

Negotiating International Business Transactions – A Scandinavian Approach

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Abstract: International Business Negotiations are an essential form of communication between both companies and executives. This paper reviews the basic concept of international multicultural business negotiations, especially the typical Scandinavian ways to negotiate. The writer analyses the specific features in Scandinavian negotiations based on both literature review and the writer's own negotiation experiences. The Scandinavian negotiation style is very similar to other European countries; in general, very strict but polite. The main differences do not lie in the cultural but the legal and business issues. Though a tendency to move forward to more detailed legal documents is evident, many Scandinavian lawyers still prefer shorter and less formal contracts. This is partly due to the advanced commercial laws that prefer very general-minded agreements where the problem-solving does not have to be taken into account beforehand. The same flexibility can be noticed in dispute resolution, because the settlement is usually sought through ADR rather than going to the court.

Keywords: Negotiation, negotiation styles, business transactions, cultural differences, Finland, Sweden.

ABBREVIATIONS

ABA	American Bar Association
ADR	Alternative Dispute Resolution
BATNA	Best Alternative to a Negotiated Agreement
EEA	European Economic Area
EU	European Union
IT	Information Technology

1. Introduction

International Business Negotiations are very important venues for cross-cultural communication. Misunderstandings in communication might be easier to come across in such a setting, which can affect the goal of a business relationship. A successful negotiation not only relies on an in-depth knowledge of the business in question, but also on the cultural and economic background of the negotiating parties. Both parties may understand the terms and concepts of the business and the purpose of the transaction, but some words and, even more crucially, forms of non-verbal communication can cause misunderstandings between the parties, which may adversely influence the outcome of the negotiation.

The aim of this paper is to review the basic concepts of international multicultural business negotiations and then to analyse the typical Scandinavian style of negotiating. The writer tries to review the specific features in Scandinavian negotiations and focus on the main differences between Scandinavians and some other nationalities in terms of business negotiations. The analysis is based on both literature review and the writer's own negotiation experiences. Chapter two describes the basic principles of negotiation and chapter three concentrates on important issues to take into account in international negotiations. Chapter four describes the typical Scandinavian negotiation characteristics. This analysis is performed from a viewpoint of a lawyer participating in the negotiations as part of the negotiating team.

2. Basic Principles of Negotiation

Any business negotiations can be divided into three main stages.

- *Pre-negotiation* refers to the initial stage where the parties are trying to determine whether they want to really negotiate on the subject or not.
- *Conceptualisation* means that the parties are trying to formulate a general concept or formula for their planned transaction.
- In the *Details* stage, the parties work more precisely on that formula and try to define every little detail of the transaction as carefully as possible.¹

Often the international business transactions include a “*Closing*” stage, where the formula and details are reviewed again. For the purposes of defining the price of the transaction, for example, the closing stage could last for several months or maybe even a year. Thus, this is not often seen as a part of negotiation in many negotiation handbooks, but the role of the negotiators participating in the closing stage should not be underestimated. However, for the purposes of this paper, the writer is mostly concentrating on *Conceptualisation* and *Details*, as they often form the most significant part of the actual negotiating process.

¹ Salacuse, J. W., *Making Global Deals. What every executive should know about negotiating abroad* 25 (London: Random House 1991).

However, before proceeding to any of these stages the parties have to decide whether they want the deal and under what terms. The basis of this is to keep in mind the so called BATNA principle ('best alternative to a negotiated agreement'). A negotiator who thoroughly appreciates his alternative options, is in a stronger position than those who need the deal and puts less insistence on the alternative conditions. The basic methods to help the party to maintain its appropriate positions during the negotiations are often quoted after *Fisher, Ury and Patton*,² who divide the basic negotiation strategy to four main elements:

1) *Separate the people from the problem*. This is essential in international negotiations where cultural clashes or simple misunderstandings can lead to a hostile attitude towards the whole transaction.

2) *Focus on interest, not positions*. The parties should be able to identify their common and individual interests on the deal and keep in mind why they want this transaction to be performed. Clutching to their original positions, not willing to give concessions, does not make a deal beneficial for both parties. Therefore, the negotiators should:

3) *Invent options for mutual gain*. Though this could sound self-evident, in long-lasting negotiations it is very important to try to keep the mutual benefits in mind.

4) *Use of objective criteria* which are not subject to either party's direct influence. The use of independent auditors or inspectors when defining the value of the transaction can be given as an example of the use of objective criteria.³

3. Important Issues in International Business Negotiations

A successful international negotiation needs understanding and developing appropriate responses to cultural attitudes and expectations. The participants should prepare carefully and start from the basics, e.g., defining the counterparts as tough/competitive or soft/cooperative

² Fisher, R., Ury, W. and Patton, B., *Getting to Yes Negotiating an Agreement Without Giving In* 15-98 (2nd ed.) (London: Random House Business Books, 1991).

³ Fox, W.F., *International Commercial Agreements: A primer on Drafting, Negotiating and Resolving Disputes* 189-190 (The Hague: Kluwer Law International, 1998).

negotiators as these characteristics are typical for certain nationalities.⁴ Salacuse has listed some typical features that often can form barriers to a successful negotiation. These are:

- Negotiating environment
- Culture
- Ideology
- Foreign bureaucracies and organizations
- Foreign laws and Governments
- Multiple money and
- Instability and sudden change⁵

Without any doubt, the party negotiating in a well-known environment has a competitive advantage than the one who lacks it. Language barriers are another great obstacle as very often, especially in the Scandinavian countries, the other team is usually obliged to use a language that is not their mother tongue. In this respect, it is not surprising – but somewhat supercilious – that many American negotiation handbooks advise the negotiators not even to try to use any other language than their own.⁶ The negotiating team is often advised to hire a local legal expert to help them with the negotiations. Nevertheless, it could be expensive; it usually proves very useful, as a local expert has more in-depth knowledge of the country, its cultural values and ideology but as well the legal system. *King* seems to also suggest that the legal expert should possess proper knowledge of his party's legal system as well. This is often crucial to make the different legal or business terminology and concepts used in a clear and unambiguous manner for both parties.⁷ For example, when a deal is negotiated between a civil law and a common law country, many key legal terms vary in their contents and general meaning.

⁴ See Ciricillo, Fremantle and Hamburg, p.37-38. More on tough and soft negotiation styles, see supra n. 2 at pp. 3-16.

⁵ Supra n. 1 at pp.4-8.

⁶ See for example, supra n. 1 at p. 30

⁷ King, H. T. Jr., *Selecting and Dealing with Foreign Lawyers* in The ABA Guide to International Business Negotiations: a Comparison of Cross-Cultural Issues and Successful Approaches 147-157 (2nd ed.), (Silkenat, J.A., and J. M. Aresty, eds., Chicago: ABA Publishing, 2000).

4. Specific Features in Negotiations with the Scandinavians

1.1 Legal characteristics

Among the abovementioned features, the issues dealing with foreign bureaucracies and organizations and instability are probably of least importance in Scandinavian negotiations. The administrative procedures in Scandinavian countries (Norway, Sweden, Denmark, Finland and Iceland) are usually much unhindered and, for example, any customs or tax procedures are not likely to create any obstacles to the transactions. As the Scandinavian countries have joined the Euro, there are only a few changes in the currency rates. Also, the political and economical climate can be considered very stable.

The legal systems in Scandinavian countries, being civil law countries, are very similar. This is partly due to the long tradition of Nordic co-operation but also because the Scandinavian countries are members of either EU or the EEA. Compared to many other countries, one of the most typical characteristics in Nordic contracts and negotiations is the attempt to follow amicable dispute resolution. The Scandinavian lawyers seem to prefer alternative dispute resolution methods, in particular arbitration, but mediation has been gaining support in recent years. This is why international disputes seldom end up in courts⁸.

Traditionally, the Scandinavian contracts and agreements have been shorter and less formal than the American or even UK ones. This has been partly due to the substantial reliance on the codified commercial laws of all these countries. Therefore, no effort was usually made to try to solve all possible problems beforehand in the contract.⁹ It is however noticeable that the Scandinavian legal tradition has been greatly influenced by American styles of negotiation and contract drafting during the 1990's. The contracts are definitely longer and more detail and precise than before. As *Gernandt and Johansson* pointed out¹⁰, merely ten years ago due diligence reviews, for example, were still very unusual in Scandinavia, but they are commonly performed now. It is still not unusual for the smaller law firms to draft in the Scandinavian-

⁸ Gernandt, J. and B. Johanson, *International Business Negotiations in Sweden* in The ABA Guide to International Business Negotiations: a Comparison of Cross-Cultural Issues and Successful Approaches 641 (2nd ed.), (Silkenat, J.A., and J. M. Aresty, eds., Chicago: ABA Publishing, 2000).

⁹ *Ibid.*

¹⁰ *Supra* n. 8 at p. 649.

style simplified contracts referring to national commercial law only, with no specific representations and warranties or indemnities sections.

Compared to their US or UK colleagues, lawyers often have a weaker position in the negotiating team in Scandinavia¹¹. It is not very unusual to involve the lawyers only at the *Details* stage of the negotiation. This can be considered a very careless and inconsiderate approach, as at this stage the parties have often already agreed on some major issues that can be very difficult to alter later on, as they may cause the whole agreement to be renegotiated and would entice major legal problems.

1.2 Cultural features – a comparison

American negotiators are often considered as very fast and aggressive and the very strong and formal attitude can be seen through most European countries.¹² A typical Scandinavian negotiator could be seen very determined, but courteous. They are often seen as strong and even stubborn negotiators but do not adopt an aggressive negotiating style¹³ as, for example, the Americans. Compared to the Latin Americans or Africans, for example, it is not typical in Scandinavia to use much non-verbal communication like gestures, waving hands and other bodily movement. One of the main characteristics of the Scandinavian negotiators is honesty: they usually point out clearly what they want, and strive to achieve it without employing bluff in the negotiation.

As far as their actual negotiation communicative skills are concerned, the Scandinavian negotiators in general speak very good English or in some cases German, French or Russian. Though a minority language groups in Europe, the Scandinavians are often in the position of handling the negotiations in a foreign language; something that seldom occurs in countries like USA or France¹⁴. It is also very interesting to notice that many trans-Scandinavian negotiations are nowadays handled in English, because especially Norwegian or Danish could be difficult to understand for other Scandinavian nationalities. Another interesting feature is the use of English as corporate language in many Scandinavian-based international companies such as

¹¹ *Ibid.*

¹² See for example, supra n. 3 at pp. 200-205.

¹³ *Ibid.*

¹⁴ Supra n. 1 at p. 28-31.

Nokia, TeliaSonera or UPM. The same tendency can be seen in smaller companies as well, especially in IT sector where it is almost a tacit rule that all the official documents and correspondence would be in English.

Many Scandinavians appear to be somewhat shy and reserved when encountered for the first time. This has been said to apply especially to Finnish people. However, after the ice is broken between the negotiators, most Scandinavians appear friendly and helpful and apply a due process to achieving a 'win-win' outcome of the negotiation. It is typical that the negotiators could talk about their personal life such as family and hobbies. Nevertheless, entertainment for foreign counterparts is typically arranged in restaurants or the company's own premises. A very typical form of entertainment is to treat the guests to some Scandinavian specialties like skiing, sauna or winter swimming.¹⁵ Invitations to the hosts' own homes are not very typical any more, though this may occur in the summer.

5. Conclusion

Negotiating international business agreements is always a question of both hard work and multicultural understanding. The negotiating team must take into account the cultural, ideological and political circumstances prevailing and at the same time, concentrate on solving the financial, technical and legal issues that are crucial to the agreement in question. Negotiating with the Scandinavians is no exception to this general rule. In principle, the Scandinavian negotiation style is very similar to other European countries, but somewhat less aggressive than, for example, the American. There is a growing tendency to write detailed legal documents, but as observed, many Scandinavian lawyers still prefer shorter and less formal contracts. The same flexibility can be found in dispute resolution as well, because the settlement is usually sought after in other ways than going to court. Lawyers from any of the larger Scandinavian law firms are now very experienced dealing with US, UK or other international transactions, and therefore, can usually easily adapt their legal drafting style to meeting the expectations of the counter party in question.

¹⁵ However, nowadays the hosts are usually aware not to make their guest participate in these traditions unwillingly, thus becoming more accommodative. More neutral experiences, such as, dinner cruises or sight-seeing trips have now become more popular and a part of the negotiation exercise.

It is, therefore, suggested that international negotiators would benefit from adopting the Scandinavian styles of negotiation, which is accommodative, fair and friendly.

Bibliography

Books

Fisher, R., Ury, W. and Patton, B., Getting to Yes Negotiating an Agreement Without Giving In (2nd ed.) (London: Random House Business Books, 1991).

Fox, W.F., International Commercial Agreements: A primer on Drafting, Negotiating and Resolving Disputes (The Hague: Kluwer Law International, 1998).

Saracuse, Jeswald W. Making Global Deals. What every executive should know about negotiating abroad (London: Random House 1991).

Articles

Ciricillo, R. C., et al., *International Negotiations: A Cultural Perspective* in The ABA Guide to International Business Negotiations: a Comparison of Cross-Cultural Issues and Successful Approaches 37-56 (2nd ed.), (Silkenat, J.A., and J. M. Aresty, eds., Chicago: ABA Publishing, 2000).

Gernandt, J. and B. Johanson, *International Business Negotiations in Sweden* in The ABA Guide to International Business Negotiations: a Comparison of Cross-Cultural Issues and Successful Approaches 641-652 (2nd ed.), (Silkenat, J.A., and J. M. Aresty, eds., Chicago: ABA Publishing, 2000).

King, H. T. Jr., *Selecting and Dealing with Foreign Lawyers.* in The ABA Guide to International Business Negotiations: a Comparison of Cross-Cultural Issues and Successful Approaches 147-158 (2nd ed.), (Silkenat, J.A., and J. M. Aresty, eds., Chicago: ABA Publishing, 2000).