor of an implicit "property right" over the signing of the deal.

Buying Influence

Negotiators are often led to buy "big influence", on the signature of large contracts, rather than "small influence" related to day-to-day implementation of such contracts. It is not rare to see the ruler of a country (e.g. a president for life or a dictator) appear almost astonished to be reproached in an interview for having accumulated huge sums of money as a result of illegal payments whilst in power. Some dictators have transferred the equivalent of a large part of their country's foreign debt to foreign bank accounts (e.g. Marcos or Mobutu). These rulers are unconsciously convinced that the state is their and their family's property. At the very least they implicitly hold the opinion that power entitles them to use their influence for personal enrichment. It may be more or less accepted in societies where most people, on their own level, sell their personal power of influence (see Box 18.1).

Box 18.1

On the banks of the large (Zaire) river just as in the province of Shaba, no one in Zaire is surprised to see a civil servant demanding a “matabiche” in return for a passport or some other official document. On the contrary, people would be worried if such a request was not made. No Zairian would take offence at having to pay for an official hearing, or to have a letter sent to a department head. Seals and headed notepaper are bought and are even sometimes forged. In Zaire, civil servants are “resourceful people” and know how to supplement their income. The police set up roadblocks when they need money: drivers never have the requisite paper and are therefore obliged to put their hands in their pockets.

At the main post office in “Kin” (Kinshasa, the capital), letters and parcels may — like anywhere else in the world — be posted in a box, but it is less than certain that they will ever arrive at their destination. The “citizen” (in Zaire, the “Supreme Guide” has brought into fashion this revolutionary title) greatly increases the chances of this occurring if he greases the palm of the postman. Likewise, a citizen may make a telephone call to the other end of the planet for the price of a tip. All this comes under “Article 15”, a shameful way of designating the small scale corruption practised by civil servants. This corruption is institutionalised and widespread; it also goes under the name of “matabiche”: bribe, backhander, a “little something”, brown paper packet.

The practice is so ingrained that President Mobutu did not shy away from encouraging it in a speech on the 20th May 1976: “If you are going to steal, steal a small amount and do it intelligently, in a nice way. If you are going to steal so much that you become rich in a single night, you will be arrested”.

Source: excerpt from Péan 1988: 139–140. Reproduced with permission.

This situation can almost be compared to one of a property right. Demsetz (1967) suggests that property rights permit individuals to know a priori what they can reasonably expect in their dealings with the other members of the community. These expectations manifest themselves in the laws, customs and morals of a society. In the case of international bribery, the right, originally based on customary law, therefore unwritten and implicit, consists of deriving personal profit from a position of power over the signature of public deals. Property rights should be exclusive and transferable. An exclusive right occurs when one single individual receives all the profits, but also has to bear all the adverse consequences that may arise. These rights must be assignable and transferable since the individual must be able to proceed to effective arbitrage. He must be permanently in a position to exchange property rights on efficient markets on which these rights are quoted. Except for dictators who establish a quasi-ownership over their country, rights on the signature of deals are rarely

exclusive. Moreover, in most cases, these rights are not transferable, or only in a very limited way, to an heir in dictatorship (e.g. the dictator Duvalier in Haiti was succeeded by his son Jean-Claude).

To maintain such “property rights” on the signature of deals, costs have to be accepted in two areas: (1) transaction costs, that is, the costs that must be met to ensure respect of one’s rights by others (bodyguards, secret agents, repression of enemies, elimination of economic and political opponents, etc.); (2) information costs to improve the efficiency of one’s property rights which may extend to paying for a sophisticated information network (i.e. spies). “Property rights” on the signature of large deals are temporary and partially exclusive; they should be considered only as subjective and implicit. Therefore business negotiators who are led to accept making illegal payments internationally face two dangers:

- letting oneself be dragged along by the megalomaniac subjectivity of an authoritative ruler who, seeing the country as his personal property, sells the right to win business there. These rights are not transferable and no dictator rules for ever.
- property rights on the signature of deals are never legally recognised; most countries prohibit the use of any position of authority for personal enrichment. Even when it is clear that bribery is a widespread practice throughout a particular society, it must not be forgotten that it is forbidden by law and is punished if discovered.

Gifts and Bribes

Often in international business negotiations, the seller’s team in an export or a turnkey contract or the party who has initiated the deal (the foreign partner in a joint venture) may find it useful and pleasant to offer gifts to their negotiation partners at the first meeting. It may make sense especially if they are hosted by their partners who spend time and effort accommodating them comfortably. Gifts are part of universal traditions of courtesy.

However, the border between gift and bribe is not a very clear one; for instance: are twelve bottles of Champagne or a cask of Bordeaux wine — worth \$250 — a gift or a bribe? Small gifts, say less than \$50, are not considered bribes in most contexts, but they can also be perceived as somewhat ridiculous presents, that is, offensive to receivers as their small size possibly suggests a lack of true commitment and even despise towards the receiver(s).

Another area of difference is whether gifts are products or services. Gifts such as a sea cruise around the world or a paid ski holiday are generally more

difficult to put into the “bribe” category. There is no direct money involved (it is paid for) or physical gift implied, although the receiver of this real bribe would have had to pay for the trip several thousand dollars.

To try and define a border between gift and bribe, it is necessary to list basic criteria for distinction:

- (1) *Size*: obviously the larger the gift the more it tends to become a bribe; American legislation, for instance, allows gifts of small value as well as “lubrication payments”;
- (2) *Intent*: a gift is not meant to be made in exchange for a favour whereas a bribe compensates for illegal action; a gift takes place within a legal transaction whereas a bribe takes place within an illegal transaction (the favour traded is not for sale, neither legally nor morally); *intentionality* is a basic element of the bribing process, either on the donor’s or the receiver’s side;
- (3) *Who is the recipient?* A bribe given to a head of state for a turnkey deal cannot be directly compared with that given to a custom officer for easing the custom process or obtaining a visa;
- (4) *Nature* of the “object” being given (tangible vs. intangible) — as noted above, intangible gifts, offering travels, favours to relatives or near acquaintances, etc. — are more difficult to consider as bribes, although they may be as much so as tangibles;
- (5) *Circumstances* in which the gift is given; if openly done, in official and public circumstances, is less likely to be perceived as a bribe and more as a gift, than if the whole process is secret and hidden;
- (6) Degree and nature of *reciprocity*: is there any reciprocation, that is, after receiving a gift a party reciprocates by giving a fairly similar gift later on to the initial giver? In the case of a bribe, there is no such reciprocation: money is given in exchange for various services such as key information, the awarding of contracts etc. which are not of the same kind;
- (7) Existence of a legal definition of *business gifts* (*cadeaux d’affaires*), that is the size and nature of gifts legally permitted to be given by companies to their customers, especially those who underwrite contracts;
- (8) *Local customs*: in some countries traditional gift exchange is still very strong; for instance in Japan gift rituals remain central in social life;
- (9) “*Poisonous gifts*” are a very special case. In order to be able to exert pressure on a person, the briber sends a gift to somebody who has not asked for bribes or gifts and feels embarrassed with the “gift”. The receiver is surprised and cannot complain about having received it, because he/she would seem even more suspect of having asked for it.

Personal Connections, Networking, Buying Information

Information is a key issue in business negotiations. Often, the cultivation of social networks appears as a prerequisite to obtaining key information. However, there is some ambiguity involved in trying to develop personal connections, because some informants in the buyer's team may be used against their own camp and favours obtained through networking may discriminate unduly against competing sellers.

Using agents for networking and influencing purpose

In international tenders, a frequent foreground for international business negotiations, the organisational links within the owner consortium are not fully defined. For instance, a state-owned utility acquires a turnkey factory under the supervision of different ministries and banks; various consultants also intervene. The areas of responsibility of each body are in fact vaguely defined. As influences can be diverse and relational networks complex, an agent who is an insider in the client organisation may offer a chance to escape the labyrinth by identifying the relevant officials and assessing the extent of their influence, and may ultimately influence them. The agent's tasks may therefore include the following: (i) supplying the seller with confidential information on the client organisation; (ii) supplying the seller with information on the competitors (warning: the recipient — or the one who is tantalised by the prospect of a bribe — may be a double agent!); (iii) spreading false information to the seller's benefit, so as to discredit a competitor. The agent may even seek to cloud the issue so that the imminent signature of the contract with a competing company can be avoided; (iv) identifying potential recipients for the bribe among those who have influence in the decision making process; (v) implementing bribe redistribution by sharing out part of the illegal payment.

Jensen & Meckling (1976) define the agency relationship as a contract in which one (or more) person (s) make(s) use of the services of another person to accomplish some task. This involves a delegation of decision-making from the principal to the agent. Agency costs arise in every situation where principal-agent cooperation is involved, even if the principal-agent relationship is not clearly defined. Agency theory has been generally applied to corporate governance issues involving relationships between shareholders and the managerial teams which govern businesses they do not own. It rests on two behavioural hypotheses: (1) principal and agent act so as to maximise their own

utility function; (2) they can rationally calculate the impact of agency relationships on the future value of their wealth.

Agent-principal relationships may give rise to opportunistic behaviour. Each individual may seek to extract personal profit from any flaws in the contracts. Flaws will be large in the case of corruption, since “bribery contracts” are never written down. It is not unheard of for bribes to be given to intermediaries without the contract being ultimately won. Because of the risks incurred when hiring an agent, agency costs will relate to controlling the agent. Should he fail to achieve his set of objectives, there must be incentives for him to succeed and possible retaliation measures against him. Such retaliation sometimes extends in extreme cases as far as hiring a paid assassin and making the agent aware of this. Conversely, a bonus on the signature of the deal may dissuade the agent from behaving opportunistically.

Ethical Aspects of Disclosing Information to the Other Party

There are various ways to reach outcomes in negotiation by manipulating the other party: (i) spreading intentionally false information (highly instrumental communication in the sense of Angelmar and Stern 1978), for instance, a seller’s negotiation team that incidentally discloses alleged technical problems of a well-placed competitor; (ii) hiding key information (e.g. a new technology is about to make totally obsolete the patent for which a licensing agreement is now being negotiated); (iii) falsifying information, that is, willingly alter figures, data, information in order to influence the other party’s decision-making process; (iv) putting pressure on the other party by invoking false arguments (“our new Chief Executive Officer will be under pressure of the shareholders and will be obliged to refuse such deals: sign now or it will be too late!”).

Taken at first glance, all these tactics seem to be unethical from a universalist point of view. However, they are used in actual international business negotiations, at least on the fringe, because the true reality is never so clear-cut. When the (future) buyer states that one of your competitors is ready to offer the same performance for a price 10% lower, it is quite difficult to check whether it is a pure lie, a simple bluff or a slightly transformed truth. As we have seen in Part 2 of this book, different cultures do not value to the same degree the very notions of honesty and sincerity, especially when it relates to information exchange.

An important aspect of information disclosure is that the party who asks for and receives confidential information from the other party must in some way reciprocate. There are ethical issues involved in asking questions and giving answers in international business negotiations. One may wonder, for instance, whether it would be fair for a party to ask the other party questions which would involve the disclosure of proprietary information. Should the other party consequently feel obliged to give answers to such questions, given that the information disclosed may be exploited if the negotiation is broken? The answer to both questions is obviously no. However, one should be aware that there is always less ethical pressure on asking questions than on answering them. As a consequence, negotiators whose culture values openmindedness, sincerity and frank talking can be unfairly exploited by partners who mostly ask questions. Cohen (1980, p. 103) phrases it in the following way:

Some of us assume that the more intimidating or flawless we appear to others, the more they will tell us. Actually, the opposite is true. The more confused and defenseless you seem, the more readily they will help you with information and advice. . . With this approach you will find it easy to listen more than talk. You should prefer asking questions to giving answers. In fact you ask questions even when you think you know the answers, because, by doing so, you test the credibility of the other side.

Networking

As noted above, there is some ambiguity involved in networking. What appears at first glance as humanistic orientation (business is not only business, it is also people), may also be interpreted as involving the immoral use of insider contacts at the detriment of competitors. In order to network with people and firms it is often required to exchange a number of reciprocal favours such as hiring their relatives, granting privileged access to positions that would normally be open to all applicants, etc. There are differences of perception as to what is acceptable or not when networking and socializing in international business negotiations. Nepotism, for instance, which is considered evil in some places, may be normal and even necessary, in other places, because of difference in the level of ingroup orientation (Triandis 1994). The ingroup bonds involve relationships of loyalty which can be based on kinship or patronage. The concrete virtue manifested in loyalty is maintaining allegiance,

even in the face of conflicts with other members of the ingroup or when experiencing unfair treatment from the most powerful members. Any society combines to various degrees ingroup and outgroup orientation and organises them around specific patterns.

Ingroup vs. outgroup orientations have a deep influence on the actual system of ethics and morality in a particular society. Strong ingroup orientation increases loyalty as insider, but decreases at the same time, the feeling of obligation towards outsiders. It might, for instance, be considered as perfectly virtuous for ingroup people to lie to or steal from outgroup people to whom no loyalty is owed. The “mafia” is a good illustration of an ingroup oriented society. Morality is based on a set of values favouring strict loyalty, treason being punished by death sentence. In this view, nepotism, patronage and clientelism are legitimate behaviours.

While the mix of friendship and business in negotiation is fairly universal, attitudes towards networking and social relationships in international business negotiations differ significantly between ingroupist and outgroupist ethics.

The western, outgroupist approach to business networks emphasizes that relationships between companies, built out of the history of the companies’ dealings with each other, matter as much as mere elements of the deal itself, that is, hard data on product specifications, price and terms of contract (see Ford 1990; Johansson & Mattsson 1988). In business networks, personal contacts matter because they serve to reduce the uncertainty linked to complex deals by face-to-face exchange of information on technical, organisational and commercial matters. “Mutual trust, respect and personal friendship between participants allows confidential information to be exchanged” (Ford 1990: 81). Personal contacts also enable interacting partners in the network to assess each other’s competence, to negotiate implementation issues and beyond-the-letter-of-the-contract issues in complex negotiations. In case of critical problems, they offer a framework for quick exchange of information and decision about corrective measures. Personal contacts also play a social role. However, market rationality and the doing orientation keep the lead in the western view of networking. People are there to “close the deal”, not to enjoy the charms of social life nor to indulge in patronage. Relationships should be “good but distant”:

... companies are not likely to encourage interaction which is only socially-based. There is an expectation that other elements of interaction (such as information exchange, product sales or purchases and adaptations) would also result. There is evidence from the research that buyers are more inclined to maintain

“good but distant” relationships than salesmen. Yet some suppliers see the dangers of too close an involvement of their salesmen with customers, in that they may lose their objectivity and take actions in the interests of the social relationships, rather than in the wider interests of their company (Ford 1990: 83).

The very notion of *guanxi* can to a large extent be considered as the Chinese and more broadly East Asian form of networking based on the continuous maintenance of relationships with the appropriate organisations and individuals within these organisations. Chinese *guanxi* corresponds to *kankei* in Japan and *kwankye* in Korea, that is, after-hours socialization which become important forums for meeting and convincing key decision makers in a socially more comfortable atmosphere. *Guanxi* mixes social behaviour and business practices in a complex set of disinterested and interested personal interactions. It is not necessarily directed at short term results and consists of an investment in relationships which may or may not be called upon in the future. The practice of *Guanxi* translates into large sales forces for maintaining contacts and large account receivables (in a way similar to the liberal credit policy in Japanese *keiretsu*). Firms engaged in a connected set of companies, called *guanxihu*, do their best to avoid embarrassing a business partner which experiences temporary financial problems. *Guanxi* has been shown to be strongly favourable to the performance of international joint ventures in China (Luo 1995) as well as for foreign-invested enterprises in China and Chinese domestic firms (Luo 1997, Luo & Chen 1997).

The Chinese concept of *Guanxi* shares some common traits with the Western concept of networking, especially the continuity of business relationships and a framework for understanding the relationships between firms engaged in cooperative rather than competitive behaviour. There are, however, some significant differences which Luo & Chen (1997: 3–4) explain as follows:

guanxi primarily relates to personal, not to corporate, relations, and exchanges that take place among members of the *guanxi* network are not solely commercial, but also social, involving the exchange of *renqing* (social or humanized obligation) and the giving of *mianzi* (face in the society), or social status. This feature often leads *guanxi* to be named “social capital”. In contrast, networking in Western marketing and management literature is the term primarily associated with commercially-

based corporate-to-corporate relations. Because of this difference, many Western business people are often in danger of overemphasizing the gift-giving and wining-and-dining components of a *guanxi* relationship, thereby coming dangerously close to bribery or to be perceived as “meat and wine friends” which is a Chinese metaphor for mistrust.

Commitment Ethics

Commitment is a wide area of ethics of business negotiations, dealing not so much with the process itself but with negotiation outcomes, after the contract has been implemented. As explained in previous chapters of this book, a relativist approach of what “commitment” means is needed. The English word “commitment” cannot be appropriately translated in many languages because it loses much of its strength as a self-obligation, that is, as an ethics of doing what one has promised to do. This relates further to the strength of the linkage between words and deeds: do parties say what they do and will they do what they say they will do? The kind of link which is established by each party between words, promises and real commitment towards the other party may differ in international business negotiations. It is better for negotiation partners to discuss as early as possible their views of what commitment means as concerns the fulfilment of obligations in a number of key areas. Domains of commitment must be discussed flexibly in order to assess whether it can be trusted that “a party’s word is his bond” or whether additional mechanisms such as penalties, arbitration of conflicts and re-negotiation clauses are necessary to redress probable lack of self-enforcement due to poor commitment ethics.

– *Time commitments* related to deadlines, delay, delivery dates, project planning, etc. should not be considered as self-enforceable. Commitment ethics in this field must be more or less agreed upon during the negotiation process and not discovered too late; since attitudes toward time differ, delivery dates, constructions time and the treatment of possible delays have to be considered with a view of how both parties can be *jointly* committed.

– *Commitment ethics* may widely differ as concerns sticking to clauses: the renegotiation of clauses may seem normal to a party and an outright violation of one’s signature to the other party. This has to do with the degree of commitment to the letter of the contract which may differ across the parties (see chapter 8). A party may try to escape responsibility by taking argument of exceptional circumstances, a change of government or other — not fulfilling obligations in terms of payments, penalty clauses, etc. Unless this is clearly forecasted in a force majeure clause or a hardship clause, this ethical issue may lead to a harsh conflict between the parties.

Ethical Standpoints: Universalism, Cultural Relativism and Moral Pragmatism

In front of ethical issues in international business negotiations, there are two extreme positions: relativism and universalism. Relativism is based on the view that rules are basically local and do not apply elsewhere; universalism, on the other hand, favours the view that most rules cross borders and apply everywhere because they are based on universal moral principles. Before describing ethical standpoints, it is necessary to assess the degree of relativity of ethical attitudes.

Cultural Relativity of Ethical Attitudes

Figure 18.1 presents a framework for assessing the cultural relativity of ethical conceptions (Usunier & Verna 1994). Any activity may be considered both

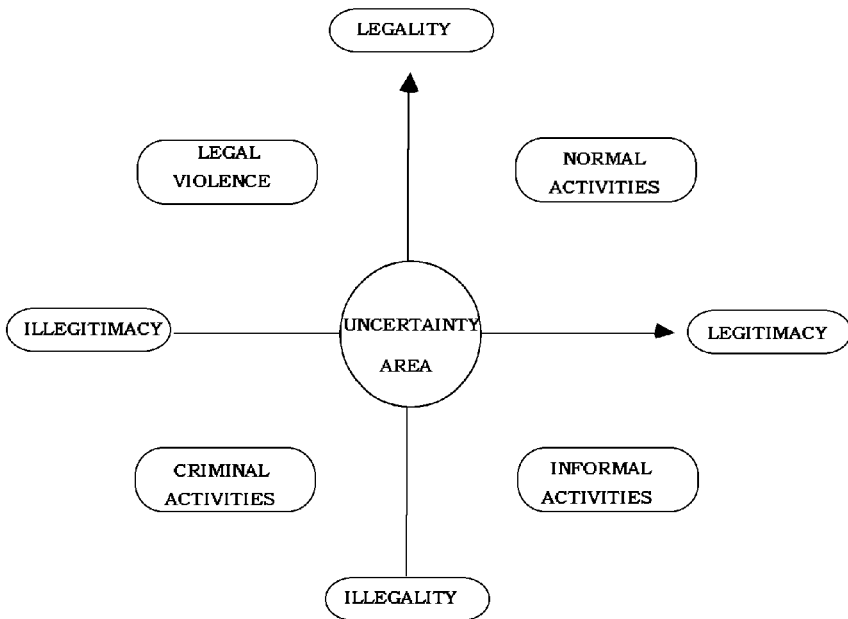


Figure 18.1: A framework to understand the cultural relativity of ethical attitudes.

Source: Usunier & Varna (1994).

from the legal and regulatory point of view (*legality*) and in terms of its degree of acceptability as a social practice (*legitimacy*). Unlike legality, that is, the quality of being lawful, legitimacy is the quality of what is just and equitable, conforming to established standards of usage and behaviour but not necessarily completely lawful. Views of what is a *legitimate* activity help to settle disputes more by reference to personal evaluations of the requirements of natural justice than by reliance on the strict letter of the law. The notion of legitimacy is therefore much more indistinct because it is based on individual assessments. One might expect that where the citizens of a nation share a common value system, they would also share at least the same general conception of natural law. Natural law, with its moral underpinning, is much more suffused with conceptions of legitimacy than positive law, which is founded on legal formalism and on the different sources of law. In this way, we can distinguish between four categories of activities:

- “normal activities” which are both legal and legitimate;
- “informal activities” that are at the margin of legality but often legitimate: underground economy and moonlighting in developed countries, parallel economy in developing countries;
- “criminal activities” which are those that are intentionally carried out in breach of the law, and are totally devoid of legitimacy;
- “legal violence” which designates those areas where an action is legal but not legitimate: forcing the population of a district to accept a hazardous factory, certain expropriations nominally in the public interest, the export of toxic waste to Third World countries, etc.

In the case of bribery it is clear that socio-economic explanations are not excuses for unacceptable practices. However, there must be some strong economic and social reasons why bribing, although unlawful, remains in existence. Three implicit economic explanations for illegal payments have been described above, which actually correspond to the three most common bribery scenarios in international business negotiations. Far from being mutually exclusive, these forms of payments which “ease” the negotiation process and facilitate favourable outcomes are combined in traditional societies where most people, on their own level, sell their personal power of influence.

The first scenario is that of small scale everyday corruption of poorly paid civil servants who supplement their income by taking advantage of their power. Passing through customs or obtaining a tax form for a mandatory fiscal statement may require the “greasing of someone’s palm”. This semi-official

situation is tolerated as long as bribes do not exceed a “fair” level. If a police officer, a customs officer or a tax inspector is poorly paid but holds authority and responsibility, it may be “implicitly understood” that in exchange for carrying out poorly rewarded public duties, he/she may supplement his/her income. This can be assimilated to an implicit salary, in so far as the public authorities are aware of such practices and consider this implicit salary as justified by the low level of the official salary. Depending on the context, small scale payments may be perceived as an informal or criminal activity.

The second explanation is that illegal payments would be related to an implicit property right when the person who has the final say on a contract also feels entitled to waive this right in return for money. This situation where a “dictator” in its wider sense, namely someone at the very top, sells his right to award deals is a form of legal violence.

The third form of illegal payments may be viewed as an implicit agency contract between a principal who seeks to win the deal in a negotiation process and an agent who penetrates relational networks, supplies information and exerts influences. According to the country, it may be considered either a normal or an informal activity, socially accepted but at the fringes of legality. In Saudi Arabia, for instance, “sponsors” are legally recognised. As a response to various scandals, Saudi Arabia introduced legislation that sought to legitimize and control the payment of commissions. A 1978 royal decree has banned the use of influence to obtain government contracts and has fixed the conditions where agents (called “sponsors”) may be hired. The legal qualification of “sponsor” is in reality rather vague: it covers the notion of guarantor and can be combined with the function of commercial agent. They must be Saudi nationals. Their remuneration cannot exceed 5% of the value of the contract, and they cannot represent more than ten companies. Even members of the royal family have to publish a list of their principals in official registers. Furthermore, military contracts as well as intergovernmental transactions may not give rise to an agent’s commission.

Universal Ethics: The Example of the FCPA

Ethical universalism is based on the view that core ethical principles are universally applicable, whenever and to whoever, independently of territory and group membership. The U.S. Foreign Corrupt Practices Act of 1977, revised in 1988, is an example of such an universalist approach to ethics and rules. It applies extraterritorially, that is, American anti-bribery legislation applies to American companies whenever the illegal action takes place outside

the U.S. territory and with foreign companies and individuals. This legislation typifies the universalist orientation of U.S. culture.

In the mid-1970s the Attorney General's enquiry into the Watergate affair revealed that suspect payments had been made to foreign politicians by large American companies. In 1977 the FCPA (Foreign Corrupt Practices Act) made it illegal for companies to influence foreign officials by personal payments or transfers of money to political groups. This law obliges firms to institute an internal accounting control. The FCPA's definition of what constitutes bribery is very wide. It does, however, exclude small payments known as "back-handers" and tips paid to minor civil servants to speed up customs clearance or any administrative formalities.

After the introduction of this legislation, over forty articles appeared in the management literature in the United States criticising the FCPA on the basis that it was detrimental for American companies abroad (Gillespie 1987). Kaikati & Label (1980) claim that the FCPA placed American companies at a competitive disadvantage as compared with European or Japanese competitors. In many countries such as Sweden, France, Switzerland and Germany, although illegal payments paid to nationals were illegal and not tax deductible, those paid to foreign officials were. Jacoby *et al.* (1979) point out that in response to the FCPA the majority of American multinationals substantially reduced or eliminated these practices. They either turned their former agents into separate companies, independent of themselves, so they could buy and sell in their own right, or sometimes even abandoned their long-standing competency as a prime contractor and acted as simple sub-contractor for French, German, Japanese or Korean companies. A further frequent criticism of the FCPA is that it has destabilised political regimes that are friendly to the United States. It is alleged that the leaders of these countries were sometimes forced into making compromising revelations.

Gillespie (1987), studying affairs of corruption in the Middle East for ten years, carried out an analysis of about sixty cases of corruption where foreign companies were involved. She concluded that arguments against the FCPA were not strictly met by the facts. Some regimes remained stable despite major scandals (e.g. Turkey, Egypt, Saudi Arabia), others fell (e.g. Marcos of Phillippines and Rajiv Ghandi of India) for more deep-rooted reasons. Furthermore, the study made by Gillespie of the changes in the export market share of the United States (in comparison with its major international competitors) showed that U.S. foreign trade with the Middle East had not been adversely affected by the FCPA.

However, Foster (1995: 212) outlines the limitations of the universalist view in the following terms:

We need to recognize that this process of developing ‘universal standards’, of searching for and relying on objectifiable fact is *not* universal, that it is, in part, a uniquely Western process and that many other cultures neither subscribe to this world view of ethics nor have histories and traditions supportive of it. In fact, it is precisely because of the profoundly opposite world view held by traditional Asian cultures in this regard that Americans find themselves in the mystifying position of having Chinese associates ‘change’ contract terms on them right after they’ve signed the deal.

Cultural Relativism

The ethical position of cultural relativism considers that what is right or wrong, good or bad, depends on one’s culture. This is based on the view that rules are applicable locally in the ingroup territory. Thus “When in Rome, do as Romans do”. There are some strong arguments in favour of cultural relativism such as the case of Africa where corrupt money is largely, but not completely, redistributed in society. However, one cannot ignore the negative consequences of such widespread corrupt practices. Galtung (1994) and others show the heavy burden placed by corruption on economic development: for instance, the property of late President Mobutu Sese Seko of Zaire is said to have been equivalent to the whole of the external debt of the country.

As noted by Berenbeim (1997: 26), host country conditions have to be taken into account:

You cannot say to a country manager, “Don’t do this, don’t do that, now here are your goals for country X where all of your competitors do this and that. I don’t want to hear any excuses if these objectives are not met”. Under those circumstances, either rules will have to be broken or ambitious goals will not be achieved. The way to avoid this kind of impossible situation is to build a consensus among practitioners for enforceable rules The example of the FCPA is a case in point. Although it would be more satisfying to punish the person who demands the bribe than the company that pays it, obtaining legal prohibitions in the major industrial countries and targeting the companies that bribe rather than the local citizens who demand payment is likely to have greater impact.

In between lies a third possible view which is a pragmatic and respectful view of how ethical behaviour can be developed in the context of international business negotiations. It implies the development of a specific set of ethical concerns and attitudes related to the situation, given the legality and the legitimacy of a definite action, both of which can differ in the home and the host country. Let us call it “moral pragmatism”; it is based on the Confucian view of *Shu* emphasizing the importance of reciprocity in establishing human relationships and the cultivation of “like-heartedness” (Cf. Goldman 1994; see Chapter 5, Box 5.1). Moral pragmatism is concerned with the welfare of the global collectivity, directing human relationships to the betterment of the common good. It is not a strictly pragmatic perspective which would involve a somewhat cynical analysis of the effectiveness of these practices in the winning of contracts. This approach avoids the risks of the simplistic attitudes whereby illegal payments are either roundly condemned or alternatively unequivocally accepted on the basis of merely being “realistic”.

Useful guidelines for those confronted with ethical issues are provided by the definition of a “moral personality” proposed by John Rawls in his *Theory of Justice* (1971). A moral personality is characterised by two capacities, namely the capacity to conceive good and the capacity to develop a sense of justice. The first is realised through a rational project for one’s life. The second implies a continuing desire to act in a way that one believes is just. Thus, for Rawls, moral personalities have chosen their own goals; and they prefer those conditions which enable them to fully express their nature of rational, free and equal beings. The unity of the person is then manifested by the coherence of one’s own project. This unity is based on a higher order aspiration to follow the principles of rational choice in a way which is suitable with a person’s sense of justice. It means that if people are asked to perform an action which violates their sense of right and wrong, it is better not to do it, even if it means not behaving as a Roman in Rome. Rawls’ definition of a moral personality remains a rather western one, in that rationality, individualism and the sense of equality with others are strongly emphasized. In many other cultural contexts, especially Asian countries, where moral personalities actually exist, these traits would not be emphasized in such a definition.

Moral pragmatism is better in any circumstance where things are intentionally hidden, suggesting that even local people are not certain about the legitimacy of what they do. Moral pragmatism complements cultural relativism. For instance, a party may exploit the other party by taking argument of its alleged “difference” in order to gain advantage after the contract has been signed. Although some flexibility with the letter of the contract is obviously needed (because contracts are never fully “complete”: there are always

loopholes and minor inconsistencies even in the best drafted contracts), a party which does not stick to its obligations must in some way be forced to do it. A way for finding adequate corrective measures is to take discreetly local advice about what happens locally when a company, an individual or a sponsor does not fulfill a certain part of its commitments: how is the issue raised and addressed, how is the conflict managed and what are preferred ways for solution? Who are possible intermediaries for problem solving?

Individual Ethics, Corporate Interests, and Social Welfare

The first consideration is pragmatic: business people who make illegal payments take (real) personal risks for (potential) organisational benefits; they do it either because of corporate loyalty or personal interest (e.g. sales commissions or promotions). Doing this, they: (1) involve their company in the risk of being implicated in a scandal; and (2) risk themselves being implicated, indicted, and ultimately sentenced to imprisonment. In the case of turnkey sales, the favourite domain for large bribes, it is important to clarify the mandate for negotiation which is given to the project negotiators by the engineering company or consortium of contractors. As one may put it in straightforward terms, "If you must grease palms do it right". Unless the negotiators actually bring up the bribery issues directly and openly, the exact extent of their powers and responsibility will be insufficiently clarified. The executives who sell factories or turnkey equipment often "go into battle" with little prior warning or protection.

Bribery is highly detrimental to social welfare in the recipient country. The big loser from the system of bribery is the recipient country, because it pays in the end for bribes which are inevitably included in the full contract price. Bribery has adverse consequences such as factories or equipment that are either idle or surplus to market needs because contracts have not been signed for sound economic reasons. When bribery is a major background topic in the negotiation process and outcomes, it reduces significantly the level of commitment of the negotiators to technical quality and to the respect of standards and dates. Local managers may be discouraged because their technical expertise is poorly considered. As a consequence, they will spend most of their time trying to attain those political positions where illegal payments enable significant personal enrichment. Bribes may ultimately be powerful motivators for under-performance. For example, technical advisors participating to the negotiating team of the buyer may be bribed by being fictitiously employed by a fake consultancy company based in Luxembourg.

Their objective interest is that their salary should be paid in Luxembourg for as long as possible, therefore the contract should be negotiated slowly and the factory itself should be constructed over a long period of time. Such persons may be unconcerned with keeping to deadlines because it would stop their bribes.

Concluding Remarks

When the scale of an ethical issue is large and/or when it involves corrupt behaviour which is legally prohibited in any country of the world, a universalist stance to ethical issues should be adopted. Conversely when confronted with minor ethical problems involving unsaid divergence in interpretation of what is ethical behavior and what is not, it is better to adopt a culturally relative attitude toward ethics in negotiation. Moral pragmatism is to be adopted when a party asks for benefits which are at the fringe of legality and rather illegitimate in a social perspective. Recommendations for action are the following:

- (1) As a negotiator on the seller's side, do not propose grease money: It is contrary to universal principles and has adverse consequences for the bribee's country; moreover, it is not a normal, that is both legal and legitimate, way of winning business.
- (2) If asked for a bribe by the other party, you have to decide with your company whether this should be included in the negotiation process or not; as an individual negotiator, always keep in mind that: (a) this is illegal; (b) profits go to the bribing organisation and not to the individual briber who takes most risks. Remember that ethical issues in international business negotiations are both organisational and personal: companies never go to jail whereas negotiators may.
- (3) Do not try to win over competitors by offering larger bribes to greedy buyers. This just feeds the "inflation" of bribes.
- (4) Lubrication payments can be made, provided that the payment does not unduly border on a bribe. The border between bribes and gifts is obviously difficult to define: a universalist perspective must be avoided in judging such matters and moral pragmatism must be adopted instead. A maximum amount legally defined is probably the most operational solution, if it exists locally and if it is realistic enough to be respected.
- (5) Cultural relativism can be adopted to a large extent in non-bribe ethical issues such as making personal connections, networking, buying information and hiring agents and intermediaries for smoothing the negotiation process.

- (6) Do not confuse real ethical issues with a misled view of your partners' honesty which may be due principally to cultural and communication misunderstandings.

Chapter 19

Some General Guidelines for Negotiating International Business

Pervez N. Ghauri and Jean-Claude Usunier

This final chapter deals with a series of normative recommendations for negotiating international business successfully. It builds on the previous chapters in the book and provides the international business negotiator with some basic rules which have been organised in four distinct, but interrelated sets: (1) rules dealing with the preparation of the negotiation; (2) rules dealing with choosing the right negotiation strategies: defining *your basic interest*, preparing walk-away options, and deciding how to react to your counterpart's strategies; (3) rules on how to manage the face-to-face negotiation, taking into account one's own and the other party's basic interests, time, people involved, communication processes etc.; and (4) rules on "negotiating beyond negotiation", that is, that part of the whole exercise that extends beyond what is generally considered as the "normal" task of the negotiators, embedded in a limited time frame.

Preparing for the Negotiation

Rule 1: Be Prepared to Prepare

The first and foremost rule of international business negotiation is to be prepared, if need be, to renounce a negotiation. This may be necessary because the stakes are too low or when sending higher level executives would not even

match the expected benefits. Most international deals incur transaction costs that are disproportionate to the costs related to domestic deals. People in the domestic market usually share the same language and cultural background, which acts as a common knowledge base. For instance, it is much easier within the native cultural setting to guess who will be a good, reliable partner or a trustworthy supplier. Negotiation, as any strategic activity, lies even *more in what one does not do* than what one actually does.

The most important fact to consider is that the negotiator's task starts largely before people sit around the table: they have to be well prepared, have a clear understanding of their basic interests, objectives, bottom line and room for manoeuvre. Before participating in a negotiation, they have to learn the basics about the behavioural norms of their partner's culture, especially concerning appointments, punctuality and planning.

Rule 2: Gather Factual Information

Key information must be collected prior to the negotiation and the lack of such information (or the fact that only part of the scope is covered by the information search) has often been noted as a reason for the failure of negotiations. The negotiators should thus create and demonstrate willingness to exchange information with each other. This can be done through:

- Learning about the future partner: people- and networking-related information; team composition; who is who in the team (background, status etc.)? First of all, you have to look for the match between your and the other parties' organisation. Secondly, you must see what type of people are involved from their side; team or individuals, technical or commercial people. Thirdly, you have to check which level of people is involved; Marketing/purchasing managers, Vice Presidents or Chief Executive Officers. And finally, in case of international business negotiations, you have to know any restrictions or limitations regarding trade or business between the two countries. Countries have different rules and laws governing licensing, agency relationships and joint ventures with foreign firms. The rules and restrictions regarding foreign exchange and remittance of funds are other crucial factors from the investors' point of view.
- Expectations of the other party: their constraints and limitations (especially in terms of performance thresholds or mandate given by their superiors). You should see the complementarity between your objectives and those of the other party. What do you expect to achieve with this deal and what does the other party want to achieve. If you have conflicting objectives, without any

overlap (your minimum expectations are far away from their minimum expectations), then you are going to have very difficult negotiations. You must ask yourself if it is wise to enter the next stage or not.

- The other party's decision-making process: general style of decision making (centralised, decentralised, committee, etc.); who decides? How? Is decision strongly related to implementation? To what extent does it fit with your own decision-making style. You must know the decision-making style, whether it will be a team decision or whether one person will decide. In case they follow a centralised or individualistic decision-making style, you should know where or by whom the decisions are made. Then you have to see how your decision-making style matches with theirs, and whether you have to make any adjustments. Our suggestion is that you should match with their decision-making style as much as possible.
- Environmental data: government; regulatory authority (e.g. EU commission's role). These days, governments and customers are highly concerned about environmental effects of foreign investments and industrialisation. In some sectors, such as agriculture and food industry, energy and power generation and pharmaceuticals, these issues are of the utmost importance. In such industries, a company needs to be extra vigilant about the rules and regulations of the local government. American firms often come with the attitude, that because in the U.S. the rules set by the Food and Drug Administration are so rigorous, they do not need to worry about rules in other countries. This is not correct behaviour. Even in the European Union, a number of U.S. firms are having trouble, for instance in the food industry, over genetically modified (GM) products. The European Union has rather specific rules about what can be sold in Europe and under what name.
- Competition-related data (especially in the case of a sales negotiation, but also beyond that, for instance in case there are different possible partners for a joint venture, or a licensing agreement): Who are the possible competitors? What is their status in the process (e.g. shortlist or final face-to-face negotiations)? As a negotiator you must have full information on your competitors for the particular project. You need to know what their strengths and weaknesses are compared to your company, product or offer. For each of their strengths, you must have a counter-offer. If your price is higher than theirs, you must be able to convince the buyer that your offer is worth it. Or, you should be able to offer some other benefits that competitors cannot.
- Information about third-parties: consultants, trade-unions, environmental groups, NGOs; all those who are generally not direct participants in the negotiation process as such, but may influence parties on either side. The parties may or may not participate in the actual negotiations, but they do

influence the decision makers. The role of governments, e.g. the relevant ministry, is very important in many third world countries. Consultants, agents or go-betweens play a major role in big projects. You should not be hesitant in employing a local consultant or foreign consultant that is an expert on a particular country/region. These consultants or agents can gather relevant information and penetrate easily into the other negotiation team.

The above-mentioned information will help us in defining the problem and basic facts about the process at hand. It is important to ascertain pieces of information, sorting them out and assessing which information needs to be sought or clarified, what additional data is needed, etc. It is a key requirement to have identified important information loopholes, that is, information which was not possible to obtain before arriving at the negotiation table and which needs to be gathered as soon as possible when starting the negotiation itself. It is important to comprehend the other side's needs and objectives, which may change during the process.

Rule 3: Assess Intercultural Obstacles as Early as Possible

Business-people often underestimate or even completely overlook this point, since they often share a technical culture with their conversation partner. They are also deceived by an almost international atmosphere that can be quite misleading. Glen Fisher emphasises: "Obviously, the modern intensity of international interaction, especially in business and in technological, communication and educational fields, has produced something of an internationalised 'culture' which reduces the clash of cultural backgrounds and stereotyped images. Happily for us, this *modus vivendi* is largely based on Western practices and even on the English language, so many otherwise 'foreign' counterparts are accommodating to the American style of negotiation" (Fisher 1980: 8). Unfortunately, in the real world, the person who does not feel the need to adapt, especially as far as language is concerned, may be indulging in indolence. It is a mistake to think that one's partner is just like oneself. That is to say that often similarities are illusions, especially when foreigners seemingly share the same "international culture". Those who adapt are aware of differences, whereas those who are adapted to stay unaware. The other party may speak English very well, may even have lived (studied) in America or Britain, but this does not mean that they follow the American negotiation style. People are different, even within Great Britain.

To gain insight in cultural differences and their importance, it is not enough to gather miscellaneous, superficial information on our counterpart's culture

and habits concerning wining and dining. Our first priority should be to develop a deeper understanding of the foreign culture and way of doing business, so we can develop a more empathetic approach to doing business with people from that culture. However, to really understand another culture and the ways in which it is different, we first need to have a clear understanding of our own culture. It is the understanding of the cultural differences that is most important. As put by Foster (1992), nobody can know everything about someone else's culture. It is possible that, for instance after living in another culture for a long time, you learn so much, that from an outsiders point of view you become "expert" on that culture. But you will never know it like an insider. And in fact, you don't need to know everything your foreign counterpart knows about his country and its culture. What you do need to know is how your culture and the ways in which it differs from that of your opponents affect what happens at the table. Your strength lies in your knowledge and understanding of yourself and your culture, as your opponent's strength lies in his knowledge and understanding of his cultural background. You should maximise your strength and minimise your weaknesses.

Box 19.1

Socrates said it. It's in the Bible and in the Koran. It's central to Confucianism and Buddhism. And, according to Freud, its absence is at the heart of many modern men and women's problems. In negotiations, "know thyself" also means "know your culture". We cannot understand another culture without first understanding our own. We must start with recognising our own point of reference — the values and norms we ourselves operate within. Generalisations about business practices in Asia, for example, mean nothing unless we can compare them with generalisations about business practices in our own culture. Without understanding the ways in which these practices differ, we cannot effectively deal with them.

The better negotiators, the more successful businesspeople are not those that have memorised thousands of do's and don'ts, but those that have developed an international feel, a global mindset, an empathetic approach toward doing business with people from other cultures. Certainly, they do try to learn about the people of the country they are negotiating with, and certainly, those experienced with a particular country will have an advantage over the less experienced. But, first and foremost, the better negotiators understand the broader process of establishing effective communication with business associates whose cultural baggage is different from their own. And they know the importance of understanding cultural differences in order to prevent such differences from undermining the negotiations.

Source: Based on Foster, D. E., *Bargaining Across Borders*, New York: McGraw-Hill 1992: 4-5.

Rule 4. Prepare for the Type of Deal that will be Negotiated

Different types of projects need different types of preparation. Projects such as turnkey, export sales, licensing, joint venture, dealership agreement, merger and acquisition, etc., involve different depth or scope in negotiation. Also, as discussed in Part three, for different types of projects different rules apply within the same country. You cannot use the same information and strategy for all types of projects.

In licensing agreements for example, you have to decide whether royalties will be paid on total production, sales or as a lump sum. The most important factor here is to compare potential revenues and costs with the expenses and income to be generated by entering the market through other ways. Only after this kind of cost-benefit analysis, will the firm become aware of how important the negotiations are and what kind of strategy and behaviour should be adopted. If the licensee is going to use the licensor's trademark or name, reference must be made to quality control or other checks. Issues related to research and development and future development of know how must also be negotiated.

In case of joint ventures, the most important area of conflict is the objectives of the parties involved. While the foreign firm may see the joint venture as a profit-making way to enter a lucrative market, the local partner may only be interested in acquiring the technology of the foreign partner. In case foreign governments are involved as a partner, they might be more interested in developing domestic industries and thus pressure the joint venture to buy components and raw materials on the local market. The selection of the right joint venture partner is often mentioned as the most important factor in joint venture negotiations. The foreign firm has to check and double-check the capabilities and resources of the potential local partner, as well as the availability of skilled labour in the particular market. This will be important when negotiating how many expatriates will be needed to run the joint venture.

Rule 5: Empathy is Not Enough

Empathy is defined in Webster's dictionary as "the action of understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts and experience of another". To be empathetic to other people thus means to understand their needs and motives as well as they do themselves. This is what we mean by a negotiator with an international orientation or

mindset: he is able to put himself in the others shoes and to understand their arguments and remarks. By understanding our counterpart's arguments and needs, we will be able to achieve our goals more smoothly, as we know which arguments will be acceptable to them, and which not.

To be successful in negotiations, you must be able to interpret and understand the other side's arguments and reactions. Keep in mind that all this depends on advance preparation, and unfortunately cannot be improvised. To help the others intelligently and agreeably, an understanding of one's own culture is a prerequisite. However, when formal business negotiations or even preliminary business talks start and one side lacks minimal knowledge of the partner's culture, the relations will often turn sour. It will soon be too late to approach basic issues affected by common understandings and cultural differences. Then the only way to negotiate is to discuss on the substantive ground of "business is business". In this light, training in intercultural business seems more like a preliminary investment to improve the effectiveness of business deals than a way of solving urgent problems. In medical terms, cultural understanding in business appears as the prevention rather than the cure.

Strategy Formulation

Rule 6. Define your Basic Interest

An essential factor in the definition of a strategy is the concept of *basic interests*. Basic interests are a limited set of core outcomes which are consciously expected by a party as a result of the negotiation process (Pruitt 1983). This may concern a reservation price, a certain type of contractual arrangement, keeping a technology etc. The main characteristics of basic interests are that:

- (1) they cover only a limited range of favourable outcomes: it is not "all the cake" which is desired but just a certain part of it which is significant to a party;
- (2) they allow a clear definition of what is negotiable and what is not negotiable;
- (3) they enable a party to signal firmness to the other party without offending them; and

- (4) they facilitate the timing of concessions and enable a party to avoid yielding too much.

Copeland and Griggs give some rules for drafting a basic interests sheet: (1) “define what ‘winning the negotiation’ means to you”; and (2) “be ambitious but set a realistic walk-away”. What do we want: a fair price, a target profit, learning from the potential partner, getting access to resources, accessing a technology or a combination of these achievements and which combination? Defining precisely what it means to a party to win or lose the negotiation is part of the “brainstorming” that is necessary for preparing the basic interests (Copeland & Griggs 1986: 74–75).

While defining basic interests, it is also important to identify the common ground and, more precisely, the perceived common ground; take the true measure of the overlap between one’s own basic interests and the other party’s expected outcomes, as far as one can envisage them. During the process and argumentation, parties should emphasise the common interest and not the conflicting objectives. One must give an impression that one is primarily looking for a solution that helps both parties to achieve their objectives.

Rule 7. Prepare Walk-Away Options

The importance of walk-away possibilities is not readily apparent in the preparation phase. Future negotiators, on both sides, tend to over-emphasise a joint positive outcome, being inspired by quite legitimate wishful thinking. In business, parties go to negotiation on a rather free basis: they often have alternative partners and/or alternative deals, ventures and projects. However, as the negotiation proceeds, it may appear that, despite favourable initial conditions, there is some deep mismatch between the parties. Thus, it is important to define what winning means to you as well as what *not winning* means to you. Being able to walk away without a deal is a scenario that has to be envisaged prior to the negotiation itself. You have to decide what is the maximum you want to achieve and what is the minimum you are prepared to accept. Also, you have to anticipate the same for your opponents: what is their maximum and minimum. As we can see in Figure 19.1, in situation *A* there is only a small overlap between your minimum and their minimum. It may be difficult to come to an agreement. In situation *B*, the negotiations should definitely go on, since the overlap provides ample room to reach an agreement. In case of situation *C*, when you see no overlap between your minimum and theirs, perhaps it is better to walk away, without wasting any time and resources.

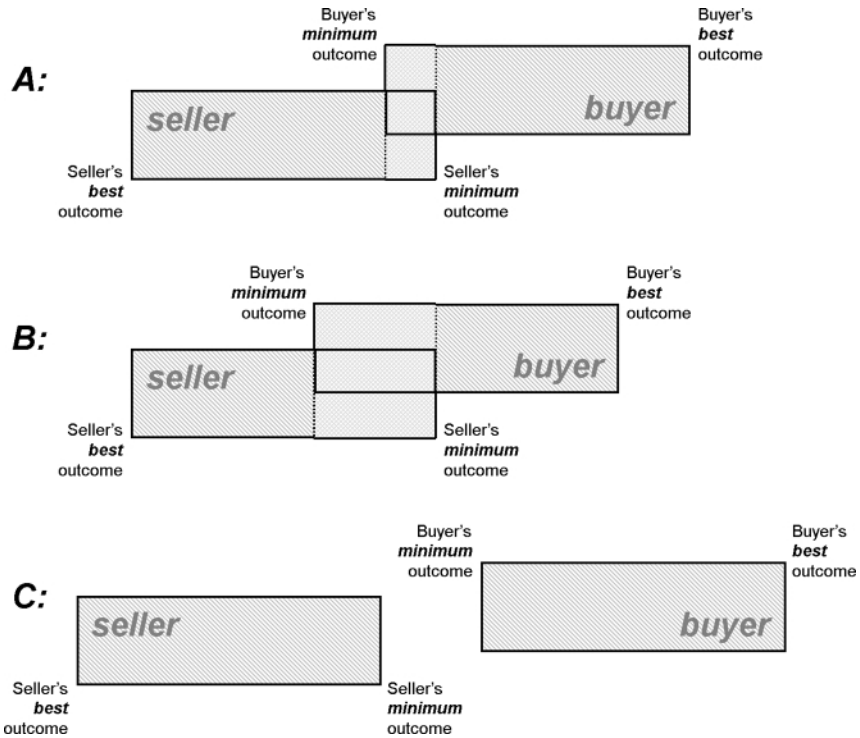


Figure 19.1: The parties' minimum and maximum outcome.

Once again: strategy is a lot about what one chooses not to do. Walk-away routes are an integral part of the strategy formulation. This may occur for many reasons, for instance:

- (1) a negotiation has started on definite premises, which have changed in the meantime (take-over, price increase of key inputs or outputs);
- (2) key people who were assets to the process have left; and
- (3) little by little, the partners discover that they do not fit together (because of different corporate cultures for instance) and even though the deal itself would be profitable on paper, the relationship would not work and joint implementation would be difficult.

Rule 8: Prepare for Tough Strategies on the Other Side

It is also important to elicit, prior to the face-to-face negotiation, the degree of toughness that a party will adopt towards the other. This issue has been widely discussed (see e.g. Ghauri 1986, 1999). A “tough” strategy, for example, is one in which a party starts with a high initial offer and avoids making concessions. A “soft” strategy is one in which the granting of concessions enhances trust and facilitates negotiations. In a ‘fair strategy,’ the negotiators appreciate that a certain settlement would be fair to both parties (e.g. a 50/50 split), and as soon as one of them suggests such a settlement, the other party agrees rather than holding out to obtain more concessions. In managing the process of yielding, on both sides, it is useful to have an understanding of the other’s basic interests and strategic orientation. If one of the parties realises before the face-to-face negotiation that there is considerable overlap between its own and the other party’s position, the negotiator should be ready to wait and not agree with a settlement at once. Not only do you have to decide on a strategic option for your side, you also have to anticipate the strategic option chosen by the other side. You must prepare for a tough strategy from the other party and have a counter strategy.

Face-to-Face Negotiations

Rule 9: Control Location and Tactics

If a party negotiates on its own terrain (possibly by inviting the other party, bearing the full cost of accommodation locally, and treating the other party as honoured guests), it will have a competitive advantage over the foreign partner in terms of time control and agenda, and it will feel quite comfortable while negotiating face-to-face. Negotiate at home whenever you have the possibility. It may be quite useful to simulate the margins of manoeuvre on both sides, the leeway of the negotiators of both parties and to investigate the opponent’s basic interests: How will they react to some of your proposals and, on the other hand, how will you react to some of their proposals? Here, the history of the relationship between the two parties can play an important role. In the case where the parties have no previous relationship, expectations on each other’s behaviour can lead to competitive, co-operative or defensive behaviour.

Preparing a negotiation sketch allows for both distributive/competitive and co-operative/integrative phases. Don’t always use the same style. Allow people

in your own negotiation team to play different roles (in a way which has been planned jointly beforehand) so that your team is never considered as being completely distributive or integrative. The nature of distributive vs. integrative phases may depend upon the type of issues discussed, for example, price vs. technical specifications.

Rule 10: Change Negotiation Style when Needed

It is possible that the other party starts with a quite “tough” strategy, as defined above. In this case, one should be ready to signal firmness without directly applying a tough strategy (as a matter of straightforward retaliation), which may lead the negotiation process to an early deadlock. For instance, the Soviet style of business negotiations, still a part of the Russian style even after the Communist regime has fallen, has been described as fairly tough and unilateral. Negotiators tend to make extreme initial demands, to view adversary concessions as weakness, to be stingy in concessions and to ignore deadlines (Cohen 1980). Graham *et al.* (1992) note the consensus of description of the Russian negotiators as “competitive” and “uncompromising”. They show in a laboratory experiment that Russian negotiators tend to prefer a distributive strategy, and this with minimal negative effects on their (Russian) partner’s satisfaction, which seems to suggest that such competitive behaviour is considered locally as standard practice. In case the other side comes with an unreasonable demand, you have to relate issues with each other. Use “if . . . , then . . .”. (Chapter 1) to make them realise that you can also play hard.

Rule 11: Control your Concessions

Plan and time your concessions beforehand. Concessions can be viewed and interpreted in rather opposite ways: either as a sign of openness, willingness to co-operate or as a sign of weakness and readiness to yield considerably. For instance, according to Lefebvre (1983), the Russian ethical system differs strongly from the American: “Something that an American considers normative positive behaviour (for example, negotiating and reaching a compromise with an enemy, and even a deal with another individual), a Russian man perceives as showing Philistine cowardice, weakness, as something unworthy (the word ‘deal’ itself has a strong negative connotation in contemporary Russian”. (quoted in Graham *et al.* 1992: 396). Normally you should give your concessions in small steps, and for each of those steps, you should try to get

something in return. Do not give too many concessions in a row, it will harm your credibility.

Box 19.2

Here is a rather standard situation:

“After lots of stalling around, I finally put forward my price, and was met with silence. This made me very nervous. It must have gone on for three or four minutes, but it felt like an hour. Then I thought that maybe he realised that I was bluffing and was waiting for me to make a better offer. So I did. I expected him to respond, say something like that it was closer to what he expected, but he went silent on me again! Now I was really nervous, so I gave him the absolute lowest price I was willing to go. He takes in a big suck of air, pauses, says that the proposal needs further study, and thanks me for my time. Well, I was confused, but I felt like he was calling the meeting to an end, and since the price was fair, I left feeling that we had a good shot. The funny thing was, we never heard from him again”.

Source: Foster, D. E., *Bargaining Across Borders*, New York: McGraw-Hill 1992: 98–99.

Rule 12: Allow Yourself Plenty of Time

Patience is a virtue and perhaps the biggest asset in negotiations. To allow yourself to be patient, you have to keep your timetable to yourself. As illustrated in Chapter 8, never tell the other side when you will have to leave because this gives them the opportunity to put your team under time pressure. Allow yourself plenty of time and even more. In particular, give yourself time to think: do not respond too quickly to new propositions; even small interruptions of the negotiations may prove useful to think over confusing issues or to define a common position within a negotiation team. It is important to show your dissatisfaction over session issues and discuss the reasons and possible solutions to that. The timing of verbal exchange is crucial in negotiations. Some Westerners, especially Americans, find gaps or pauses in conversations to be disturbing, while people from other cultures prefer to leave a moment of silence between statements, to give themselves and the other side time to digest the new issue/dimension.

When planning together, do not get fooled by the other party seemingly sharing your time pattern: try to set realistic dates and deadlines and if needed, plan softly, introducing time slack, allowing for delays to be absorbed without ruining the economy of the whole venture. Remember — better plan modestly

and realistically than go into jumbo delays that ruin the credibility of the whole planning process.

Box 19.3

Time is cultural, subjective, and variable. One of the most serious causes of frustration and friction in cross-cultural business dealings occurs when counterparts are out of sync with each other. Differences often appear with respect to the pace of time, its perceived nature, and its function. Insights into a culture's view of time may be found in their sayings and proverbs. For example:

"Time is money". United States

"Those who rush arrive first at the grave". Spain

"The clock did not invent man". Nigeria

"If you wait long enough, even an egg will walk". Ethiopia

"Before the time, it is not yet the time; after the time, it's too late". France

Sources: Adapted from E. T. Hall, and M. Reed Hall, *Understanding Cultural Differences* (Yarmouth, Maine: Intercultural Press 1990: 196); and G. M. Wederspahn, "On Trade and Cultures", *Trade and Culture*, Winter 1993–1994: 4–6.

Rule 13: Be Flexible with the Negotiation Agenda

Be flexible with the negotiation agenda if the other party does not stick to it. It may be somewhat frustrating to see that a negotiation agenda has been agreed-upon and is eroded bit by bit. It may mean that the other party prefers a global to a step-by-step negotiation, and that they do not see negotiation as a linear process in which issues are addressed one after the other and settled before proceeding to the next.

In face-to-face negotiation, the maintenance of flexibility of parties and issues is important, especially when it concerns issues like terms of payment, credit facilities, delivery time and of course, price. These issues are interrelated and cannot be discussed or agreed upon separately. However, flexibility margins must always remain strictly monitored within the boundaries of basic interests. The process of give and take usually occurs after both sides have tested the commitment, and have sent and received signals to move on. For example, price can often be reduced if the party offers better terms of payment. It is also important to include in the margins of flexibility some elements which

can be traded off but which cannot be evaluated in accounting terms, such as obtaining a reference project or market access where the potential is much larger than the present sale.

Rule 14: Manage the Communication Process

Face-to-face negotiation implies intensive communication flows, the efficiency of which is often impaired by language and cultural differences. The basic guideline for effective communication in international business is to be ready for different communication styles and be cautious in interpreting silence, emotionality, threats and any kind of manipulative, instrumental communication. This general recommendation can be broken down into more detailed advice, which takes into account the kind of communication taking place (speaking, listening, using interpreters, speaking directly in the other party's language even if it is not your own native language, etc.).

Box 19.4

- (1) First there is a feeling: this is the very beginning of communication. Something that one of your six senses is picking up, and that you want to get in somebody else's mind or body in the way that you are experiencing it.
- (2) Then there is an awareness of that sensation or thought: from that physical experience you get an idea, or you feel a need that demands expression.
- (3) This leads to the formation of words in your mind: these words are an attempt to capture that sensation or that idea you are experiencing.
- (4) These words and/or conduct are then put out to others: they are communicated verbally, in sign language, through other non-verbal means (body language) or on paper. These are the only means of sending the feelings or words that are in your mind to someone else.
- (5) The words and/or conducts are then received and processed by the other person: you must be able to convey them to another person's eyes and/or ears.
- (6) The receiver will process your words and/or conduct: whatever the other person sees and/or hears will be re-interpreted into his own words and understanding. At this point the receiver may also have his own internal conversation and thoughts, which is stimulated by his interpretation.
- (7) The interpretation, internal dialogue and thoughts will in turn create feelings and images in the receiver's mind and body: the receiver's ultimate feelings in response to what you have sent out may be very different from what you were feeling or intending to communicate.

Source: Based on Edelman, J., & Crain, M. B., *The Tao of Negotiation*, New York: Harper Business 1993: 62–63.

You should articulate properly and speak very slowly. This is particularly important if you are speaking in English with someone for whom English is not the native language. It is quite normal that people get excited and have to say a lot about their product and technology, but to be a good communicator, you should also be a good listener and give the other party enough time (more time than you avail yourself). The more they talk, the more they disclose their position.

Even if we do see the need to communicate, we often assume that it means just telling the other party something. However, communication is a two way process of transmission and reception, which means that listening is an essential part. We must not talk too much, thus discouraging the other party from listening. The more you talk, the less the other party will listen. When people feel that you are talking too much, they will switch over to their internal conversation. In the same way, if you are on the listening side, you have to let the other party know or feel that you are actively listening, for example, by nodding, saying yes, asking small questions, showing an expression of surprise or agreement whenever appropriate, etc.

Rule 15: Check Non-Verbal Communication

Language can be a barrier in international business negotiations. What may not be fully recognised, is that non-verbal communication (also called silent language or body language) can also interfere in cross-cultural interactions. Non-verbal communication includes many things, from the value different cultures attach to time, space and material possessions to the use of subtle signs, signals or cues in human behaviour. Different cultures use body movement, eye contact, hand gestures, etc., to strengthen their communication. Some of these signs and gestures are universal, such as, a smile, a groan, sitting with closed arms, or expanding or contracting the eye muscles. But they can have different meaning. Laughter or a smile can indicate happiness, but in many cultures, e.g. Asian, it can also be a sign of embarrassment. Most body language is strongly culture bound. For example, in the Middle East, pointing a finger at someone is considered rude or disrespectful, as is touching somebody's head or showing the sole of your foot in Thailand. In negotiations you should be careful using these gestures.

You should be able to read body language in order to get the true message. What is explicitly said is not necessarily what is implicitly meant. You need to check and verify. Spend time on checking communication accuracy, especially when the stakes are high (orders, delivery dates, contractual involvement in

general). Check ambiguous messages directly, for example by asking “Do we understand correctly that . . .?”. According to Foster (1995: 249), “The effective international negotiator knows how to probe, how to ask questions and how to listen”.

Box 19.5

Arabs may watch the pupils of your eyes to judge your responses to different topics.

A psychologist at the University of Chicago discovered that the pupil is a very sensitive indicator of how people respond to a situation. When you are interested in something, your pupils dilate; if I say something you don't like, they tend to contract. But the Arabs have known about the pupil response for hundreds if not thousands of years. Because people can't control the response of their eyes, which is a dead give-away, many Arabs wear dark glasses, even indoors.

These are people reading the personal interaction on a second-to-second basis. By watching the pupils, they can respond rapidly to mood changes. That's one of the reasons why they use a closer conversational distance than Westerners do. At about one meter, the normal distance between two Westerners who are talking, we have a hard time following eye movement. But if you use an Arab distance, about two feet, you can watch the pupil of the eye.

Direct eye contact for a Westerner is difficult to achieve since we are taught in the West not to stare, not to look at the eyes that carefully. If you stare at someone, it is too intense, too sexy, or too hostile. It also may mean that we are not totally tuned in to the situation. Maybe we should all wear dark glasses.

Source: P. Cateora and P. Ghauri, *International Marketing*, European ed. 2000, London: McGraw Hill.

Learning the non-verbal communication style of another culture may prove very difficult. Deep cultural learning in this area is very hard after childhood. Be careful and observant on non-verbal communication and read between the lines. It is better to aim at a state of alertness, so that one does not decode non-verbal messages erroneously, than to try to gain full command of different types of non-verbal communication. Changing these fundamental ways in which we behave and view the world is not an easy task. Moreover, non-verbal communication is not related to cultural concepts and dimensions such as individualism/collectivism or uncertainty avoidance, and is therefore very difficult to grasp. To get to terms with a particular non-verbal pattern of communication, you need to have a deeper knowledge of the particular culture. We do however know, that in some cultures the normal, acceptable physical distance between individuals, even from the opposite sex, is substantially less

than in others. In some cultures, it is considered quite normal that people touch, embrace or even kiss each other, without this being a sign of deeper intimacy. There are “high-contact” and “low-contact” cultures. In some cultures body odour, e.g. from using garlic in food, is considered offensive, in others you can not go to a meeting smelling of alcohol. The same goes for eating behaviour. For example, eating pork at the same table with a Muslim, or beef with a religious Hindu, is equally offensive as a Chinese ordering a dog in front of a Dutch counterpart. As mentioned, it is very difficult to learn the non-verbal communication of a culture, but a certain amount of awareness and sensitivity can prevent us from making mistakes and offending the other party.

Negotiate Beyond Negotiation

Rule 16: Be Prepared to Negotiate Beyond Negotiation

Negotiating beyond negotiation: This phrase captures a significant part of the paradox that negotiating business is clearly about deal-making and, at the same time, goes far beyond the simple agreement on different issues. A relationship often develops through a series of successive negotiation rounds, with the implementation phase being the final round. Negotiation is often a continuous rather than discontinuous activity; although certain rituals, such as the signature of a contract, seem to put definite time boundaries, it is not so clear in the real world. Wait for the negotiation process to extend beyond the face-to-face sessions, as quite often formulating the contract draft is a negotiation on itself. For most cultures there is no clear time-line defined by the signing of a contract. The most important time frame is that of the relationship, not that of a particular deal.

Rule 17: The Agreement Should be Clear

A number of authors on negotiations suggest that it is necessary to have a signed agreement before you leave (see e.g. Copeland & Griggs 1986). This is however debatable, because you may be at a risk of yielding too much or of signing an agreement which will afterwards be considered detrimental to one party. A simple memorandum of understanding that allows further refinement may be better when the parties have not reached full agreement within a negotiation round. The idea that “a deal closed is better than none” may be

somewhat dangerous. To sign an ambiguous contract can lead to enormous problems in the implementation stage. It is thus wiser to spend one more session to discuss and clear the ambiguity than to sign the contract too early (Ghauri & Fang 2002).

The rules of agreement differ from country to country. In some cultures, the agreement or contract is just an agreement on principle or a formality. The implementation does not need to follow this document literally, but should instead be based on mutual trust. Westerners normally like to rely on the written contract while some Asians (e.g. Chinese) and Arabs will rely on mutual trust and understanding for the implementation. Because of these differences, there are often lengthy discussions on the language of the contract to be signed. In our opinion, you should make sure during the entire process, that you and your counterpart have the same understanding of the issues at hand. And the contract should then be written in simple and clear language, to avoid ambiguity or future conflict.

Rule 18: Avoid the Threat of Litigation

In several chapters, the degree of formality of agreements has been mentioned as a key issue in international business negotiations. The presence of lawyers, especially early in the process, and a very punctilious attitude when drafting clauses may be interpreted by the other party as a signal of distrust. On the other hand, the role of lawyers in formalising the final agreement is standard in the world of international business. The advice therefore would be to exclude lawyers and accountants from the negotiation table in the early stages of the negotiation (and probably even in face-to-face negotiation). They may, however, be quite important doing a counselling job and working behind the scenes. They should show up only in the last phases of the negotiation process when the parties are finalising the agreement.

Litigation does major damage to the relationship, which generally does not survive the legal process. Discussions, even tough ones, are always preferable to court settlements. Even very detailed contracts can never be fully perfect. Sometimes, the issue is simply that a clause has not been written precisely enough and the partners need to clarify it. In this very process, there is always an element of “re-negotiation”, which may be resented by the party who fears losing as a result of the clarification of the clause. However, avoiding litigation, and even the threat of it, must be a major concern since going to court means the dissolution of the relationship and quite often a “lose-lose” solution. A court settlement must be used only when the expected losses from litigation are

substantially smaller than the solution without litigation (a rare case in practice).

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