

# CHALLENGES FACING INTER-GOVERNMENTAL POLITICAL NEGOTIATIONS WHICH ARE COMMON TO INTERNATIONAL BUSINESS NEGOTIATORS: AN ANALYSIS OF SHARED CONCERNS

*Dr. Yassin El-Ayouty \**

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## I. TWO PROVERBS AND INTRODUCTION

The thesis of this article is that the commonality of challenges facing both inter-governmental negotiators and international business negotiators is more predominant than the differences in these two situations. The importance of recognition of this commonality is due to the prevalent interchangeability between diplomats and actors in the business world, the closer identification between international politics and international economics, and the need for formulating courses in negotiation from which both the diplomat and the business person would draw nearly equal benefits.

In the course of the research, two proverbs were discovered which are used here as a prologue to the body of this article. The wisdom conveyed by these proverbs, which underlie the entire purpose of negotiation, is of equal benefit to both the governmental negotiator and the private intercontinental transactional negotiator. The first of the two proverbs is a Kikuyu (African) adage which states: "To be hard does not mean to be hard as a stone, and to be soft does not mean to be soft as

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\* Adjunct Professor of Law, Cardozo School of Law. The author is an attorney at Spector & Feldman in New York City. He was formerly a Principal Officer of the United Nations.

water.”<sup>1</sup> The other is a common Chinese proverb which is highly applicable to the two different contexts of negotiation, however, it is non-attributable. This proverb states: *From listening comes wisdom, and from speaking, repentance.*

Before proceeding to the presentation and analysis of the shared concerns of both the inter-governmental negotiator and the transnational business negotiator, reference should be made to the main differences between the contexts within which these two actors operate. For case of reference, this article uses the shorthand of *diplomat (D)* and *business person (B)* within the arena of international negotiations. One of the essential differences between *D* and *B* is that the former, as a representative of sovereignty, has a pressure tool which is unavailable to *B* as a negotiator.<sup>2</sup> That tool is the “mobilization of domestic political support.”<sup>3</sup> However, *B* is endowed with an advantage that *D* does not have in most negotiating situations, *B* can proceed with negotiations without having to let the public in on it. *B*'s secrecy cannot, under most circumstances, be called into question, while *D*, especially in democratic societies, “cannot develop a negotiating position on a major issue without letting the public in on some of the internal controversies.”<sup>4</sup>

Nonetheless, an advantage accrues to *D*, which generally is either irrelevant or unavailable to *B*, the availability of international force and institutions for settling of controversies. The United States, for example, can resort to the United Nations Security Council as a means of putting pressure on the Haitian military government; but a United States business person cannot use this instrumentality in negotiations with a Haitian counterpart.

The pendulum of advantages swings again in the direction of *B* over *D* in a very important respect in the analysis of differences between these two international actors. When *B* enters in negotiation with his/her counterpart, the intent is certainly to reach a mutually-agreed settlement if at all possible. This certainty of intent, however, is at times lacking in the case of *D*. Sometimes a government “enters negotiations simply to deflect domestic opposition to its militant policy or to forestall domestic pressures to make a unilateral conciliatory move.”<sup>5</sup> President Nixon's first trip to

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1. TRENHOLME J. GRIFFIN & W. RUSSELL DAGGATT, *THE GLOBAL NEGOTIATOR: BUILDING STRONG BUSINESS RELATIONSHIPS ANYWHERE IN THE WORLD* 20 (1990).

2. FRED CHARLES IKLE, *HOW NATIONS NEGOTIATE* 26 (1987).

3. *Id.*

4. *Id.* at 226.

5. LOUIS KRIESBERG, *INTERNATIONAL CONFLICT RESOLUTION - THE U.S.-USSR AND MIDDLE EAST CASES* 121 (1992).

China falls within this category. In addition, *D* is sometimes faced with inherently unsolvable disputes, such as those “involving ethnic issues, minorities, [and] ideology. . . .”<sup>6</sup> In spite of these differences, the challenges which are common to *D* and *B* as negotiators predominate.

## II. NATIONAL CHARACTERISTICS AND NEGOTIATION STYLES

The above two elements are intertwined and represent the core of the commonality of challenges facing both *D* and *B* within the international negotiators context. Both *D* and *B*, in negotiating with their American or Soviet counterparts, have to be aware of a major difference in negotiating styles which is attributable to the difference in national characteristics. Whereas the American negotiator looks upon negotiation as a hurdle to be overcome, the Soviet negotiator looks upon it as a power play. President Carter expressed this crucial difference aptly when he said:

[t]o Americans, a negotiation is most often looked upon as an obstacle to be overcome in order to reach a desired goal. For the Soviets . . . the same negotiation was almost an end in itself X a ritual that demonstrated to the world that they were equal in status to the United States.<sup>7</sup>

The Soviet's perception of negotiation as primarily a power tool, not a means to conflict resolution on the basis of shared interests, is articulated as “preoccupation with authority, avoidance of risk, [and an] imperative need to assert control.”<sup>8</sup>

Thus it is of primary importance for both *D* and *B* to bear the symbiosis between national characteristics and negotiation styles in mind. In fact, when we look further into the scope of this common challenge facing both *D* and *B* equally, we discern an interesting variance. National negotiating styles vary for the same national group depending on whom is facing that national group in negotiations. Taking Egypt as an example, former United States Ambassador to Israel, Samuel Lewis observed the following: “Egyptian negotiation behavior varies from region to region . . .”<sup>9</sup>

The same relationship between nationality and negotiation style confronts *B* in a more direct way than in the case of *D*. While treaties and

6. HUGH MIALL, *THE PEACEMAKERS: PEACEFUL SETTLEMENT OF DISPUTES SINCE 1945* 185 (1992).

7. JIMMY CARTER, *NEGOTIATION: AN ALTERNATIVE TO HOSTILITY* 16 (1984).

8. RAYMOND COHEN, *NEGOTIATING ACROSS CULTURES: COMMUNICATION OBSTACLES IN INTERNATIONAL DIPLOMACY* 13 (1991).

9. *Id.*

other international inter-state instruments vary between general and detailed, depending on the issues and circumstances, business agreements drafted by Americans give the impression of being over-negotiated. In drafting contracts, which an American *B* is likely to propose to a foreign *B*, the drafter "often attempt[s] to deal with every possible contingency."<sup>10</sup> This is in contrast to the practice of most foreign *Bs* who "generally tend to prefer more broadly framed agreements and to deal with the details of implementation as they arise."<sup>11</sup>

Returning to the broad characteristic of nationality as an indicator of negotiation style, irrespective of whether the negotiators are *Ds* or *Bs*, we find that the French tend to be "prone to elaborate historical-philosophical themes," while the Germans, like the Americans, place "greater emphasis on legal aspects."<sup>12</sup>

The relationship between nationality and style is quite understandable in terms of the impact of culture on negotiation as a means of conflict resolution. Culture and national background influences differing negotiating styles<sup>13</sup> and should therefore rank high among the common challenges facing both *D* and *B* as they consider their *best alternative to negotiated agreements* and how to prepare their pre-negotiation steps.

### III. THE PRE-NEGOTIATION STAGE

Another important challenge which is common to both *D* and *B* as negotiators is the preparation for the pre-negotiation stage. The importance of this stage, described sometimes as "the diagnostic phase"<sup>14</sup> stems from the fact that it is largely subjective. Here the parties, each for themselves, determine whether the issue is negotiable. Therefore, "if the opponent refuses even to consider that a mutually agreeable solution may be possible, of course it is not possible."<sup>15</sup> The Asian-Pacific Economic Cooperation (APEC) forum held in Seattle, Washington, in late November 1993 offers an example. At that summit, it was clear to President Clinton, before he held his meeting with the Chinese Prime Minister, that the issue of China's respect for human rights within its borders was non-

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10. GRIFFIN & DAGGATT, *supra* note 1, at 109.

11. *Id.*

12. IKLE, *supra* note 2, at 225.

13. I. WILLIAM ZARTMAN & MAUREEN R. BERMAN, *THE PRACTICAL NEGOTIATOR* 10 (1982).

14. *Id.* at 42.

15. *Id.*

negotiable.<sup>16</sup> This was a pre-negotiation determination. Though it is presumed that the President raised it, the Prime Minister skirted the issue by talking about the virtues of “non-interference in the internal affairs of other [states].”<sup>17</sup>

Thus it could be seen from the APEC example that among the benefits of the pre-negotiation stage to both *D* and *B* are: a) to hear “the other party’s point of view[.]”<sup>18</sup> and b) to signal a change in the relationship between the two parties which may bring about “a reassessment of alternatives and add negotiation to the strategies of conflict management that are seriously considered.”<sup>19</sup> However, there is an additional advantage to the pre-negotiation stage for both *D* and *B*, namely, crisis avoidance. In this regard, the pre-negotiation stage has a tendency to take the opposing parties to the edge of the precipice which generally triggers an inclination in favor of conflict resolution. The phase of Egyptian-Israeli relationship which preceded Camp David negotiations in 1978 is instructive. The United States felt that “the status quo was inherently dangerous; the Egyptian authorities perceived the gathering of a storm if progress was not made before the expiration of the second disengagement agreement;” and the leaders of Israel “faced an intensifying domestic crisis.”<sup>20</sup> The perception on the part of *D* or *B* of what Professor Zartman describes as “the conjunction of threat and opportunity”<sup>21</sup> not only enhances the attractiveness of the negotiation option, it also helps the parties in the collection of relevant information about their adversary’s position, enables leaders to prepare for what Harold Saunders calls “arranging the negotiation,”<sup>22</sup> and sets or delimits “the agenda for negotiation.”<sup>23</sup>

In combining these benefits of the pre-negotiation phase, benefits which are common to *D* and *B* as international negotiators, (especially the benefit of early information gathering), another advantage emerges in lowering what Professor Scardilli aptly describes as a “premium on

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16. R. W. Apple, Jr., *The Pacific Summit: 'Dialogue Is Begun As Clinton Meets With China's Chief*, N.Y. TIMES, Nov. 20, 1993, §1, at 1.

17. *Id.*

18. ZARTMAN & BERMAN, *supra* note 13, at 85.

19. JANICE GROSS STEIN, GETTING TO THE TABLE: THE PROCESSES OF INTERNATIONAL PRE-NEGOTIATION 239 (1989).

20. *Id.* at 243.

21. *Id.* at 245.

22. *Id.* at 248.

23. *Id.* at 254.

competition.”<sup>24</sup> In this connection, the pre-negotiation phase which constitutes a common challenge to both *D* and *B*, contributes to the betterment of fact-finding and lowers the cost of “our confrontational adversary system of trials.”<sup>25</sup> Once negotiations are entered into, other challenges emerge of a practical nature which confront either the inter-governmental diplomatic negotiator (*D*) or the international business negotiator (*B*) and are presented in the balance of this article.

#### IV. THE CULTURAL GAP AND ITS IMPACT

By their adoption of the North American Free Trade Agreement (NAFTA) in November 1993, the United States House of Representatives, and later the Senate, seems to have given a green light to the Executive Branch to globally pursue the liberalization of trade through the lowering of tariff barriers. Hence it was not surprising that the momentum seemed to propel United States negotiators, including President Clinton, at the APEC forum (discussed in Section III above) as well as at the General Agreement on Trade and Tariffs (GATT) negotiations. The global character of these negotiations brings forth the challenge of the cultural gap which confronts both *D* and *B* negotiators. This cultural gap, although an aspect of national characteristics discussed in Section II above, is distinct from those characteristics as it has to do with the creation of a chasm between two multinational sets of negotiators.

In taking five nationalities as examples of producing cultural gaps in international business negotiations X equally applicable to diplomatic negotiators X the case of the commonality of the challenge of the cultural gap between negotiators is made. Examples of these are the Chinese, the Soviets, the Japanese, the French, and the Egyptians. In this sense, *culture* has to be understood in its larger framework which includes: civilization, history, values, political systems, and the national perception of the nation's place in the world. Keeping this in mind, the Chinese, as negotiators “tend to stress at the outset their commitments to abstract principles and will make concessions at the eleventh hour after they have fully assessed the limits of their interlocutor's flexibility.”<sup>26</sup> Unlike the Chinese, the Soviet negotiator makes concessions *slice by slice* much like *salami-slicing* tactics. A quid pro quo is expected for each concession.<sup>27</sup>

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24. Frank J. Scardilli, *Law, Lawyers and the Tyranny of Illusion*, HUMANIST, Sept./Oct. 1981, at 24.

25. *Id.*

26. HANS BINNENDIJK, NATIONAL NEGOTIATING STYLES vi (1987).

27. *Id.*

The Japanese look upon negotiations as “a form of social conflict” where the personal relationship with the opposite negotiator is emphasized. These relationships are “of value to the Japanese negotiator for informal, frank discussions where social conflict is minimal and progress can be made on a pragmatic basis.”<sup>28</sup>

In contrast to the Chinese, Soviet, and Japanese negotiators, the French and the Egyptians are described as suspicious of international negotiations, but for different reasons. This is, in part, reflected in French negotiators reliance on “highly rational abstract logic and general principles,”<sup>29</sup> and Egyptian negotiators historic fear of “collusion and intervention of external powers” through the process of negotiation.<sup>30</sup>

Exemplifying the role of the cultural gap in international negotiations is the attitude adopted by a Japanese firm in negotiating a joint venture with a United States firm.<sup>31</sup> Progress was being made until the arbitration clause was reached and resulted in an impasse.<sup>32</sup> The Japanese, for reasons of national pride and convenience, wanted the arbitration to take place in Japan; the United States firm wanted it to be located outside Japan.<sup>33</sup> The stalemate persisted until the Japanese asked their American counterparts whether they had ever participated in arbitration.<sup>34</sup> Upon receiving the American response in the negative, the Japanese sensed that neither side would ever resort to it, and quickly proposed that arbitration would take place in Hawaii.<sup>35</sup>

Now with NAFTA promising to bring American and Mexican business negotiators together more frequently in the future, it is worth examining the cultural gap in such business situations which are akin to those faced by diplomats. In their seminal article on inter-cultural communication, Hall and Whyte<sup>36</sup> outline a number of cultural variables, among which the following may be noted as important in international negotiations:

- a) punctuality is interpreted differently;

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28. *Id.* at vi-viii.

29. *Id.* at vii-viii.

30. *Id.*

31. GRIFFIN & DAGGATT, *supra* note 1, at 18.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 19.

36. Hall & Whyte, *Intercultural Communication: A Guide to Men of Action*, 19 HUM. ORG. 320 (1960).

b) Latin Americans "don't usually schedule appointments to the exclusion of other appointments;"<sup>37</sup>

c) whereas in the United States, discussion "is a means to an end,"<sup>38</sup> in Latin America, "discussion is a part of the spice of life;"<sup>39</sup> and

d) the phrase *come any time* to a Latin American really means what it says; to an American, it is "just an expression of friendliness. You are not really expected to show up unless your host proposes a specific time."<sup>40</sup>

These are only but a few of the many examples which highlight the impact of different national customs on the outcome of negotiations. With this in view, one could expect discrepancies between a negotiations matrix drawn up by a non-American *D* or *B* and one outlined by an American *D* or *B* with regards to the shared, independent, or conflicting needs of the respective parties on the famous scale of "essential, important and desirable."<sup>41</sup> Nonetheless, the cultural gap still faces both *D* and *B*, from a common culture, in their negotiations with their *D* and *B* counterparts from a different cultural environment.

## V. THE ROLE OF LANGUAGE

In spite of the presumed growth of what may be termed a *universal language of negotiation*, the direct role of language in influencing the outcome of negotiations should be recognized as a challenge to the international negotiator, regardless of whether he/she is a *D* or a *B*. Quoting Lorand Szalay, Raymond Cohen reiterates that:

the idea itself does not really travel, only the code, the words, [and] the patterns of sound or print [travel]. The meaning that a person attaches to the words received will come from his mind. His interpretation is determined by

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37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Videotape: Primer on Negotiation (Barbara Britzke and Joseph D. Harbaugh 1988) (on file with the law library at Nova Southeastern University, Shepard Broad Law Center).

his own frame of reference, his ideas, interests, past experiences, etc. . . . ”<sup>42</sup>

On that basis, the international negotiator, who is the product of a culture different from that of his counterpart, is faced not only with a cultural gap but with a linguistic gap which reflects an “inter-cultural dissonance.”<sup>43</sup> In that context, the role of language in negotiation is not only the transmission of information from one negotiator to another, but it is also “a social instrument — a device for preserving and promoting social interests.”<sup>44</sup>

The inter-cultural dissonance represented by inter-cultural and cross-linguistic communication is further magnified by the needs of *D* and *B* negotiators to rely on interpretation. Experience in multi-lingual organizations, such as the United Nations, where negotiations involve a large number of parties hearing one another in one of six official languages (Arabic, Chinese, English, French, Russian, and Spanish) demonstrate the magnitude of this problem. The same dissonance may apply even when the negotiator is using, not his/her, but a second language which is the mother tongue of his/her counterpart. The import of this is that “negotiators not only have to question whether their meaning will be transmitted through interpretation and translation, but also whether it will be communicated when the respondent is speaking the negotiator’s own language as a second language.”<sup>45</sup>

Both *D* and *B* face the linguistic challenge from another perspective: “[w]hat will happen in interpretation if an idea or concept does not exist in the other culture?”<sup>46</sup> When Japan was exposed to the West, there was no word for *democracy*. The Anglo-Saxon notion of *fair play* has no precise equivalent in either French or Spanish. Obviously in these circumstances, the interpreters “supply their own assumed meaning[s],”<sup>47</sup> despite the possible damage which may be inflicted on communications. In fact, it is reported that Edmund Glenn, former chief of the Language Services Division at the United States Department of

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42. COHEN, *supra* note 8, at 19-20.

43. *Id.* at 19.

44. *Id.*

45. GLEN FISHER, INTERNATIONAL NEGOTIATION: A CROSS-CULTURAL PERSPECTIVE 62 (1980).

46. *Id.*

47. *Id.* at 63.

State, insists that "interpreters often do have difficulty in transmitting the logical thrust of key statements."<sup>48</sup>

In certain situations, reliance by the negotiators on interpreters may blunt the edge of confrontations. But by the same token, it could produce a very different and negotiable result. The interpretation dilemma; which some negotiators try to mitigate by speaking slowly, providing a text to the interpreter, writing out the figures for the other party to see, and/or by briefing the interpreter in advance of the subject of negotiation; is compounded when the speaker uses idioms that have no equivalents in the other language. This may have given rise to the statement by James Evans that "[t]o work through an interpreter is like hacking one's way through a forest with a feather."<sup>49</sup> On the humorous side of this linguistic dilemma, it is reported that the phrase "'out of sight, out of mind' was once translated into Russian and back to English as 'invisible maniac.'"<sup>50</sup> Even Presidents are not immune to interpretation mishaps. When President Carter visited Poland in 1977, the President's phrase "desires for the future" was translated as his "lusts for the future."<sup>51</sup>

## VI. INTERESTS, NOT POSITIONS, AS FOCUS

As negotiators, successful diplomats, like successful businessmen and businesswomen, are constantly challenged by the notion that "behind opposed positions lie shared and compatible interests."<sup>52</sup> The inter-governmental, as well as the transnational business negotiators, need to find shared interests with their counterparts. In order for them to succeed they have to explain, not coerce or argue. Both *D* and *B* have to be attentive to the adage pronounced by Oliver Wendell Holmes: "Deep-seated preferences cannot be argued about — you cannot argue a man into liking a glass of beer."<sup>53</sup> *D* and *B*'s goal identical: "to create a solution that is acceptable from two different perspectives by reconciling interests."<sup>54</sup> This is the reason why successful negotiators, in their attempt to increase the flow of information from the other side and to "keep the relationship mutually beneficial,"<sup>55</sup> use questions "beginning with 'what'

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48. *Id.* at 64.

49. GRIFFIN & DAGGATT, *supra* note 1, at 39.

50. *Id.* at 43.

51. *Id.* at 44.

52. ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 43 (1991).

53. GRIFFIN & DAGGATT, *supra* note 1, at 99.

54. *Id.*

55. *Id.* at 163.

rather than 'why.'"<sup>56</sup> Such well-formulated and conciliatory questions, not only increase the informational flow, they help uncover shared interests.

In an article in *Forbes*, the game theory, as applied to successful business negotiations, was revisited.<sup>57</sup> Under the heading *How To Succeed In Business by Being Nice To Your Competitors*, the author cites several examples of big United States businesses that discovered that self-interest does not lie in killing the competition.<sup>58</sup> The strategy used by Philip Morris in its price war against RJR Nabisco was to "inflict pain on RJR, not to destroy RJR, but to persuade it to stop cutting prices on discount cigarettes."<sup>59</sup> This approach is analyzed in the article under the heading, of *Evolutionary Economics*.<sup>60</sup> The article expounds on the evolution of this "altruistic behavior," which "can be used to craft optional business strategies,"<sup>61</sup> using recent examples of Wal-Mart, Japanese car manufacturers' use of voluntary export restraints, IBM, Merck & Co., United States West, and Time Warner. The article's main conclusion is that "in cooperation lies survival."<sup>62</sup> The article justifies this conclusion on the basis of a novel merger of biology and economics. The author states: "Both disciplines are concluding that nature is not entirely tooth and claw and that the ability to cooperate may be one of mankind's tools for evolutionary survival X and business survival, too."<sup>63</sup>

From the above, it becomes clear that the tenet of modern negotiation, that interests, not positions, should be the central focus, has much in common with *Evolutionary Economics*.<sup>64</sup> Here it should be recognized that *B* has a better advantage over *D* who may be under strict instructions from his diplomatic superiors that *sovereignty*, for example, cannot be subject to negotiation. One may safely presume that the Syrian negotiators in their current dialogue with the Israelis in Washington, D.C., and elsewhere, regarding the Israeli-occupied Golan Heights, could not bargain away Syria's claimed sovereignty over that territory. *B* negotiator, in most instances, would not face this dilemma of *non-negotiable* issues as would *D* in certain circumstances.

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56. *Id.* at 120.

57. Rita Koselka, *Evolutionary Economics: Nice Guys Don't Finish Last*, FORBES, Oct. 11, 1993, at 110-14.

58. *Id.*

59. *Id.* at 112.

60. *Id.* at 111.

61. *Id.*

62. *Id.* at 114.

63. Koselka, *supra* note 57, at 112.

64. *Id.* at 110.

However, both *D* and *B* share in their common concern for establishing and maintaining good personal relations with the other interlocutors. Fostering good personal relations in the course of negotiations may be accomplished through a variety of means: arguing for interests not positions; debating some aspects of positions, not personalities; "setting the opening negotiating position to support a mutually acceptable agreement and concessions at an appropriate rate[;]"<sup>65</sup> "putting aside difficult items for later trading[;]"<sup>66</sup> and, promoting agreement through the creation of "timely deadlines for completing negotiations."<sup>67</sup>

Regardless of the tactics used by either *D* or *B*, the over-arching strategy for successful international negotiations is to focus on shared interests with the other party.

## VII. CONCLUDING COMMENTS

The thesis of this article is that in spite of obvious differences between the position of an inter-governmental political or diplomatic negotiator and that of a transnational business negotiator, there is a great deal of commonality among the challenges facing both of them. The interchangeability of personnel between the worlds of international business and international diplomacy, and the accelerating identification of international business with the political affairs of states, heighten the need for recognition of these common challenges. Since the basic skills of the negotiator, whether a *D* or a *B*, are primarily the same, such skills and strategies will have to be employed in the context of national characteristics dictating negotiation styles.

This article's selection of a few, though important, common challenges is meant to support the theme of the existence of a commonality of challenges. It goes without saying that a resourceful *D* or a resourceful *B* would quickly recognize that the options available within the diplomatic context may vary from those present in the context of international business. As an example, the options available to Americans negotiating on behalf of GM for a joint venture with Toyota Japanese negotiators may perceive a broader spectrum of options available to them, as compared to the options available to Russian diplomats negotiating with the Japanese foreign ministry for an aid package for Moscow. Nonetheless "bargaining

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65. KRIESBERG, *supra* note 5, at 124.

66. *Id.*

67. *Id.*

success is contingent on resourcefulness”<sup>68</sup> in either of these two scenarios. From the pre-negotiation stage to the eventual successful conclusion of negotiations, transcending the cultural gap and the linguistic interpretation gaps, the most critical question which either *D* or *B* should keep in mind is: “What can help craft cooperative solutions that create a continuing incentive to maintain and enhance the relationship.”<sup>69</sup>

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68. CHARLES LOCKHART, *BARGAINING IN INTERNATIONAL CONFLICTS* 133 (1979).

69. GRIFFIN & DAGGATT, *supra* note 1, at 21.