

PLACEHOLDER

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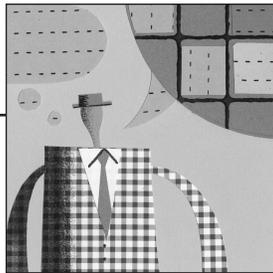
## PART TWO

### *General Tools for Cross-Cultural Negotiators*

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

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

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





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

Steven Robert Roach

### A b s t r a c t

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

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

## I. Introduction

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

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

## II. Some Limitations of Interest-Based Negotiating

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

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

## III. Problems in Distributional Bargaining

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

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

### **A. Haggling: An Example**

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

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

### **B. Effective Haggling with Interest-Based Preparation**

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

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

#### IV: A Framework to Meet Interests

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

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

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

#### V. The Concern of Erroneous Assumptions

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

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

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

### **A. Challenging Basic Interests**

In assessing whether the negotiating counterpart shares or should share the negotiator's value system, a useful technique is to ask a series of questions challenging the negotiator into looking beyond the obvious and using these new insights as a starting point for gathering information.<sup>23</sup> Value systems are not universal and the assumptions that a negotiator brings to the table as a result of his experiences may be challenged in a particular negotiation. The value system of a terrorist provides an extreme example of a counterpart with a different set of basic values. "The very human willingness of individual terrorists to seek security and rewards while avoiding punishment" may not be applicable to terrorists with extremist ideologies.<sup>24</sup> Academic work on rational models of terrorist negotiations is currently incomplete because it has focused on a lack of shared interests<sup>25</sup> while "ignoring other possibilities, such as problems of communication or lack of discipline."<sup>26</sup> For a terrorist, his self-concept, base of support, and experience may lie in a different arena than the negotiator and when substantive concessions are made, the terrorists "are likely to believe that they result from the pressure applied by terrorism."<sup>27</sup> Using a purely interest-based approach that favors concessions would not lead to optimal results with most terrorist groups.

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

### **B. Identifying Self-Interests**

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

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

### **C. Exploring the Interests of a Negotiating Counterpart**

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

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

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

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

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

## VI: The Possibility of No Agreement

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

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

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

## **VII: Conclusion**

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

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

Endnotes

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

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

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

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

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

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

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

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

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

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

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

<sup>10</sup> White, *supra* note 5, at 116.

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

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

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

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

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

*Id.* at 226.

<sup>15</sup> RAIFFA, *supra* note 12, at 127.

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

<sup>17</sup> SHELL, *supra* note 14, at 77-78.

<sup>18</sup> *Id.*

<sup>19</sup> WATKINS, *supra* note 1, at 23.

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

<sup>21</sup> FISHER & URY, *supra* note 1, at 40.

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

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

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

*Id.*

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

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

<sup>26</sup> *Id.* at 421.

<sup>27</sup> *Id.* at 426.

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

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

<sup>30</sup> SHELL, *supra* note 14, at 21.

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

<sup>32</sup> SHELL, *supra* note 14, at 34-35.

<sup>33</sup> *Id.* at 24.

<sup>34</sup> STONE, *supra* note 31, at 126-27.

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

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

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

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

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

<sup>40</sup> *Id.* at 47.

<sup>41</sup> *Id.* at 48.

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

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

<sup>44</sup> *Id.* at 128-29.

<sup>45</sup> STONE, *supra* note 31, at 137.

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

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 1096.

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

<sup>50</sup> *Id.* at 1092.

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



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

Michael T. Lennane and Laura E. Weidner

**A b s t r a c t**

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

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

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

## I. Introduction

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

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

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

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

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

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

## II. Trust Generally

### A. What is Trust?

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

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

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

#### 1. Trust in the Cross-Cultural Negotiation Context

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

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

#### 2. Trust vs. Distrust

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

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

## **B. Levels of Trust**

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

### **1. Calculus-Based Trust**

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

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

### **2. Knowledge-Based Trust**

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

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

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

### 3. Identification-Based Trust

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

### C. Culture and Trust

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

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

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

## III. Toolbox for Building Trust in Cross-Cultural Negotiations

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

Many scholars have developed helpful suggestions<sup>40</sup> and intricate models for trust building<sup>41</sup>—some of which even take culture into account—but this chapter wishes to expand upon those models and provide a trust building framework that is qualitatively-based and easy to follow. The model proposed in this

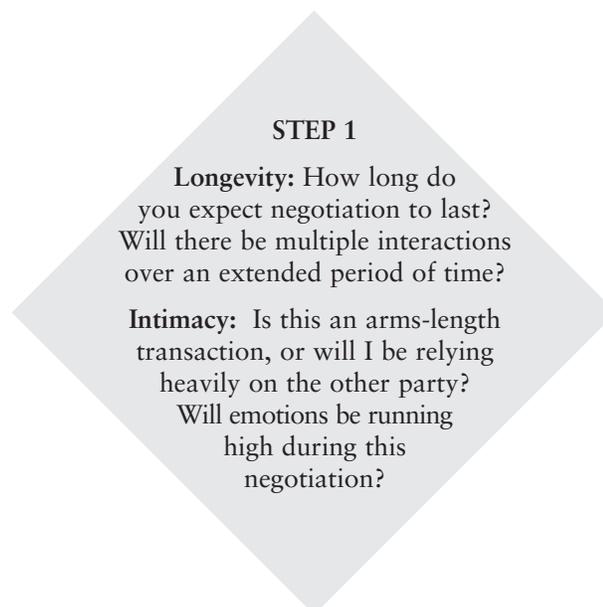
chapter, hereinafter referred to as the “Longevity-Intimacy Model,” provides the U.S. negotiator with a two-step process that will equip him with the tools necessary to increase trust and improve the relationship between the parties during a wide variety of cross-cultural negotiations.<sup>42</sup>

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

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

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

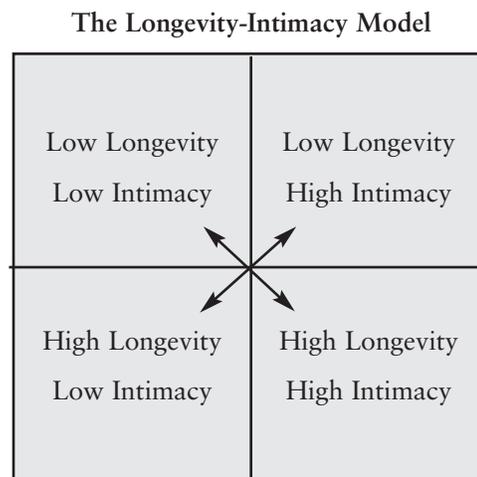
Intimacy of the relationship is equally important and can be defined as the expected interdependence and emotional capital that the parties bring to the table or that will likely be developed. The more the parties rely on each other, the greater the pressure to trust each other and work to increase any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



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

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

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



**1. Low Longevity-Low Intimacy**

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

**Low Longevity Low Intimacy**

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

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

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

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

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

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

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

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

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

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

## 2. High Longevity-High Intimacy

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

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

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

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

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

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

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

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

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

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

### **3. High Longevity-Low Intimacy**

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

#### **High Longevity Low Intimacy**

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

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

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

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

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

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

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

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

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

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

#### **4. Low Longevity-High Intimacy**

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

##### **Low Longevity High Intimacy**

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

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

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

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

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

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

### C. Step 3: Rebuilding Trust

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

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

#### Rebuilding Trust

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

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

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

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

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

#### **IV. Conclusion**

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

Endnotes

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

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

<sup>3</sup> *Id.* at 379-80.

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

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

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

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

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

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

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

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

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

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

<sup>13</sup> *Id.*

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

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

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

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

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

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

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

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

<sup>22</sup> *Id.* at 439.

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

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

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

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

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

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

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

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

<sup>30</sup> THOMPSON, *supra* note 28, at 120 (citations omitted).

<sup>31</sup> COLTRI, *supra* note 26, at 184.

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

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

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

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

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

<sup>37</sup> Johnson & Cullen, *supra* note 23, at 353-54.

<sup>38</sup> *Id.* at 336

<sup>39</sup> *Id.*

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

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

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

<sup>43</sup> Johnson & Cullen, *supra* note 23, at 341.

<sup>44</sup> *Id.* at 342.

<sup>45</sup> *Id.* at 341.

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

<sup>47</sup> *Supra* note 27.

<sup>48</sup> *Supra* note 24.

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

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

<sup>51</sup> FURLONG, *supra* note 15, at 144.

<sup>52</sup> *Id.* at 146.

<sup>53</sup> FISHER & URY, *supra* note 49, at 19-20.

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

<sup>55</sup> *Id.* at 31-32.

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

<sup>57</sup> *Id.* at 41.

<sup>58</sup> *Id.*

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

<sup>60</sup> FURLONG, *supra* note 15, at 143.

<sup>61</sup> FISHER & URY, *supra* note 49, at 85.

<sup>62</sup> Lewicki & Wiethoff, *supra* note 12, at 96.

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

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

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

<sup>66</sup> *Id.* at 156-57.

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

<sup>68</sup> *Id.* at 158-59.

<sup>69</sup> *Id.* at 155-59.

<sup>70</sup> COLTRI, *supra* note 26, at 185.

<sup>71</sup> *Id.*

<sup>72</sup> *Supra* note 27 and accompanying text.

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

<sup>74</sup> Wu & Laws, *supra* note 50, at 359.

<sup>75</sup> *Id.*

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

<sup>77</sup> Wu & Laws, *supra* note 49, at 359.

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

<sup>79</sup> THOMPSON, *supra* note 28, at 123 (citations omitted).

<sup>80</sup> Kelman, *supra* note 5, at 644.

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

<sup>82</sup> *Id.*

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

<sup>84</sup> Koeszegi, *supra* note 18, at 649 (citations omitted).

<sup>85</sup> THOMPSON, *supra* note 28, at 125.

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

<sup>87</sup> *Id.* at 125.

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

<sup>89</sup> Kelman, *supra* note 5, at 645-46.

<sup>90</sup> FISHER & BROWN, *supra* note 4, at 85.

<sup>91</sup> *Id.* at 92.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 109-14.

<sup>94</sup> Lewicki & Wiethoff, *supra* note 12, at 96.

<sup>95</sup> FISHER & BROWN, *supra* note 4, at 112.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 112.

<sup>98</sup> *Id.* at 112-13.

<sup>99</sup> *Id.* at 113.

<sup>100</sup> *Id.*

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

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 120.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 121.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 121-22.

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

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

<sup>113</sup> FISHER & URY, *supra* note 49, at 31.

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

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

<sup>116</sup> FISHER & BROWN, *supra* note 4, at 154.

<sup>117</sup> *Id.* at 156.

<sup>118</sup> *Id.* at 160.

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

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

<sup>121</sup> COLTRI, *supra* note 26, at 185.

<sup>122</sup> THOMPSON, *supra* note 28, at 133.

<sup>122</sup> *Id.* at 134.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

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

<sup>127</sup> *Id.* at 134.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 135.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*





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

Ronald R. Petroff & Leslie E. Siegel

**A b s t r a c t**

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

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

## I. Introduction

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

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

See Chapter 5 for further information on trust building.

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

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

## II. Perceptions, Stereotypes, and Images

Heaven is where...

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

Hell is where...

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

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

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

### A. Definition of Stereotype

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

### B. How Stereotypes Are Employed in Everyday Life

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

#### 1. Cognitive Approach to Stereotypes:

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

### a. Why Stereotype?

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

#### i. Convenience

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

#### ii. Psychological Benefits

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

### b. The Dangers of Stereotyping in the Negotiation Context

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

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

## III. International Perceptions of Americans

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

“Do you have a gun?”

“Do you live in a mansion?”

“Do you know Jennifer Aniston?”

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

## 1. The Media

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

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

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

## 2. American Products and Marketing

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

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

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

## 3. History and Politics as Shaping International Perceptions

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

—Heinrich Heine, 1851<sup>33</sup>

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

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

#### **a. The War in Iraq**

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

The war in Iraq elicits strong sentiments—both positive and negative—from various parts of the world. Nations such as Great Britain, Canada, and Mexico have stood behind the United States, supporting its war efforts.<sup>40</sup> Those opposed to the war, however, have viewed it as another example of the United States flexing its military muscle<sup>41</sup> and ignoring the opinions of those nations that have opposed the war.<sup>42</sup> In the Middle East, approval of the United States in the wake of the war plummeted. An editorial in an Egyptian newspaper called upon the world to "fight America and kill Americans," while a Gallup poll released in February 2002 showed that thirty-six percent of Kuwaitis believed that "the September 11 attacks were justifiable."<sup>43</sup> Sixty-four percent of Saudis, sixty-three percent of Iranians, and forty-one percent of Moroccans reported having a "negative impression" of the United States.<sup>44</sup> In a poll from May 2003, ninety-nine percent of Jordanians claimed to have a somewhat unfavorable or very unfavorable opinion of the United States.<sup>45</sup> Some Europeans also voiced their disdain for U.S. military action in Iraq. Former German Chancellor Gerhard Schroeder's justice minister went as far as to compare George W. Bush to Adolf Hitler.<sup>46</sup> Although such hateful statements are undoubtedly difficult for Americans to hear, U.S. negotiators may need to be aware that these sentiments exist, and that they may be confronted at the negotiation table by someone who subscribes to these troubling viewpoints.

#### **b. U.S. Relationships with Other Nations**

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

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

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

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

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

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

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

### **3. Perceptions of the “Uncle Sam” Image**

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

### **4. Perceptions of U.S. Celebrity Culture**

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

### **5. Perceptions of U.S. Wealth and Materialism**

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

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

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

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

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

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

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

## IV. International Perceptions of Defined U.S. Groups<sup>57</sup>

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

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

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

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

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

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

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

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

## **B. Racial and Religious Overtones in Cross-Cultural Negotiation Processes<sup>71</sup>**

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

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

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

### C. Individualistic Capitalists vs. Socialistic Collectivists

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **A. Research**

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

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

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

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

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

**Table 6.1**

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

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

## **B. Enquire**

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

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

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

## **C. Assess**

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

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

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

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

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

## **D. Debunk Misperceptions**

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

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

## **VI. Conclusion**

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

Endnotes

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

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

<sup>21</sup> *Id.* at 92.

<sup>22</sup> HASELER, *supra* note 18, at 12.

<sup>23</sup> DEFLEUR & DEFLEUR, *supra* note 20, at 22.

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

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

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

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

<sup>26</sup> DEFLEUR & DEFLEUR, *supra* note 20, at 30.

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

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

<sup>29</sup> *Id.* at 195.

<sup>30</sup> *Id.* at 146.

<sup>31</sup> *Id.* at 195.

<sup>32</sup> DEFLEUR & DEFLEUR, *supra* note 20, at 31.

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

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

<sup>35</sup> RUBIN, *supra* note 28, at 126.

<sup>36</sup> *Id.* at 127.

<sup>37</sup> *Id.* at 128.

<sup>38</sup> *Id.* at 203.

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

- <sup>40</sup> *A Nation Challenged; Excerpts from the President's Remarks on the War on Terrorism*, N.Y. TIMES, OCT. 12, 2001, at B4.
- <sup>41</sup> Jean-Yves Haine, *Power Without Restraint? Back to Realities*, in SHIFT OR RIFT: ASSESSING US-EU RELATIONS AFTER IRAQ 105 (Gustav Lindstrom ed., 2003) [hereinafter Shift or Rift]. Haine views the “war on terror” as “the Bush administration’s answer to the trauma of 11 September.” *Id.* at 107.
- <sup>42</sup> RUBIN, *supra* note 28, at 209; *see also* Stanley Hoffmann, *The Crisis in Transatlantic Relations*, in SHIFT OR RIFT, *supra* note 41, at 13, 14-15. Public opinion polls conducted in European countries have shown significant drops in support for the United States. From November 2002 to May 2003, as the tension between the United States and Iraq escalated, public support for the United States fell from eighty to fifty percent in Poland, from seventy to thirty percent in Italy, and bottomed out in Spain at fourteen percent. Nicole Gnesotto, *EU, US: Visions of the World, Visions of the Other*, in SHIFT OR RIFT, *supra* note 42, at 21, 38.
- <sup>43</sup> RUBIN, *supra* note 28, at 180-81.
- <sup>44</sup> *Id.* at 181.
- <sup>45</sup> *Id.* at 181.
- <sup>46</sup> *Id.* at 210.
- <sup>47</sup> Examples of this abound. *See, e.g.*, Dina Iordanova, *Political Resentment versus Cultural Submission: The Duality of U.S. Representations in Bulgarian Media*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 71, 72 (exploring the impact of U.S. foreign policy on U.S.-Bulgarian relations); Jae-Kyoung Lee, *From Savior to Villain: Redefining America in South Korea*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 55, 55 (discussing anti-American sentiment resulting from U.S. foreign policy in South Korea); Kuldip R. Rampal, *Image of the U.S. Foreign Policy toward India among Indian Media and Policy Makers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 37, 37 (examining Indian perceptions of U.S. foreign policy); Laid Zaghلامي, *Mass Media and the U.S. Image: An Algerian Perspective*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 103, 103 (providing an analysis of Algerian media reports about U.S. foreign policy).
- <sup>48</sup> *See, e.g.*, Ayseli Usluata, *U.S. Image Reflected Through Cartoons in Turkish Newspapers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 87, 93-94 (analyzing portrayals of Americans in Turkish newspaper cartoons).
- <sup>49</sup> The study involved 1313 teens between the ages of fourteen and nineteen from Argentina, China, Bahrain, Italy, Lebanon, Mexico, Nigeria, Pakistan, Saudi Arabia, South Korea, Spain, and Taiwan. For a closer look at the findings, *see generally* DEFLEUR & DEFLEUR, *supra* note 20, at 53 .
- <sup>50</sup> Misperceptions of women in negotiations are discussed in Part IV.A *infra*.
- <sup>51</sup> Usluata, *supra* note 48, at 92.
- <sup>52</sup> *See, e.g.*, Zaghلامي, *supra* note 47, at 109; *see also* Udita Das, *What Does America Symbolize to the Urban, Educated Youth in India?*, in IMAGES OF THE U.S. AROUND THE WORLD *supra* note 25, at 209, 218-19 (providing a list of the most popular soap operas, movies, U.S. products, and celebrities among Indian teens); *see generally* Ersu Ding, *Imperfect Paradise: The Image of the U.S. on Chinese TV*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 221, 223-26 (analyzing a Chinese television program that presents a distorted picture of life in the U.S.).
- <sup>53</sup> Respondents to DeFleur’s study overwhelmingly agreed with the statement that “Americans are very materialistic.” DEFLEUR & DEFLEUR, *supra* note 20, at 53. Additionally, in a study of Greek high school students, participants overestimated Americans’ ability to own a luxury car, though they correctly estimated the median U.S. income. Interestingly, the more U.S. television shows that a student watched, the wealthier the student perceived Americans to be. Thimios Zaharopoulos, *Television Viewing and the Perception of the United States by Greek Teenagers*, in IMAGES OF THE U.S. AROUND THE WORLD, *supra* note 25, at 279, 286, 290.

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

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

<sup>56</sup> DEFLEUR & DEFLEUR, *supra* note 20, at 29.

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

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

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

<sup>60</sup> *Id.* at ix.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

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

<sup>65</sup> BABCOCK & LASCHEVER, *supra* note 59, at ix.

<sup>66</sup> *Id.* at 161.

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

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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

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

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

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

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

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

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

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

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

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

<sup>72</sup> See, e.g., *id.* at 160-87.

<sup>73</sup> *Id.*

<sup>74</sup> Michelle LeBaron, *Cultural-Based Negotiation Styles* (July 2003), at [http://www.beyondintractability.org/essay/culture\\_negotiation/](http://www.beyondintractability.org/essay/culture_negotiation/).

<sup>75</sup> *Id.*

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

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

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

<sup>79</sup> *Id.* at 63

<sup>80</sup> *Id.*

<sup>81</sup> DAVID M. SMITH, GEOGRAPHY AND SOCIAL JUSTICE 189 (1994).

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

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 4.

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

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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





## *Managing Assumptions About the Negotiation Process*

Vinay Reddy

### **A b s t r a c t**

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

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

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

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

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

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

## II. Background on the Challenge of Culture and Assumptions

The tension between a person’s governing assumptions on negotiation and a negotiating counterpart’s countervailing cultural values is ripe for more research and exposition as human interactions increasingly occur across boundaries. To be sure, evolving research and writing in the field of dispute resolution<sup>6</sup> has recognized that culture influences negotiation processes and outcomes. For example, Professor Frank Sander, a distinguished Harvard Law School professor and co-author of the leading textbook on alternative dispute resolution processes, suggests the most significant influence of culture occurs even before the negotiation begins.<sup>7</sup> Professors Roger Fisher and William Ury, authors of foundational literature on interest-based negotiation, recognize how cultural differences require adjustment of negotiating strategies.<sup>8</sup> Focusing on U.S.-based legal processes, Harvard Law Professor Robert H. Mnookin discusses assumptions underlying the legal culture and provides an analytical framework to re-characterize limiting assumptions during legal negotiations.<sup>9</sup> Furthermore, U.S. governmental departments and agencies have also addressed the issue of culture and dispute resolution processes. For example, the United States Agency for International Development (USAID) has published an overview of dispute resolution processes with suggestions and international case studies exploring the importation of dispute resolution processes in countries with countervailing cultural values.<sup>10</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Self-Assessment Step 1-**

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

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

**B. From Self-Assessment to Prospective and Comparative Questioning**

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

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

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

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

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

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

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

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

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

### Toolbox Questions for an Informed Negotiator

#### *Prior to negotiation:*

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

Other sources of Preparation: Toolboxes from:

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

#### *During Negotiation*

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

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

## VI. The Danger of Relying on Comparative Assumptions

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

## VII. Conclusion

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

Endnotes

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

<sup>2</sup> *Id.* at 219-21.

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

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

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

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

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

<sup>8</sup> FISHER & URY, *supra* note 2, at 166-68.

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

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

<sup>11</sup> *See* Avruch, *Culture and Negotiation Pedagogy*, *supra* note 4.

<sup>12</sup> *Id.*

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

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

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

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

<sup>17</sup> FISHER & URY, *supra* note 2; *See also* MNOOKIN, *supra* note 9.

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

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id* at 111-17.

<sup>23</sup> *Id.*

<sup>24</sup> *Id* at 209-15, 292-94.

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

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

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

<sup>28</sup> *Id.*

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

<sup>30</sup> SALEM, *supra* note 28.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Rubin, *supra* note 27, at 195-209.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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

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

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



Chapter 8

*Power and Authority*

Tamara D. Johnson

**A b s t r a c t**

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

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

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

## I. Introduction

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

*“Power trumps everything (including culture).”<sup>2</sup>*

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

## II. What is Power?

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

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

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

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

### III. Power Structures

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

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

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

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

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

### IV. Authority

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

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

### **A. The Principal and the Agent**

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

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

### **B. Extent of Authority**

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

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

### **C. Common Problems of Authority**

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

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

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

### 1. Assess counterpart's level of authority

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

### 2. Request to negotiate with a counterpart of like authority

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

### 3. Express willingness and ability to commit

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

### 4. Delay commitment until authority level is matched

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

### 5. Be prepared for delays

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

## V. Perceptions of Power

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

### A. Assessing the Weaker and Stronger Parties

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

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

## B. Traditional Theories of Perceptions of Power

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

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

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

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

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

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

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

## Toolbox- Balance of Power

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

### How to Take Advantage of High Power

#### Assess the importance of reaching an agreement

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

#### Establish willingness and desire to reach resolution

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

#### Highlight comparable alternatives

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

#### Use facts and expertise<sup>42</sup>

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

#### Acknowledge successes and support

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

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

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

### How to Overcome Disadvantages in Power

#### Strengthen the starting position<sup>43</sup>

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

#### Use facts and expertise (see above)

#### Paint a picture to persuade

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

### **Avoid Attacking**

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

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

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

### **Expect reciprocity**

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

## **How to Create Balance**

### **Reciprocate**

Concessions and proposals of value should be offered and accepted on both sides.<sup>44</sup>

### **Remember “veto power”<sup>45</sup>**

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

### **Explore options together**

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

### **Create an environment of acceptance and trust**

### **React in proportion<sup>46</sup>**

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

Endnotes

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

<sup>30</sup> *Id.*

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

<sup>32</sup> The Structure of Negotiation, *supra* note 3, at 74-75.

<sup>33</sup> *Id.* at 76.

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

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

<sup>36</sup> *Id.*

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

<sup>38</sup> *Id.* at 16.

<sup>39</sup> *Id.* at 17.

<sup>40</sup> *Id.* at 18.

<sup>41</sup> The Structure of Negotiation, *supra* note 3, at 74.

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

<sup>43</sup> *Id.* at 446.

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

<sup>45</sup> The Structure of Negotiation, *supra* note 3, at 75.

<sup>46</sup> *See* Mastenbroek, *supra* note 42, at 446.





## *Ethics in Cross-Cultural Negotiations*

Carly A. Hammond & Sarah C. McCarty

### **A b s t r a c t**

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

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

## I. Introduction

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

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

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

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

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

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

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

### A. Identifying Ethical Dilemmas in Negotiation

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

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

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

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

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

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

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

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

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

### C. Corruption

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

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

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

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

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

#### 1. United States Foreign Corrupt Practices Act

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

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

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

## **2. Local Corruption Laws**

Being aware of local laws regulating corruption – both where the negotiation is taking place and where a substantial portion of the subject of the negotiation has occurred or will occur – is important for U.S. negotiators. Korean law has outlawed bribery for many years, and a new Anti-Corruption Act was enacted in 2001.<sup>40</sup> However, Craig P. Ehrlich, an assistant professor of law at Babson College, and Dae Seob Kang, a Korean law professor, report that Korea is ranked among the top fifty most corrupt countries according to the Transparency International Corruptions Perception Index.<sup>41</sup> The extent to which governments enforce anti-corruption laws is the determining factor. Despite the enactment of laws by the Korean government that facially demonstrates an opposition to corruption, many believe that “laws cannot change a culture,” so corruption continues to exist.<sup>42</sup> Other countries are stricter in their enforcement of anti-corruption laws, perhaps because the laws are more aligned with their cultures and ethics.<sup>43</sup> Regardless of how strictly enforced anti-corruption laws are in other countries, a U.S. negotiator is obligated to abide by the host country’s laws in order to avoid prosecution or civil suit under the FCPA.

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

## **3. Additional Corruption Concerns**

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

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

## **D. Potential Human Rights Violations**

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

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

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

### III. Customs Affecting Ethics

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

#### A. Legal Customs

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

##### 1. Purpose of the Law

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

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

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

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

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

## **2. Perceptions of Justice**

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

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

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

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

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

### 3. Current and Historical Legal System

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

### B. Religious Customs

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

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

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

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

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

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

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

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

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

## **3. Historical Aspect of Religion’s Effect on Ethics**

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

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

#### 4. Other Considerations

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

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

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

#### 5. Conclusion

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

### IV. Practical Applications

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

## **A. Preparation**

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

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

### **1. Self-Evaluation**

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

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

### **2. Evaluation of Counterpart**

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

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

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

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

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

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

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

## **B. Strategies During Negotiation**

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

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

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

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

## **V. Conclusions**

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

## Toolbox for Negotiators

### Preparation Before Negotiation

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

Endnotes

- <sup>1</sup> Christopher Pala, *Bribery Case Hinges on National Security*, Wash. Times, Dec. 17, 2005, at A08.
- <sup>2</sup> International Eurasian Institute for Economic and Political Research, *Voice of Democracy* (Kazakhstan 21st Century Foundation 2003), at [http://iicas.org/libr\\_en/vd/libr\\_07\\_04\\_03\\_kp\\_0.htm](http://iicas.org/libr_en/vd/libr_07_04_03_kp_0.htm) (last visited July 8, 2006); Integrated Regional Information Networks, *Kazakhstan: Corruption Remains a Major Cause of Concern* (UN Office for the Coordination of Humanitarian Affairs 2004), available at [http://www.irinnews.org/report.asp?ReportID=41311&SelectRegion=Central\\_Asia&SelectCountry=KAZAKHSTAN](http://www.irinnews.org/report.asp?ReportID=41311&SelectRegion=Central_Asia&SelectCountry=KAZAKHSTAN) (last visited July 8, 2006).
- <sup>3</sup> See Philip M. Nichols, *The Fit between Changes to the International Corruption Regime and Indigenous Perceptions of Corruption in Kazakhstan*, 22 U. PA. J. INT'L ECON. L. 863,878-79, 908 (2001).
- <sup>4</sup> Ethics is used synonymously with morality and values. See WILLIAM F. FOX, JR., INTERNATIONAL COMMERCIAL AGREEMENTS: A PRIMER ON DRAFTING, NEGOTIATING AND RESOLVING DISPUTES 206 (3d ed. 1998).
- <sup>5</sup> Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1237-39 (1988).
- <sup>6</sup> Thomas Donaldson, *Values in Tension: Ethics Away From Home*, HARV. BUS. REV., Sept.-Oct. 1996, at 48, 49.
- <sup>7</sup> *Id.* at 48; Wangerin, *supra* note 5, at 1237, 1239.
- <sup>8</sup> Donaldson, *supra* note 6, at 52-53.
- <sup>9</sup> FOX, *supra* note 4, at 207.
- <sup>10</sup> *Id.*
- <sup>11</sup> MODEL RULES OF PROF'L CONDUCT R. 4.1 (2004).
- <sup>12</sup> MODEL RULES OF PROF'L CONDUCT R. 4.1 cmt. 2 (2004).
- <sup>13</sup> Craig P. Ehrlich & Dae Seob Kang, *Independence and Corruption in Korea*, 16 COLUM. J. ASIAN L. 1, 19 (2002).
- <sup>14</sup> Nicola W. Palmieri, *Good Faith Disclosures Required During Precontractual Negotiations*, 24 SETON HALL L. REV. 70, 120 (1993); STEPHEN B. GOLDBERG ET AL., DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES 80 (2003).
- <sup>15</sup> GOLDBERG, *supra* note 14, at 80.
- <sup>16</sup> FOX, *supra* note 4, at 210.
- <sup>17</sup> Palmieri, *supra* note 14, at 73.
- <sup>18</sup> *Id.* at 210-11.
- <sup>19</sup> Kwok Leung & Michael W. Morris, *Justice Through the Lens of Culture and Ethnicity*, in HANDBOOK OF JUSTICE RESEARCH IN LAW 343, 350 (Joseph Sanders & V. Lee Hamilton eds., 2001).
- <sup>20</sup> *Id.*, at 349.
- <sup>21</sup> *Id.* at 350.
- <sup>22</sup> *Id.* at 356.
- <sup>23</sup> *Id.*
- <sup>24</sup> Ehrlich & Kang, *supra* note 13, at 4.
- <sup>25</sup> Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT'L L. REV. 1307, 1308 (2004); Nichols, *supra* note 3, at 867-68.

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

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

<sup>90</sup> *Id.* at 271-72.

<sup>91</sup> *Id.* at 273.

<sup>92</sup> *Id.* at 269.

<sup>93</sup> *Id.* at 270.

<sup>94</sup> *Id.*

<sup>95</sup> FOX, *supra* note 4, at 33.

<sup>96</sup> *Id.* at 34.

<sup>97</sup> *Id.* at 35.

<sup>98</sup> *Id.* at 34.

<sup>99</sup> *Id.*

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

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

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

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

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

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

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

<sup>108</sup> *See* Erdmans, *supra* note 83, at 172-73.

<sup>109</sup> Donaldson, *supra* note 6, at 56, 62.

