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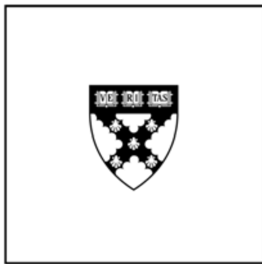

Assess, Don't Assume, Part II: Negotiating Implications of Cross-Border Differences in Decision Making, Governance, and Political Economy

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ASSESS, DON'T ASSUME, PART II:

NEGOTIATING IMPLICATIONS OF CROSS-BORDER DIFFERENCES IN DECISION MAKING, GOVERNANCE, AND POLITICAL ECONOMY [i]

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Abstract

When facing a negotiation that crosses national borders and/or cultures, the standard preparatory assessments—of the parties, their interests, their no-deal options, opportunities for and barriers to creating and claiming value, the most promising sequence and process design, etc.— should be informed and modified by potentially relevant factors. Drawing on considerable literature in cross-border and cross-cultural negotiation, a two-paper series develops a four-level prescriptive framework for effectively carrying out such assessments. The first paper in this series ("Etiquette and National Culture in Negotiation") described 1) common expectations for surface behavior, and 2) some implications of deeper cultural characteristics for the negotiation process itself, as well as cross-border caveats such as stereotyping and overemphasizing national culture to the exclusion of other factors. The current paper carries this analysis further by systematically analyzing a third and fourth class of factors that often prove critical in cross-border dealmaking:

> *3. **The decision-making and governance processes that are the targets of influence efforts.** While negotiations take place with individuals, those individuals are typically enmeshed in organizational processes and cultures. Thus, a key assessment focuses on the organization's decision-making and governance processes. Several questions guide this analysis: Who has what decision rights? Is it a one-person authoritarian process? A simple consensus? A multi-stage consensus process? A key subgroup? How does the formal decision-making and governance process differ from the informal one?*
>
> *4. **The broader economic and political context for negotiation as well as salient "comparable" deals**. Several questions guide this analysis: is there a formal or informal government policy toward the kind of arrangements under negotiation such as the requirement that the majority of a joint venture be owned by a local partner? Are high-tech deals particularly sought-after by the state? What recent deals by others, successful or not, will be salient in the minds of your local hosts and authorities when they contemplate yours? Does the political ethos favor state control or privatization? Does a wrenching political transition foster managerial uncertainty and decision paralysis? And so on.*

Part I of these two papers largely dealt with the behavioral implications of “cultural differences.” I have examined them in general—both superficially and at a deeper level—as well as how they can manifest themselves more specifically in the negotiation process. Yet beyond behavioral issues, crossing borders can involve less widely familiar considerations, even more likely to trip up the unwary dealmaker One of these involves possible differences in the very way your counterpart’s organization arrives at decisions such as a sustained “yes” or final “no” to your proposal.

As is true at home, most of your negotiating counterparts will be part of and represent organizations. The organizational processes for making decisions as well as the rules and expectations for governance often differ dramatically by country. Differences in decision-making and governance can represent major sources both of problems and opportunities in negotiation. The imperatives are 1) to understand and map the formal and informal processes, and 2) to understand the negotiating implications of the way these processes function. While this is good advice in general, it is of special importance in less familiar national settings where views of decision-making and governance imported from “home” experience may be deeply misleading guides. And this is only partly a matter of law and regulations.

1. Learn about decision-making and corporate governance; take their effects into account in your negotiating approach.

Organizational processes for making decisions as well as the rules and expectations for governance often differ sharply as you cross national borders, even familiar ones. Diplomatic negotiations, for example, vary greatly depending on the type of home government involved. A parliamentary system such as that in the U.K. or Canada ordinarily has a Prime Minister and Foreign Minister from the same party that has control in the legislative body or Parliament. Typically, that means that a deal reached with the Foreign Ministry will receive Parliamentary approval as a matter of course. A deal with the Foreign Minister normally means a deal with the country. Not so for those negotiating with a country such as the United States in which the Executive and Legislative branches are separate and may be controlled by different political parties. Those negotiating with the United States have come to learn, to their frequent regret, that a deal with the Executive (State Department) is only the first step in a process requiring broader Executive Branch approval and formal Senate ratification. With experience of deals negotiated by the President failing to win ratification until renegotiated, some U.S. negotiating partners attempt to hold back in the initial negotiations, aware that the Senate may force the deal later to be renegotiated. At a more prosaic level, this ratification dynamic is similar to the everyday “manager in the back room” who must “approve” deals negotiated by salespeople in the showroom.

a. Understand and map the decision-making and governance processes.

A negotiator in a familiar setting should almost instinctively map the decision-making and governance process of the other side(s): more specifically, the parties necessary to make a decision, the decision process itself, as well as the incentives and constraints of those involved. Then the negotiation approach can be tailored to the specific situation in a manner that maximizes the chances for success.

Parties with formal roles. In the course of negotiating with those who seem central to the process in less familiar settings, however, it is easy to overlook the full set of potentially involved parties. For example, a new M.D.-Ph.D.-MBA associate of Sierra Ventures, a San Francisco venture capital firm, was negotiating with the Director of the Institute for Protein Research in Russia not long after the collapse of the Soviet Union. His firm was hoping to get the rights to an apparently revolutionary biotechnology discovery developed by the Institute. A marathon negotiation process with the Institute’s Director and his associates—bridging huge gaps between East and West, business, and science, bureaucracy and venture capital—finally approached an acceptable deal for both sides. However, near the apparent finish line, it suddenly become clear that several Moscow ministries, each with its own point of view and agenda, also had

to approve the agreement, posing a potentially fatal set of obstacles that could have been anticipated earlier had Sierra explicitly probed and mapped the process rather than making unwarranted assumptions.[ii]

Involvement of parties other than the principals to the deal is common. In a U.S. context, for example, certain transactions entail participation by the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), and Justice Department. When Traveler's and Citicorp were even *contemplating* a merger, the heads of each firm, John Reed and Sanford Weill, together visited Federal Reserve Chairman Alan Greenspan to get a reading on the Fed's likely attitude.[iii] Beyond these familiar processes, U.S. transactions involving significant non-U.S. ownership, for example, of airline or broadcasting companies can run up against legal obstacles requiring negotiation even in an otherwise relatively "free" market for corporate control.[iv] In many countries, it is routine to find the involvement of local concentration or anti-monopoly authorities, referral to commercial courts or stock exchange authorities, and foreign direct investment control agencies.[v] In the European Union, various Brussels Commissions may become involved; the competition and anti-monopoly authorities have recently become much more active. And for transactions with targets that have foreign subsidiaries, the entanglement with a range of other players can be expected. Often regulatory participation implies an active negotiation over acceptable terms of the deal, not merely a passive submission for arms-length approval or turndown. Even as sophisticated a global corporation as GE, publicly and humiliatingly for what supposed was to be CEO Jack Welch's capstone action, had to abandon its acquisition of Honeywell, apparently blindsided by EU competition considerations that GE had in effect assumed would be virtually the same as for the U.S. FTC.

The issue of *who* might potentially be involved in a cross-border deal can have unexpected answers. For those experienced in North American shareholder-based corporate governance, it may come as a surprise to discover labor representation on supervisory boards of directors in Germany as part of that country's long-standing policy of "codetermination." It will probably be less surprising, though no less discomfiting, to discover a local Party official as an integral part of a Chinese negotiating team in the People's Republic—even though the issue involves a joint venture between the Canadian corporation and the nominally "private" Chinese firm. Party involvement is routinely the case for deals of a certain size or potentially strategic importance.

It follows from the involvement of different players—anti-monopoly agencies, political parties, local or regional governments, labor, etc.—that another set of *interests* will be brought to bear on the process, as well as varying potential to block, reshape, or foster the negotiation. It then becomes a matter of negotiating strategy and tactics on how to handle this richer set of parties and interests. Should the basic deal between "principals" be done first, and then attempt to bring the others on board? Should accommodation with the special interests of other players be reached and then built into the basic deal? Can these "other" parties be overridden or ultimately ignored? The answers to these questions depend on the particulars, but anticipating a possibly unfamiliar set of players is the first step toward a strategy.

Formal decision rights and governance. In short, it is important to understand precisely which parties have a legal or other formal mandate for involvement as well as their roles in the negotiation. While ordinary business and legal preparation should make the range of likely involved players evident, special care should also be taken in cross-border cases to understand *what* decisions can be made by *which* players. Failing to properly analyze decision rights, governance, and motivations in relatively unfamiliar cross-border situations can be very costly.

For example, when Pirelli, the Italian tiremaker, sought to take over its German rival, Continental Gummiwerke, it was able to acquire 51% of Continental's shares and least the tacit backing of Deutschebank. In a U.S. context, for example, this would normally be adequate to control the target. Unfortunately for Pirelli, German corporate governance provides a structure in which even a majority of shareholders can be effectively blocked unless the support of other players is obtained. Four sets of players are potentially key to major decisions: the shareholders, the supervisory board, labor, and the executive board.[vi] First, the shareholders at large act by way of a General Meeting to elect members to a "supervisory board," typically for a four-year term. For large German enterprises, a supervisory board can be dismissed only by a three-quarters majority of the voting capital. But since many German firms are subject to union "codetermination," labor elects half the members of the supervisory board. Now, the supervisory board elects the man-

agement or executive board (the "Vorstand"). However, the supervisory board cannot dismiss the Vorstand without the support of its labor members.

Not only does the Vorstand exercise day-to-day management of the firm, but it is can be given the right to decide *whether to recognize voting rights of new shareholders of ordinary shares*, that is to register shares in the company sharebook. And the Vorstand has extremely wide discretion in deciding whether to register shares. Thus, without the Vorstand's agreement, even acquiring a majority of Continental's shares did not suffice for Pirelli to gain control of its target. Ultimately, the Italian firm suffered a humiliating defeat, losing nearly half a billion dollars in the process.

Since 1945, there have been only a handful cases of hostile takeovers in what has widely been known in financial circles as "fortress Germany;" much lower levels of merger activity have taken place there than in the UK or the US.[vii] Some of these battles, such as Pirelli's abortive effort to take over Continental, have become notorious. In a less widely noted episode, Michel Albert, until 1994 the Chairman of Assurances Generales de France (AGF), the second-largest insurance company in that country, attempted to negotiate an initially friendly expansion into Germany with the second-largest insurer there, the Aachener und Munchener Beteiligung (AMB). While AGF eventually bought a third of AMB's shares, the process was immensely frustrating and ultimately unsuccessful in terms of AGF's strategic intent. As Albert himself implied in his book *Capitalism Against Capitalism*, such negotiations must surmount formidable differences in corporate governance and political economy:

> The modern nemesis of long-term management, the takeover bid, is virtually unknown in Japan, Switzerland and Germany. Approximately a third of German companies issue registered shares which may not be sold or transferred without the express authorization of the company. What is more, the board of directors (in its capacity as legal representative of the firm) may in some cases withhold its reasons for turning down a share-transfer request. This prerogative is a highly effective delaying tactic: you have no vote and no right to join in an increase in capital as long as the share transfer has not been approved by the company in question.[viii]

Of course takeover bids, especially those that become hostile, typically stimulate an especially aggressive form of negotiation. There are some impressive examples of executives deftly navigating these potential barriers, and rapid change in governance is taking place in regions such as the European Union.[ix] In particular, Vodaphone's successful acquisition of Mannesman seemed to herald major changes in German law and governance, although there were very special tactical circumstances in that deal and its general implications for Euro-governance seem increasingly limited. However, the broader point underlined by Albert involves how differences in governance affects players, decision rights, and the likely composition of winning and blocking coalitions in cross-border dealmaking.

Consider the case of Honda, Rover, BMW, and British Aerospace (BAe). Honda first worked out a limited licensing agreement with the troubled British automaker Rover in 1979. Gradually the relationship expanded to a much fuller joint venture with Rover, ultimately involving significant cross-shareholdings. Honda played a dominant role in the relationship, with Rover production and management practices coming over time to be very "Japanese." A strong positive relationship among the workers and management at both firms developed and Rover became far more efficient, though still losing money and requiring significant ongoing investment. This relationship continued to intensify even when the British government sold the majority of Rover's shares to British Aerospace in 1988, which was seeking to diversify out of its main defense business.

By the early 1990s, though, Rover still required capital infusions and BAe, as the holding company, determined to divest. Although Honda declined to increase its ownership position in Rover, the Japanese firm was dumbfounded and outraged to learn that BAe had sold its Rover stake to BMW. This was a "sting of Paul Newman proportions." In Honda's eyes, the relationship with Rover was a long-term one, very much like a marriage. It was virtually inconceivable that BAe could sell.

For Honda and much of Rover, failure to understand the situation felt disastrous. For BAe, in a cold-blooded sense, Honda's cultural blinders offered a major economic opportunity. Bottom line: understand-

ing both formal decision rights and motivations in less familiar settings can be vital. In short, assess, don't assume.

Poor U.S. legal advice to Bernard Arnault's French luxury conglomerate LVMH--that New York Stock Exchange traded companies could not increase their share base by a significant amount without shareholder approval—led it to acquire almost 35% of Gucci in a takeover bid.[x] For non-U.S.-based firms like Netherlands-chartered, Florence-headquartered Gucci, that also traded in New York, however, different stock exchange rules on equity issues applied. As the Gucci defense team came to understand the legal situation more clearly, this loophole was used to blow up LVMH's strategy; Gucci first issued 20% new shares to its employees in an ESOP-like transaction and then 42% further new shares were issued to a group controlled by Francois Pinault, Arnault's French rival. LVMH's massively diluted position effectively handed victory to Pinault and left LVMH's investment effectively trapped as a relatively powerless minority shareholder in Gucci.

The Honda-Rover and Gucci examples make clear that cross-border deals must take account not only of the parties that have legal standing to become involved but the classes of decisions that can or cannot be made by different players. Obviously, the old admonition to "read the fine print" applies in virtually all dealmaking; yet it can be much more difficult, but just as important, to do in less familiar, cross-border settings.

The informal negotiation. It is quite normal in many contexts to assume that the negotiation will mainly take place between the parties who will ultimately sign a contract or make a deal. Certain approvals, such as those of principal customers, are often required where there is a change of control. So far the story is familiar in most places. Yet it many settings, an informal negotiation often envelops the formal one; it pays to be aware of this potential process in which you may become inadvertently embedded.

For example, negotiators in Japan need to pay attention to the large industrial/financial groups, the *keiretsu*, that are linked by a dense-web of business ties and cross-shareholdings. Even though the companies have independent identities, knowledge of the broader relationships and their implications can be critical. Similarly, in the German financial sector, giant *Allianz* is sometimes referred to as "the spider in the web" as a result of its widespread decision-making influence in that sector. In Italy, the role of powerful families and companies, the *salotto buono* ("good drawing room") in economic decision-making would be ignored at one's peril in much apparently unrelated dealmaking. And there may be a more sinister side, such as the role of the Russian "mafia" and other protection/extortion rackets.

Even where these kind of fixed but informal webs of influence are not particularly important, the *de facto* negotiating process may come to include a range of other players. For example, the U.S. Stone Container Corporation was negotiating the terms of a major forest project in Honduras, a poor Central American country that had only recently democratized and had a long history of strained relationships with the U.S. government and U.S. multinationals. Formally, the deal had to be done with the Honduran President and his relevant ministries. As Jerry Freeman, the responsible Stone executive explained:

> We were down there dealing with who [the President] we thought had the power, the responsibility, the authority. Connected with that was their Forest Service, who had the scientific background. So, we had the science and they were going to be the quality control on the program that we did.[xi]

This clean, if legally correct view, however, was naïve. Inadvertently, Stone's proposal and negotiating strategy triggered the involvement of the Honduran Congress, labor unions, political parties, potential business competitors, indigenous people in the affected region, as well as domestic and international environmental groups. In spite of ultimately what was arguably a very valuable project—relative to the likely alternatives—for virtually all concerned, Stone became enmeshed in a complex, multiparty process. Colorfully, Freeman later lamented "We were caught in a drive-by shooting with no place to hide."[xii] An assessment of Honduran history vis-à-vis U.S. corporations in natural resource projects together with the fragile status of the Presidency would almost certainly have pointed the way to a likely potent informal

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process of which Stone needed to take account—and which held considerable promise of success if anticipated.

In other settings, it is quite common for negotiators from countries with relatively strong legal systems to count on the foreign equivalent to enforce formal contracts. This partly underlies the well-known tendency of U.S. negotiators to seek lengthy and detailed agreements. By analogy to Stone Container's view of the formal Executive Branch in Honduras, the common North American expectation that a formal judicial process that will discipline negotiations over compliance or demands for renegotiation can be a bad misreading of the reality. Some countries, such as Japan, have relatively small legal systems and few lawyers, instead relying on relationships and negotiation to sort through most commercial disputes. Present-day Russia has practically no functioning judiciary. Other legal systems, of course, are corrupt or under the control of local political powers. It can be a costly error to *assume* the equivalent of one's home legal system, rather than to *assess* both the formal and informal realities.

There can be a great gulf between laws on the books and how things really work. In part, this underlies the discussion above on the distinctions between contracts and relationships. But it extends further, as the following Chinese example illustrates:

> When executives at a US electrical goods manufacturer hired a local manager to run their Chinese operations, they thought they had been rather clever: no language problems and no labor difficulties. However, when the head office tried to expand the product line, it received a shock. The Chinese general manager categorically refused to follow orders. There is no demand, he said. Eager to keep matters on a civil footing, the US company tried peaceful negotiation. The general manager would not budge. He was fired but still he would not go. The executives went to the local labor bureau, which refused to back them up.
>
> Exasperated, the executives tried to dissolve the joint venture and start again. But attempts to recover the registered capital were thwarted when the local partner refused to agree to the move (approval of both sides was necessary under Chinese law). A foreign law firm was hired at great expense but it had no success. In desperation, the US company hired a local law firm. By "negotiating" with the local bank officials, the Chinese law firm overturned the need for dual approval.[xiii]

In short, a first step should be to map the decision-making and governance processes of those who are likely to become part of the negotiation.[xiv] This involves the parties with a legal claim or mandate for involvement and may, in cross-border settings, include unexpected players. Then it is critical to know what decisions can be made by what parties. Finally, informal relationships and parties who may become involved in the informal process must be mapped. Locally knowledgeable help is obviously vital in carrying out these assessments of the process, formal and informal as well as precise decision rights.

b. Understand the negotiation implications of central characteristics of different decision-making and governance processes.

At one level, you always negotiate with a *person*, perhaps from a different culture. Yet you are typically seeking to influence the outcome of an organizational *process*. Different decision-making and governance processes call for radically different negotiation strategies and tactics. Several distinctive processes are common across the formal and informal structures described above: the Boss, ratification, consensus, and coalition-building. Even seasoned executives often fail to adapt their approaches to these different processes, with costly consequences.

The Real Boss and Ratification. If your assessment reveals that there really is a Boss who does not meaningfully delegate, then your negotiations should always be aimed, directly or indirectly, at that person. When there is the local equivalent of a very-much-in-charge Admiral Rickover, a Harold Geneen, or a Robert Moses, be careful of revealing key information or making vital concessions prematurely to those not genuinely in the loop. It is hazardous to make "deals" with relatively powerless agents who can function as important messengers or emissaries but not as powers in their own right. Often your energies are best directed at finding a legitimate means of direct interaction with the Boss. In some cases, this means focusing

on those outside the process who can powerfully influence the Boss. Even where there is no such Boss, you should be very clear up front on the need for any further ratifications or approvals. Having made an apparently "final" stretch to do a deal, if several more stages of the process suddenly materialize, the cost and risk involved rise correspondingly.

By the same token, be careful not to impute omnipotence even to apparently "powerful" bosses; doing this might be called the "hierarchical fantasy." Stone Container wrongly assumed that a deal with the President of Honduras was sufficient to ensure success. This is not a problem limited to less developed countries; others, whether the Shah of Iran or South Vietnamese leadership, have made deals or reached critical understandings with U.S. Presidents that could not be realized as they expected given effective limits on Presidential power. And even in one-party, relatively authoritarian countries, deals at the top may not translate into action on the ground.

The case of Armand Hammer's protracted negotiations to form, and later manage a joint venture between Hammer's Occidental Petroleum (Oxy) and the State-run China National Coal Development Corporation (CNCDC) provides an illustration of how even the highest-level backing can be insufficient.[xv] After the first year of preliminary negotiations, progress was minimal; it seemed the deal was destined to fall apart. But Hammer and China's then-paramount leader Deng Xiaoping, who met personally on numerous occasions, became determined for the deal to go through. Hammer saw the project as a crowning achievement of his career: the largest-scale foreign investment in China in history. For his part, Deng was anxious to show the world that his market reforms were transforming China into an economy ripe for investment. Subordinates on both sides were ordered to reach agreement. The Oxy-CNCDC project became a test-case that had all eyes watching. Yet, for reasons of bureaucratic conflict, clashing expectations and interpretations, and escalating antagonisms, the formal negotiations dragged on for years and Oxy ultimately pulled out after more than a decade of frustration.

Consensus. At the other end of the decision-making spectrum, especially common in Asia, is the custom or requirement of reaching consensus before agreement can be finalized. The consensus sometimes needs to be forged among the members of the other side's negotiating team; sometimes the need extends to the broader enterprise. Often a two-step process is required for Chinese enterprises: first consensus within the enterprise, then consensus within the relevant government entities. And many hybrid forms exist.

Example: Three Gorges Dam Project. For over 70 years, the Chinese debated constructing a dam in the Three Gorges section of the Yangtze River. Since the idea took root, foreign groups were eager to participate in what will be, if ultimately built, the largest dam in history with a reservoir the size of Singapore. The United States first took interest in the project in 1944 when the U.S. Bureau of Reclamation made initial recommendations regarding the Three Gorges site. Not until the early 1980s, however, did U.S. firms began to develop feasibility studies and construction plans in earnest, following China's State Council's beleaguered approval for the project. Following this cue, a U.S. consortium (Bechtel, Coopers and Lybrand, Merrill Lynch, the Morgan bank, the Bureau of Reclamation, and others) sent a proposal for technical and financial assistance to the Chinese in July 1985.[xvi] The proposal boasted independent management, a lean work force, cost effectiveness and speedy completion.[xvii]

Though a winner from a Western perspective, however, this formula did not resonate at all in the Chinese bureaucratic landscape.[xviii] For example the proposal envisioned foreigners carrying out their role with little interference from or interaction with territorial/local authorities, whereas Chinese gatekeepers, especially territorial, have a keen desire to be actively incorporated into process. The proposal highlighted the use of state-of-the-art efficient machinery and a lean labor force whereas employment maximization was a Chinese goal. The proposal used rigorous cost-benefit analysis whereas the Chinese view of such complex calculations was suspicion of manipulation. Had it stood back and surveyed what parts of a proposal might resonate with Chinese involved in the process, the U.S. group might have placed greater stress on elements such as technology transfer, training, and foreign investment, rather than cost-cutting and speed.

More important that the substance of the proposal is the role of the Chinese decision process in this very complex example. In this vein, the U.S. group might have better anticipated the number of actors directly affected by the building of the dam. The U.S. consortium dealt primarily with only one Chinese agency,

the Yangtze Valley Planning Office (YVPO), but failed to adequately understand the breadth of the multi-fibered web in which the YVPO operated. Had the team been better aware of this web outside those directly involved with approving the plan, it might have anticipated enemies, and even more importantly, incorporated allies to back its plan.

In China, rankings among bureaucratic units are explicitly defined. But because no one ministry, province or other bureaucratic unit has authority over another of the same rank, none can issue commands or exert authority alone: permission from above is required. The consequence, as China scholar Kenneth Lieberthal explains, can be that contested decisions are pushed up to the very highest authority possible. The result is often an overload at the highest levels of the bureaucracy. The only practical solution given this situation has become a cornerstone of the modern Chinese bureaucracy: consensus. In order to move processes along, each affected unit must engage in complex bargaining system to establish compatible goals and protect interests. Had the U.S. group understood the necessity for collaborative decision making, it might have changed its strategy considerably, insisting less on independence from territorial and local authorities, and instead choosing instead to work with as many units as possible to center consensus around its plan.[xix] This massive example involves a much wider set of economic and political considerations than space permits but, for our purposes, suggests more effective elements of dealing with a consensus process in negotiation.

Implications of negotiating "into" a consensus process. One normal consequence of dealing with a consensus approach is a much longer time-horizon than is the case when a single decision-maker calls the shots. When a negotiator from a decisive, Boss-centered culture confronts a consensus process, the potential for misunderstanding and frustration can increase dramatically.

The need for consensus on the other side should affect your negotiating strategy in several ways. First, consensus cultures are often relationship-focused rather than deal-focused; thus they will likely have a time-consuming desire to learn about you and forge a deeper relationship before getting into a dealmaking process. Such a relationship is not only critical to the deal but also to making it work later. Second, realizing that consensus processes often go hand-in-hand with near-inexhaustible needs for information, you should be prepared to provide it—in many different forms, at a high level of detail, and repeatedly. Third, to the extent that you can pinpoint the source of delay—usually the doubts of specific people or units—you can design your approach to help the other side convert its doubters, by giving them good data and reasons to solve that internal problem. Pinpointing the source of delay essentially means a concerted effort to understand the interests and perceptions of a wider set of players on the other side—as a means of reframing your approach to bring help them on board. Fourth, at a minimum, your own expectations should be adjusted to take their time requirements into account for this process to work; there is often very little you can do to speed it up unless they are desperate for a deal with you (which usually means the consensus is already there). One forcing mechanism that can be effective, however, is parallel negotiations with a competitor of theirs, providing that there is a real basis for a deal there.

If you are getting into this kind of process, you should almost always negotiate a very clear understanding with your *own* headquarters, backed by credible examples, of the likely time frame required in this foreign setting. Failure to negotiate realistic expectations on your side can lead you into a bargaining vise, with headquarters pressuring you for results ("after all this time") and the relaxed other side exploiting your own side's impatience to squeeze further concessions from you. Caught in the middle, you may see no good choices: either walk away (raising lots of questions about your effectiveness and wasted resources) or make major concessions (diluting the value of any deal). Prevention via expectation-setting and continuous communication at home is a much better prospect. And, if your judgment suggests that your side simply cannot handle a year-long negotiation process, for example, you may be better off avoiding the process.

With some bitterness, American trade negotiators dealing with seemingly immovable Japanese counterparts have often puzzled over the following problem: "before the Japanese have reached a consensus, they *can't* negotiate; after consensus is attained on the other side, there is *nothing* to negotiate." One approach to this conundrum is to shift your focus away from the bargaining table and seek to interact with the other side extensively and informally while they are going about reaching a position. Your objective is to get

your interests, point of view, and plans incorporated into *their* consensus process. If you wait to do this until you are at the bargaining table, you will have to pry open their now-fixed position. As John Graham and Yoshihiro Sano explain, "in Japan, what goes on at the negotiation table is really a ritual approval of what has already been decided before through numerous individual conversations in restaurants, bath houses, and offices. In Japan, the negotiating table is not a place for changing minds. Persuasive appeals are not appropriate or effectual."[xx] Often this requires a near-collusion between you and their bargaining team, in which you make such a public fuss that their team returns with a powerful argument to reopen their process.

As frustrating as the need for consensus may be to those from faster-moving cultures, there can be offsetting advantages. Having painfully worked out the full set of issues throughout the organization, the permanence of the ultimate decision and its implementation may be faster and far more assured than for agreements made in a top-down fashion.

In short, you should not be blindsided by the need for consensus. Coming with it can be unexpected requirements for time, relationship-building, and information. Dealing with a consensus process effectively requires facilitating it while doing what you can—with real external deadlines and competitors--to speed it up. Realistic expectation-setting, particularly on your own side, can save you from unnecessary frustration and a major squeeze. And there can be offsetting benefits to dealing with a consensus process, both tactically and for implementation.

More general processes: winning and blocking coalitions. Decision processes rarely come in pure forms such as authority or consensus. Ultimately, success requires a sufficient set of players, a "winning coalition," to say "yes". At the same time, success requires an approach that keeps those opposed to a deal from stopping the proposal by means of a "blocking coalition." When Stone Container sought a deal with the Honduran President, it turned out that a much wider group of opponents--in and out of government, domestic and international--was energized into a successful blocking coalition. Similarly, Armand Hammer's agreement with Deng Xiaoping foundered on the rocks of bureaucratic and political opposition. By failing to win over Continental's all-important Vorstand in its takeover foray into Germany, Pirelli left a blocking entity in control. The broader question turns on what will be the likely interests and options of the players who will be needed as allies in a winning coalition or who may seek to form a blocking entity. Governance processes often drive these considerations.

Surface and deeper issues of national culture can matter as can negotiation-specific process expectations. But the core point remains: successful strategies also map the decision and governance process and take it into account whether it involves authoritative choice, ratification, consensus, coalition, or a hybrid of these methods.

2. Learn about the broader economic and political context for negotiation as well as salient "comparable" deals.

Specific deals are negotiated in broader economic, political, and legal contexts, which can vary as you cross borders. Ordinary legal and regulatory advice by locally knowledgeable counsel is clearly critical to undertaking significant negotiations. Knowing that investments in China greater than $30 million require central government approval—and that this process can take up to two years--should obviously be part of your baseline due diligence.[xxi] But beyond garden-variety advice on learning the laws and regulations in your target country and locale, what elements of context are critical for effective negotiation preparation?

Salient "comparable" or contemporary deals. You should seek to understand the kinds of deals that may well be on your host's mind as it contemplates your proposal. By thinking about broadly comparable deals—not merely from a valuation standpoint—you may better understand your host's expectations, hopes, and concerns. You can then prepare good arguments for and against the comparisons and design your strategy to take them into account.

For example, a powerful yen and a string of high-profile Japanese investments in the United States during the 1980s—including Mitsubishi's purchase of Rockefeller Center, Sony's acquisition of Columbia

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Pictures, and Bridgestone's takeover of Firestone—gave rise to a serious U.S. case of economic anxiety with respect to the seemingly unstoppable Japanese investment juggernaut. Good advice, therefore, to Matsushita before acquiring the U.S. film studio MCA in 1990 (which included Universal Pictures) was to carefully test for and defuse adverse public and congressional reaction in the course of doing the deal. Matsushita's experienced media and congressional advisors did just that before proceeding. In particular, Matsushita minutely dissected Sony's acquisition of Columbia Pictures both for positive and negative lessons. Among other comparative dimensions such as pricing and the role of advisors, Matsushita anticipated and thought through tough but likely U.S. reporter's questions: "What would be Matsushita's reaction if MCA wanted to make a film that was critical of the Emperor's wartime role?" (Unfortunately for Matsushita, the deal, while completed, foundered on other, more fundamental grounds.)[xxii]

As a potential business negotiator in China, you would benefit from a real familiarity with major salient deals, both in the specific industrial sector and region you were targeting. In the 1980s, these would have included the failed Oxy-China National Coal Development Corporation venture that pointed to lower-level bureaucratic resistance and cultural clash. The AMC (since acquired by Chrysler) agreement with Beijing Automotive Works to produce jeeps suggested how very different visions of a deal could lead to major difficulties: "same bed, different dreams." Similarly, a range of lessons can be drawn from the Three Gorges Dam development along with the China experiences of Levis, Disney, Coca-Cola, United Technologies, Lehman Brothers, McDonalds, Motorola, and a host of smaller firms.

Broader political and economic context. Beyond comparable deals, you should look more broadly for negotiation-relevant factors. If you are planning to negotiate an investment in Russia in the 1990s, your basic business assessment should have turned up major characteristics that will affect your negotiations: enormous economic opportunity tightly coupled with political instability, a wrenching and very uncertain economic transition from the old command-and-control economy to a free-for-all market, a nearly defunct legal system, and so forth. From the simplest logistics, to tax and profit repatriation, to claims employees may have for "social costs," it can be very dangerous to assume that things will work as they do in your home market. Similarly effective dealmaking in newly democratizing South Africa, in imploding Indonesia, or in China undergoing economic transition requires far more knowledge about politics and economics than about local protocol and etiquette.

In particular, "hot button" issues, such as the premium the Chinese have placed in the 1990s and early 2000s on deals that promise to transfer high technology give a strong clue as to how the other side will see its interests. If the central bank is likely to squeeze the money supply, the provisions you negotiate for payment need special attention in the expectation of tight liquidity. If you are investing in a newly privatizing sector, it is particularly important to understand how brutal and final the political battle over privatization has been to understand which players will be involved, how they will see their interests, and which forces may have the means and motives to stop you. If natural resources involved in your potential deal are perceived to have an almost mythic national status, such as oil enjoys in Mexico or Venezuela, this awareness can help save you from serious missteps.

In the case of China, depending on when you were contemplating negotiations, the political and economic context would be very different. At a macro level, official U.S.-Chinese relationships have varied dramatically, often with repercussions for individual firms. Widely different climates have reigned: Nixon's "opening" of China, the 1989 Tiananmen Square crackdown with the later-withdrawn U.S. threat to revoke China's Most Favored Nation trade status, battles over intellectual property and World Trade Organization accession, accusations of Chinese nuclear espionage, the accidental bombing of the Chinese Embassy in Belgrade by Nato forces in the Kosovo war, and the intense diplomacy surrounding the grounding of a U.S. spyplane on a Chinese island. The commercial context for negotiation in China has also shifted greatly.[xxiii] In recent times, the first broad wave of foreign investment in China, including such firms as Unilever and Iveco, took place during the 1980s when China was seeking a decisive break toward a market system. These pioneers hoped to stake out early positions for later advantage even if it meant a very long wait. A second wave in the early 1990s included firms like General Motors and large foreign banks swelled the investment totals to almost $50 billion per year, making China the second largest target for foreign investment after the United States. Huge perceived market potential, the belief that early

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brands would gain decisive edges, and relatively welcoming government policy drew in these firms. Yet by the late 1990s, the yearly numbers of foreign contracts signed had dropped by half and total new foreign investment in China appeared to sharply contract. Existing investors were rethinking their actions in light of sobering experience. For example, by early 1999, the Royal Bank of Canada pulled out; Southwestern Bell retreated from a planned joint venture; Fosters of Australia sought to sell its Chinese breweries; and Marks and Spencer of the UK closed its Shanghai office and dropped plans for a new store. Factors included intensifying competition from domestic companies, a decidedly more hostile regulatory environment ("buy local" policies, foreign exchange controls, etc.), and an economic slowdown with a potential currency devaluation. More fundamentally, of course, with Chinese membership in the WTO and the U.S. Senate's vote to extend "Permanent Normal Trading Status" with the United States to China, the situation again evolved, and continues to change with China's accumulation of huge dollar surpluses and the ongoing financial crisis that begun in late 2008.

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Specific deals are negotiated in broader economic, political, and legal contexts, which can vary over time and as you cross borders. Gaining this broader understanding as well as ordinary legal and regulatory advice by locally knowledgeable counsel are clearly critical. But you should also seek to understand the kinds of deals that may well be on your host's mind as it contemplates your proposal—as well as lessons from the negotiating experiences of similar firms. By thinking about broadly comparable deals—not merely from a valuation standpoint—you may better understand your host's expectations, hopes, and concerns. You can then prepare good arguments for and against the comparisons and design your strategy to take them into account.

While savvy cross-border negotiators are skilled at the usual elements of profitable dealmaking, Part I of this series showed how they should also be alert to the surface etiquette codes and deeper cultural tendencies of their hosts. And they must put these factors into perspective, realizing in their bones that assessing the traits of the specific *person* across the table in whatever culture, rather than assuming he or she will act like a national central tendency, is the right way to go. And beyond avoiding the pitfalls of stereotyping, effective negotiators also resist the tendency to see *national culture* as the Rosetta Stone, the indispensable key to describe, explain, and predict the behavior of the other side. Of course there are many possible "cultures" operating within a given individual. And given the potential salience of cultural differences, other powerful factors such as underlying economics, finance, and business strategy take a backseat as explanatory factors when a cross-border venture goes awry. While business and technical factors are often dominant, the first explanation advanced by managers of the involved firms is likely to be "cultural."

Yet perhaps the least appreciated factors in cross-border negotiating difficulties—as well as negotiating with unfamiliar partners in home markets—have to do with the failure to understand and diligently map the other side's decision and governance processes in the context of their political economy. You want a "yes" from the *person* across the table, but such an answer typically results from a complex organizational *process* away from the table, often with unfamiliar elements that are both formal and informal, internal and external. If you aren't looking for such aspects, you probably won't see them (until, perhaps, too late). Whether their "yes" or "no" ultimately results from an authoritative figure, a consensus, a sequenced set of approvals, or a distinctive coalition, your strategy and tactics should be designed to exert maximal influence on that process.

[i] I would like to acknowledge the contributions of Rebecca Hulse and Ron Fortgang as well as the useful suggestions of David Lax and Rob Robinson. Adapted excerpts of previous versions of this working paper have been published in Sebenius, James K. "The Hidden Challenge of Cross-Border Negotiations." *Harvard Business Review* 80, no. 3 (March 2002): 76-85, and Sebenius, James K. "Caveats for Cross-Border Negotiators." *Negotiation Journal* 18, no. 2 (April 2002): 121-133.

[ii] William A. Sahlman and Burton C. Hurlock, "Ribogene, Inc. (A, B, C)" Harvard Business School cases 9-293-026, -027, -028, revised, June 4, 1993.

[iii] Daniel J. Kadlec, *Masters of the Universe*, New York: Harper Business, 1999, pp. 85-92.

[iv] See, for example, Chapter 12 (pp. 736-800), "Special Topics Relating to Transactions with International Aspects." Stanley Foster Reed and Alexandra Reed Lajoux, "The Art of M&A: A Merger Acquisition Buyout Guide," Second Edition, Chicago: The McGraw-Hill Companies, Inc., 1995.

[v] A summary of some of these issues may be found in Viviane de Beaufort and Alain Lempureur, "Preparing Mergers and Acquisitions in the European Union: The Asset of Cooperative Negotiations," in Ghauri and Usunier, 273-301.

[vi] Information in this and the following paragraph is taken from Razeen Sally, "A French Insurance Firm and 'Fortress Germany:' The Case of AGF and AMB," plus the associated "Appendix," INSEAD Cases 394-052-1 and 394-052-5, respectively, Fontainebleau, France, 1994.

[vii] This paragraph is generally taken from James K. Sebenius, "Negotiating Cross-Border Acquisitions," *Sloan Management Review* , Winter1998, v39, no. 2, pp. 27-41.

[viii] Albert, Michel, *Capitalism Against Capitalism*, London: Whurr, 1993., p. 90.

[ix] James K. Sebenius, "Negotiating Cross-Border Acquisitions," *Sloan Management Review* , 1998.

[x] Bryan Burroughs, "Gucci and Goliath," *Vanity Fair*, July 1999, pp. 142-4.

[xi] Gerald Freeman, personal interview, 21 February 1995, from "*Stone Container in Honduras (A)*," Harvard Business School Case 1-396-294, p.5.

[xii] Ibid., p. 9.

[xiii] Charles Olivier, "Investing in China: 12 Hard Lessons," *World Link*, November-December 1996, p.12.

[xiv] For example, see Charkham, J. *Keeping Good Company: A Study of Corporate Governance in Five Countries*, Oxford: Clarendon Press, 1994.

[xv] This example is drawn from Roderick MacLeod, *China, Inc.: How to Do Business with the Chinese*. Toronto: Bantum Books, 1988, pp. 28-30 and 149-155.

[xvi] See Buyers, Richard S. "Team America." *Engineering News Record*. 11/28/85, p. 10.

[xvii] "U.S. Vies for Huge Chinese Dam." *The Washington Post*. 12/15/85, G33.

[xviii] See Lieberthal, Kenneth. "China: The Three Gorges Dam Project." in Faure, Guy Olivier and Rubin, Jeffrey Z., eds. *Culture and Negotiation: The Resolution of Water Disputes*. London: Sage Publications, 1993, pp. 176-195.

[xix] Lieberthal, p. 185.

[xx] John L. Graham and Yoshihiro Sano, *Smart Bargaining: Doing Business with the Japanese*, revised edition. New York: Harper and Row, 1989. p. 29.

[xxi] Stephan Fidler, "Flow of Funds from Abroad Expected to Slacken," Financial Times, November 16, 1998, p. II.

[xxii] See Connie Bruck, "Leap of Faith," New Yorker, September 9, 1991.

[xxiii] This paragraph draws heavily on James Harding, "End of the China Goldrush," *Financial Times*, March 25, 1999, p. 15.

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