

Cultural Dimension Interests, the Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution

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INTRODUCTION

American negotiation theory highlights “interests” as a key component of negotiations.¹ According to this theory, people negotiate to fulfill their interests.² *Getting to Yes*, the classic American negotiation text, urges negotiators to “focus on interests, not positions.”³ Interests are commonly thought to include substantive, procedural, and psychological interests.⁴

In cross-cultural negotiations, however, additional Cultural Dimension Interests (CDI)⁵ also come into play. CDIs are culturally-based values and

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1. See R. E. WALTON & R. B. MCKERSIE, *A BEHAVIORAL THEORY OF LABOR NEGOTIATIONS: AN ANALYSIS OF A SOCIAL INTERACTION SYSTEM* (1965); ROGER FISHER ET AL., *GETTING TO YES* 41-55 (2d ed., Penguin Books 1991). Whether or not a negotiator is a cooperative or competitive type of negotiator, interests are very important to successful negotiations. See FISHER ET AL. at 41-55. Competitive negotiators focus on fulfilling their own interests without regard to their negotiating partner’s interests. Cooperative negotiators seek not only to fulfill their own interests, but to also assist their negotiation partners in fulfilling their negotiating partner’s interests too. See *generally id.* at 56-80 (discussing the importance and benefits of cooperation in negotiations for mutual gain).

2. CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* 231 (2d ed. 1996).

3. FISHER ET AL., *supra* note 1, at 40.

4. See MOORE, *supra* note 2, at 71-73.

5. See John Barkai, *What’s a Cross-Cultural Mediator to do? A Low-Context Solution for a High-Context Problem* 9 CARDOZO J. CONFLICT RESOL. (forthcoming) (using the term “cultural dimension interests” (CDI) for the first time).

preferences for how a person organizes life, how a person should behave, and how a person likes to be treated.⁶ Although some people have argued that an interest-based model of negotiations is an exclusively American (or Western) view of negotiations, this article will suggest that an interest-based model of negotiation is very consistent with effective cross-cultural negotiations and dispute resolution for all cultures, if interests are defined to include cultural interests.

Differences in cross-cultural values and behaviors lead to additional conflicts in negotiations beyond the obvious substantive conflicts.⁷ Often negotiators wonder if they really want to do business with the opposing negotiator. During the negotiations, their prospective business partner may exhibit behavior that sometimes appears to be strange, and at other times their behavior is actually insulting and offending. However, as cross-cultural expert Paul Pedersen⁸ says, “Behaviors have no meaning until they are placed into a cultural context.”⁹ It is very tempting and easy to interpret the behaviors and infer the intention of people from other cultures as if those people were from our own culture.¹⁰ We react to their behavior as if their actions were done to intentionally offend us and not as if they sprang from cross-cultural ignorance. Cross-cultural differences create such a high degrees of friction and frustration that they put business deals in jeopardy,¹¹ make disputes more difficult to resolve, and create international incidents. They make us question whether the other party is “playing fair “ and whether we want to create or continue a business relationship with someone “like that.”

This article will argue that effective cross-cultural negotiations and dispute resolution requires an understanding of CDIs. The article will review many of the cultural interests that impact negotiation and dispute

6. See Harold Abramson, *Selecting Mediators and Representing Clients in Cross-Cultural Disputes*, 7 CARDOZO J. CONFLICT RESOL. 253, 255-56 (2006). My use of CDIs is similar to “culturally-shaped interests” as described in this recent article by my friend Harold Abramson.

7. See generally JACQUELINE NOLAN-HALEY ET AL., INTERNATIONAL CONFLICT RESOLUTION: CONSENSUAL ADR PROCESSES 49-90 (2005); BRUCE E. BARNES, CULTURE, CONFLICT, AND MEDIATION IN THE ASIAN PACIFIC (rev. ed. 2007); DAVID W. AUGSBURGER, CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS (1992).

8. See Paul P. Pedersen Welcome Page, <http://soeweb.syr.edu/chs/pedersen/index.html> (last visited Apr. 12, 2008). Paul P. Pedersen has written forty books and almost 200 articles and book chapters about culture and counseling.

9. Paul P. Pedersen, Guest Lecture for John Barkai’s International Negotiation Class at the University of Hawaii, (Feb. 15, 2006) (on file with author) [hereinafter Pedersen Lecture].

10. See generally DOUGLAS STONE ET AL., DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST (1999).

11. See ROSALIE L. TUNG, BUSINESS NEGOTIATIONS WITH THE JAPANESE 213 (1984).

resolution¹² by: 1) specifically reviewing the cultural theories of Edward T. Hall, Geert Hofstede, Fons Trompenaars and Charles M. Hampden-Turner, and Richard D. Lewis,¹³ 2) considering country specific anecdotal accounts of national negotiating behaviors, and 3) reviewing some specific beliefs, behaviors, and practices that impact national negotiation styles and approaches. This article will focus mainly on cross-cultural differences between American and Asian negotiation styles and behaviors.¹⁴

VARIETIES OF CROSS-CULTURAL DIFFERENCES

The literature about cross-cultural differences is both general and specific.¹⁵ The general culture literature includes characteristics that vary

12. See Ilhyung Lee, *In re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum*, 20 OHIO ST. J. DISP. RESOL. 375 (2005), and Julia Ann Gold, *ADR Through A Cultural Lens: How Cultural Values Shape Our Disputing Processes*, 2005 J. DIS. RESOL. 289, 298 (2005).

13. There are many lists of cultural differences that are likely to impact cross-cultural negotiation. See generally GEERT HOFSTED, *CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES* (1980) [hereinafter *CULTURE'S CONSEQUENCES*]; CHARLES M. HAMPDEN-TURNER & ALFONS TROMPENAARS, *THE SEVEN CULTURES OF CAPITALISM: VALUE SYSTEMS FOR CREATING WEALTH IN THE UNITED STATES, JAPAN, GERMANY, FRANCE, BRITAIN, SWEDEN, AND THE NETHERLANDS* 10-12 (1993) [hereinafter *SEVEN CULTURES*] (delineating the dimensions as: universalism vs. particularism, individualism vs. collectivism, specific vs. diffuse, achievement vs. ascription, and neutral vs. emotional or affective); CHARLES M. HAMPDEN-TURNER, *MAPS OF THE MIND* (1981); RICHARD D. LEWIS, *WHEN CULTURES COLLIDE: LEADING ACROSS CULTURES* (3rd ed. 2006); André Laurent, *The Cultural Diversity of Western Conceptions of Management*, 13 INT'L STUD. MGMT. & ORG. 75 (1983); Shalom H Schwartz & Anat Bardi, *Value Hierarchies Across Cultures: Taking a Similarities Perspective*, 32 J. CROSS-CULTURAL PSYCHOL. 268 (2001). Although the most commonly cited authors in the field of cross-cultural differences are Hall, Hofstede, Trompenaars and Hampden-Turner, a completely different set of authors, Parsons and Shils, Kluckhohn and Strodtbeck, McClelland, Fiske, and Schwartz also made early contributions on this topic.

14. In addition to my full-time law school teaching, for the past 15 years I have taught annual International Negotiations classes in "Japan-focused" and "China-focused" Executive MBA programs (called "JEMBA/CHEMBA") at the University of Hawaii College of Business Administration, courses in Intercultural Negotiations for Asian business people at JAISMS (the Japan American Institute for Management Science), and numerous other executive training programs for Korean, Chinese, Japanese, and Taiwanese executives. The JEMBA/CHEMBA programs are comprised of about one-third foreign nationals from Asia and two-thirds Americans who have extensive experience or interests in Asia. The JAISMS' programs are for Asians, with about eighty percent of the participants from Japan. Furthermore, I have been fortunate to have rather extensive Asian and Pacific foreign travel; I taught in Hong Kong for one semester and have conducted trainings and courses in Australia, Finland, Hong Kong, Hungary, Japan, Korea, and several courses in the Federated States of Micronesia.

15. The literature about doing business in specific cultures often discusses such topics as whether and when to present a business gift, how to wrap and present a gift, what types of gifts to avoid, physical touching, punctuality, appropriate (and inappropriate) dress, greetings, physical touching, business entertaining, gestures, forms of address, use of titles, importance of a written contract, detailed or short

from culture to culture.¹⁶ Some of this literature is derived from empirical work with large databases¹⁷ and other parts include more personal observations of various authors.¹⁸ Still other literature is about specific cultures (usually specific countries) and is a collection of observed traits without empirical background¹⁹ or is derived from limited empirical work such as surveys from seminar attendees.²⁰

contracts, use of lawyers, use of intermediaries, bribes and commissions, etc. *See generally* TERRI MORRISON ET AL., *KISS, BOW, OR SHAKE HANDS* (1995); ROGER E. AXTELL, *DO'S AND TABOOS AROUND THE WORLD* (2d ed. 1990); BOYE DE MENTE, *ETIQUETTE GUIDE TO JAPAN: KNOW THE RULES THAT MAKE A DIFFERENCE* (1990); SCOTT D. SELIGMAN, *CHINESE BUSINESS ETIQUETTE: A GUIDE TO PROTOCOL, MANNERS, AND CULTURE IN THE PEOPLE'S REPUBLIC OF CHINA* (1999).

16. Lena Zander, *The Licence to Lead: An 18 Country Study of the Relationship Between Employees' Preferences Regarding Interpersonal Leadership and National Culture* (1997) (unpublished Ph.D. dissertation, Stockholm School of Economics and the Institute of International Business) (on file with author) (using twenty-five cultural dimensions from the cross-cultural management literature to search for links between these dimensions and leadership preferences); Jeanne M. Brett & Michele J. Gelfand, *A Cultural Analysis of the Underlying Assumptions of Negotiation Theory*, in *NEGOTIATION THEORY AND RESEARCH* 173-201 (Leigh L. Thompson ed. 2006), available at <http://www.bsos.umd.edu/psyc/gelfand/Brett%20&%20Gelfand%202006.pdf>.

17. *See* GEERT HOFSTEDE & GERT JAN HOFSTEDE, *CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND* 11 (2005) [hereinafter *SOFTWARE*]; *CULTURE'S CONSEQUENCES*, *supra* note 13, at 11-12; HAMPDEN-TURNER & TROMPENAARS, *supra* note 13, at ix.

18. *See generally* EDWARD T. HALL, *THE SILENT LANGUAGE* (1959), EDWARD T. HALL, *THE HIDDEN DIMENSION* (1966) [hereinafter *HIDDEN DIMENSION*], EDWARD T. HALL, *BEYOND CULTURE* (1981), EDWARD T. HALL & MILDRED REED HALL, *HIDDEN DIFFERENCES, DOING BUSINESS WITH THE JAPANESE* (1987), EDWARD T. HALL & MILDRED REED HALL, *UNDERSTANDING CULTURAL DIFFERENCES* (1990), FRANK L. ACUFF, *HOW TO NEGOTIATE ANYTHING WITH ANYONE ANYWHERE AROUND THE WORLD* (1993); GLEN FISHER, *INTERNATIONAL NEGOTIATION: A CROSS CULTURAL PERSPECTIVE* 17-59 (1980).

19. *See generally* JOHN L. GRAHAM & YOSHIHIRO SANO, *SMART BARGAINING: DOING BUSINESS WITH THE JAPANESE* (rev. ed. 1989); JAMES DAY HODGSON ET AL., *DOING BUSINESS WITH THE NEW JAPAN* (2000); N. MARK LAM & JOHN L. GRAHAM, *CHINA NOW* (2007).

20. *See generally* DONALD W. HENDON ET AL., *CROSS-CULTURAL BUSINESS NEGOTIATIONS* (1996). The litmus test for me on the quality of such literature is usually questions like: Does the source mention the work of Geert Hofstede or does the source about Chinese negotiation mention the 36 Strategies? If neither of those sources is mentioned, a red flag goes up.

I. THE GENERAL CULTURAL THEORIES OF EDWARD T. HALL, GEERT HOFSTEDE, FONS TROMPENAARS AND CHARLES HAMPDEN-TURNER, AND RICHARD LEWIS

a. *Edward T. Hall's High and Low-Context Communication*

The difference between high-context and low-context communication, pioneered by Edward T. Hall,²¹ is probably the most important cultural difference in many cross-cultural negotiations.²² High and low-context refers to how much of the meaning of a communication comes from the surrounding context compared to the words that are actually spoken.²³ In low-context cultures, people communicate directly and explicitly and are said largely to rely on the spoken words as opposed to non-verbal communication to express themselves.²⁴ In high-context cultures, the meaning of the communication lies mainly in the context and is not fully verbalized.²⁵ The main issues may be only inferred or not discussed at all, and the actual words spoken carry less of the meaning or are the basis for inferring the meaning. For example, Asians are well known for saying “no” without speaking the word “no.”²⁶ A cultural outsider could easily fail to understand the major issues because they are not being stated explicitly. People in the United States, Canada, Australia, New Zealand and most Northern and Western European countries use direct, explicit, low-context communication and Asians, along with most of the rest of the world, use indirect, implicit, high-context communication.

21. Anthropologist Edward T. Hall is considered by many people to be the founder of the cross-cultural communication field. He called this field “intercultural communication.” His work focused on differences between Japan and the United States. His books, *The Silent Language*, *The Hidden Dimension*, and *Beyond Culture* are classics in the field. Hall wrote *Hidden Differences*, *Doing Business with the Japanese* and *Understanding Cultural Differences* with his wife Mildred Reed.

22. See Barkai, *supra* note 5 (discussing the connections between the writings of Edward T. Hall and Geert Hofstede and cross-cultural mediation).

23. See Gold, *supra* note 12, at 298.

24. This idea of the primacy of verbal communication seems to be inconsistent with the work of Albert Mehrabian which suggests that ninety-three percent of verbal communication is actually non-verbal communication. However, Mehrabian’s research is usually misinterpreted, because he really proclaimed that ninety-three percent of “feelings and attitudes” about the message are conveyed non-verbally. See generally <http://www.kaaj.com/psych/>.

25. See Gold, *supra* note 12, at 298.

26. See *The 16 Ways that Japanese Say “No”*, *infra* note 165. and accompanying text.

Every national culture has its high and low context aspects. In high-context subcultures, there are clear “insiders” compared to “outsiders.”²⁷ High-context cultures are more past oriented and value traditions over change; low-context cultures are more present and future oriented and value change over tradition. Individualism is usually a characteristic associated with low-context cultures.²⁸

The low-context communication and negotiation style, which is typical of Anglo cultures, has been described by Israeli Professor Raymond Cohen in the following manner:

[I]t is infused with the can-do, problem-solving spirit, assumes a process of give-and-take, and is strongly influenced by Anglo-Saxon legal habits. When theorists posit a universal paradigm of negotiation (usually involving such features as the “joint search for a solution,” “isolating the people from the problem,” and the “maximization of joint gains”), they are in effect proposing an idealized version of the low-context, problem-solving model. Notice the instrumental assumptions of rationality that underlie the paradigm: people are part of the problem, not the solution; each problem can be solved discretely; goals are defined in terms of material, not psychic, satisfactions.²⁹

The high-context communication and negotiation style, which is typical of many Asian countries, has been described by Cohen in the following manner:

[An] alternative model, associated with a nonverbal, implicit, high-context style of communication, predominates in interdependent societies that display a collectivist, rather than individualist, ethos. This paradigm³⁰ was found to mark the negotiating behavior of the non-Western states examined. In contrast to the result-oriented American model, it declines to view the immediate issue in isolation; lays particular stress on long-term and affective aspects of the relationship between the parties; is preoccupied with considerations of symbolism, status, and face; and draws on highly developed communication strategies for evading confrontation.³¹

Cohen describes cross-cultural conflicts in negotiation styles between low-context communicating Americans and high-context communicators from other cultures as follows:

American negotiators tend to be surprised by their interlocutors' preoccupation with history and hierarchy, preference for principle over nitty-gritty detail, personalized and

27. See Jennifer E. Beer, *High and Low Context*, <http://www.culture-at-work.com/highlow.html> (last visited Apr. 19, 2008).

28. See BeyondIntractability.org, *Communication Tools for Understanding Other Cultures*, http://www.beyondintractability.org/essay/communication_tools/ (last visited May 1, 2008).

29. See RAYMOND COHEN, *NEGOTIATING ACROSS CULTURES: INTERNATIONAL COMMUNICATION IN AN INTERDEPENDENT WORLD* 216 (rev. 1997) (focusing on the high-context communication countries of China, Egypt, India, Japan, and Mexico).

30. The non-Western countries that Cohen studied were China, India, Japan, Mexico, and Egypt. See COHEN, *supra* note 29.

31. Cohen, *supra* note 29, at 216.

repetitive style of argument, lack of enthusiasm for explicit and formal agreement, and willingness to sacrifice substance to form. They are frustrated by their partners' reluctance to put their cards on the table, intransigent bargaining, evasiveness, dilatoriness, and readiness to walk away from the table without agreement. Non-Western negotiators tend to be surprised by their interlocutors' ignorance of history, preoccupation with individual rights, obsession with the immediate problem while neglecting the overall relationship, excessive bluntness, impatience, disinterest in establishing a philosophical basis for agreement, extraordinary willingness to make soft concessions, constant generation of new proposals, and inability to leave a problem pending. They are frustrated by their American partner's occasional obtuseness and insensitivity; tendency to see things and present alternatives in black-or-white, either-or-terms; appetite for crisis; habit of springing unpleasant surprises; intimidating readiness for confrontation; tendency to bypass established channels of authority; inability to take no for an answer; and obsession with tidying up loose ends and putting everything down on paper. Obviously, these are oversimplified depictions, but they do serve to highlight the main points of abrasion in the low-context-high-context encounter.³²

The underlying values, which are the basis for differing behaviors, could not be more different for the low-context and high-context approaches. Many of the most important differences between high and low context communication can be found in the chart below.

Differences Between Low-Context and High Context Cultures (according to Edward T. Hall) ³³	
LOW-CONTEXT CULTURE	HIGH-CONTEXT CULTURE
Overtly display meanings through direct communication forms	Implicitly embeds meanings at different levels of the sociological context
Values individualism	Values group sense
Tends to develop transitory personal relationships	Tends to take time to cultivate and establish permanent person relationships
Emphasizes linear logic	Emphasizes spiral logic
Values direct verbal interaction and is less able to read nonverbal expressions	Values indirect verbal interaction and is more able to read nonverbal expressions

32. *Id.* at 217. Although this book focuses on cultural differences in diplomatic negotiations, the same factors impact business negotiations too.

33. See <http://www.deakin.edu.au/studentlife/counselling/Images/highlowculture.jpg>, (last visited Apr. 19, 2008).

Tends to use “logic” to present ideas	Tends to use more “feeling” in expression
Tends to emphasize highly structured messages, give details, and place great stress on words and technical signs	Tends to give simple ambiguous, non-contexting messages
Perceive highly verbal persons favorably	Perceive highly verbal persons less favorably

b. *Geert Hofstede’s Dimensions of Culture*

Dutch cultural anthropologist Geert Hofstede’s remarkable empirical study of cross-cultural differences has to be at the heart of any serious work on cross-cultural negotiation.³⁴ Hofstede’s work is based on over 116,000 questionnaires from IBM employees in 53 countries from which he formulated four dimensions of culture.³⁵ Later, Hofstede collaborated with Michael Bond to add a fifth dimension related to Chinese culture.³⁶ Later research by Hofstede and others have added additional information about other countries, and there is now data available from seventy-four countries and regions of the world.³⁷ Hofstede’s five dimensions are Power Distance Index (PDI), Individualism (IDV), Masculinity (MAS), Uncertainty Avoidance Index (UAI), and Long-Term Orientation (LTO).³⁸ LTO data is only available for thirty-nine countries. Although there has been some criticism of Hofstede’s work on a variety of grounds,³⁹ his contribution to

34. When a writer about cross-cultural negotiation differences fails to mention Hofstede, I grow suspect about the quality of its research.

35. “A dimension is an aspect of a culture that can be measured relative to other cultures.” SOFTWARE, *supra* note 17, at 23.

36. See Geert Hofstede & Michael Bond, *The Confucius Connection: From Cultural Roots to Economic Growth*, ORGANIZATIONAL DYNAMICS, Spring 1988, at 5, 17-19.

37. See SOFTWARE, *supra* note 17, at 26-27.

38. See Itim International, Geert Hofstede’s Cultural Dimensions, <http://www.geert-hofstede.com> [hereinafter Cultural Dimensions]. To do Hofstede’s, and later Trompenaars Hampden-Turner’s (THT), great cross cultural work, they really needed to stand on the shoulders of the cultural dimension pioneers who apparently first thought of the dimensions that contemporary study seems to credit to Hofstede and THT. See, e.g., TALCOTT PARSONS & EDWARD A. SHILS, TOWARD A GENERAL THEORY OF ACTION: THEORETICAL FOUNDATIONS FOR THE SOCIAL SCIENCES (1951); FLORENCE ROCKWOOD KLUCKHOHN & FRED L. STRODTBECK, VARIATIONS IN VALUE ORIENTATIONS (1961).

39. Several of the criticisms, and criticisms of those criticisms, can be found at <http://geert-hofstede.international-business-center.com/> (last visited Apr. 20, 2008). See Brendan McSweeney, *Hofstede’s Model of National Cultural Differences and Their Consequences: A triumph of faith - A failure of analysis*, <http://geert-hofstede.international-business-center.com/mcsweeney.shtml> (last visited Apr. 20, 2008).

cross-cultural theories offers a wonderful lens for looking at cross-cultural differences in negotiation and dispute resolution.⁴⁰

1. The Power Distance Index (PDI)

The power distance index (PDI) refers to “the extent to which less powerful members [of a culture] expect and accept that power is distributed unequally” in a culture.⁴¹ It is a measure of hierarchy in a culture.⁴² Power distance is defined from the viewpoint of the less powerful members of a culture.⁴³ Its central value at the high power distance pole is “respect for the leader or the elder.”⁴⁴ Status is an especially important issue in a high power-distance culture.⁴⁵ In these cultures, inequalities are expected and desired.⁴⁶ Absence of hierarchy is a frustrating situation for a person from a high power distance culture.⁴⁷ In low power distance countries, equality and opportunity for everyone is stressed.⁴⁸ There is a belief that “all men are created equal” and should be treated that way.⁴⁹

Power distance scores for a sampling of countries appear in the chart below.

POWER DISTANCE INDEX B PDI “HIERARCHY” ⁵⁰					
High Hofstede Score		World Average = 55 World Mean = 63		Low Hofstede Score	
Malaysia	104	France	69	U.S.	40
Philippines	94	Hong Kong	68	Australia	36
Russia	93	Korea, S.	60	Germany	35

40. See generally Geert Hofstede, *Cultural Predictors of National Negotiation Styles*, in PROCESSES OF INTERNATIONAL NEGOTIATIONS 193, (Frances Mautner-Markhof ed., 1989).

41. SOFTWARE, *supra* note 17, at 46.

42. See GERT JAN HOFSTED E T AL., EXPLORING CULTURE: EXERCISES, STORIES AND SYNTHETIC CULTURES 36 (2002) [hereinafter EXPLORING CULTURE].

43. See SOFTWARE, *supra* note 17, at 46.

44. See Pedersen Lecture, *supra* note 9.

45. See SOFTWARE, *supra* note 17, at 60.

46. *Id.*

47. *Id.*

48. *Id.* at 61.

49. *Id.*

50. See SOFTWARE, *supra* note 17, at 43-44. The subtitles in quotations are alternative ways of describing the Hofstede dimensions, and are from the work of Geert Hofstede, his son Gert Jan Hofstede, and Paul Pedersen. See EXPLORING CULTURE, *supra* note 42, at 40.

Mexico	81	Taiwan	58	U.K	35
China	80	Spain	57	Sweden	31
Indonesia	78	Japan	54	Norway	31
India	77	Italy	50	Israel	11

2. Individualism (IDV) v. Collectivism

A second Hofstede dimension, individualism (IDV), focuses on how much a culture reinforces individual achievement and interpersonal relationships.⁵¹ It is a measure of identity of a culture.⁵² Its central value at the high individualism pole is “respect my freedom.”⁵³ Individualism is defined by the extent to which individuals’ behaviors are influenced and defined by others.⁵⁴ Individuals look after themselves and their immediate family and have much less regard for anyone else.⁵⁵ The interests of the individual prevail over those of the group.⁵⁶ Individualistic cultures value self-sufficiency, personal time, freedom, challenge, and extrinsic motivators such as material rewards, honesty, talking things out, privacy, and individual rights.⁵⁷

This focus on the individual versus the collective is another “great divide” among world cultures.⁵⁸ Typically, Americans think and act individually and respond to individual interests.⁵⁹ Asians, on the other hand, typically think and act collectively and respond to collective interests.⁶⁰ Asians also often divide the world into “insiders” and “outsiders.” Outsiders should expect to encounter different types of negotiation tactics, especially tactics involving deception.⁶¹ These different focuses can be both a source

51. See Culture Dimensions, *supra* note 38.

52. See EXPLORING CULTURES, *supra* note 42, at 35-36.

53. See Pedersen Lecture, *supra* note 9.

54. See generally HARRY C. TRIANDIS, INDIVIDUALISM AND COLLECTIVISM (1995) (discussing an alternate view of individualism).

55. See Aaron Marcus, *Cultural Dimensions and Global Web User-Interface Design: What? So What? Now What?* <http://www.amanda.com/resources/hfweb2000/hfweb00.marcus.html> (last visited Apr. 20, 2008).

56. See TRIANDIS, *supra* note 54, at 43.

57. See Marcus, *supra* note 55.

58. For a very interesting article on the difference between individual and collective cultures in conflict resolution, see Walter A. Wright, *Cultural Issues in Mediation: Individualist and Collectivist Paradigms*, Jan. 2000, <http://www.mediate.com/articles/wright.cfm>.

59. See CULUTURE’S CONSEQUENCES, *supra* note 13, at 215-16.

60. See, e.g., TRIANDIS, *supra* note 54, at 89-91.

61. See discussion *infra* pp. 36-44 about the use of deception in Chinese negotiation tactics such as the use of the 36 Strategies.

of friction and also an opportunity to make agreements, because the parties may have different interests.

Collectivists act predominantly as members of their group or organization and emphasize obligations to the group.⁶² They take responsibility for fellow members of their group.⁶³ Collectivists represent the majority of the world population.⁶⁴ They value harmony more than honesty, and they work to maintain face.⁶⁵ They place collective interests over the rights of individuals, and their governments may invade private life and regulate opinions.⁶⁶ Asians typically think and act collectively and respond to collective interests.⁶⁷

Individualism scores for a sampling of countries appear in the chart below.⁶⁸

Individualism – IDV “Identity”					
High Hofstede Score		World Average = 43 World Mean = 39		Low Hofstede Score	
U.S.	91	Spain	51	China	20
Australia	90	India	48	Singapore	20
U.K.	89	Japan	46	Thailand	20
Canada	80	Russia	39	S. Korea	18
Netherlands	80	Brazil	38	Taiwan	17
New Zealand	79	Germany	35	Indonesia	14

There is an important relationship between the communication contexts pioneered by Edward Hall and individualism.⁶⁹ Individualistic cultures are generally low-context communicators who prefer being direct, specific, straightforward, confrontational, and self-disclosing.⁷⁰ Collectivist cultures are generally high-context communicators who prefer being indirect,

62. See Wright, *supra* note 58.

63. *Id.*

64. See SOFTWARE, *supra* note 17, at 74.

65. See Marcus, *supra* note 55.

66. *Id.*

67. See, e.g., TRIANDIS, *supra* note 54, at 89-91.

68. See SOFTWARE, *supra* note 17, at 78-79.

69. See Pedersen Lecture, *supra* note 9.

70. See SOFTWARE, *supra* note 17, at 73-114.

ambiguous, cautious, non-confrontational, and are subtle in working through conflict.⁷¹

3. Masculinity (MAS) v. Femininity

Hofstede's masculinity dimension focuses on the degree to which a culture reinforces traditional male values and gender, such as achievement, control, power, money, recognition, challenges, assertiveness, aggressiveness, dominance, competitiveness, ambition, the accumulation of money and wealth, independence, and physical strength.⁷² The masculine orientation is towards achievement outside the home.⁷³ Masculinity is a measure of competitiveness.⁷⁴ Its central value at the masculinity pole is "win at any cost."⁷⁵ In masculine cultures, males dominate a significant portion of the country's society and power structure.⁷⁶

Traditional feminine goals are cooperation, security, pleasant relationships, modesty and care for others.⁷⁷ In feminine cultures, women are subordinated to male leadership.⁷⁸ Using the terms "assertiveness" and "cooperativeness" instead of "masculinity" and "femininity" would probably make this dimension easier to understand in contemporary society and less emotionally charged.⁷⁹

Other masculine behaviors include being loud and verbal, with a tendency to criticize and argue with others.⁸⁰ Such traits are much more predominate in individualistic cultures.⁸¹ Feminine behaviors include not raising one's voice, small talk, agreement, and being warm and friendly in conversation.⁸²

71. See *id.* at 92; Pedersen Lecture, *supra* note 9.

72. See SOFTWARE, *supra* note 17, at 117, and CULTURE'S CONSEQUENCES, *supra* note 13, at 263-64.

73. See SOFTWARE, *supra* note 17, at 117.

74. In *Exploring Cultures*, the authors refer to this dimension as one of gender, but I think "competitiveness" is a better term. See EXPLORING CULTURES, *supra* note 42, at 37.

75. See Pedersen Lecture, *supra* note 9.

76. See Culture Dimensions, *supra* note 38, and Marcus, *supra* note 55.

77. See SOFTWARE, *supra* note 17, at 118-19, and CULTURE'S CONSEQUENCES, *supra* note 13, at 263-64.

78. See CULTURE'S CONSEQUENCES, *supra* note 13, at 279-81.

79. See Daniel Q. Posin, *Mediating International Business Disputes*, 9 FORDHAM J. CORP. & FIN. L. 449, 466 n.62 (2004).

80. See EXPLORING CULTURES, *supra* note 42, at 101.

81. See *id.*

82. See *id.* at 103.

Countries ranking high on the masculinity scale include Slovakia, Japan, Switzerland, Mexico, and nations in the Arab World.⁸³ The U.S., China, Germany, Australia, Great Britain, Germany, and Italy are all above average on this scale.⁸⁴ The Scandinavian countries are among the most feminine, and Thailand and South Korea are also at the low end.⁸⁵

Masculinity scores for a sampling of countries appear in the chart below.⁸⁶

MASCULINITY – MAS“GENDER”					
High Hofstede Score		World Average = 50 World Mean = 49		Low Hofstede Score	
Slovakia	110	Italy ⁸⁷	70	S. Korea	39
Japan	95	Mexico	69	Thailand	34
Hungary	88	China	66	Finland	26
Austria	79	U.K.	66	Denmark	16
Italy	70	Germany	66	Netherlands	14
Mexico	69	U.S.	62	Norway	8
China	66	Australia	61	Sweden	5

4. Uncertainty Avoidance Index (UAI)

Hofstede’s Uncertainty Avoidance Index focuses on the level of tolerance for uncertainty and ambiguity within a culture, and it measures the extent to which people feel threatened by unstructured or unknown situations compared to the more universal feeling of fear caused by known

83. See SOFTWARE, *supra* note 17, at 120-22.

84. See *id.*

85. See *id.*

86. See *id.* at 120-21.

87. Italy’s placement in this table (as well as Mexico and China) as being in both the high and average groups is not a typographical error. With scores of 70, 69, and 66, Italy, Mexico and China appear as if they should be listed in the mid-range of values for this dimension. However, because Hofstede has indicated that the scores on all dimensions represent relative, not absolute, positions of the countries, then because Italy, Mexico and China are the seventh, eighth, and eleventh most masculine countries, they should probably be considered as also having a “high” score on this dimension. See SOFTWARE, *supra* note 17, at 120-21.

or understood threats.⁸⁸ In some ways, uncertainty avoidance represents the importance of truth in a culture as compared to other values.⁸⁹ Its central value at the high end of the uncertainty pole is “respect the law.”⁹⁰ A high uncertainty avoidance culture creates a rule-oriented society that institutes laws, rules, regulations, and controls in order to reduce the amount of uncertainty in the environment.⁹¹ Cultures high in uncertainty avoidance will distrust negotiating partners who display unfamiliar behaviors, and they will have a need for structure and ritual in the negotiation process.⁹²

High uncertainty avoidance cultures prefer rules and structured circumstances, and are wary of novel situations.⁹³ Rules are needed to maintain predictability. One must be busy and work hard. Time is money. Precision and punctuality are important. They cope with anxiety by minimizing uncertainty, attempting to minimize conflict, and choosing strategies that offer lower rewards but have higher probability of success.⁹⁴ What is unconventional is considered dangerous. Business people in these countries prefer management having precise answers to questions, precise instructions, detailed job descriptions to deal with job complexity, and avoidance of multiple bosses.⁹⁵

The way Hofstede uses uncertainty avoidance is not the same as risk avoidance.⁹⁶ However, many other people treat this measurement as a proxy for risk propensity—suggesting that high uncertainty avoidance is considered risk averse, and low uncertainty avoidance is considered risk taking.

Uncertainty Avoidance scores for a sampling of countries appear in the chart below.⁹⁷

Uncertainty Avoidance Index B UAI “Truth”					
High Hofstede Score		World Average = 64 World Mean = 70		Low Hofstede Score	
Greece	112	Germany	65	U.K.	35
Portugal	104	Thailand	64	China	30

88. See Culture Dimensions, *supra* note 38.

89. See EXPLORING CULTURES, *supra* note 42, at 37-38.

90. See Pedersen Lecture, *supra* note 9.

91. See SOFTWARE, *supra* note 17, at 164-70.

92. See *id.* at 339.

93. See *id.* at 164-70.

94. See SOFTWARE, *supra* note 17, at 170-72.

95. See *id.* at 182-86.

96. See *id.* at 172-73.

97. See *id.* at 168-69.

Japan	92	Indonesia	48	Hong Kong	29
Spain	86	U.S.	46	Sweden	29
S. Korea	85	Philippines	44	Denmark	23
Mexico	82	India	40	Singapore	8

5. Long-Term (LTO) v. Short-Term Orientation

Long-term orientation focuses on the extent that a culture embraces traditional, forward-thinking values and exhibits a pragmatic, future-oriented perspective rather than a conventional, historic or short-term point of view.⁹⁸ It is a measure of virtue for a culture.⁹⁹ Its central value at the long-term orientation pole is “sacrifice for the future.”¹⁰⁰ Cultures with a long-term orientation make long-term commitments and have great respect for tradition.¹⁰¹ There is a strong work ethic. Long-term rewards are expected as a result of today’s hard work.

Long-term orientation cultures tend to respect thrift, perseverance, status, order, sense of shame, and have a high savings rate.¹⁰² Their members tend to make an investment in lifelong personal networks,¹⁰³ what the Chinese call “guanxi” or personal connections.¹⁰⁴ There is a willingness to make sacrifices now in order to be rewarded in the future.¹⁰⁵ Asian countries score high on this dimension, and most Western countries score fairly low.¹⁰⁶

In a culture with a short-term orientation, change can occur more rapidly because long-term traditions and commitments do not become impediments to change. A short-term orientation leads to an expectation that effort should

98. *See generally id.*

99. *See* EXPLORING CULTURES, *supra* note 42, at 38-39.

100. *See* Pedersen Lecture, *supra* note 9.

101. *See* SOFTWARE, *supra* note 17, at 210-212.

102. *See id.* at 225.

103. *See id.*

104. *See* John L. Graham & N. Mark Lam, *The Chinese Negotiation*, HARV. BUS. REV., Oct. 2003, at 82, 86.

105. *See* SOFTWARE, *supra* note 17, at 210.

106. *See id.* at 211.

produce quick results.¹⁰⁷ Although it might not seem at first obvious, a short-term orientation culture has a concern for saving face.¹⁰⁸

Long-term orientation cultures may experience people from short-term orientation cultures as being irresponsible and throwing away money.¹⁰⁹ Short-term orientation cultures may experience people from long-term orientation cultures as being stingy and cold.¹¹⁰

The high long-term orientation countries are China, Japan, and other Asian “Tigers,” such as Hong Kong and Taiwan.¹¹¹ Short-term orientation countries are the U.S., Canada, Australia, United Kingdom, Philippines, Nigeria, and Pakistan.¹¹²

Long-term orientation scores for a sampling of countries appear in the chart below.¹¹³

Long-Term Orientation – LTO “Virtue”					
High Hofstede Score		World Average = 45 World Mean = 39		Low Hofstede Score	
China	11	Thailand	56	Germany	3131
Hong Kong	8	Singapore	48	Australia	29
Taiwan	96	Netherlands	44	U.S.	25
Japan	87	Norway	44	U.K.	19
S. Korea	75	Switzerland	40	Philippines	0
Brazil	65	France	39	Pakistan	

B. The Hofstede Dimension Scores

The following table shows the Hofstede dimensions scores for seventy-four countries and regions of the world.¹¹⁴

HOFSTED E DIMENSIONS¹¹⁵

107. See *id.* at 212.

108. See *id.*

109. See EXPLORING CULTURES, *supra* note 42, at 43.

110. See *id.*

111. See SOFTWARE, *supra* note 17, at 211.

112. See *id.*

113. See *id.*

114. See SOFTWARE, *supra* note 17, at 43-44, 78-79, 120-121, 168-169, 211. The authors of *Software of the Mind* also rank each country on each dimension. The rankings are not reproduced in this article, though they could be calculated by sorting the scores in the accompanying table.

Country	PDI	IDV	MAS	UAI	LTO
World Averages	55	43	50	64	45
Arab Countries	80	38	52	68	-
Argentina	49	46	56	86	-
Australia	36	90	61	51	31
Austria	11	55	79	70	-
Belgium	65	75	54	94	-
Brazil	69	38	49	76	65
Canada	39	80	52	48	23
Chile	63	23	28	86	-
China	80	20	66	30	118
Colombia	67	13	64	80	-
Costa Rica	35	15	21	86	-
Czech Republic	35	58	45	74	-
Denmark	18	74	16	23	-
East Africa	64	27	41	52	25
Ecuador	78	8	63	67	-
El Salvador	66	19	40	94	-
Estonia	40	60	30	60	-
Finland	33	63	26	59	-
France	68	71	43	86	-
Germany	35	67	66	65	31
Greece	60	35	57	112	-
Guatemala	95	6	37	101	-
Hong Kong	68	25	57	29	96
Hungary	46	80	88	82	-
India	77	48	56	40	61
Indonesia	78	14	46	48	-
Iran	58	41	43	59	-
Ireland	28	70	68	35	-
Israel	13	54	47	81	-
Italy	50	76	70	75	-

115. An excellent website devoted to Hofstede's work is available at <http://www.geert-hofstede.com>. At that site, it is possible to create a table comparing the scores of any two countries. The majority of countries do not have scores for Long-Term Orientation.

Country	PDI	IDV	MAS	UAI	LTO
Jamaica	45	39	68	13	-
Japan	54	46	95	92	80
Malaysia	104	26	50	36	-
Mexico	81	30	69	82	-
Netherlands	38	80	14	53	44
New Zealand	22	79	58	49	30
Norway	31	69	8	50	20
Pakistan	55	14	50	70	0
Panama	95	11	44	86	-
Peru	64	16	42	87	-
Philippines	94	32	64	44	19
Poland	68	60	64	93	-
Portugal	63	27	31	104	-
Russia	93	39	36	95	-
Singapore	74	20	48	8	48
South Africa	49	65	63	49	-
South Korea	60	18	39	85	75
Spain	57	51	42	86	-
Sweden	31	71	5	29	33
Switzerland	34	68	70	58	-
Taiwan	58	17	45	69	87
Thailand	64	20	34	64	56
Turkey	66	37	45	85	-
United Kingdom	35	89	66	35	25
United States	40	91	62	46	29
Uruguay	61	36	38	100	-
Venezuela	81	12	73	76	-
Vietnam	70	20	40	30	80
West Africa	77	20	46	54	16

c. *Trompenaars and Hampden-Turner's Cultural Dilemmas*

Fons Trompenaars and Charles Hampden-Turner provide a theory of cross-cultural differences that, while not directly dealing with negotiation, has wide application to cross-cultural negotiation and dispute resolution. The Trompenaars Hampden-Turner (THT) model focuses on major

dimensions of differences that they claim best account for the major differences between national cultures.¹¹⁶ They see some cultures as being mirror images of other cultures.¹¹⁷ In their many publications on the subject of cultural differences, they have named these differences in several different ways and sometimes described them as “dilemmas.”¹¹⁸ They talk about the fact all people face the same problems or dilemmas, and they believe that responses to these dilemmas vary widely between people of different countries.¹¹⁹

The THT classifications come from thousands of questionnaires administered to managers who have attended their trainings,¹²⁰ and focus on people’s relationship to time, nature, and other human beings.¹²¹ According to their theory, when faced with certain basic dilemmas, various cultures would react differently (“go a different way” as they say).¹²²

Their classification factors are: Universalism v. Particularism, Individualism v. Communitarianism, Specificity v. Diffusion, Neutral v. Affective, Achievement v. Ascription, Equality v. Hierarchy, Internal v. External Time.

These factors are usually discussed in the same order (starting with universalism and ending with time), although this article will present them in a slightly different order because some of the classifications are similar to some of the previously discussed Hofstede dimensions. In addition, in some

116. Charles M. Hampden-Turner & Fons Trompenaars, *A Mirror-Image World: Doing Business in Asia*, in *MANAGING ACROSS CULTURES: ISSUES AND PERSPECTIVES* 144-45 (Malcom Warner & Pat Joynt eds., 2d ed. 2002) [hereinafter *Mirror-Image*].

117. *Id.* at 143-44.

118. See, e.g., *SEVEN CULTURES*, *supra* note 13; FONS TROMPENAARS & CHARLES M. HAMPDEN-TURNER, *RIDING THE WAVES OF CULTURE* (2d ed. 1998) [hereinafter *RIDING*]. Both books have only very short formal sections on negotiation, but much if not all of the content of the books focuses on ideas that would be useful in cross-cultural negotiating and disputing. *SEVEN CULTURES*, *supra* note 13, at 35-37; *RIDING*, *supra* note 118, at 111-17, 195-96. See also CHARLES M. HAMPDEN-TURNER & FONS TROMPENAARS, *BUILDING CROSS-CULTURAL COMPETENCE: HOW TO CREATE WEALTH FROM CONFLICTING VALUES* (2000); FONS TROMPENAARS & CHARLES HAMPDEN-TURNER, *21 LEADERS FOR THE 21ST CENTURY: HOW INNOVATIVE LEADERS MANAGE IN THE DIGITAL AGE* (2001) [hereinafter *21 LEADERS*].

119. See *Mirror-Image*, *supra* note 116, at 143-44.

120. The first book was supposedly based upon 15,000 questionnaires. See *SEVEN CULTURES*, *supra* note 13, at ix. Subsequent publications were based upon 30,000 questionnaires and still later 45,000 questionnaires. See *RIDING*, *supra* note 118, at 2.

121. See *RIDING*, *supra* note 118, at 28. Their terminology actually comes mainly from work done nearly forty years earlier. See PARSONS & SHILS, *supra* note 38, and KLUCKHOHN & STRODTBECK, *supra* note 38.

122. See *Mirror-Image*, *supra* note 116, at 144.

discussions of the factors by THT they assign point totals which can be used to place countries on a spectrum between the extreme ends of each polar opposite scale.¹²³ Usually, THT classification numbers play a far lesser role of importance in the use of these classifications than do the numbers associated with the Hofstede dimensions.

Although Hofstede and THT seem to have a few overlapping classifications,¹²⁴ THT claim to interpret data differently than Hofstede does,¹²⁵ and criticize Hofstede's approach.¹²⁶ In addition, THT show some similar dimensions and classify some countries in the same clusters as does Hofstede. Also, THT's time dimension of "time as sequence v. time as synchronization" is very similar to Edward T. Hall's early conception of "monochronic" and "polychronic" time.¹²⁷

1. An individual or collective focus?

THT's classification of individualism v. communitarianism (relabelled here as collectivism) appears to be almost identical to Hofstede's individualism. The question is: Do people regard themselves primarily as individuals or primarily as part of the group? Is the focus whether people function as a group or individuals? The impact on negotiation and dispute resolution is fairly obvious. Are the negotiation goals the goals of individuals or the goals of the group? Will self-interest or community interests be most important? There is likely also a major link to decision making. How will the decision be made on whether to accept the terms of a business deal or to settle a business dispute? Will one or just a few people make the final decision, or will a large number of people be consulted and will their collective agreement be required? Russia, the United States, Netherlands, Denmark, Switzerland, Australia, and the United Kingdom have high scores on individualism, and on the other hand, India, Japan,

123. In some presentations of their theory, THT present answers to specific questions from surveys that have administered to many people in the form of numerical scores for each country. See *Mirror-Image*, supra note 116, at 144. In other presentations of their theory, they assign a single number to each country for each of their classifications. See 21 LEADERS, supra note 118, at 22.

124. THT's Individualism v. Communitarianism seems to be about the same as Hofstede's individualism v. collectivism, and THT's achieved status v. ascribed status seems to be very similar to Hofstede's power distance index. See supra section b. 1-2.

125. See RIDING, supra note 118, at 253.

126. See RIDING, supra note 118, at 27.

127. Compare *Mirror-Image*, supra note 116, at 158-61, with HIDDEN DIMENSION, supra note 18, at 173-74.

South Korea, Mexico, Singapore, France, and China are high on communitarianism.¹²⁸

2. Status and Equality

The categories of achievement v. ascription and equality v. hierarchy seem closely connected and in combination seem to reflect the Hofstede Power-Distance dimension. In achievement cultures, status comes from what a person has accomplished in life and their specific performances. In these cultures, “everyone is created equal” and their accomplishments define the person. People can “earn” merit. In ascription cultures, status is attributed to birthrights, kinship, family background, age, gender, personal connections, and which school you attended (but not how well you did in that school). In such cultures, status often is hereditary. In either type of culture, whether status is derived by achievement or through entitlement, people in both these types of cultures respect that status.¹²⁹ People in Canada, the United States, United Kingdom, all earn status through achievement, and on the other hand, people from Korea, China, India, Japan, and Singapore all ascribe status.¹³⁰

The idea of status leads directly to the issue of hierarchy. Cultures differ on whether people are all considered equal (“one man, one vote”) or whether there is a hierarchy of judgment and people at the top of the hierarchy are respected more and make the decisions. THT illustrate the hierarchy/equality perspectives for different cultures by using triangles.¹³¹ Cultures that seem to balance hierarchy and equality are represented by triangles that have sides of equal length. Cultures that more value hierarchy are represented by triangles that have sides that are twice as high as the triangle’s base. Cultures that value equality more are represented by triangles that are five times as wide as they are high.

128. See 21 LEADERS, *supra* note 118, at 20.

129. In many cultures, it would be inappropriate to send a young (even a very accomplished young) person to negotiate with an older person. The younger person would not be seen as a person of equal status.

130. 21 Leaders, *supra*, note 118, at 20.

131. Seven Cultures, *supra* note 13, at 95.

3. Time

A final THT classification that seems closely related to cultural factors previously mentioned is the classification of time as being “time as sequence v. time as synchronization.” THT researched this classification by allowing people to draw different sized circles of the past, present, and future, and allowing those circles to be arranged any way the person wanted. Some cultures represented time as a linear process in which events happen in sequence and punctuality is a virtue. In such cultures, time is seen as a straight line and a race. These people do one thing at a time. On the other hand, other cultures saw time as a synchronous cycle in which people do many things at once and punctuality is much less important. Other values, such as taking the additional time to nurture relationships, may be more important than being time efficient. These people do not mind being kept waiting because there is so much else going on. These people do several things at once, see time as moving in a circle and as a dance.

This classification is important for the structure of negotiations, as well as determining how much the past and present is seen as impacting the future. Must traditions be highly respected, or can they be safely ignored? This THT dimension is very similar, if not exactly the same as Edward Hall’s concepts of monochronic and polychronic time. According to Hall,¹³² monochronic time is characterized as linear, tangible, and divisible. In monochronic time, events are scheduled one item at a time and this schedule takes precedence over interpersonal relationships. Polychronic time, on the contrary, is characterized by “the simultaneous occurrence of many things and by a great involvement with people.”

4. Other THT classifications

An interesting THT classification that might have a considerable impact on negotiations is universalism versus particularism. Universalists prefer to follow specific, standard rules all of the time and particularists prefer a flexible approach to unique situations. Universalists try to do the “right” thing every time, and particularists fit their actions to the particular situation.

This classification of universalism versus particularism has a link to individualism and collectivism because in essence it is weighing the importance of relationship and connectedness to a group. In a sense it is asking, “What is more important, rules or relationships?” Anglo cultures place high value on rules, and Asian cultures place high value on relationships.

132. Edward T. Hall, *Beyond Culture* (1976).

Universalists will likely place high value on the exact wording of a contract and expect the contract to be complied with no matter what happens. The particularist will see the contract as only a rough guideline or approximation of the relationship at a certain point in time and a statement of original intent.¹³³ If conditions change, they will expect the contract to be readjusted.

Another way of saying this is that this classification is about how one balances obligations to one's in-group with obligations to society at large.¹³⁴ Individualist societies take a "universalist" perspective, which is to apply rules across the board. A universalist believes that what is right is right, regardless of the circumstances or who is involved. Certain absolutes exist and the same rules should apply to similar situations. A universalist would treat everyone the same, making no exceptions for family, friends, or members of one's group.¹³⁵ They put feelings aside and look at things objectively.¹³⁶ However, Particularists take circumstances into account, and believe that what is right in one situation may not be right in another. Personal feelings should be relied upon, not ignore. The United States, Finland, Canada, Denmark, and the United Kingdom all have high scores for universalism, and on the other hand, Russia, South Korea, India, Singapore, France, China, Japan, and are all relatively particularistic.¹³⁷

Another classification is neutral versus affective.¹³⁸ Essentially, this is about whether emotions are controlled and interactions are objective and detached or, on the other hand, if it is acceptable to display emotions openly. This classification goes to what is "proper" behavior in negotiations. In some cultures, people are expected to be more machine-like, and in other cultures people are likely to be loud and often get angry in negotiations. Again, this goes to behavior in negotiations, not what the people are negotiating about.

133. Trompenaars & Hampden-Turner, *supra* note 76, at 40.

134. Gold, *supra* note 12, at 297.

135. *See id.*

136. Gold, *supra* note 12, at 297.

137. Trompenaars & Hampden-Turner, *supra* note 76, at 20.

138. Interestingly, Charles Hampden-Turner sees this classification as more "stylistic, not fundamental" and does not include it in the books where his name as author comes before Fons Trompenaars'.

Specific versus diffuse is yet another classification.¹³⁹ To some degree this is like the Myers-Briggs Type Indicator (MBTI) classification of Sensing versus Intuition. Is the focus on the details or the big picture? The THT focus here is how far people get involved.¹⁴⁰ Specific cultures focus on just the task at hand. Diffuse cultures look more at the whole person. Specific cultures are direct, open, and to the point. Diffuse cultures are indirect and flexibility is very important. Everything is connected to everything else.¹⁴¹ The specific versus diffuse classification, sometimes called high and low context,¹⁴² is therefore related to Edward Hall's high and low context communication. It suggests that in some cultures, you need to do business with "the whole person," and you cannot do business until you have developed a personal relationship with the other party.¹⁴³ Business is not just business. Business is relationships.

The final classification of THT is sometimes referred to as "attitude towards the environment," or "internal control versus external control," or "inner-directed versus outer-directed" orientation. It is related to the question of whether we control our environment or it controls us. Can you control your own destiny, or do you believe that fate, destiny and acceptance are part of life? Are you stimulated by inner drive and a sense of control or do you adapt to external events that are beyond your control? Anglos tend to be high in the belief of internal control, and Asians rank mid and low on this classification. Canada, the United States, South Korea (perhaps surprisingly), and the United Kingdom have a strong inner direction. On the other hand, Japan, Russia, Singapore, and China have a strong outer focus.¹⁴⁴

Inner directed cultures believe that they can and should control nature by imposing their will upon it. They can have a dominating attitude bordering on aggressiveness towards the environment. Conflict and resistance means you have convictions. Focus is on the self and your own organization. "Hard ball" is legitimate. It is most important to "win."

139. Sometimes this classification is called "analyzed specifics versus integrated wholes," See, WARNER & JOYNT, *supra* note 75, at 144.

140. See TROMPENAARS & HAMPDEN-TURNER, *supra* note 88, at 83-101.

141. See *id.* at 89.

142. See *id.* at 92.

143. The common perception is that a person cannot do business with someone from Japan until a relationship has been established through social times spent together socializing, drinking, etc. See Graham and Sano's approach to the importance of what they call "non-tasking" sounding when doing business with the Japanese. See, JOHN GRAHAM & YOSHIHIRO SANO, SMART BARGAINING: DOING BUSINESS WITH THE JAPANESE (Harper & Row 1989); HODGSON ET AL., DOING BUSINESS IN THE NEW JAPAN (Rowman & Littlefield 2000).

144. TROMPENAARS & HAMPDEN-TURNER, *supra* note 76, at 20.

Outer-directed cultures see an organization itself as a product of nature and to favor an ecological balance. These cultures are seen as having a flexible attitude, and a willingness to compromise and keep peace. Harmony and responsiveness are important. Focus is on the “other” — the customer, partner, and colleague. Softness, persistence, politeness and long, long patience will get rewards. It is most important to maintain the relationship involved.

d. Richard D. Lewis’ Cultural Model

Another interesting model of cultural differences useful for negotiation and conflict resolution is one created by Richard D. Lewis.¹⁴⁵ Instead of using a classification system of polar opposites like Hofstede’s (e.g., individualism versus collectivism) or Trompenaars’ (e.g. universalism versus particularism), Lewis classifies cultures into three groups, which he calls Linear-active, Multi-active, and Reactive.

People in “Linear-active” cultures are task-oriented, highly organized planners, who prefer to do one thing at a time in a linear sequence. They plan, schedule, organize, and pursue topics in a straight-line, direct manner. Germans, Swiss, Americans (WASPs),¹⁴⁶ Scandinavians, Austrians, British, and South Africans are examples of linear-active cultures.

People in “Multi-active” cultures are extroverted and people-oriented. They are lively, loquacious people who do many things at once, organizing their priorities based upon the thrill or importance of the thing at the moment, and not according to a strict time schedule. Hispanic Americans, Italians, Latin Americans, Spaniards, Africans, Portuguese, and Arabs are examples of linear-active cultures.

People in a “Reactive culture” are introverted, respect-oriented people who are reluctant to initiate firm action or be involved in opinionated discussions. They prefer to listen to the other person’s opinion first, and then react to it as they formulate their own opinion. Even in conflict, they value courtesy and respect. They usually listen quietly and unemotionally to their negotiation partner, and react carefully to the other side’s proposals. Chinese, Japanese, Vietnamese, Koreans, and Singaporeans are examples of linear-active cultures.

145. See Lewis, *supra* note 13 (classifying cultures into three groups called, linear-active, multi-active, and reactive).

146. WASP - White Anglo-Saxon Protestants.

Lewis' estimates that the world's population is about ten percent Linear-active, twenty-nine percent Reactive, fifty-six percent Multi-active, and five percent Hybrid (Multi-active and Reactive).¹⁴⁷ Lewis attempts to sidestep the stereotyping issue by referring to "national norms."¹⁴⁸

The ten most common traits of the cultures in the Lewis Model are in the table below:

Linear-Active Culture	Multi-Active Culture	Reactive Culture
introvert	extrovert	introvert
patient	impatient	patient
quiet	talkative	silent
minds own business	inquisitive	respectful
likes privacy	gregarious	good listener
plans ahead	plans grand outline only	looks at general principles
punctual	unpunctual	punctual
Sticks to facts	juggles facts	statements are promises
gets information from statistics, reference books, database	gets first-hand oral information	uses both
rarely interrupts	interrupts frequently	doesn't interrupt
separates social and professional	interweaves social/professional	connects social and professional

Using the three-prong approach, Lewis presents a very attractive graphic arranging his three cultural types in triangle, with the terms linear-active,

147. LEWIS, *supra* note 13, at 41.

148. *Id.* at xvii.

multi-active, and reactive, at corners of the triangle.¹⁴⁹ Each corner of the triangle in Lewis’ model is a different color. Circles representing the countries are placed along the sides of the triangle. As various countries’ circles are positioned farther from a corner of the triangle (representing that those countries are less extreme in their characteristics in the Lewis Model and are more of a blend of two of the three traits than the countries at the corners of the triangle), the colors blend together to form new colors (e.g. the blue at one triangle corner and yellow at another corner blend into various shades of green as they move away from the triangle points along the sides of the triangle). Lewis also offers various lists of characteristics of each of the three cultural types that could be helpful in preparing for and conducting negotiations and mediations. Lewis explains a number of areas where these cultures differ. Many of the areas might be useful in conflict resolution, such as communication patterns, purposes and use of communication, individual versus organizational goals,¹⁵⁰ logic versus emotions, amount of talking, willingness to follow the rules,¹⁵¹ focus on agenda, respect for “power distance”,¹⁵² the importance of written contracts, focus on profit, separation of social and professional lives, “face”, importance of truth, facts versus feelings, and logic versus emotion. See the table below.¹⁵³

Linear-Active Culture	Multi-Active Culture	Reactive Culture
Talks half the time Talks and listens in	Talks most of the time	Listens most of the time

149. See, Richard D. Lewis, *Working in a Global Environment* (2005), available at http://www.konverentsid.ee/files/doc/2005_JUHTIMINE/LEWIS_slaidid.ppt#456,17, Slide 17 (last visited Mar. 8, 2008). See also Lewis’ website, available at <http://secure.cultureactive.com>.

150. Similar to Hofstede’s “individualism” and “collectivism.”

151. Lewis’ linear-active’s “values and follows rules” sounds similar to Trompenaaras’ “universalism” and the Reactive’s “interprets rules flexibly” sounds similar to Trompenarras’ “particularism.” See Lewis, *supra* note 13.

152. “Power Distance” is a Hofstede concept.

153. The characteristics for the table are taken from a powerpoint presentation at the Duke University Fuqua School of Business. Arie Y. Lewin & Jeff Russell, *Cultureactive.com as a Teaching Resource in GATE Study Tours*, available at http://faculty.fuqua.duke.edu/ciber/site2006/programs/Presentations/Russell_finalCIBERGATEpresentationMay182007.pdf (last visited Mar. 19, 2008).

equal degrees		
Does one thing at a time	Does several things at once	Reacts to partner's action
Plans ahead step by step	Plans grand outline only	Looks at general principles
Polite but direct	Emotional	Polite, indirect
Partly conceals feelings	Displays feelings	Conceals feelings
Confronts with logic/facts	Confronts emotionally	Never confronts
Dislikes losing face	Has good excuses	Must not lose face
Dislikes losing face	Rarely loses face	Must not lose face
Rarely interrupts	Often interrupts	Doesn't interrupt Never interrupts
Task-oriented	People-oriented	Very people-oriented
Sticks to facts	Feelings before facts	Statements are promises
Truth before diplomacy	Flexible truth	Diplomacy over truth
Uses official channels	Seeks out key person	Uses network
Promotes product	Promotes personal relationships	Promotes inter-company harmony
Speech is for information	Speech is for opinions	Speech is to promote harmony
Admits own mistakes	Justifies own mistakes	Hides, covers up mistakes
Completes action chains	Completes human transactions	harmonizes by doing things at appropriate times
Bad orders can be discussed	Bad orders should be circumvented	An order is an order
Punctual, time-dominated	Relaxed about time	Focuses on doing things in the correct order
Partly conceals	Displays feelings	Conceals feelings

feelings		
Follows linear agenda	Diverges frequently from agenda	Follows circular agenda
Separates personal and business life	Intertwines business and social life	Links business and social life
Cool	Excitable	Inscrutable
Defines problems and solves in quick sequence	Goes for all-embracing solutions	Prefers gradualist solutions
Limited body language	Lots of body language	Hardly any body language
Plans ahead step by step	Plans grand outlines	Reacts to other's plans
Respects facts and figures	Respects oratory, expressiveness charisma	Respects age, wisdom, experience
Task-oriented	People-oriented	Very people-oriented
Has individual goals	Has intimate-circle goals	Has company goals
Frank, direct	Indirect, manipulative	Indirect, courteous

Lewis says that nationals of different cultures do not share the same view of the negotiation process and they negotiate in completely different ways.¹⁵⁴ They differ in their beliefs on how negotiations should proceed.¹⁵⁵ For example, Americans believe that compromise is an important part of negotiation, but not all cultures have the same positive view of compromise. The Japanese see compromise as a departure from a previously, company-wide determined consensus on an issue, and the French may see compromise as a “crude tactic for chiseling away at the legitimate edifice of reason they have so painstakingly constructed.”¹⁵⁶ These different cultures also have different hierarchies of negotiation objectives.¹⁵⁷ Linear-actives focus on the

154. LEWIS, *supra* note 13, at 162.

155. *Id.*

156. *Id.* at 168.

157. *Id.* at 164.

“current deal,” multi-actives focus on “national honor,” and reactives focus on harmonious relationships and “direction taking.”¹⁵⁸

II. A SPECIFIC CULTURAL FOCUS ON DOING BUSINESS IN JAPAN AND CHINA

a. An early focus on Japan

Because Japan became the first very successful Asian economy, much of the early writing about “doing business in Asia” was written about doing business with the Japanese.¹⁵⁹ Now that China has risen to economic prominence, and the potential of more than one billion consumers, makes many businesses salivate, China is the focus of most writing about negotiating in Asia. The writing about negotiating in other Asian countries is rather sparse¹⁶⁰ and is most often found as a chapter in larger books about “doing Business in Country X,” or as part of a chapter in a book about many countries’ business practices.¹⁶¹

158. *Id.*

159. ROBERT T. MORAN, *GETTING YOUR YEN’S WORTH: HOW TO NEGOTIATE WITH JAPAN*, INC. (1985); ROSALIE L. TUNG, *supra* note 11 at 231; MARK ZIMMERMAN, *HOW TO DO BUSINESS WITH THE JAPANESE* (1985); DON R. MCCREARY, *JAPANESE-U.S. BUSINESS NEGOTIATIONS: A CROSS-CULTURAL STUDY* (1986); ROBERT M. MARCH, *THE JAPANESE NEGOTIATOR: SUBTLETY AND STRATEGY BEYOND WESTERN LOGIC* (1991); JOHN L. GRAHAM & YOSHIHIRO SANO, *SMART BARGAINING: DOING BUSINESS WITH THE JAPANESE* (REV. ED. 1989); CHRISTALYN BRANNEN & TRACEY WILEN, *DOING BUSINESS WITH JAPANESE MEN: A WOMAN’S HANDBOOK* (1993).

160. Two very interesting exceptions are RICHARD SACCONI, *NEGOTIATING WITH NORTH KOREA* (2003) and RICHARD SACCONI, *NEGOTIATING YOUR WAY THROUGH KOREA* (2001), detailing the hard-ball competitive negotiation techniques of North Korea.

161. See RAYMOND COHEN, *NEGOTIATING ACROSS CULTURES: INTERNATIONAL COMMUNICATION IN AN INTERDEPENDENT WORLD* (rev. ed. 1997) (focusing on the high-context communication countries of China, Egypt, India, Japan, and Mexico); JESWALD W. SALACUSE, *MAKING GLOBAL DEALS: WHAT EVERY EXECUTIVE SHOULD KNOW ABOUT NEGOTIATING ABROAD* 58-70 (2003); TERRI MORRISON ET AL., *KISS, BOW, OR SHAKE HANDS: HOW TO DO BUSINESS IN SIXTY COUNTRIES* (1995); JEANNE M. BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* (2007); PERVEZ N. GHAURI & JEAN-CLAUDE USUNIER, *INTERNATIONAL BUSINESS NEGOTIATIONS* (2001); FRANK L. ACUFF, *HOW TO NEGOTIATE ANYTHING WITH ANYONE ANYWHERE AROUND THE WORLD* (1993); GLEN FISHER, *INTERNATIONAL NEGOTIATION: A CROSS-CULTURAL PERSPECTIVE* 17-59 (1982); DONALD W. HENDON ET AL., *CROSS-CULTURAL BUSINESS NEGOTIATIONS* (1999); KEVIN AVRUCH, *CULTURE & CONFLICT RESOLUTION* (1998); SANJYOT P. DUNUNG, *DOING BUSINESS IN ASIA: THE COMPLETE GUIDE* (1995).

1. Smart Bargaining with the Japanese

John L. Graham and Yoshihiro Sano, in their book *Smart Bargaining: Doing Business with the Japanese*,¹⁶² offered eight specific tactics for negotiating with the Japanese. Graham and Sano suggested: 1. Let the Japanese bring up business; 2. try not to interrupt them; 3. ask questions before making counter offers; 4. expect and allow for silence; 5. expect high price demands and ask questions; 6. consider all issues together, not one at a time; 7. present one face for your team; and 8. use informal channels of communication and avoid threats. A video tape that goes with the book shows that effective and effective negotiators apply these tactics.¹⁶³

2. Japan External Trade Organization's (JETRO) Description

An excellent, early source of information about negotiating with Japan, *Negotiating with the Japanese*, was published by JETRO (Japan External Trade Organization) in 1994. That publication covers the topics of business relationships in Japan, building trust, differing attitudes to contracts, disputes and their causes, "insiders" and "outsiders," flexibility based on long-term relationships, benign neglect and long-term objectives, the problem of time, working within the Japanese hierarchy, and the dangers of legal action. The publication is no longer in print or available on the JETRO website, but it can be found in internet archives.¹⁶⁴

3. A Japanese view of American Negotiators

An anonymous account of the American negotiation style written hypocrofully (it is believed) called, *A Japanese View of American Negotiators*, describes American negotiators as: difficult to understand, unpredictable and erratic, ignorant of commonly known facts, lacking humility, very rigid about signed contracts, willing to argue among themselves, making first offers that they know are unreasonable, using

162. Graham & Sano, *supra* note 142. *Smart Bargaining* was later revised and published as JAMES DAY HODGSON, YOSHIHIRO SANO & JOHN L. GRAHAM, *DOING BUSINESS WITH THE NEW JAPAN* (2000).

163. Videotape: *Smart Bargaining: Doing Business with the Japanese* (rev. ed. 1989).

164. JETRO (Japan External Trade Organization), *Negotiating with the Japanese*, available at <http://web.archive.org/web/19980124224926/www.jetro.go.jp/Negotiating/index.html>, (last visited Mar. 4, 2008).

humor that is hard to understand, seldom taking naps during the negotiation, concentrating on one problem at a time, and having the disturbing habit of very quickly passing over the areas of agreement and giving high emphasis to disagreements.¹⁶⁵

4. Hearing the Indirect “No” - Sixteen Ways the Japanese say “No”

For low context Americans, a simple “Yes” or “No” usually sends a clear, direct, unambiguous message. In Asia, these words might be quite confusing to understand. The word “Yes,” might mean more “Yes, I understand what you just said” rather than “Yes, I agree with what you just said.” Asians are known to often give indirect answers and to avoid saying “No” to a request in order to maintain the relationship and not hurt someone’s feelings even if that someone is a stranger. A rather famous communication article¹⁶⁶ gives sixteen ways the Japanese avoid saying “No.” Of course, such alternatives ways of saying “No” might occur in any Asian or high context country. The “Non-no’s” include: silence, counter questions, tangential responses, leaving, lying, making an excuse, criticizing the question itself, refusing the question, giving a conditional “No,” a “Yes, but” answer, delaying answers, and offering an apology. Responding by giving a “No” is also an issue for American negotiators.¹⁶⁷ An interesting way to practice giving such a “Non-no” is to play the game called “No Maybe,” where the purpose is to avoid giving a direct “No.”¹⁶⁸

B. A Focus on China

Lucian Pye’s 1982 book, *Chinese Negotiating Style*,¹⁶⁹ was perhaps the first serious description of the Chinese negotiation style.¹⁷⁰ In that early

165. Reprinted in LEONARD L. RISKIN ET AL., *DISPUTE RESOLUTION AND LAWYERS* 259 (3rd ed 2005) and JAMES ABEGGLEN ET AL., *JAPANESE LAW IN CONTEXT: READINGS IN SOCIETY, THE ECONOMY, AND POLITICS* 231 (2001).

166. Keiko Ueda, *Sixteen Ways to Avoid Saying No in Japan*, in *INTERCULTURAL ENCOUNTERS WITH JAPAN* (J.C. Condon & M. Saito, eds., 1974).

167. See WILLIAM URY, *GETTING PAST NO* (1993). See also WILLIAM URY, *THE POWER OF A POSITIVE NO: HOW TO SAY NO AND STILL GET TO YES* (2007).

168. See ELIZABETH CHRISTOPHER & LARRY SMITH, *NEGOTIATION TRAINING THROUGH GAMING: STRATEGIES, TACTICS, AND MANEUVERS* (1991) (showing the “No Maybe” simulation).

169. LUCIAN W. PYE, *CHINESE NEGOTIATING STYLE: COMMERCIAL APPROACHES AND CULTURAL PRINCIPLES* (1992).

170. Other books about or including materials about negotiating with the Chinese include: RICHARD H. SOLOMON, *CHINESE POLITICAL NEGOTIATING BEHAVIOR 1967-1984* (1995), and VERNER WORM, *VIKINGS AND MANDARINS: SINO-SCANDINAVIAN BUSINESS COOPERATION IN CROSS-CULTURAL SETTINGS* (1997).

book, Pye is discusses many aspects of Chinese negotiating behavior that were both prevalent in the late 1970s and early 1980s as China was just starting with a market economy. Most of those descriptions are equally relevant to today's China.

The earliest popular books about Chinese business practices, including aspects of negotiation, might be two entertaining works of Chin-Ning Chu, *The Chinese Mind Game*,¹⁷¹ and *The Asian Mind Game*.¹⁷² Both of these books detail aspects of the Thirty-six Strategies as a basis for Chinese behaviors in all aspects of life.

John Graham and Mark Lam wrote about eight important elements in negotiating with the Chinese: 1) "guanxi" (person connections), 2) "zhongjian ren" (the intermediary), 3) "shehui dengji" (social status), 4) "renji hexie" (interspousal harmony), 5) "zhengti guannian" (holistic thinking), 6) "jiejian" (thrift), 7) "miannzi" ("face" or social capital), and 8) "chiku nailao" (endurance, relentlessness).¹⁷³ Graham, who made a great contribution to understanding negotiating with Japanese,¹⁷⁴ has more recently been focusing on China. Lam and Graham's book, *China Now*,¹⁷⁵ is a very useful book, which includes significant sections about negotiating with the Chinese. In this book the authors apply the four-part model that Graham developed for negotiating with the Japanese to the Chinese negotiators.

In *Negotiating China*,¹⁷⁶ Carolyn Blackman, provides a quick reference chart to Chinese negotiating characteristics and tactics,¹⁷⁷ listing twenty-four Chinese negotiating characteristics and tactics, responses to those tactics, the cultural background for the behavior, and references to the case studies in the book that discuss the tactic. Blackman's list includes: concentration on price, the practice of renegotiating the contract after the contract is signed, stalling, using false authority, psychological pressure, creating an adversarial atmosphere, and repetitive questioning to name just a few.

171. CHIN-NING CHU, *THE CHINESE MIND GAME: THE BEST KEPT TRADE SECRET OF THE EAST* (1988).

172. CHIN-NING CHU, *THE ASIAN MIND GAME* (1991).

173. See John L. Graham & N. Mark Lam, *The Chinese Negotiation*, 81 HARV. BUS. REV. 82 (2003).

174. See GRAHAM & SANO, *supra* note 142; HODGSON ET AL., *supra* note 142.

175. N. MARK LAM & JOHN L. GRAHAM, *CHINA NOW* (2007).

176. CAROLYN BLACKMAN, *NEGOTIATING CHINA: CASE STUDIES AND STRATEGIES* (1998).

177. *Id.* at xv-xviii.

Two other books about Chinese negotiating behavior, Tony Fang's *Chinese Business Negotiating Style* and March and Wu's, *The Chinese Negotiator* are also excellent resources on Chinese negotiation behavior. These books will be discussed later with the focus on the "Thirty-six Strategies."

The Thirty-six Strategies

Probably the most famous two pieces of Chinese cultural literature that can be applied to cross-cultural negotiation are Sun Tzu's *The Art of War* and the *Thirty-six Strategies*.¹⁷⁸ This article will focus on the Thirty-six Strategies. The Thirty-six Strategies or Stratagems are a collection of tactics that can be applied to very different situations. In China, the tactics are somewhat like proverbs or folklore. They have been described as "gems that speak to the cores of Chinese society."¹⁷⁹ Chinese children learn them¹⁸⁰ just like Americans learn nursery rhymes. They are taught in school, found in literature, popular folk opera, and sometimes even in television programs.¹⁸¹ It is said that these strategies have become part of the "collective unconscious" of most Chinese people.¹⁸² The strategies are derived from military tactics applied during the Warring States Period (403-221 B.C.) or during the Three Kingdom Period (220-265 B.C.).¹⁸³ Just about anyone who has "grown up Chinese" (meaning that they have grown up in a Chinese home that respects and teaches Chinese traditions) know these Thirty-six Strategies. The author (or authors) of the strategies are unknown.

178. See, CHIN-NING CHU, *THE CHINESE MIND GAME* (1988) (describing thirty-two of the thirty-six strategies); CHIN-NING CHU, *THE ASIAN MIND GAME: UNLOCKING THE HIDDEN AGENDA OF THE ASIAN BUSINESS CULTURE – A WESTERNER'S SURVIVAL MANUAL* (1991) (describing all thirty-six strategies); YUAN GAO, *LURE THE TIGER OUT OF THE MOUNTAINS: THE THIRTY-SIX STRATAGEMS FROM ANCIENT CHINA* (1991); SUN HAICHEN, *THE WILES OF WAR: 36 MILITARY STRATEGIES* (1991); HARRO VON SENER, *THE BOOKS OF STRATAGEMS: TACTICS FOR TRIUMPH AND SURVIVAL* (1988); LAURENCE J. BRAHM, *NEGOTIATING IN CHINA: 36 STRATEGIES* (1996); TONY FANG, *CHINESE BUSINESS NEGOTIATION STYLES*, (1999); LAURENCE J. BRAHM, *DOING BUSINESS IN CHINA: THE SUN TZU WAY* (2004) (a book mainly about the Art of War); ROBERT M. MARCH & SU-HUA WU, *THE CHINESE NEGOTIATOR: HOW TO SUCCEED IN THE WORLD'S LARGEST MARKET* 145 (2007); John Chu, *The Art of War and East Asian Negotiating Styles*, 10 WILLAMETTE J. INT'L. L. & DISP. RESOL. 161 (2002).

179. MARCH & WU, *supra* note 177, at 145.

180. See CHU, *supra* note 177, at 156.

181. BRAHM, *supra* note 177, at xii.

182. *Id.*

183. BRAHM, *supra* note 177, at xii.

Although somewhat known in the Western world for many years,¹⁸⁴ the Thirty-six Strategies have taken on greater significance as many foreigners have tried to learn more about the Chinese and to do more business with the Chinese. The Thirty-six Strategies have become a part of a number of various ancient military approaches that have been modified and applied to the world of business.¹⁸⁵ Although web searches for “36 strategies” will find many web sites about the strategies and numerous links for commercial courses on applying the Thirty-six Strategies to negotiating with the Chinese, there appear to be only a few authors who have written books that focus on the Thirty-six Strategies and negotiations.¹⁸⁶

The previously mentioned books by Chin-Ning Chu, *The Chinese Mind Game* and *The Asian Mind Game*, offer what is probably the first popular explanations of the Thirty-six Strategies. Chu did not link the strategies to negotiating with the Chinese, but she did explain the ancient Chinese battle tactics that are supposedly the forerunners of each strategy.¹⁸⁷

The first book specifically focused on the Thirty-six Strategies and negotiation, *Negotiating in China: Thirty-six Strategies*,¹⁸⁸ was written by my former student, now old China hand, and long-time friend,¹⁸⁹ Laurence Brahm. In his book, Brahm uses stories about ancient Chinese military tactics to explain the Thirty-Six Strategies along with contemporary negotiation stories about negotiating with the Chinese. Laurence’s stories about the Thirty-Six Strategies are a major source for research about the Thirty-Six Strategies.

184. *The Secret Art of War: Thirty-six Strategies* was first published in the 1940s. See MARCH & WU, *supra* note 177, at 146.

185. See generally, WESS ROBERTS, LEADERSHIP SECRETS OF ATILLA THE HUN (1987); MARK MCNEILLY, SUN TZU AND THE ART OF BUSINESS (1996); SUN TZU, THE ART OF WAR (1910); MIYAMOTO MUSASHI, THE BOOK OF FIVE RINGS (1982); I CHING.

186. CHU, THE CHINESE MIND GAME, *supra* note 177 (describing thirty-two of the thirty-six strategies); CHU, THE ASIAN MIND GAME, *supra* note 177 (describing all thirty-six strategies); BRAHM, NEGOTIATING IN CHINA: 36 STRATEGIES, *supra* note 177, at xii; LAURENCE J. BRAHM, WHEN YES MEANS NO! (OR YES OR MAYBE) HOW TO NEGOTIATE A DEAL IN CHINA (2003); FANG, *supra* note 177.

187. *The Chinese Mind Game* describes thirty-two of the thirty-six strategies and *The Asian Mind Game* describes all thirty-six strategies. CHU, THE CHINESE MIND GAME, *supra* note 177; CHU, THE ASIAN MIND GAME, *supra* note 177.

188. Brahm has written a slightly expanded and supplemented version of this book. See, BRAHM, *supra* note 140.

189. More than fifteen years ago, when we were both living in Hong Kong, Laurence and I co-authored a short article about our trip to Vietnam. See, John Barkai & Laurence Brahm, *Investing in Vietnam: An Ancient Land Looks for Modern Money*, LEGAL TIMES, June 1994, at 36.

The second book, Tony Fang's *Chinese Business Negotiating Style*, is a much more dense and complete book about Chinese negotiating style. Fang's book does not cite Brahm's earlier book on applying the Thirty-Six Strategies to negotiation. Although it does mention Chu's book *The Asian Mind Game*, it only connects Chu's book to three of the Thirty-Six strategies.¹⁹⁰ However, Fang does a wonderful job of describing the Chinese negotiation style. For Fang, the Thirty-Six Strategies are only one part of his book. His Appendix A lists the strategies, gives a very short description of each one, and then for each strategy provides an insightful list of citations to the works of other authors who have written about negotiation, doing business with the Chinese, or about Chinese culture.

The third book about negotiating with the Chinese, March and Wu's *The Chinese Negotiator*,¹⁹¹ includes a chapter about the Thirty-Six strategies and negotiations. The book follows Robert March's excellent tradition of exploring issues related to doing business in Asia.¹⁹²

The Thirty-Six Strategies are sometimes described as being grouped into six groups of six strategies each. The first eighteen strategies are called "Winning Strategies," or strategies when you are in a winning situation. The second eighteen strategies are called "Disadvantageous strategies," or strategies when you are in a less powerful position. But even when the strategies are grouped into the six groupings, their classification is not always so clear or obvious.¹⁹³

The Winning Strategies include strategies one through six, called "Strategies when Commanding Superiority,"¹⁹⁴ or "Advantageous Strategies;"¹⁹⁵ strategies seven through twelve, called "Strategies for confrontation" or "Opportunistic Strategies;" and strategies thirteen through eighteen, called "Strategies for attacking" or "Offensive Strategies." The Disadvantageous strategies include strategies nineteen through twenty-four, called "Strategies when being inferior" or "Desperate Strategies;" strategies twenty-five through thirty, called "Strategies for gaining ground" or "Deception Strategies;" and strategies thirty-one through thirty-six called "Strategies when being inferior" or "Desperate Strategies."

190. Both Brahm and Fang may have benefited from reading Chin-Ning Chu's early books, *The Chinese Mind Game* and *The Asian Mind Game*, where she reviewed the Thirty-Six strategies. However, Chu did not directly relate her writing about the Thirty-Six Strategies to negotiations.

191. MARCH & WU, *supra* note 177.

192. See generally, ROBERT MARCH, *THE JAPANESE NEGOTIATOR: SUBTLETY AND STRATEGY BEYOND WESTERN LOGIC* (1988).

193. FANG, *supra* note 177, at 165.

194. *Id.* at 167.

195. China History Forum excerpt from book, see *id.*

Although the Thirty-Six Strategies are supposedly derived from military strategy, they also seem to reflect the Chinese approach to business, especially business with foreigners. A common Chinese expression is “The marketplace is like a battlefield,” or “The marketplace is a battlefield.”¹⁹⁶ For the Chinese, business is like war.¹⁹⁷

Perhaps the most important aspect of the Thirty-Six Strategies for non-Chinese to understand is that most of the strategies are based upon deception and deceit. Asia scholar Rosalie Tung describes deception as a normal part of Asian business practices and says that one of twelve principles guiding the East Asian approach to business is “Engaging in deception to gain a strategic advantage.”¹⁹⁸ “There can never be too much deception in war,” is another old Chinese saying. And since the marketplace is a battlefield,¹⁹⁹ these ideas should leave no doubt about the prominence of deception in Chinese negotiation and business tactics.²⁰⁰

Unlike the United States, which only had one civil war with ethnically similar people, China has had a long tradition of civil war in which hundreds of independent states fought many wars against one another.²⁰¹ There were 480 wars fought during China’s so-called Spring and Autumn period (722-481 B.C.).²⁰² With such an internal history, it is no wonder that “guanxi” (good relationships) and intensive networking connections with family and overseas Chinese are such an important part of business. If you are family, the Chinese will take care of you. On the other hand, if you are an outsider²⁰³ and, in addition, you are from a culture that the Chinese think of

196. See, CHU, *THE ASIAN MIND GAME*, *supra* note 177, at 10. A Google search for either of those phrases locates many cites.

197. Americans, on the other hand, more often see business, not as war, but as a sport and use sports metaphors: “We are still in the game,” “tackle the problem,” “end run,” “punt,” “game plan,” “huddle,” “cover all bases,” “strike out,” “never get to first base,” “in left field,” “in the ballpark,” “a ballpark figure,” “that’s a home run,” “slam dunk,” “full court press,” etc. See, RICHARD SACCONI, *NEGOTIATING WITH NORTH KOREA* (2003); RICHARD SACCONI, *NEGOTIATING YOUR WAY THROUGH KOREA* 148 (2001).

198. See Rosalie L. Tung, *Managing in Asia: Cross-Cultural Dimensions*, in *MANAGING ACROSS CULTURES: ISSUES AND PERSPECTIVES* 139 (Pat Joynt and Malcom Warner eds., 2002).

199. “Chinese stratagems can be adopted even by decent people as a defensive weapon to keep evils at bay.” See FANG, *supra* note 177, at 176.

200. China is well known for economic crime and counterfeit products such as baby formula, instant coffee, and instant soup. MARCH & WU, *supra* note 177, at 145.

201. MARCH & WU, *supra* note 177, at 145.

202. *Id.* at 146.

203. The Japanese, who also have a long history of civil war, also have clear distinctions between insiders (“Uchi” in Japanese) and outsiders (“Soto” in Japanese).

as having exploited them in the past, you are very likely to encounter deception in the negotiation process.

There are many variations of each strategy and many different stories used as examples of each strategy in the Thirty-six Strategy literature. The names of some of the strategies invoke colorful images, which at first might seem incomprehensible (e.g., Strategy # 1: Cross the Sea by Deceiving the Sky). Other strategies suggest the tactics more straightforwardly (e.g., Strategy # 5: Loot a Burning House).

The chart below lists various versions of the Thirty-six Strategies and accompanies each with a contemporary maxim that makes the original strategy a little more clear to present-day negotiators. The contemporary maxims presented below come either from interpretations by my former students, from various web sites, or are my own interpretation. March and Wu claim that they have found that four of the strategies account for sixty-five percent of the cases that international business people encounter, and therefore assume that those four are the most commonly used stratagems in all negotiations with the Chinese²⁰⁴ – Strategy # 3: Kill with a Borrowed Knife; Strategy # 4: Relax and Wait for the Adversary to Tire Himself Out; Strategy # 18: To Catch Bandits, Nab Their Ringleader First; Strategy # 31 Use a Beauty to Ensnare a Man. For that reason, those four strategies merit particular attention.

In the chart, the source of the phrase used for the original strategy is given by the two-letter code that follows the strategy in parentheses. CNC is Chin-Ning Chu; LB is Laurence Brahm; TF is Tony Fang; and RM is Robert March. Unless otherwise indicated, the description of the Original Strategy is by Laurence Brahm.

THE 36 STRATEGIES AND CONTEMPORARY NEGOTIATION MAXIMS

	The Original 36 Strategies	Contemporary Maxims
1	Cross the Sea by Deceiving the Sky.	Act in the open, but hide your true intentions.
2	Besiege Wei to Rescue Zhao.	Attack their Achilles heel.
3	Kill with a Borrowed Knife.	Attack using the strength of another person.
4	Relax and Wait for the	Exercise patience and wear them down

204. MARCH & WU, *supra* note 177, at 169.

	Adversary to Tire Himself Out. Await leisurely the exhausted enemy.	
5	Loot a Burning House.	Hit them when they are down.
6	Make a Feint to the East While Attacking in the West.	Fake to the right; attack to the left.
7	Create Something Out of Nothing.	Turn something that is not substantial into reality.
8	Secretly Utilize the Chen Cang Passage (CNC). Pretend to Advance Down One Path While Taking Another Hidden Path (LB).	Pretend to care about an issue and later give it up to get what you really want.
9	Watch the Fire Burning from Across the River.	Allow them to fight your other enemy while you rest and observe. Later, defeat the exhausted survivor.
10	Conceal a Dagger in a Smile.	Befriend them to get their guard down, then attack their weakest point.
11	Sacrifice a Plum Tree to Save a Peach Tree (RM). Let the Plum Tree Wither in Place of the Peach Tree (TF).	Trade up! Take a small loss for a large gain.
12	Take Away a Goat in Passing.	Take advantage of every small opportunity.
13	Beat the Grass to Startle the Snake.	Stir things up before beginning to negotiate for your true interests.
14	Raise a Corpse from the Dead (LB). Borrow a Corpse to Return the Soul (TF).	Revive a dead proposal by presenting it again or in a new way.
15	Lure the Tiger out of the Mountain.	Seek a neutral location. Negotiate after leading them away from a position of strength.
16	Let the Adversary off in order to Snare Him. To Capture the Enemy, First Let It Go (RM).	Do not arouse their spirit to fight back.
17	Toss out a Brick to Attract a	Trade something of minor value for something

	piece of Jade. Toss out a Brick to Attract Jade (RM).	of major value.
18	To Catch Bandits, Nab Their Ringleader First. To Catch the Bandits, First Catch Their Ringleader (RM).	Convince the leader and the rest will follow.
19	Remove the Fire from under the Cauldron.	Eliminate the source of their strength.
20	Muddle the water to catch the fish (TF). Gathering Fish from Trouble Waters (LB).	Do something surprising or unexpected to unnerve them, and then take advantage of that situation.
21	The Cicada Sheds Its Shells. The Golden Cicada Sheds Its Shell. The Cicada Sloughs Its Shell (RM).	When you are in trouble, secretly escape.
22	Fasten the Door to Catch a Thief. Lock the Door and Catch the Thief (RM).	Completely destroy them by leaving no way for escape.
23	Befriend a Distant State While Attacking a Neighboring State. Befriend Distant States While Attacking Nearby Ones (RM).	Build strategic alliances with others that will give you the upper hand.
24	Borrow a Safe Passage to Conquer the Kingdom of Guo (LB). Attack Hu by a Borrowed Path (RM).	Temporarily join forces with a friend against a common enemy.
25	Steal the Dragon and Replace with the Phoenix (CNC). Steal the Beams and Pillars and Replace Them with Rotten Timber (LB). Steal the Beams and Change the Pillars.	Sabotage, incapacitate, or destroy them by removing their key support.
26	Point at the Mulberry Tree but Curse the Locust Tree.	Convey your intentions and opinions indirectly.
27	Feign madness, but keep your balance. Pretend to be a Pig in Order to eat the Tiger (CNC). Play Dumb (LB).	Play Dumb, then surprise them. Let them underestimate you.

	Feign Ignorance and Hide One's Intentions (RM).	
28	Remove the Ladder after your ascent (LB). Lure the enemy onto the roof, then take away the ladder. Cross the River and Destroy the Bridge (CNC).	Lead them into a trap, then cut off their escape.
29	Decorate the Tree with Fake Blossoms. Flowers Bloom in the Tree (RM).	Reframe deceitfully. Expand the pie with objects of little value.
30	Turn Yourself into a Host from Being a Guest. Host and Guest Switch Roles (RM).	Turn your defensive and passive position into an offensive and active one.
31	Use a Beauty to Ensnare a Man. The honey trap. Beauty Trap (RM).	Provide alluring distractions.
32	Open the Gate of an Undefended City. The Empty City Stratagem (RM).	Deliberately displaying your weakness can conceal your vulnerability.
33	Use Adversary's Spies to Sow Discord in Your Adversary's Camp. Turn the Enemy's Agents against Him (RM).	Provide inaccurate information to mislead them, especially through informal channels.
34	Inflict Pain on Oneself in order to Infiltrate Adversary's Camp and Win the Confidence of the Enemy. Self-Torture (RM).	Appear to take some hits. Feign weakness while arming yourself.
35	Lead Your Adversary to Chain Together Their Warships. Stratagem on Stratagems (RM).	Devise a set of interlocking stratagems to defeat them.
36	Retreat is the Best Option. If All Else Fails, Run Away (RM).	Purse your BATNA.

Those of us who cannot read Chinese, and therefore cannot read any version of the Thirty-six Strategies in their original form, must rely on translations and their interpretations. Reading a single version of the Thirty-Six Strategies can lead to confusion. Reading multiple versions, both helps one to clarify the approaches, and it also highlights the inconsistencies of various translations. The Thirty-six Strategies are a very useful collection of ideas and tactics to anticipate and be vigilant for in a negotiation. The Thirty-six Strategies serve as a very useful reminder for all negotiators who are cooperative by nature. They highlight the idea that using deception, if not outright lying, is a common practice for many negotiators.²⁰⁵ Although lay people are sometimes shocked to learn that the lawyers Code of Professional Conduct does not prevent lawyers from not telling the truth in many, if not all, aspects of negotiation, in the world-wide market place it appears that only the naive tell the truth.

The Cultural Dimension Interests (CDIs)

Some people say that the cooperative, problem-solving, *Getting To Yes* approach to conflict resolution is so imbued with American values that the *Getting-To-Yes* approach is much less useful in a cross-cultural conflict.²⁰⁶ *Getting To Yes*' four core principles – 1) separating the people from the problem, 2) focusing on interests not positions, 3) inventing options for mutual gain, and 4) using objective criteria – strongly reflect American culture from the Hofstede perspective. Hofstede himself acknowledges that *Getting To Yes* reflects high individualism, medium power distance index, and low uncertainty avoidance.²⁰⁷ *Getting To Yes* also may reflect low masculinity in its search for “mutual gain” and a high long-term orientation in its search for enduring agreements. However, these last two factors may be contrary to American culture, which is seen as high on masculinity and with a short-term orientation.

“Separating the people from the problem” certainly does reflect an individualistic perspective.²⁰⁸ In collectivist cultures, there is more of a focus on the ongoing relationships than on the tasks at hand or the issues being negotiated. In this sense, it may be impossible to “separate the people

205. The Chinese negotiator is both a sincere and a deceptive negotiator. FANG, *supra* note 177, at xv.

206. See HOFSTEDE, *supra* note 13, at 436; See also Catherine H. Tinsley et al., *Adopting a Dual Lens Approach for Examining the Dilemma of Differences in International Business Negotiations*, 4 INT'L NEGOTIATION 5, 7 (1999).

207. See HOFSTEDE, *supra* note 13, at 436.

208. *Id.*

from the problem.” The people and their relationships are intertwined with the problem and may even be the problem.

In high power distance cultures, having and maintaining power is a critical interest.²⁰⁹ The positions the negotiators take are often linked to hierarchy and power interests. Negotiators may be less concerned with apparent substantive interests than appearing powerful. They may sacrifice substantive interests to maintain power. Negotiators not only want to be powerful, they also must look powerful to maintain their status and hierarchy. In this sense, a negotiated solution must not only be good, it must also look good. The parties may assert their high-status power by not ever “backing down.”

The idea of “inventing options” suggests a willingness to try novel, and not-yet-proposed solutions, or at least solutions that were not proposed initially by one of the parties to the negotiation. Inventing options can be comfortable for someone from a not too large uncertainty avoidance culture, such as the U.S. However, for someone from a high uncertainty avoidance culture, “what is different is dangerous.” Their thinking is that there is little to be gained from trying something new. They have an interest in avoiding uncertain situations and nurturing the status quo.

Striving for “objective criteria,” “mutual gain,” “win-win” goals, or anyone else’s goals, might seem quite naive or feminine for someone from a culture high in masculinity. In such a culture, aggression, competition, and dominance are prime cultural beliefs. Negotiators from such cultures are more likely to use a competitive negotiation style and seek “win-lose” solutions. To negotiators from a masculine culture, *Getting to Yes* principles might sound like an approach for the weak. Furthermore, establishing objective criteria may be exceptionally difficult for negotiators from different cultures who hold different values.²¹⁰ What is “fair” to one side, may not seem at all “fair” to the other.

In international negotiations, the negotiators may hold different values,²¹¹ objectives, and truly play the game of negotiation by different rules. They are accustomed to doing different negotiation dances and listening to different music. However, the *Getting To Yes* concept of “interests” can encompass all those different values. For example, a negotiator could be said to have a high power distance interest and not a low

209. HOFSTEDE, *supra* note 13, at 436.

210. *Id.*

211. “The main cultural differences between nations lie in values.” *Id.* at 364.

power distance interest; an individualist interest and not a collectivist interest; a competitive interest and not a cooperative interest; an interest in the status quo and not a interest in novel approaches; or a long-term orientation interest and not a short-term orientation interest. Vastly different cultural interests still fit within the most critical *Getting To Yes* principle – understanding and working with underlying interests. Therefore, referring to interests that seem to have a basis in cultural differences, such as Cultural Dimension Interests (CDIs), is a useful conceptualization. The term “dimension” is borrowed from Hofstede’s work because his work is so important for cross-cultural understanding. Understanding, recognizing, and working with CDIs in a cross-cultural negotiation and dispute resolution may be just as important as working with the substantive interests. It is possible to make a chart of CDIs to use in the preparation for and conducting a cross-cultural negotiation or mediation.²¹² These CDIs are usually the unrecognized impediment to reaching cross-cultural agreements.

III. DOING THE DANCE OF NEGOTIATION

The dance of negotiation is done in every culture, but the music and the steps may vary significantly between cultures.²¹³ When the ideas in this article were presented at the Pepperdine Symposium on April 10, 2008, the author played a short video clip that showed dance scenes from a classic waltz, a Chinese opera, a Maori Haka dance, a Japanese Noh performance, and a Hawaiian hula. Neighboring countries may have similar negotiation dances (e.g., U.S. and Canada) or they may have dances that vary significantly (e.g., U.S. and Mexico).²¹⁴ Even in our now very globalized world, the most common world trade pattern is that most international trade is still regional trade between neighboring countries.²¹⁵ Obviously, even negotiators in bordering countries with very significant differences in negotiation styles have learned to hear the music and do the steps necessary to have a successful negotiation dance. When negotiators from different

212. See generally John Barkai, *supra* note 5.

213. Wendi L. Adair & Jeanne M. Brett, *The Negotiation Dance: Time, Culture, and Behavioral Sequences in Negotiation*, 16 ORG. SCI. 33 (2005).

214. See Julie Barker, *International Mediation-A Better Alternative for the Resolution of Commercial Disputes: Guidelines for a U.S. Negotiator Involved in an International Commercial Mediation with Mexicans*, 19 LOY. L.A. INT’L & COMP. L. REV. 1, 52 (1996).

215. For example, America’s exports go to various countries in the following proportions: Canada – 22%, Mexico – 13%, Japan – 6%, and China – 5%. CIA World Fact Book, United States, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html#Econ> (last visited Mar. 19, 2008). Looking at economic data for most countries shows the same pattern of major regional trade, with obvious exceptions that trade with the U.S., China and Japan may be the major counties of import or export.

countries attempt the negotiation dance so that they can do business, on the way to reaching an agreement they are trying to not step on one another's toes as they communicate about their preferences, priorities, interests. Learning, understanding, and being able to apply the cross-cultural differences discussed in this article will help in the preparation for the cross-cultural negotiation dance and for the dance itself. And before beginning the dance, one should check the weather forecast.

IV. CULTURAL STEREOTYPES AND WEATHER FORECAST ACCURACY

The descriptions about cultural differences in this article lead to stereotypes about other cultures. Cultural stereotypes²¹⁶ are both dangerous and useful as a starting point in preparing for cross-cultural negotiation and dispute resolution.²¹⁷ Cultural stereotypes are about as accurate as weather forecasts. They are definitely very useful. Most people plan their daily activities around them. However, they also recognize that these forecasts often turn out to be inaccurate. Some days, rain is forecasted, but it does not rain. Because of the forecast, you brought your umbrella with you that day, but if it does not rain you do not put up your umbrella and walk around with it in the sun.²¹⁸ On other days, the forecast is for a dry day, but there may be an unexpected shower. If you do not adjust your activities on such a day, you might "get soaked."

Of course, not everyone in a country shares the same values and traits or acts the same. We know of wide regional and personal variations in our own country, and we must assume that the same is true in all countries. Your neighbor (or even your spouse) may be more different from you in their approach to negotiation than a person from the East Coast and one from the

216. Other approaches that I like to use to avoid using the word "stereotypes" are to talk about "patterns." See, DEBORAH TANNEN, *YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1991) (referring to male and female "patterns" of speech); WILLIAM M. O'BARR, *LINGUISTIC EVIDENCE: LANGUAGE, POWER, AND STRATEGY IN THE COURTROOM* (1982) (describing "powerful" and "powerless" speech patterns as "male" and "female" patterns).

217. Lam and Graham ask whether, when negotiating with the Chinese, it is possible to "generalize about a billion-plus people?" They answer that question with a "yes," and then go on to describe the thread of consistency that does appear in how Chinese business people negotiate in commercial settings. See, N. MARK LAM & JOHN L. GRAHAM, *CHINA NOW* 131-50 (2007). This chapter of their book restates many of the ideas from their Harvard Business Review article.

218. However, Asian women are often seen using umbrellas in the hot sun. They are protecting themselves from the sun, not the rain.

West Coast, or between a person from a large city and a person from a small, rural, farm town. Nonetheless, there is usually some truth in these stereotypes, especially at the national and international level.

These stereotypes represent a good starting point for preparations for cross-cultural negotiations. Although the word “stereotype” usually has a negative connotation, stereotypes used wisely in cross-cultural negotiations and dispute resolution can be very useful. THT defined “sophisticated stereotypes” as “the stereotypes (or sociotypes) of a culture that have been researched carefully and found to be true.”²¹⁹ Osland and Bird also used this concept of “sophisticated stereotypes.”²²⁰ Nancy Adler calls these “helpful stereotypes”²²¹ and suggested using them as a first, best guess, until direct experience with a particular negotiation partner proves that they should be modified.

CONCLUSION

Failure to understand and to allow for cultural dimension interests (CDIs) often leads to frustration and resentment during a cross-cultural negotiation, and is likely to lead to impasse during the negotiations, or a contract breach after the cross-cultural negotiation is completed. If you insult me or my culture, I am much less likely to be interested in doing business with you, and even if we do make a contract, we are more likely to breach our contract. There are many sources of information about cross-cultural differences, and all types of such sources should be considered before and while doing business with someone from another culture.

219. FONS TROMPENAARS, *21 LEADERS FOR THE 21ST CENTURY*, 20 (2001).

220. Joyce S. Osland & Allan Bird, *Beyond Sophisticated Stereotyping: Cultural Sensemaking in Context*, 14 *Acad. of Mgmt. Executive* 65 (Feb. 2000).

221. See NANCY J. ADLER & ALLISON GUNDERSEN, *THE INTERNATIONAL DIMENSIONS OF ORGANIZATIONAL BEHAVIOUR* (5th ed. 2007).