

# Cross-Cultural Negotiations

—Or—

## Have You Ever Been Yelled at by an American Attorney in a Negotiation?

By Salli A. Swartz, Marcelo E. Bombau, and Ingrid Busson-Hall

**H**ow many times have you entered a room or a telephone conference to negotiate with attorneys and clients of several different nationalities from several different countries having different legal systems?

If you are an international-minded attorney, the response is probably “often.”

Whether you are a Brazilian company doing business in the United States, a French company doing business in Argentina, or a U.K. company doing business in Russia, the thought is usually: well, we are all attorneys—how difficult can it be?

Answer: It can be very difficult!

In addition to the typical difficulties raised by conflicting and different interests, positions, legal systems, and the like, you will need to understand the cultural underpinnings (meaning the why and how) of the interests, positions, and legal systems in order to conduct a successful negotiation.

Take this list of generalizations and see how well you do:

- South Americans are always late.
- Arabs never drink alcohol.

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- Women do not like to have business dinners.
- Accepting a lunch invitation can be seen as affecting your impartiality.
- Lunch should not interrupt negotiations.
- Talking about sports is a waste of time.
- The Japanese who nods his or her head in assent is in agreement with what you are saying.
- Time is money.
- Everyone likes seafood.
- The more distant you are, the more professional you look.
- A conflict of interest exists when a son of one of your partner's friends acts for the other side.
- When the son of one of your partner's friends acts for the other side, that's the best thing that could happen.
- A woman accompanying a man on a business trip is his wife or the man accompanying a woman is her husband.

These are all well-loved generalizations that are not necessarily true—or are they?

If negotiations are expected to progress, communications must be channeled in the right direction, and this is certainly not a mere language issue. Anyone who thinks that speaking a foreign language is the key to success in the international arena is dead wrong. The doors that a well-spoken foreign language can open will be quickly shut if the cultural component of the communication is not understood.

Missing an important deadline, not appreciating the business card that was handed to you (heaven forbid you forget it on the meeting room or lunch table), or not understanding the other party's anxiety or his or her laid-back, lax attitude will certainly get you off on the wrong foot in almost any jurisdiction. The same will happen should you stumble over a dietary or religious taboo in a country in which meals and religion are at the forefront of cultural identification.

As any good sports person would do, you need to “read



the play” before it takes place or while it is taking place. For this, an open mind with cultural flexibility is an absolute must. In the same manner as you would study the background of the people with whom you will be meeting, researching the basic facts (history, religions, race and caste diversity, geography, food, literature, cinema, sports, music, etc.) of a country and its culture is a must. If you are saying to yourself, “Who has the time . . . ?,” you can and should find the time. It can make the difference between closing the deal and killing it.

In this regard, many U.S. lawyers are at a relative disadvantage. Those born and raised in the United States have a tendency to think that their world is the “only” world. Many times this is explained by the very large number of Americans who live in the United States and have not traveled abroad (many have not even traveled out of the state in which they were born). Some of this is a “mere” lack of education or knowledge or interest or opportunity, but some of it is born of fear, generalization, and presumption. Whereas the former can be explained and ameliorated by effort, the latter is a real killer in the international legal world. Ignorance and apologies (if given) can only take you so far.

Many U.S. attorneys are viewed by their peers from other countries as impulsive, arrogant, disrespectful, either too

## Main challenges: know what you don’t know, “undo” generalizations, and determine expectations.

distant or too friendly, and certainly shrewd. Similarly, U.S. attorneys most probably view their foreign counterparts as unorganized, inefficient, and unknowledgeable. As a result, they can be condescending to their foreign peers. The main challenge in these circumstances is to know what you don’t know, to “undo” generalizations that may be getting in the way of effective communication, and to find a way to determine the other parties’ expectations in order to understand them and to establish an effective communication method. Minimum cultural understanding of the other party is vital since its absence may bring the communications down like a house of cards. And many times, you will not even be aware of the problem and not understand why you are getting reactions that seem to you to be disproportionate or irrational or stubbornly repetitive.

The following subjects need to be thought through because they will be of importance in building the relationship:

- Attire (no one other than Americans knows what “business casual” means);
- Notion of time (for start times, length of meetings, and pace of negotiations);
- Introductions (when, where, how long, how detailed) and use of business cards;
- Physical proximity (how close you stand to the other person(s));
- Handshakes and kisses (when, how many);
- Tone of voice and verbosity (how loud, how much talk, and when; use of silence);
- When to get to and push the point (how much small talk, how many breaks);
- Mixture of professional and private subjects (Americans tend to ask personal questions that are not appropriate in many cultures);
- Religious issues (working days and hours, breaks for prayer, scheduling of meetings, dress, use of language);
- Work days and holidays (Americans would not appreciate your scheduling important negotiations on the Thanksgiving holiday); and
- Use of telephone, Internet, e-mail, Skype, or faxes to communicate (don’t impose a communication method; ask which is the preferred method).

There are many books and Internet sites out there that can be perused before traveling or opening discussions. Our best advice is to consult them and learn about the culture or cultures you are about to enter or for whom you are acting as a host. Should you have the benefit of a friend or contact from the given country, do not hesitate to give that person a call.

Here are a few tools for your toolkit.

1. Do not assume that your counterpart will feel comfortable in your culture. Make an effort to make your peers feel at ease by asking about jet lag, break times, food preferences, need for extension cords or electric plugs, etc. They may very much enjoy your arranging some tourist activities before or after your meetings.
2. Listen and hear (these are not the same) carefully, and take time to react. Different cultures discuss at different paces. Do not rush matters even if you have been instructed to rush matters by your client.
3. Ask questions. It shows that you are interested, not that you are stupid. Speak slowly if your colleague

is not a native English speaker and you are speaking English.

4. Repeat out loud what you think you have understood during the negotiation or discussion: “If I have understood correctly, you would like to modify Clause 4 because . . . .” This technique has two (or possibly more) advantages: it reinforces the impression that you are listening and hearing and it gives everyone the opportunity to correct a misunderstanding right away before it becomes so buried that you cannot unwind the problem to identify the cause.
5. Don’t hesitate to apologize if you have gotten something wrong. Although apologies come hard to some people, it is the most gracious way to fix a problem. Despite common beliefs, you will not lose face or the upper hand by apologizing. You will appear human and open to doing the deal.
6. Every time you open your mouth or write an e-mail, think how you would feel and react if the tables were

turned. Treat your sparring partner with the same respect, courtesy, and intellectual honesty that you would like to receive in the same situation. Remember that a battle won does not necessarily mean that you have won the war.

7. Do not underestimate local knowledge. The person with whom you are planning to do business definitely has more knowledge than you do concerning his or her jurisdiction. Suggesting a road map is a good way to approach cultural differences, rather than trying to “teach” or “preach.” More often than not, you will need to use local contacts and consult local counsel time and time again, so make friends, not enemies.

The ABA Section of International Law strives to respect other cultures and open ours to the world. Our tag line is “Your Gateway to International Practice.”

Working internationally with different cultures is an art. Learn it and enjoy practicing it. You can only become a better attorney and a more enriched, better person as a result. ♦