



Management Communication Systems, Inc.
4000 Bridgeway, Suite 404
Sausalito, CA 94965
Tel: (415) 339-2990
Fax: (415) 339-2999

Cross-Cultural Negotiations

by Charles Sheppard, Management Communication Systems, Inc.

All negotiations present problems, but the challenges of international business negotiations are unique. It is critical that you become aware of these challenges before they arise, and take proactive measures to forestall their potentially negative impact.

Cross-Cultural Negotiations

There are several key problems most likely to affect you as an international negotiator. Some of these problems are unique to international business negotiations (such as establishing an international joint venture), while others can occur domestically, but are magnified internationally (such as dealing with a bribe). Let's review the impact of these problems and examine the action steps you must take to overcome them.

Reducing Culture Shock

Culture shock occurs when we are deprived of the familiar "maps" which tell us how to conduct ourselves. These maps encompass both our professional and personal lives, and often guide us during activities that we normally take for granted. In international business negotiations, these might include how to shake hands; what forms of address to use; to whom your comments should be addressed; how direct to be with the other party; determining if the other party means "no" when they say "yes"; and what topics, if any, should be discussed over dinner.

Most individuals who work internationally go through unique phases of adjustment to other cultures and negotiating situations. These phases of growth can be very troublesome and perplexing,

but they are a normal and expected part of the intercultural journey. Each phase has its own unique characteristics and challenges. These phases include:

Phase One. The first phase is a time of great excitement and anxiety. Pre-departure anticipation and initial enchantment upon arrival is a powerful combination. There is excitement about the new opportunity to work in a foreign culture, coupled with anxiety about adjusting to the new situation. There is a desire to plunge in and enjoy every aspect of the host culture. You read about the surroundings, history, and architecture, and celebrate the differences between the host culture and the United States. You have a somewhat naive acceptance of the host culture, without much critical analysis of its shortcomings. You feel buoyed by optimism about doing business with the other party. You begin thinking, "*People all over are basically the same.*"

Phase Two. This is known as the awakening phase, when you slowly realize that people from different cultures are not, in fact, the same as Americans. Minor annoyances begin to grind one down emotionally. For example, in South America it may seem that your negotiating counterparts are never on time for meetings. They are overly friendly, always grabbing you and hugging you like you were their best friend; they seem more interested in talking about their brandy than about the

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negotiating issues; they won't give you straight answers to your questions; and four of them talk at once. It takes forever to get a long-distance call through back to the United States, and when you do, the cost seems outrageous. In this phase, you come face-to-face with your own ethnocentrism. This initial culture shock can become permanent and debilitating, unless acknowledged and resolved.

Phase Three. In the next phase you become very specific about what is wrong with the host culture, and with the individuals with whom you must deal. You begin thinking that if only you could extricate yourself gracefully from the negotiation, you would happily board an airplane in the morning and go home. A general feeling of disillusionment is prevalent.

Phase Four. The final phase is characterized by serenity and a realization of what can and cannot be accomplished in the host culture. You realize that the host culture has existed, for centuries in most cases, before your arrival—and will likely survive after your departure. You begin to work creatively and enjoyably among the challenges and opportunities you encounter.

The duration and order of these phases differs from person to person. The progression and impact of this series may endure from the first extended trip to the host country through several return visits.

Action Steps for Dealing with Culture Shock

- *Find a cultural mentor.* Ask for advice from others who have negotiating experience in the areas of the world where you will be doing business. Talk with people who have had successful negotiating experiences there, and also with those who have had bad experiences there. In this way you can get a balanced

view of the host country and its negotiators. The sooner you get this type of information, the better off you will be when it comes to the later phases of adjustment.

- *Be flexible and patient with yourself and with those in the host culture.* Events, services, issues, mechanical devices—in short, practically all aspects of your life—are not going to flow as smoothly and predictably as they do back home.

- *Withhold judgment about the new culture and its people.* Rather than being pre-judicial about your new environment, be post-judicial. Try not to go overboard with either positive or negative reactions.

- *Be aware of the phases of adjustment.* Recognize that the negative feelings you may have at the "awakening" and "disillusionment" stages are normal and appropriate. Annoyances, irritations, and letdowns are to be expected.

- *Keep a sense of humor about yourself and your situation.* This doesn't require joke-telling, but rather, keeping a sense of proportion and a positive attitude about whatever culturally irritating situation you find yourself in.

- *Reduce stress by being as self-sufficient as possible with regard to business services.* "Routine business services" is an oxymoron in some countries. In many emerging economies there are often no secretaries, typewriters, copiers, faxes, or other business fundamentals. There may also be confidentiality issues in many host-country business settings, so don't depend on the other party to type up your bargaining position or other similar material. Take along a portable personal computer (with appropriate electrical adapters) for your notes, strategies, and other uses. Arrange for other services at a large international hotel, or other professional service provider.

Negotiating with your international counterpart can be difficult, but experienced negotiators can tell you that negotiating with your own boss, legal staff, and others back in the home office can be simply brutal.

- *Learn from your experiences.* Your cultural experiences, both good and bad, are the raw material of professional growth. When you make mistakes, try to smile and learn from them. Continue to ask, "What is working well, and what not so well? And why is this the case?"

Negotiating with your Management and Home Office Staff

Negotiating with your international counterpart can be difficult, but experienced negotiators can tell you that negotiating with your own boss, legal staff, and others back in the home office can be brutal. Here's a likely scenario: You've been overseas for two weeks, have had seven formal dinners with your counterparts, made 200 toasts, and sipped 47 cocktails – and all you have to show for it is one less-than-impressed boss back home at headquarters.

In addition to dealing with your boss, you are likely to run into difficulties negotiating with your own legal staff or counsel. In many cases, you may get a lot more "help" with the negotiation than you want. Your legal counsel is likely to want more detail than will be acceptable to your foreign counterpart. Expect the legal staff to challenge, correct, and attempt to overrule portions or even all of the agreement you are negotiating. They are only trying to keep you and the organization out of trouble.

Action Steps for Preparing the Boss and Headquarters Staff for the International Negotiation:

- Stress the protracted nature of international negotiations in most parts of the world. Lower expectations as to the chances of a speedy agreement. Stretch out their time horizons.

- Be clear as to who has the authority to negotiate on the organization's behalf. The negotiation process will be undermined if the other party feels that concessions that you wouldn't agree to can be gained from the home office.

- Take time to educate your management and legal staff on the key cultural factors that influence the negotiation. Compare and contrast specific instances overseas with how they would have been handled domestically (for example, the degree of emphasis put on the relationship aspects of the negotiation).

- Cue your management and legal staff to differences in contract length, specificity, and other matters, early on in the negotiation. Try to determine the absolute necessities of protecting your side versus what would be "nice to have."

- Keep your attorneys away from the negotiating table in most other countries. You would be perceived by your hosts as overly rigid and lacking good faith.

- Don't go around asking the corporate legal staff dozens of questions as to whether or not you can put various legal items in the agreement. They will tell you, "No." That's their job. It's your job to combine the necessary legal protections with the practicalities of achieving an agreement that is good for both parties.

- On the other hand, don't surprise the technocrats with a big problem. If you see that there is a potential legal, financial, or other problem, give ample notice to the appropriate person. By getting them involved early in the process, you have a chance to make your case to the technocrats before a final decision is made, and also to save yourself some potential problems with the other party.

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- Give your management or other headquarters staff a lesson in International Negotiating. If your management or others make a trip with you, ensure that they are educated, in detail, regarding the status of the negotiations and the expectations associated with the other party's culture.

Resolving Bribery and Questionable Payment Issues

What constitutes a bribe or payoff in the United States may be considered routine business in many foreign countries.

For many years, it has been acknowledged in the international business community that gifts or money payments are necessary to obtain positive action from government officials, whether to secure a large order or to gain favorable treatment from customs officials, taxing authorities, and so on. While U.S. negotiators tend to bargain over issues such as price, quality, and service, and are not normally comfortable with considerations such as gifts or payoffs, these "bribes" are an important tradition in some countries.

Members of the inner circle in communal cultures, such as those in many parts of Latin America and Asia, maintain their relationships through a system of favors. It is assumed in these systems that any person who is obligated to another person or group has the duty to repay the favor at some time in the future. A lifetime cycle of obligations has thus been formed.

Another factor is that, to non-Westerners, Americans and other Westerners seem to be preoccupied with the business aspects of the negotiation and ignore the important relationship aspects. Therefore, non-Westerners see gift-giving as an appropriate way to increase social ties and to create a sense of obligation by the

Western negotiator. Small gifts—such as pens, cups, and key rings engraved with your company logo—are not only acceptable, but virtually essential in global business. Home and office decorations and books and magazines are also popular.

You should be concerned about the legal issues concerning gifts, payments, or bribes from the perspectives of both the United States and the host country. Tips, commissions, and finder's fees may be legal abroad, but they are a legal nightmare within Uncle Sam's domain. During the 1970s, revelations of dubious payments made by U.S. companies to foreign officials rocked governments in the Netherlands and Japan. The U.S. Congress, considering corporate bribery "bad business" and "unnecessary," then passed the Foreign Corrupt Practices Act.

The FCPA prohibits any U.S.-based company from "corruptly" offering or giving money or "anything of value to a foreign political official" for the purpose of obtaining or retaining business. On the other hand, the law allows *facilitating payments* (i.e., payments made to expedite solely nondiscretionary official actions, such as customs inspection). This usually means routine promotional gifts, reimbursement of reasonable expenses for promotional meals or travel, and payments that are legal under the laws of the foreign country. It is not always clear, however, where illegal bribes end and facilitating payments begin. There are also uncertainties as to how far management must go in order to learn whether an employee has violated the FCPA. Also, while rules about bribes are probably less stringent in the host country, it is vital that you know its laws in this respect.

Action Steps for Resolving Bribery and Questionable Payment Issues

Joint ventures usually involve at least three major parties: (1) a multinational corporation, (2) a national partner, and (3) the government of the host country.

- Above all, check with your legal staff about any vague areas of home or host-country laws. Here's a time when you want the legal staff's involvement. It may be necessary to get legal counsel in the host country as well.
- Keep your boss informed. This is no time to be a cowboy. Be sure he or she is aware of any concerns you have.
- If you must make a payment, find out the proper way to do it. Rather than make a direct money payment, it may be feasible for you to invest in community projects, such as building a school for the children of customs officials.
- If a monetary payment must be made, don't make the payment yourself. Use a go-between such as a "consultant" or someone's relative.

Problem : Establishing an International Joint Venture

The term "joint venture" refers to many types of cross-border alliances that may or may not involve equity participation. These arrangements are usually complex, with sometimes wildly differing goals among the parties. For example, your company goal may be a quick return on its investment of capital, technology, and management, in perhaps three to five years. The local partner, on the other hand, may want to develop a growing business that yields satisfactory profits over a ten-to-fifteen year period.

Too often the joint venture will be doomed to failure because of different motives regarding the source of supplies. For example, your company may want to use U.S. suppliers for key components to ensure quality and prompt delivery, while the national partner may want local suppliers to maintain competitive prices.

Joint ventures usually involve an arrangement by which the parties commit resources such as money, materials, and management to organize a jointly owned entity, generally for production purposes. Joint ventures, however, can also be organized around specific contracts (e.g., licensing or technology transfer) or loose alliances (e.g., sharing R&D expenditures or setting up a mutually beneficial organization) that serve as an "empty shell" partnership just to exchange information and trade a limited amount of technical data.

Joint ventures usually involve at least three major parties: (1) a multinational corporation, (2) a national partner, and (3) the government of the host country. Other parties may include national investors and the U.S. government (e.g., when the joint venture deals with national security). It is easy to see how joint venture negotiations can go astray, given the different possible goals of the major parties involved. Here, for example, are typical goals of joint venture partners for a manufacturing joint venture in a developing country:

Potential Real Outcomes for a Multinational Corporation:

- To increase market share where there is substantial market size.
- To maintain reasonable risk.
- To maintain a reasonable rate of return on investment.
- To take strategic initiative to use the company's specific advantages.

Potential Real Outcomes for a National Partner:

- To enter into a profitable operation with a prestigious multinational corporation.
- To obtain technology.
- To gain business know-how.
- To obtain trademarks.

Forming a successful joint venture can be a good example of a win-win negotiation.

Potential Real Outcomes for a Host-Country Government

- To achieve industrialization and economic development.
- To increase national income and employment.
- To improve the balance of payments between the host country and home country of the multinational (for example, the United States).
- To develop backward areas of the country.

Forming a successful joint venture can be a good example of a win-win negotiation.

Action Steps for Establishing an International Joint Venture:

- Ensure that you and the other parties have similar goals with respect to the business. For example, it is important to know offhand the rate of return that is expected over various periods of time, and the long-term goals of the venture. By clarifying such issues during the negotiations, you can eliminate a lot of problems later.
- Try to maintain control of the critical management responsibilities. This is important even if you have minority ownership. You want to retain the authority to appoint key managers and the right to veto important management decisions. In other situations, it may be feasible to have the national partner share in policy decisions, but you should retain the major operational decisions for your company.
- Try to find suppliers from the host country. It may not always be possible to find local suppliers, particularly in the early years of a joint venture since quality and delivery demands may eliminate local sources. When it otherwise makes good business sense to do so, however, use local suppliers to help form a strong

relationship with the national partner and the host government.

- As long as quality and delivery standards are met, allow the joint venture operation to purchase materials, components, and other products from the lowest-cost available source. This will reduce cost concerns on the part of the national partner.
- Make training part of the package, particularly if the joint venture is located in a developing country. Training is increasingly a selling point for your company with the host-country partners. The host country government usually emphasizes such provisions in a joint venture agreement, as it tries to make political points for creating or upgrading jobs, and for the increased transfer of technology.
- Maintain flexibility. Over time there will be changes in the joint venture's objectives, resources, markets, and technologies and in the relative power of the partners.

Following is a list of issues to be addressed in any joint venture negotiation. As you can see, there are many pivotal technical, management, financial, and legal issues to be addressed.

A. Purpose of a Joint Venture:

1. Major goals and strategy of foreign partner
2. Major goals and strategy of local partner
3. Products, industries, markets, and customers served

B. Contributions of Each Partner:

1. Capital
2. Existing land, plant, warehouse, offices, and other facilities
3. Manufacturing design, processes, and technical know-how
4. Product know-how

5. Patents and trademarks
6. Managerial, production, marketing, financial, organizational, and other expertise
7. Management development and technical assistance and training
8. Local relationships with government, financial institutions, customers, and suppliers

Note: This outline represents a comprehensive list of factors that could be included in a joint venture agreement. Not all of these aspects necessarily apply to every joint venture agreement.

C. Responsibilities and Obligations of Each Partner:

1. Procurement and installation of machinery and equipment
2. Construction and modernization of machinery and equipment
3. Production operations
4. Recruitment and training of workers and supervisors
5. Quality control
6. Relationships with labor unions
7. Research and development
8. General, financial, marketing, personnel, and other management

D. Equity Ownership:

1. Equity granted to foreign partner for manufacturing and product technology and industrial product rights
2. Equity granted to local partner for land, plants, warehouses, and facilities
3. Ownership share of foreign partner
4. Ownership share of local partner

E. Capital Structure:

1. Equity capital
2. Loan capital (national and foreign)
3. Working capital
4. Provisions for raising future loan funds
5. Loan guarantees by partners
6. Future increase in equity capital
7. Transfers of shares of stock, including limitations

F. Management:

1. Appointment, composition, and authority of the board of directors
2. Appointment and authority of executive officers
3. Expatriate managers, technicians, and staff

4. Right of veto of appointment of officers and key decisions
5. Development of local managers, including time schedule
6. Organization
7. Strategic and operational planning
8. Information system

G. Supplementary Agreements:

1. Licensing and technology agreements
2. Management contracts
3. Technical service agreements
4. Allocation of foreign partner's corporate overhead to affiliate

H. Managerial Policies:

1. Declaration of dividends
2. Reinvestment of earnings
3. Source of supply of materials and components, including price, quality, and assurance of delivery
4. Major marketing programs, including product lines, trademarks, brand names, distribution channels, promotion, pricing, service, and expenditures
5. Export markets and commitments
6. Executive compensation and bonuses

I. Accounting and Financial Statements:

1. Accounting standards
2. Financial statements in currencies of host and foreign countries
3. Reporting requirement
4. Audit and review of financial statements

J. Settlement of Disputes:

1. Board of directors and executive committee
2. Mediation
3. Arbitration

K. Legal Matters:

1. Relevant local laws, regulations, and policies
2. Required government approvals
3. Articles and bylaws of incorporation
4. Antitrust considerations
5. Tax law considerations
6. Selection of legal counsel
7. Use of host-country courts