



## How Different Is “Different”? Teaching Persons to Negotiate Cross-Culturally

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*Editors’ Note: The authors note with appreciation the rising volume of research discussing cross-cultural negotiations; but they find its application to teaching and training often arid, simplistic and unpersuasive. They argue for a richer and more complex treatment of culture in negotiation, to give a more accurate impression of two salient circumstances in particular: the degree to which factors believed to be culturally distinct operate in “intra-cultural” negotiating contexts as well as in cross-cultural ones, and the degree to which negotiating dimensions, concepts, strategies and tactics may be similar across cultures, such that a belief that a completely different approach is required as soon as one is negotiating with someone from another culture is as likely to provoke error as a belief that one can safely behave exactly as one would at home.*

### Introduction

To those interested in conducting and teaching negotiation, a dominant question, stated very generally, is: Does or should one’s approach to bargaining differ if one’s negotiating counterpart is from a “different culture”?<sup>1</sup>

The answer seems obviously simple: “of course.” Failure to appreciate differences can easily lead to misinterpretation of communications and missed settlement opportunities. There is a burgeoning

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social science literature that tries to identify such differences (see, e.g., Brett and Okumura 1998; Brett 2001; Hall 1976; and Hofstede 1980).

In our judgment, this response is simplistic. While the differences often cited – such as the role of hierarchy in decision-making (see, e.g., Ridgeway and Erickson 2000), or high-context or low-context communication styles (see, e.g., Hofstede 1980) – are important, those concepts apply across and within multiple cultures. Furthermore, such analyses, by emphasizing differences, neglect to identify concepts, strategies and tactics that are similar across negotiating settings.

A different approach is warranted. We set out below three hypothetical stories; they build off – but do not reproduce – several interviews conducted with real world participants. From these hypothetical situations, we highlight salient negotiating concepts, strategies and skills that are exhibited in these accounts. Given these dimensions, we suggest how the insights from the first generation of social science literature that examines cross-cultural negotiation falls short of addressing the salient negotiating dynamics illustrated in the hypothetical stories. We conclude with suggestions as to how one might approach the design of teaching materials and pedagogy to prepare a student to be an effective negotiating participant in the global context.

## Conducting Negotiations Cross-culturally: Three Stories

### *Case 1: The Lawyer*

“I am an international lawyer. I focus on representing clients in international ADR proceedings – mostly, arbitration. I love my work – well, at least my clients. I love defending them because they often do business with persons and lawyers who are shameless in their conduct. I enjoy defending and securing my client’s interests.

Here is a typical case. I was asked to represent a South American businessman who had been an investor with a business that was organized and operated by a partner from another South American country. The business relationship collapsed. The lawyers representing the other client were both French and South American. I am a U.S.-trained lawyer operating from our firm’s Paris office.

I immediately arranged to meet with my client. I do not – and never would – handle these initial conversations by telephone. I needed to meet him, to get to know his needs. I had to understand and appreciate the way in which his country’s values and life-styles shaped

his business viewpoint; how he viewed his business counterpart; and how his business counterpart dealt with him.

At that first meeting I learned that our business counterpart was tapping my client’s phones and had surreptitiously intercepted my client’s internal and external email messages. Rotten stuff. We immediately took steps to secure the integrity and privacy of our communications. I cannot, and usually do not try to change that kind of behavior by our adversary. I try to work around it.

One immense challenge in working in the international arbitration context is that lawyers come from two traditions: the common law tradition and the civil law tradition. In case you didn’t know it, all lawyers – and their training – are not “the same.”

For example, there are striking differences between common law and civil law traditions regarding discovery practice. In the civil law tradition, there is no concept of disclosure. Can you believe that? A civil law trained lawyer will not disclose documents that contain information damaging to her client’s legal case. By contrast, those of us trained in the common law tradition view the discovery process, from exchanging interrogatories to conducting witness depositions, as central to effective case preparation.

How can I get the other side to share information? Work like mad. One positive and recent development in international arbitration is that the International Bar Association developed and recommends guidelines for handling discovery requests (IBA 2010).<sup>2</sup> The Redfern Schedule<sup>3</sup> enables me to develop a proposed order for the arbitration panel in which I identify the requested documents, indicate why they are important to the case, and explain why producing them does not impose a disproportionate burden on the adversary. Of course, opposing counsel can object to any, or all, such requests. The arbitration panel then renders a decision establishing the parameters with regard to the document request and a general schedule for exchange, if there is to be one. I might not persuade the panel to provide me everything that I seek (after all, some of the panel members, too, are civil law trained) but having this procedural avenue available helps me to deal with opponents whom, I say charitably, might never disclose adverse information.

I have learned from experience not to be forthcoming, at least initially. It actually goes against both my training and my professional values; I would much rather share relevant information. But I have a greater duty to protect my client. Until I see some reciprocity of openness from my opponent, I remain cautious. Every lawyer, or her firm, in this small community has a reputation for how either she, or her firm, approaches her representation role. I, or my partners, can quick-

ly learn the “good” and the “bad” about their approach(es) and adapt our own conduct accordingly. In an ideal world, perhaps, there would be a uniform code of professional conduct governing lawyers across jurisdictions. Having that would, at the least, establish a common basis for going forward. Put differently, it would create an institutional platform for establishing minimal standards for what constitutes professional conduct and integrity.

I do not settle many cases just before an arbitration hearing – or, as my American friends who litigate like to say, “on the courthouse steps.” I am not opposed to settling cases. If my client thinks it best to settle, we will. Yet what is the incentive? First, I spent a lot of time negotiating with the other side which rules will govern matters such as the arbitral situs, the choice of law, the language of the hearing, and the institutional rules. With that investment, I’m reasonably confident about the process, so that I would not hesitate to use it. Second, arbitration is private; I would not need to settle the case in order for my client to keep matters out of the public eye. Third, international arbitrators, for better or for worse, do not often render decisions that are clear “win/lose” outcomes. Depending on the case, it may be that the arbitrators provide my client with what we would have sought in a negotiated settlement.”

### ***Case 2: The Chief Executive Officer (CEO)***

“I love being in business – and helping to lead a company. When I had a chance to become the CEO of a well-known luxury goods company, I jumped at it.

I knew – and told people before I became CEO – that the future of our business was in China, both in terms of a customer market and in terms of manufacturing operations. We had no presence there when I started; I was determined, without jeopardizing the company, to get there.

I knew two important things about China. It had a manufacturing infrastructure that was efficient, reliable, and capable (just look at Nike if you don’t believe it). Second, the business people in China – at least those I interacted with – “got” capitalism. I don’t know how they learned it – maybe because many had been trained at business schools in the West. However they got it, they certainly embraced it; and that made it easy to deal with them.

I think leadership requires clarity, both internally and externally. Through our publications and website, we publicly signaled three things to potential partners. First, we wanted a manufacturing collaboration with an independent Chinese company; we did not want to establish our own operations and then hire local nationals to op-

erate it. Second, we would partner only with a company that would commit to us that it would neither knowingly engage in human rights abuses nor violate child labor laws. Third, we had to be certain that any arrangement would in no way compromise our company’s unimpeachable, long-standing reputation for quality products.

We went looking. When we found a partner, we embraced him – brought him and his people inside our organization to see and learn our product design process. Once they understood that, we gave them test samples to produce for us. We evaluated their ability to produce the item timely and with perfect quality. We also worked at, and reflected on, our collective capacity to work together. As everyone’s confidence level grew, we moved toward a more substantial collaboration.

What did that more substantial collaboration look like? Operationally, we provided our partner with a significant order. We had developed our own staff presence at the partner’s work site (ultimately, all of whom were Chinese). These people – our employees – were physically present at the plant on a daily basis. Their responsibilities were to provide operational support to our partner and monitor work processes, quality control measures and human rights compliance. These people were not “moles”; our partners knew they were there both as a resource for them, and for us. Look, our goal is to make money. If they succeeded, we succeeded. So if something in the manufacturing process was not working correctly, we wanted – had to – be able to identify it quickly and fix it. We talk to each other; that’s what business partners do. If it could be fixed and not repeated, terrific; if we could not fix it, it was clear that we would terminate the relationship.

We would never sacrifice our reputation for quality; that meant that we would insist that the partner use the materials that we provided. No choice there.

We put very few things in writing. What we did put in writing was explicit: our principles for engagement; our demand for quality; and a contractual exit strategy. But we never developed a formal written contract regarding such matters as order terms or capital investments. Our Chinese partner made its own decisions and financial investments regarding equipment purchases, production facilities (“factories”) for our product, staffing size, and, beyond a minimum, compensation levels.

Of course we had company concerns that influenced how we did business and how our partners would concretely display their understanding of our concerns. We wanted their employees to be loyal to our brand and not use their idle time to produce “counterfeit” knock-offs of our product. We needed to protect trade secrets. If our manu-

facturing partner did not have enough business from us to keep his work force fully employed on our products, then he clearly had the right to strike manufacturing deals with others – and possibly hurt us in the ways I just cited.

So what did we do? After some months, our partner established a separate, dedicated manufacturing facility to produce only our products; I wanted him to know how much that was appreciated, so we increased our order size – not to ensure 100 percent production capacity but to support his commitment. He got it. But none of that was required or put in writing.

I was confident and proud of our Company engagement principles; I do not want to do business with people who knowingly employ young children or who require employees to work abominably long hours. I don't want that type of partner anywhere. Beyond that, with one exception, I did not want to change or mess with the way that company conducts its business. I did insist, though, on one other matter: I required that our partner pay his employees a fair wage – not by my standards, but to pay them a wage that would enable his employees to meet their basic human needs. Why? Because there is no way that I could live with myself if I knew that I was able to live like I do – in comparative luxury – while persons working in factories with whom I had authority to structure relationships were earning a wage that would not enable them to meet basic human needs. We were making those factory owners very wealthy people; it would be reprehensible of me not to insist that their employees benefit at a tolerable level.

The approach has worked. Within a few years, we are manufacturing almost all of our company products in China. How did we unwind the relationships with those companies in other parts of the world who had previously produced our products? How much time do you have? That was a whole other set of crucial, complex, simultaneous conversations."

### ***Case 3. U.S. College Administrator in Charge of Foreign Study Programs***

"I administer foreign study programs for our College.

We have a lot of them: some are semester or year-long programs; some are summer programs; others are concentrated, intensive short courses. Faculty members and the provost, of course, design the academic dimensions and teach some of the courses, but I participate actively in their discussions about program design – both with our College people and our potential collaborators. This is because my job is to make the program work on the ground.

Why have such programs? Pretty obvious: we live in a global society; we need to understand and learn how to get along. Our educational task is to provide rich, distinctive educational experiences for our students – if we can enhance their education about a global society by providing them something they could not get at our home institution, then why not do it? Our partners – particularly where we have students enrolled in classes taught by their faculty – clearly understand that goal.

Every program must operate within certain parameters. For instance, the academic program must be in compliance with our accrediting agency’s rules and guidelines – that’s a no-brainer. We need to be clear for students about how their participation impacts their academic credit and financial needs: Do the courses count toward satisfying the requirements of their major field of study or a certificate program? Does studying abroad adversely impact a college’s minimum residency requirement? Can student loans be used for study abroad initiatives? Another, perhaps less obvious, matter about program design is that the budgets must work. We cannot price the program beyond the financial capacity of our students. A final dimension is that while part of the international experience is to have students adopt a lifestyle that is different from their home orientation, we have to be concerned that the program facilities meet the needs of the students. We need functional classrooms; the housing arrangements must meet minimum comfort levels. If we do not meet these, then as the administrator, I will be fielding complaints from faculty and students throughout the program. It is not worth it.

No program, obviously, moves forward without our physically meeting with our potential partners, inspecting the facilities, and the like. Our potential partners clearly want the same. Communicating by phone and email is nice. But we have to work together – we have to know one another before we start.

I have been doing this a long time. I know that new personnel who want to put their stamp on “innovative” programs do not like to hear this, but I now approach every discussion about creating a new foreign study program with one dominant thought: there are always endless alternatives to working with this proposed partner, including having no program at all – so we should never say “yes” to going forward just because someone thinks that our potential partner is irreplaceable.

That does not mean I am a “naysayer” and always try to find reasons for why something cannot be done. I’m not that type of person. I just care too much about doing it correctly – and doing it correctly for each program that we operate. We did one program with partners

who thought that not only was every item negotiable, but also that every settled item was renegotiable. Of course, nothing was ever put in writing that resembled a “contract.” From an administrative standpoint, I never felt confident that significant matters were stable. That was a challenge.

I understand formalities and structure. They exist everywhere; their formats differ. In some settings, for instance, the professor is highly esteemed and no one will do anything without her endorsement. In other settings, it’s the university administrator – Provost or Dean – to whom that deference is displayed.

Those formalities spill over into decision-making procedures. For some matters, our Dean makes the decision; on others, she defers to me and states to our counterparts: “I will do whatever my colleague (me) thinks is best.” How people on the other side of the table make their decision is just something we have to learn as we proceed – it typically differs from our own.

I can get along with almost anyone. But I will not compromise basic human values: for example, I do not like, or tolerate, arrogance. I respect roles. But when an arrogant person uses the authority of her role to treat people in dismissive, demeaning ways, I do not kowtow to it – wherever I am. I try to deal with it by letting others talk, or proposing program implementation strategies that divorce me from interacting with that individual. But if none of those efforts work, I will make it clear to my supervisor and colleagues that the relationship will be difficult and we should seek a different partner. I do not think that arrogance must be tolerated.”

## Lessons Learned

These vignettes illustrate multiple elements that shape one’s vision and conduct during negotiations. What are they?

### 1) *Conceptual*

These theoretical elements laced the party’s conduct.

#### a) **Values operate at multiple levels, and they matter.**

Values shape conduct. Values are held by individual organizational leaders conducting conversations, as well as by their organizations.

There are multiple categories of values – normative claims – that significantly play out in a negotiation. They include the following:

- ***Ethical values.*** The lawyer recognized that her client’s counterpart engaged in improper tactics – tapping telephone calls – that might put her client at a disadvantage. She did not reciprocate. When she learned that the reputation of her lawyer counterpart (or their firm) was unprofessional, she did

not reciprocate. The University administrator affirmed that no one needs to tolerate the contempt with which an arrogant individual treats others. And the business person insisted that his business counterpart pay its employees an appropriately-based living wage for two ethical reasons: first, he knew they had capacity to do so, because he was central to making them wealthy individuals; and second, he would not be able to enjoy his own comfortable lifestyle knowing that he was in a position to do something effectively about how his business enterprise and operations treated its people – in a phrase, he felt ethically responsible.

- ***Human values that govern organizational or professional conduct.*** Reputation and integrity count. The business committed itself to be a certain type of participant in a global economy: it would not earn a profit for some at the expense of human rights abuses involving child labor or insufferable working conditions. The lawyer would not mirror the unprofessional conduct of her counterpart by deliberately misrepresenting the existence or content of a damaging document.
- ***Enterprise values.*** Partners’ values regarding the goals and elements of various enterprises are shared – or, at least, significantly overlap. The people in the business enterprises shared a philosophy regarding the appropriate economic goals for business in a global environment. In the words of the CEO, “my partner ‘got’ capitalism.” That shared perspective shaped collaborative understanding about production processes, sales strategies, and human resource protocols that promoted efficiency and quality. For the college, there was – importantly – a shared sense of what constitutes an “educational enterprise.” The lawyer, intriguingly, raised a crucial question: Do members of the legal profession across borders share a common set of professional values?

**b) Power is always at play. Power comes in multiple forms and does not reside exclusively with one party.**

Power – the capacity to make another do what one wants – is real. To ignore it is irresponsible and unwise. But there are multiple sources of power – and it is wrong to believe that “all power” in a given negotiation or transaction resides completely with only one participant.

Relevant examples are many.

The U.S. company derived enormous power from its market share and reputation for quality. It could, in many ways, dictate terms to a potential partner. But its partner also had significant power: crucially, the manufacturing infrastructure to produce these products at a cost

that would enable the U.S. company to remain competitive – and the possibility of penetrating the far eastern consumer market.

The U.S. college wanted to create opportunities for its students to gain an “international experience” as part of their education. Its power resided in its capacity to create an academic and study program that would serve its students’ multiple interests and the College’s ability to motivate, recruit and admit persons to the program. But that capacity is useless without the presence and willingness of a credible educational partner located outside the U.S. While one party might try to resolve legal controversies by using aggressive or unethical business or advocate practices, its counterpart can, to some extent, meet that assault by assertive, effective use of the procedures governing their mutually-adopted dispute resolution forum.

Although each party brings her own training and skills to a negotiation, in practical terms in a cross-cultural context the situation is never determined exclusively by adoption of and adherence to one party’s preferred paradigm.

**c) One must manage multiple negotiations simultaneously.**

Human conduct does not operate in a vacuum; it is rarely “dyadic.”

When negotiating with one’s bargaining counterpart, there are often conversations and negotiations occurring simultaneously with one’s client, co-workers, or business collaborators.

The litigator must always converse with – and persuade – her client about the appropriate course of conduct; the administrator must develop a shared understanding with her supervisors and co-workers about how a particular program will operate and how that impacts the performance of their other job tasks; and the CEO, minimally, must figure out how to terminate current manufacturing operations without the exit sabotaging future company activity in that region of the world.

**d) Human interaction is complex.**

The circumstances of any negotiation or transaction are multi-layered and unique, but the way in which any individual brings her corporate, shared or personal values and her power to bear in any given circumstances, though culturally influenced, is idiosyncratic.

## **2) Strategic**

Negotiating strategies and tactics abound. Common elements of negotiation techniques include the following:

**a) Decisions are made in multiple ways.**

People, groups and institutions make decisions in multiple ways: some can be made “at the table” with those negotiators or parties who are there participating; some require further consultation and approval by other entities such as a board of directors, a union membership, or a council of elders. Some decisions are made only by the person with the requisite title or role in the hierarchy; other such “persons” might delegate that decision-making authority to colleagues who might know the most.

These types of differences affect not only what information direct actors are willing to share with one another, but also the timeframe within which decisions are made. Quite obviously, the decision making apparatus and timeframe for one party need not be identical to that of its negotiating counterpart.

**b) Trust cements relationships but must be built over time.**

If one has reason to believe that her bargaining counterpart will not do what she represents she will do – and one’s own business or personal interests are impacted by that conduct – then one proceeds cautiously in order to protect oneself. That is understandable. The lawyer was cautious, initially, with what she was willing to share with her counterpart. The company sought a partner and brought it into its operational environment; but there were a series of benchmark evaluations – tests – regarding the timely, quality production of products, and these constituted the building blocks for more extensive engagement. And when one college participant experienced that its counterpart viewed not only every item as negotiable but every settled item as renegotiable, confidence in each other’s reliability eroded.

**c) Party interests dovetail and shape possibilities.**

There is a reason why persons can “do business” with one another: someone else is in a position to do something for you that you want. Whether or not one embraces the provocative rhetoric of “interests”,<sup>4</sup> the three stories illustrate what shapes deal-making. The Chinese partner can manufacture the product in a way that generates economic savings and profits; only a non-U.S. university can provide the U.S. student with that international learning experience. It is such differences that make agreement possible.<sup>5</sup>

**d) Being firm does not mean being rigid, inflexible or a cultural imperialist.**

Foreign counterparties are often criticized for attempting to impose their own values and practices on others. But does being firm in a negotiation mean being imperialistic in that derogatory sense? That seriously misreads – and wrongly evaluates – the situation. The educator

asserts: we cannot discuss a program that will not meet the standards of our accrediting agency. Is that imperialistic? The Company asserts: we cannot compromise our reputation for manufacturing and selling quality, luxury products. Is that imperialistic? These principles shape their enterprises. They ground their mission and define their institutional integrity. They establish their bargaining priorities on such issues as course design or product materials. They “blend” the conventional difference between “interests” and “positions” because one’s interest, for example, in offering an accredited educational program may allow no flexibility in the school’s “position” on such matters as length of the class session. Of course, it is easy to misrepresent such principles and constraints, but some of them are central to the enterprise.

**e) Communications take many forms.**

Communicating effectively with another person is an extraordinarily challenging human activity. It is pedestrian to note that there are multiple ways to communicate – through language or through non-verbal conduct; that levels of communicating can purposefully range from being precise to being deliberately vague; and that understanding and acknowledging a counterpart’s communication can be signaled in ways that differ from the way in which that original message was transmitted. The lesson of experience is that we need to remain open to the possibilities of the subtlety, richness and elegance of the human capacity for communicating.

How do these general observations play out in a negotiating environment? Clearly, the effectiveness of negotiation strategies and tactics is a subject best left to separate discussion.<sup>6</sup>

However, these observations are capable of transcending cultural barriers.

The business person wanted to protect the company’s trade secrets; when his partner built a factory dedicated exclusively to his product, he increased the size of his order. This was not a contractual deal. They communicated indirectly but very concretely through their conduct. However, if there were problems with quality control in the production process, did one or another charge a breach of contract? No – “we do what business partners do: talk it out and fix the problem.”

By contrast, the lawyer communicated clearly to her counterpart: in writing, she requested document production pursuant to the procedural rules. She had no reason to trust the other side to produce it otherwise.

f) BATNAs (best alternatives to a negotiated agreement) are **genuine**.

In the real world, options to reaching a negotiated agreement vary significantly according to context.

The lawyer’s best option, particularly when dealing with a former business partner whom you are accusing of absconding with corporate funds, was to have an international tribunal arbitrate the case rather than try to settle it through direct negotiations. The College administrator who accurately assesses that his school would be better off “with no international program” rather than adopt the one being proposed enjoys, at one level, a very strong BATNA.

But the strength and robustness of one’s BATNA, like power in negotiation, varies over time. The options one party has when developing a business relationship with a counterpart, for instance, might differ considerably from his available options when implementing a partnership.<sup>7</sup> In the case of our businessperson, he might not enter into a contractual relationship with a potential partner – and feel comfortable about doing so – if that potential partner does not agree to commit itself to cooperate with the company’s engagement principles regarding child labor laws; but once the parties are engaged, that option – of “not sustaining the relationship” – might remain viable, but not represent the “best” alternative. Things change.

## Implications For Teaching Negotiation

What implications do these cases and observations about bargaining have for teaching negotiation to persons interested in “cross-cultural” negotiation?

### *1) First Generation Efforts*

We might hope for guidance from recent social science studies, but would be somewhat disappointed.

There is a body of first generation “social science” scholarship that analyzes negotiating behavior among participants from different cultures. Those efforts have triggered engaging observations and insights for scholars and practitioners alike.

Early entries, primarily analyzing international business transactions, developed conceptual categories designed to improve the understanding of business persons conducting activity in cultures (often meaning countries) different from their own. Edward Hall pioneered the insight of the difference between “high-context” and “low-context” communication, while Geert Hofstede’s studies on cross-cultural differences contributed the vocabulary and insights of the Power Distance Index, individualism v. collectivism, masculinity v. feminin-

ity, uncertainty avoidance index, and long-term v. short-term orientation (Hofstede 1980).<sup>8</sup>

More recent studies target how culture influences one's psychological processes regarding a person's motives, or information processing practices that, in turn, help shape the way in which that individual conducts negotiations. Michele Gelfand and Naomi Dyer invite us to examine whether bargaining heuristics vary by culture, and whether that, in turn, leads to different bargaining behavior. Lynn Imai and Michele Gelfand pursue the intriguing question of whether a person's level of "cultural intelligence" (CQ) influences her approach to negotiation, with the hypothesis that the higher one's cultural intelligence, the more "integrative" a negotiator will be (2010).

These insights provide thoughtful guidance for understanding negotiating conduct, but they fall short in three distinct ways: a) the definition of "culture" contains no principle for determining an appropriate "grouping" of persons;<sup>9</sup> b) the salient differences that are identified are significant to negotiations both "intra-culture" and "cross-culture";<sup>10</sup> and c) the bargaining simulations and teaching materials from which the insights are drawn have significant limitations for generalizing.<sup>11</sup>

We suggest a different approach.

## ***2) What We Learn From the Hypothetical Stories about Teaching Bargaining***

The multiple bargaining elements illustrated in the recited cases target core components for developing and enriching our teaching materials and pedagogical techniques.

Those components include the following:

### **a) Values play a central role in conducting a negotiation.**

Participant values must be identified, highlighted and discussed. The teaching goal is not to convert a participant to embrace a particular perspective (e.g., that an unrestricted capitalistic economic system is desirable, or that common-law norms governing disclosure should be preferred) but to make these matters explicit.

The teaching materials should reflect, particularly in simulations, information regarding participant individual ethical values, the role of professional norms, and the central values that lace the organizational or institutional settings in which they operate. Doing so will highlight more vividly the ways in which persons and organizations have shared or dovetailing norms that support the possibility of constructive engagement, as well as highlight how values anchor or preclude possible relationships.<sup>12</sup>

**b) Power dynamics influence and structure negotiations.**

Power sources are far more diverse and dynamic than the monolithic image of financial power often suggests. Many current negotiation simulations are graded predominantly on the scale of financial pay-offs; doing so systematically skews the capacity for participants to deploy, measure and appreciate multiple power resources. Simulation materials must be sufficiently rich to enable students to experience how power operates. Additionally, as affirmed in the case of the international lawyer, the simulation material should make the possibility of non-agreement much more probable – and *valued* – than is assumed in the traditional dyadic negotiation simulation.

**c) Simultaneous or satellite negotiations require a consideration of multiple strategic and practical matters.**

“Dyad negotiations” fail to invite both the execution and analysis of how these multiple tensions impact negotiator planning, communication, and conduct.

**d) The utility of stereotyping as an analytical tool depends on the context of its use.**

References to “high context”/“low context” cultural characterization, which have the potential to morph into stereotypes, may serve as a trigger for context or reality checking. While it is useful to introduce students to generalizing concepts, such perspectives should not be allowed to blur the student’s awareness of the commonality of elements in cross-cultural negotiation strategies and tactics, nor blur the need to create “open mind” unprejudiced thinking about those factors which motivate counterparties.

The teaching materials ought to challenge the student to consider the value of approaching cross-cultural negotiations with an acceptance that they do not know, or need to know, everything they could know about their counterparty’s cultural drivers. However, the absence of the need to possess a complete cross-cultural knowledge base does not prevent one from understanding a counterparty’s needs and wants. This focus on the uniqueness of any given negotiation context increases the utility of thoughtful listening by parties. The context level (high, low or otherwise) of any given cultural context may only affect the *extent* to which the opportunity for such thoughtful listening occurs, independently of the listener’s own actions. Teaching tools must focus on developing skills related to remaining sensitive to the dynamics of a particular negotiating context regardless of the cultural background of the parties such as those just mentioned.

### e) Teaching materials.

Lectures, short exercises, or simulations must systematically target both enhancing participants' analytical abilities to recognize strategic behaviors, and sharpening their performance skills in executing them. For example, every negotiator must sharpen her linguistic ability both to communicate proposals clearly and to discern counterproposals accurately. Richard Walton and Robert McKersie's (1991) remarkable analysis of how a negotiator communicates or interprets the degree of commitment to a proposal – that is, how firm or how flexible is it – or Fisher, Ury and Patton's (1991) thoughtful analysis of "negotiation jujitsu" offer crucial insights regarding such matters. This can be accomplished independently of the apparent desire of many instructors to proselytize for a particular bargaining theory.

## Conclusion

It is commonplace to note that everyone negotiates. (See Chamoun et al., *Negotiation in Professional Boxing*, in this volume, for an extreme example.) As our individual lives and activities become increasingly linked globally, gaining a heightened understanding as to how differences in a person's background, culture and personality shape bargaining interactions is more and more central to effective efforts to develop global partnerships or resolve conflicts.

We believe, though, that scholar and practitioner insights that accord heightened salience to targeted negotiating elements in cross-cultural negotiations, such as decision-making procedures or communication styles, have inadvertently created two misleading impressions: first, they understate the degree to which those same features operate in "intra-cultural" negotiating contexts; second, they neglect the extent to which other negotiating dimensions, concepts, strategies and tactics are similar across cultures. We suggest that it is important to restore the equilibrium. When such rebalancing occurs, multiple bargaining elements, as suggested in our case stories, become crystallized, and command attention. Those elements include the way in which personal and organizational values shape bargaining frameworks and negotiator flexibility, and the manner in which power dynamics relate to personal and organizational values and govern bargaining possibilities. And when these dynamics become incorporated into teaching materials, learners will become more effectively attuned to the complexities, possibilities, and limitations of the bargaining process.

## Notes

<sup>1</sup> There is, of course, a threshold inquiry: When we claim that people from different “cultures” are “negotiating” with one another, are we asserting that they are engaged in – participating in – the “same” activity? We presume that they are, but that is a conclusion that needs justification, not simply assertion. Here is a brief attempt.

If persons believe that “culture” is so specific – so relativistic – that each “culture” has its own epistemology, then we might be mistaken when we speak about persons “negotiating” cross-culturally. “Negotiating” to one participant might be a different activity for the other, much like the English word, “football” denotes distinctly different sports in the United States and in England (or the rest of the world).

This dramatic “cultural relativity” seems implausible. At least for real actors who operate in the contexts of trying to resolve cross-boundary litigation, conducting commercial business transactions, or establishing educational exchange programs, they appear to be, and believe they are, engaged in the “same” activity of trying to reach a mutually acceptable outcome. There appears to be some shared understanding that when parties “negotiate” with one another, they are, in philosopher Ludwig Wittgenstein’s words, acting in an activity that bears a “family resemblance” with one another.

This is significant because it enables one to: a) offer a definition of the negotiation process that can describe – or guide – conduct of persons from differing cultures; and b) examine where and in what ways bargaining concepts, strategies or tactics “should differ” – i.e., be adjusted to one’s operating environment so as to minimize miscommunication and missed settlement opportunities.

<sup>2</sup> The Arbitration Committee of the International Bar Association’s Legal Practice Division has more than 2,300 members from over 90 countries. The Committee has standing sub-committees to address specific issues relating to the use and effectiveness of the arbitration of transnational disputes, including the Rules of Evidence Subcommittee. In 1999, that Subcommittee developed and issued *The IBA Rules on the Taking of Evidence in International Arbitration*. The IBA describes these Rules “... as a resource to parties and to arbitrators to provide an efficient, economical, and fair process for the taking of evidence in international arbitration. The Rules provide mechanisms for the presentation of documents, witnesses of fact and expert witnesses, inspections, as well as the conduct of the evidentiary hearings. The Rules are designed to be used in conjunction with, and adopted together with, institutional, ad hoc or other rules or procedures governing international arbitrations. The IBA Rules reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures.” The Rules were revised and adopted in their current version in May 2010 (IBA 2010).

<sup>3</sup> The “Redfern Schedule” is a six-column chart that organizes information regarding advocate requests for document production in an arbitration of a transnational dispute. Devised by Alan Redfern, an established arbitrator of international business controversies, the chart displays each party’s request(s) for document production, the moving party’s arguments for the document’s relevance, the Respondent’s objections (if any) to production, the Claimant’s replies, and the Tribunal’s decision. *Techniques for Controlling*

*Time and Costs in Arbitration: Report from the ICC Commission on Arbitration.* International Chamber of Commerce, 2007.

<sup>4</sup> The term as used in negotiation literature and practice is typically ascribed to Roger Fisher and William Ury (1991).

<sup>5</sup> David Lax and James Sebenius (1986) crystallize this crucial observation.

<sup>6</sup> Bargaining strategies and tactics are often best understood as flowing from a theoretical framework. For instance, if one embraces a competitive bargaining theory, then a negotiator prepares her opening proposal shaped by that theory's support of the notion that a negotiator's task is to maximize self-gain. While each of the elements of negotiating strategy that we identify and examine is presented independent of a particular theoretical bearing, we recognize that each major current theory of negotiation does attempt to account for them.

<sup>7</sup> This distinction resembles, but is not identical, to that made by Robert Mnookin and colleagues (2000) between negotiating "disputes" (claims of right) and "deals."

<sup>8</sup> To the negotiator, the application of these general categories is presumptively straightforward and has been wonderfully sketched by John Barkai (2008).

<sup>9</sup> Jeanne Brett and Tetsushi Okumura offer the following thoughtful definition of "culture:" "society's characteristic profile with respect to values, norms, and institutions. It is a socially shared knowledge structure or schema, giving meaning to incoming stimuli and channeling outgoing reactions" (1998: 496). The weakness of this definition is straightforward: the word "society" does not sharply delineate a grouping that identifies a "fundamental" culture that eliminates other groupings. The definition, therefore, applies with comparable insight to the "culture" of multiple groupings, ranging from a "family" or "community" to particular institutions (the "culture of Fox News") to professions ("the culture of the profession of nurses.") While authors such as Michele Gelfand and Namoi Dyer caution readers not to equate "culture" with "geographic location" (2000), no current definition we have found offers distinctive principles for connecting "culture" to a unique grouping.

<sup>10</sup> The important concepts proposed regarding culture – "high/low communication," "individualistic/collectivist" – apply to conducting a negotiation in both "intra-group" and "cross-group" settings. Any savvy negotiator knows that it is important to learn whether her negotiating counterpart has authority to make decisions on her own or must operate within her "organizational hierarchy." Additionally, the skilled negotiator knows that there are multiple ways to communicate a message – the image that "American style is direct" is, even if sensible, a gross exaggeration (see, e.g., Walton and McKersie 1991).

<sup>11</sup> Many findings about "cross-cultural negotiations" are based on simulated negotiation exercises executed by persons of various ages who are engaged in an educational activity. As thoughtfully noted by those designing the studies, these factors significantly limit the capacity to generalize. Three limitations in particular stand out: the simulated exercises are typically buyer/seller of goods or services; the exercise involves "dyads;" and the only measure of success or failure is a pay-off structure. To the extent these elements do not reflect the actual world in which persons bargain, the ability to generalize is limited (see, e.g., Avruch 2006).

<sup>12</sup> The instructor, for example, from the U.S. perspective might introduce readings, discussion and simulations involving various provisions of the *Foreign Corrupt Practices Act*. For more on blending substantive and process content in teaching negotiation in a global context, see Salacuse 2010.

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