THE INTERNATIONAL NEGOTIATION COMPETITION:
A GUIDE FOR PARTICIPANTS

The International Negotiation Competition offers students the unique opportunity to negotiate with other students from all across the globe. With that opportunity come some challenges. In any international experience, preparation smooths the way. This brief guide will offer some insights that will hopefully assist teams to prepare for the competition. Reading this guide is not a substitute for reading the rules of the competition.

Who is competing?

The competition is designed for teams that have won a national competition. There may be two teams from one country if an extra team is needed to complete the competition field. New countries may also be represented by a team that has not won a national competition, so long as there is a reasonable expectation that there will be a national competition in the near future.

Each team consists of two students, who must be studying law in their home country. Depending on the structure of legal education in the country, the students may be undergraduate or graduate students. You can read the competition rules for more detailed information.

How does the competition work?

The competition involves three rounds of negotiations. The three negotiation scenarios will be related to each other in some way. In each round of negotiations, two teams from different countries will face each other in an attempt to resolve the issues presented by the scenario. Occasionally a round will involve a multi-party negotiation and there will be three or four teams negotiating together.

About three weeks before the competition, the teams will receive the scenarios. Everyone will receive the same General Information, which explains what the negotiation is about and provides any other information both teams should have prior to the negotiation. Each team will also receive Confidential Information for the party they represent. The information is confidential in the sense that the other party is not aware of it, not in the sense that it cannot be discussed during the actual negotiation.

The negotiations are limited in time. They will be observed by a panel of judges, who will apply defined criteria in judging the competition. All teams will participate in all three rounds. The winners will be announced after all the rounds are completed.

How should teams prepare?

Teams can obviously determine how best to prepare themselves, but in general there is no substitute for practicing by negotiating. Teams can use unrelated negotiating scenarios, or the actual scenarios for the competition in their preparation. If teams are using the actual
competition scenarios, someone should create confidential information for the other party that will allow a full negotiation to take place. For example, if a team has been assigned to represent a seller of property in the competition, they should find someone to write confidential information for the buyer, and a team to represent the buyer in a practice negotiation.

Teams should also spend time strategizing about how to approach the negotiation—what kind of information-gathering should take place, how should the negotiation open, is there an appropriate agenda for the negotiation, is there a bottom line in the negotiation that should not be crossed, what tone and style of negotiation are appropriate?

Teams should plan their teamwork as well—is there a natural balance and flow between the team members? Is one team member quieter than the other, and should that person have specific assignments during the negotiation, such as to deliver the introduction or to ask information gathering questions?

**Cross-cultural issues and advice**

Much has been written on various cultural approaches to communication generally and negotiation specifically. It is useful to know about high context vs low context cultures, and how different cultures view power and time and honesty in negotiation, among other things. It may be useful to review some of the literature in this area, but fundamentally the most important thing to remember is that we are all human beings, and paying attention during a face to face interaction will provide the most useful information. Do not rely on stereotypes and assumptions about culture or ethnicity (or gender, for that matter).

Watch out for different styles—the intimidating, fast-talking negotiator vs the soft-spoken passive negotiator. Try to adapt to whatever style appears across the negotiating table. Confusion about what a negotiator is demanding may often be clarified by asking simple questions—Why? How? When? Do not be afraid to ask questions when something is happening that is difficult to understand.

What follows is some general negotiating advice from educators from several countries that have participated in the competition. The tone of the advice is somewhat informal, since it was offered in response to an email query.
Below are excerpts from the answers to two questions I asked of friends and colleagues who have extensive experience teaching and coaching negotiations and dispute resolution in international contexts. The questions were:

1. What general advice would you offer someone preparing for a cross-cultural negotiation?
2. What specific advice would you offer someone preparing to negotiate with someone from your country?

South Korea

Subject: 답장: cross-cultural negotiating advice (words from Korea, Prof. Won)

Dear Nancy,

Greetings from Korea.

Here are some quick thoughts for you.

In our third round, Korea’s team focused on two things.

1. Cross Cultural Communication (overcoming communication barrier)
2. Making the other side understand the Asian approach.

As to Cross Cultural Communication there are two issues: language and culture
a. Do not assume the other side understands your position or contract conditions, even if you said it in perfect English and the other side speaks reasonable English. (maybe you are using certain expressions only known to your country)
b. In Asia, I "understand" does not necessarily mean Yes.
c. Sometimes, Asian negotiators come across very accommodating but it might not mean that they agree with you. They are just being polite.

As to understanding the Asian negotiation approach.

a. Do not put too much focus on the details of the contract on first meeting. It is time to build a common bond and trust.
b. Do not be too competitive. You might offend or make the Asian team lose face.
c. Asians (Koreans) believe that ultimately people are implementing the contract, not the other way around.
In conclusion,

Always clarify what you are saying and from time to time summarize what you think you have agreed. Do not wait until the end, because the two parties might have had different assumptions and understandings during the negotiation.

Saving face is important; do not push the other side too hard. Do not threaten to walk out. Be willing to speak slowly and clarify what you are saying. Make Asians feel comfortable in expressing whether they understand the negotiations or not. Give them a chance to become part of the negotiation rather than only pushing your agendas. Any good business negotiation should be problem solving not positional.

Let me use this year's competition example.

a. Our second round, which you saw, was interesting. Two Asian teams were negotiating in their non-native language. Judges were Western. Later Judges told us that it was fascinating to see how Asians negotiate. Since we did not fight, before you knew it we finished all the terms in a most amicable way.

b. Our third round, we had the ultimate cross-cultural experience. Korean native speakers vs. English native speakers
We had challenges of language and culture and even misunderstanding rules (judges as well)
One could say, any of these challenges present in real inter-cultural negotiations.
US and Korea could not finish the negotiation because we had a different understanding of time. Furthermore, US second team and Australia could not finish either, even though there was no communication difficulty... I guess intercultural is more than language.

In both the 2nd and 3rd rounds, after the negotiations, Korea’s team became good friends with the other opposing teams, Japan and USA. It was an uncommon situation. I guess they were able to build the trust between themselves. That’s what Korea’s team wanted and in fact, that was our goal regardless of outcome. Funny, you might find that Korea’s team was more concerned about building a good relationship than outcome. Of course, we want to achieve both in the real world.

Key word is "clear cross-cultural communication."

In my observation, Americans enjoy good and fair sparring

Judges are like your boss, your superior in your law firm and business.
Their perception is important in the real world regardless of how well you think and really did.

Best Regards,

Jae Won
Handong International Law School
Hi Nancy

Re. your questions:

1) In preparing for a negotiation with someone representing a different culture than your own, it is highly advisable to do specific research about the dos and don'ts of that culture. Numerous books and articles are dealing with such, however a pragmatic and efficient tool for comparing the characteristics of your own culture and those of the other can be found at i.e. http://www.geert-hofstede.com/.

Additionally, it is crucial to know yourself as a negotiator (strengths and weaknesses, preferences, trickier points). Do a personality analysis to assist in better getting to know yourself.

Realize that independent of the different cultures represented by the negotiators, they are human beings first. Human needs and emotions are generally shared, thus, a basis for identifying integrative potential might be found by focusing on human needs and emotions rather than cultural or personal specialties. Rhetorically, you might easier find common ground building your argument chains based upon ethos than upon logos.

Remember that you have to "peel the onion", solving data conflicts initially (sharing information and understanding of same), personal and value based conflicts (understanding and respecting differences, appreciating the diversity rather than trying to convince everyone that you are right and they are not), structural conflicts (creating a balanced negotiation re mandates, language, location, hierarchical position, governing law, etc.etc.) - then centering the negotiations on identifying and solving the conflicts of interest (which might be more or less integrative, thus requiring different strategic approaches).

You, also, need to research the relevant differences in the legal systems represented at the table, i.e. civil law, common law, sharia law..... Don't assume a shared understanding of legal concepts, - ask lots of questions (and listen to the answers) to ensure disclosure of differences and similarities. Show respect for the cultural nuances.

2) For Americans negotiating towards Danes, it is significant to understand how different our approaches are to i.e. contract law, ref. the above about different legal systems and philosophies.

In general, there will not be major language problems; however, remember to re-phrase and summarize frequently in order to have any misunderstandings or miscommunications disclosed and remedied soonest possible. Be aware that less than 7 % is the spoken or written word, thus, use your body language and intonation to ensure effective communication, as well as frequent
visualization to illustrate concepts, time lines etc, making it easier for the other party to absorb your ideas through the right side of his brain.

Don't consider any irony or sarcasm from the Danish negotiator a personal insult. Most Danes are aware of reducing their use of irony when negotiating internationally; however, you might run into one, who treats you like a Dane......

Birte V. Bruce, Mediator, JD  
Faculty of Law, University of Copenhagen

Ireland

Hi Nancy

Question 1
As far as preparation my advice is to research the specific culture(s) involved to ascertain if specific behaviours are considered essential or inappropriate as regards the following areas:

· Handshaking/normal manner of greeting
· Eye contact
· Use of first name or title + surname (Mr/Mrs/Dr/Professor etc)
· Exchange of business cards
· Dress code for business/professional meetings
· Formal or informal approach usual
· Direct or indirect approach usual
· Seating arrangement – closeness, formality etc
· Use of physical contact – appropriate or not
· Use of ice breakers
· Use of humour
· Use of vocals – loud or quiet, fast or slow etc
· Use of gestures, especially those which exist with different meanings in different cultures  
  e.g. head nodding, head shaking
· Use of words which can be used with different meanings in different culture e.g. yes (may not always imply ‘definitely’, can be used with the attributed meaning ‘possibly’ )
· Avoid slang, idiomatic expressions, dialect etc
· Are there any terms or topics which should not be mentioned
· Is there any behaviour which is considered rude/offensive
· Is it ok to interrupt

Question 2
Concerning specific advice for negotiating with someone from Ireland, it is useful to bear the following in mind:
· Make eye contact
· Shake hands when greeting
· Physical contact is not usual except for handshaking for greeting
· Use first name
· Informal approach is the more usual style
· Irish people tend to speak fast so it may be necessary to ask the Irish party to speak slower

Alison Gallagher  
Law School, Law Society of Ireland

Singapore

Hi Nancy,

Let me put down some random thoughts which in my own obtuse way may address (or not) the 2 questions you raise.

The biggest pitfall in cross-cultural exchanges is "assumption". It is easy to be made aware of assumptions when there are clear linguistic or race or gender differences. However, when the other person speaks and acts like us, we assume they are like us without realizing that we have made an assumption.

When teaching culture, I am often mistaken for saying that I don't believe culture exists. This is because I tend not to rely on the stereotypes that seem to proliferate in negotiation texts about "How to negotiate with the <fill in the appropriate nationality/race/gender/sexual orientation>". While these stereotypes are a good starting point to make us aware, assuming that these stereotypes are universally true is equally lethal.

Birte has referred to Hofstede. This is a better system than the stereotypes mentioned earlier because it provides a framework for thinking about culture. Salacuse provides another which has some overlaps (see http://www.iveybusinessjournal.com/view_article.asp?intArticle_ID=514).

When dealing with someone of a different culture, I prescribe "losing one's mind and coming to one's senses". Be aware of your personal assumptions, perception and preferences. Respond to the individual in front of you by constantly stepping into their shoes and seeing it from their point of view. Also constantly shift to third or observer position which can help you gather data that might be missed from the positions of self or other. Constantly revise your assumptions and check. It is easy for us, when faced with a behavior that we don't understand, to conclude that it is irrational or to dismiss it or at the depths of non-awareness, filter it out completely. Bottom line is this: The behavior makes sense from their perspective. We need to figure out how it makes sense.
I hope this helps in some small way.

Cheers

Joel (Lee)
Faculty of Law, National University of Singapore

Australia

Dear Nancy

I've read Birte's comments, which I think could serve as a template for our quest to put something on paper - thanks, Birte. The Geert-Hofstede scales are a fascinating study tool.

I would just emphasise listening, slowing it down, seeking clarification, asking questions - much as I would with most negotiations. I've found that students seem to have more problems with audibility and tempo than "deeper" cultural differences.

The exception to this comes out of "jurisdictional culture", where for example, civil and common law differences in proceeding, evaluating, reaching conclusions, can be quite marked, even if the outcomes are much the same. At the extreme end it is characterised by our tendency to argue just about everything rather than apply a definitive code or accept a straight-line ruling.

Where language is a problem, it can increase as both sides shut down as it becomes apparent that communication will be limited. This intensifies once prepared scripts are exhausted. It is easier to advise than to put into practice the need to openly admit that things are stalling and to work out, independently of the dispute resolution exercise, what is happening and how to get back on track.

I would try to avoid a formulaic or overly specific approach to cross-cultural acculturation, and rely on "be sensitive, be polite, learn from the other party..."

Unless of course you were negotiating with Australians. And that's my answer to your last question.

Cheers
Frank (Astill)
University of Sidney
Dear Nancy,

Regarding the cross-cultural negotiation, I don't have much experience of teaching on the issue, my very personal comments are as follows:

Advice to Japanese who negotiate with Western people:
- You should keep in mind that the negotiation style of counterparties may be very different from Japanese counterparties. It is important that you are not surprised when you encounter such a negotiation style.
- On the other hand, the negotiation styles depend on each person, and the counterparty may have a good understanding on Japanese culture, you should avoid prejudice.
- It could be recommended to use more time to exchange the views on the process of the negotiation, to confirm the purpose of the negotiation and to share the common interest of the negotiation.
- I feel difficulties exist especially in relation to non-verbal information in cross-cultural negotiation. Comparing the negotiation with the person from the same culture, it is difficult to understand non-verbal information (face, tone of voice, gesture, the way of sitting, silence, etc.) correctly. Also, we should pay attention to how our non-verbal information will be understood by the counterparty.
- On this point, you should make some research on the culture of the counterparty.
- If you are not confident, you should ask someone who is familiar with the culture of the counterparty to join the team. It is important to know the limit of the ability of yourself. It is also the case when you are not good at the language of the counterparty.
- Basically, Japanese business negotiation style is polite and indirect. Also, Japanese is the language which requires us to fix the relationship with the counterparty before talking. Depending on the relationship with the counterparty (senior or junior, close or not, etc.), we need to use different expressions and styles, and it could limit negotiation dynamics to some extent. When you negotiate with people from a Western country, in many instances, we could be more frank, direct and casual.

Advice to people who will negotiate with Japanese
- In Japanese society, it is considered as best that people could understand each other without talking. Therefore, Japanese people tend to talk indirectly and try to avoid too much talking.
- You should understand such tendency and try to make active listening and confirm the intent of the counterparty more carefully.
- Also, you should understand that typical Japanese decision-making mechanisms in organizations could be different from the western. It tends to take more time to make decision as the organization.
- Many Japanese people don't believe in a specific religion. Rather, their way of living is ruled by
the norm of the society, relationships with others and common sense. Therefore, Japanese people tend to feel hesitant to behave very uniquely. It is important for you to create a more frank, direct and active atmosphere in your negotiation table at the beginning.


Best regards,
Tetsuo (Morishita)
Sophia University Law School

Italy

In general, the Italian culture on negotiation lacks of theory and skills training.

Negotiation programs are very rare in the University and the courses offered to entrepreneurs are few and the training quality is not always high. For those reasons, lawyers and entrepreneurs develop their negotiation skills on the experience basis, on the “as usual” basis or on the ground of their personality.

In order to try a more specific examination of the Italian negotiation style, it’s useful to separate two areas:

- dispute-related negotiation;
- entrepreneurial negotiation.

1) Dispute-related negotiation. This kind of negotiation could be divided in (1) negotiation before or during a dispute and (2) negotiation to prevent a dispute. Leaving aside the assisted negotiation offered by mediation (which is currently rapidly developing in Italy, due to the EU Directive on mediation and its implementation), the Italian way to negotiate before or during a dispute is affected by the length of Italian litigation. In fact, a very high percentage of the disputes are resolved outside the court, by negotiation, but this negotiation is more affected by the fear of an uncertain 7-years-plus proceeding than by skills and negotiation techniques. The Italian BATNA connected to litigation pushes the parties to negotiation mostly not to find out a better outcome in terms of interests, but to avoid the fear of a long and uncertain litigation. Negotiation to prevent a dispute avoids this biased BATNA use and is more often done by in-house lawyers. If they have, in many cases, experience, they usually lack of a more solid preparation in skills and technique, as very few attended to negotiation training during their careers. In general, dispute-related negotiation is very affected by the personality of the single lawyer that is negotiation. Maybe because negotiation training isn’t developed, the negotiating lawyer is very often positional, aggressive and competitive, very used to a distributive
negotiation where law is used not as an objective criteria (sometimes very difficult in Italy) but as a way to improve leverage and strength.

2) Entrepreneurial negotiation. It faces the same problems that dispute-related negotiation has: lack of training and skills, and a high influence of personality. Two situations can be identified, and it all depends on major economical national and international issues. Where the business is developed into a rich area, entrepreneurial negotiation is very well managed (usually for mergers or IP licensing). The negotiator is very often a team, very well prepared, that can overcome the lack of specific training by a very good use of experience. It brings to solid agreements with (in many cases) international implications in terms of product distribution. The other side of the coin is where negotiation refers to an area with crisis, as it usually refers both to economical and labor crisis. It usually brings to deadlocks between entrepreneurs and Unions, with (quite useless) strikes, delaying of the negotiation itself, Government intervention, usually followed by public funds given to the enterprise to overcome the crisis situation, and it often is only a way to face the specific situation without dealing with the fundamental problem.

(From me)> Thanks, Corrado! This is interesting--is there anything about the Italian personality in a broad sense that contributes to the positional bargaining and deadlocks? I know I'm asking you to generalize and stereotype, and obviously individual personalities are paramount, but it sounds like there is a somewhat consistent approach in the absence of training. For example, we tend to think Italians are emotional (stereotype)--does that have anything to do with the problem?

Ehe, I was pretty sure you'd ask it! The world famous Italian personal "skills"...
I understand your question. But (apart from some specific situations, mostly connected to extremely emotional negotiations into community mediations) I don't think that the Italian emotional specificity comes out during the majority of negotiations. Or, better, it's not the main part of it: to my experience, I see negotiators using a sort of emotional impact to influence the other side. Or to collect more leverage through the improvement of the perception of the strength/BATNA.

In conclusion, I think that an Italian negotiation is affected (rather than by the Italian emotional behaviour) more by the Italian affection for status, status symbols and perception of it. It's very usual to reach the real "core" of a negotiation only after a sort of play of roles, statuses, titles: the Italian style is more affected by the way we deal with public relationships than by the emotional side.

Please, if you need something more I'll be happy to try to help!
All the best,

Corrado
General remarks and specific advice to someone preparing for a negotiation with a Swiss counterparty

To fully achieve the objectives of a negotiation, negotiators need to understand the purpose and interests of the counterparty. This is particularly difficult in a cross-cultural negotiation when the “cultural rules” of the counterparty are different.

Culture determines people’s communication and has an impact on negotiation strategies and techniques. To better understand the negotiation mode of another party and to be in a strong negotiation position, it is the homework of a negotiator to study the culture of the counterparty prior to the negotiation.

Furthermore, culture is not the only soft factor in a negotiation. The social, educational and professional background of a person is also relevant in cross-cultural negotiations.

When negotiating with someone from Switzerland, here are some tips and additional information for competitors:

- **Formality**: Generally speaking, Swiss people tend to be punctual and organised. They would rather start a negotiation on time and respect its timeline.
- **Form of communication**: Whereas people in the French speaking part rather tend to communicate orally (by using the telephone), professionals in the German speaking part of Switzerland often use email for communicating.
- **Calling names**: In a professional setting, (in German and French) people tend to address each other with their family name. Using the first name is rather informal, but becomes common when the parties communicate in English.
- **Small talk**: In the Swiss culture, there is nothing wrong about doing small talk in business, but it does not mean anything bad if someone is not actively participating in an informal conversation.
Greetings: People greet each other by shaking their hands. It is very common, that they do it at the beginning and the end of a meeting.

Gender issues: In law school and in the legal sector, you will find as many women as men studying and practicing law.

Language issues: There are three official languages in Switzerland: the majority speaks German, French is the language in the western part of the country and a minority speaks Italian. Generally, people are fluent in two national languages. Moreover, you will find many people speaking English and other foreign languages.

Legal English: As English is not an official language, however, lawyers have to learn how to use English for their job. In particular, they learn to use the legal terms when they start practicing.

Legal system: The legal system in Switzerland is based on the constitution, federal and cantonal (regional) law as well as court rulings (civil law system). Contracts tend to be rather short as there are many stipulations in the law providing optional rules that will apply to a contract if not otherwise agreed.

Jean-Luc Delli (Lawbility, Switzerland)
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