

# International Negotiations: Thinking It Through

Global Law and Business Seminar

COLUMBIA LAW SCHOOL

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## OVERVIEW

- Discuss negotiation skills in three parts [workshop]:
  - Preparing for the negotiation
  - Negotiation scenarios: Tips
- Address three common mishaps in cross-border deals
- Interview with Suzana Nutu (Sanofi, M&A Director)



“Plans are of little importance, but planning is essential”

Winston Churchill

## WHY STUDY NEGOTIATION?

- Negotiating is a survival skill
- We learn how to negotiate throughout our lives:
  - Our first negotiations are with parents and siblings
  - By practicing negotiations on lower pressure situations, we strengthen our skills for bigger negotiations in the future
- Requires a balancing of intellectual (logic and reason) and emotional skills. An understanding of what is happening around you but also of how you are dealing with it – which requires self-awareness and self-regulation



# PREPARING FOR A NEGOTIATION - AGENDA

- Get Your Own House in Order:
  - Reporting Lines
  - Conflicting Interests
  - Carrots and Sticks: Your Toolbox
- Do your Research (individuals, parties, industry and framework)
- Identify:
  - Wants vs. Needs
  - BATNAs
  - Leverage



# PREPARING FOR A NEGOTIATION – GET YOUR HOUSE IN ORDER



- Get Your Own House in Order: [LR]
  - Reporting Lines – who “owns” the deal and who will pay for it?
  - Conflicting Interests
  - Carrots and Sticks: Your Toolbox
  - Keep checking-in
  - Get your approvals ready

## PREPARING FOR A NEGOTIATION

- Do Your Homework: Learn about the other side
  - Individuals: corporate websites, LinkedIn
    - Know who you will be negotiating with
  - Entities: public filings, corporate disclosures, news articles
    - How long has the target company owned the business?
    - What is target's core business? What is their market trajectory?
    - What is target's reputation in the market?



# PREPARING FOR A NEGOTIATION



- Learn about the Framework
  - Industry: recent deals, specifics of industry in region/country
  - What is happening from a political, social, and economic standpoint?
    - Particularly important for international deals:
      - Political uncertainty? [When are the next elections?]
      - Discussions regarding regulatory changes? [Mexico]
      - Foreign exchange restrictions? [Argentina, Venezuela, Brazil]

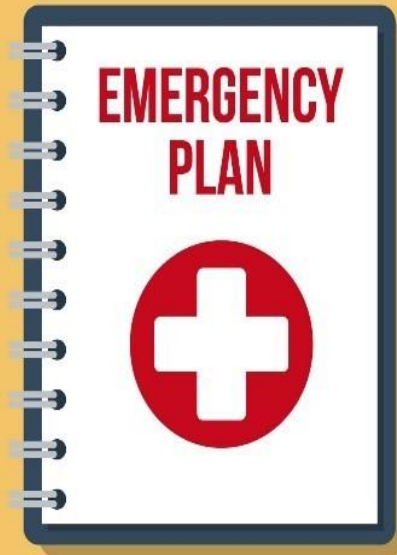


# PREPARING FOR A NEGOTIATION



- What is your goal?: Open-ended formulation (wants vs. needs)
  - Instead of “acquiring target” (i.e., identifying the end-result): increasing our presence in the [specific market] in the U.S. so that we can build on our existing distribution chain. \*\* Share this with your lawyers [carve-outs; due diligence]
- Flesh out Your Position: Win-win mindset
  - What would the “best deal” look like? What is your wiggle room?
  - How does a “good deal” for both parties looks like: Understand the other side - where are they coming from? (Private equity?/No indemnity; Family?/Legacy; Strategic/reputation?)
    - Comparative advantage: Key things you want the other side to identify you by (reputation, financial capability, technical prowess, market presence)
    - Create your “negotiation toolbox”: management/employment enticements, stock options, earnouts, alliance agreement (future ventures), board seat ...

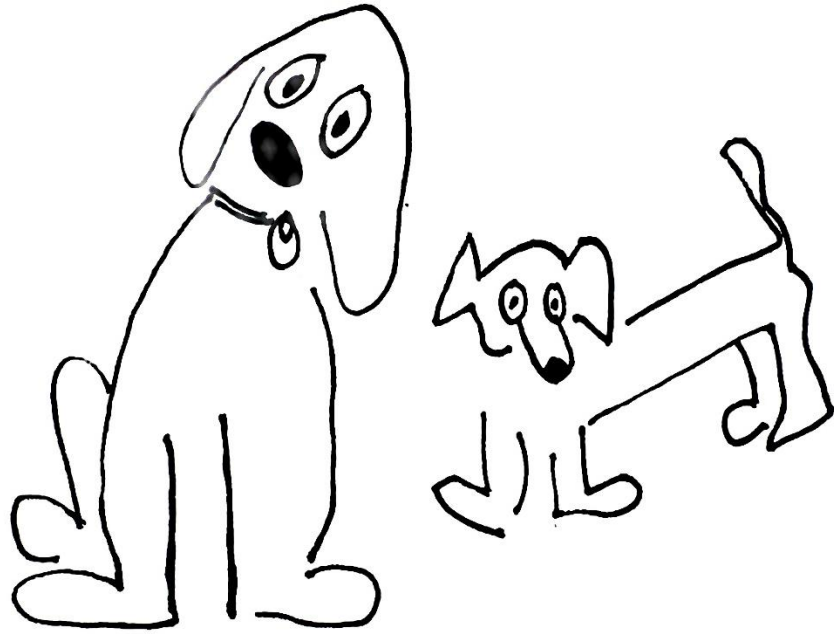
## PREPARING FOR A NEGOTIATION – DEVELOPING A STRATEGY



- Create a plan B . . . and a plan C and D:
  - What will you do if you can't reach a deal?
  - Map out your BATNA: best alternative to a negotiated agreement
    - BATNA may change over the course of the negotiation
    - Strong BATNA = more leverage

# PREPARING FOR A NEGOTIATION – LEVERAGE

- Understand your leverage
  - Leverage: perceived advantage that could give a party the upper hand in the negotiation
    - BATNAs and Leverage (strong BATNA – High leverage)
  - Leverage changes throughout the deal
    - Seller has more leverage during the bid process
    - Buyer has more leverage after signing
  - You can *make* your leverage change throughout the deal. Think creatively: for example, if you are the smaller partner in a joint venture of three, become the pivoting partner [Erdogan]



## THREE COMMON NEGOTIATION PITFALLS

What happened?

# THREE COMMON PITFALLS IN CROSS BORDER NEGOTIATIONS

1. Failure to understand who is in charge: who has the decision-making power? Do you have the right people sitting at the negotiation table?
2. Failure to manage expectations: communication and time management strategies
3. When to take “no” for an answer: how different cultures deal with conflict and what to do about it



## FIRST PITFALL: WHO HAS THE DECISION-MAKING POWER? --- TRUST EROSION

In international deals, you may need to look for constituencies outside of the standard corporate or regulatory paths that may be necessary to the success of your deal

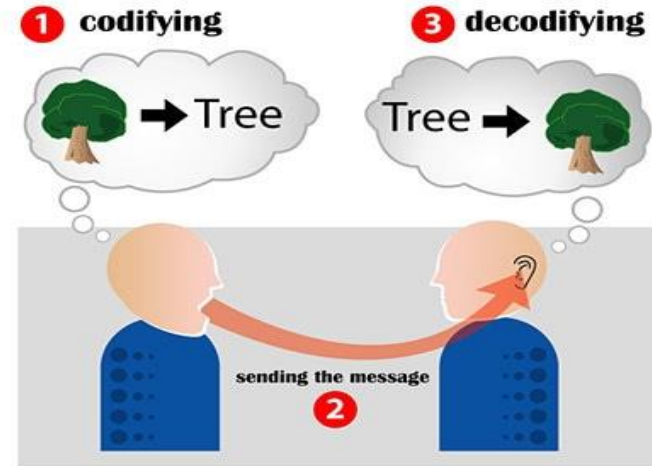
- Side Note: Don't let stereotyping and cultural assumptions trump you: focus on the individuals in front of you



# WHO HAS THE DECISION-MAKING POWER?

Understand who the ultimate decider is vs. the person signing the contract

1. What is the corporate approval process?
  - In there an informal process?
2. Do you need regulatory approvals?
3. Different negotiation approaches
  - Top-down vs. consensus based



# TEAM SIZE AND NEGOTIATION APPROACH

If the other side has a small negotiation team	If the other side has a large negotiation team
<ul style="list-style-type: none"><li>• Negotiation approach is usually top-down</li><li>• Negotiators communicate directly with decision makers</li><li>• Goal is the contract not the relationship</li><li>• Deals are done faster</li><li>• Documentation is highly specific</li><li>• Medium to high appetite for risk</li></ul>	<ul style="list-style-type: none"><li>• Negotiation approach is focused on building consensus</li><li>• Negotiators do not communicate directly with decision maker</li><li>• Goal is building the relationship</li><li>• Deals take longer</li><li>• Documents are less specific</li><li>• Less appetite for risk (unless broad consensus)</li></ul>



## SECOND PITFALL: PARTIES FAIL TO MANAGE EXPECTATIONS - -- FRUSTRATION

### THREE TIPS:

1. Establish a timeline that includes specific milestones and assigns responsibilities to individuals instead of teams -- delegate
2. Involve counsel early and substantively (including local counsel)
3. Plan relationship building opportunities – create TRUST



## THIRD PITFALL: WHEN TO TAKE “NO” FOR AN ANSWER -- TRUST

THREE TYPES OF “NO”:

1. I say “yes” but I mean “no”
2. I say “no” but I mean “may be”
3. I say “no” and I mean it.



## THE “MAÑANA” APPROACH

- WHEN?: There is no meaningful progress in the negotiation but there is an appearance of agreement among the parties
- THE RESET: You will need to break-down the negotiation process to find where the problem lies
- THE SOLUTION: Going back to the decision makers
  - In-person Meetings: the pandemic challenge



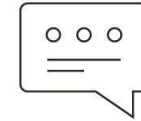
## THE TACTICAL NO – MAY BE

- WHEN?: That's not something we can do at this point
- THE RESET: Acknowledge their position and ask a follow-up question: Mirroring, When or How *[Chris Voss podcast]*
- THE SOLUTION: Move forward

## Non Verbal Cues



voice



articulation



eye  
contact



facial  
expression



gestures



body



appearance

language

## THE HARD “NO”

- There is a very important difference between the “personal no” and the “institutional no.” If it is a “personal no”, there is room for negotiation. If it’s an institutional “no” the only thing that is left is to wrap-up the negotiations as gracefully as you can, leaving the door open for the future
- Maya Angelou, the American poet, said it perfectly: “I’ve learned that people will forget what you said, people will forget what you did but people will never forget how you made them feel.”



IT'S OK TO TAKE  
**“NO”**  
FOR AN ANSWER

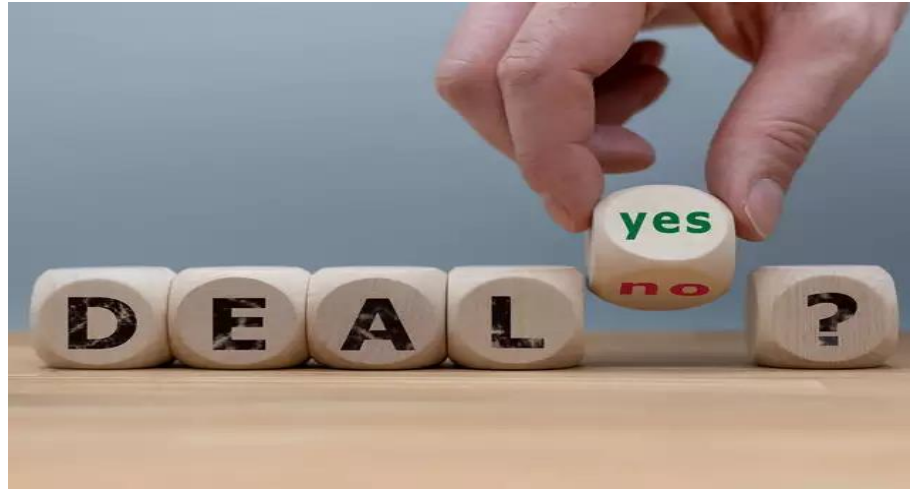
## THE HARD “NO” – THAT IS PERSONAL...

- EVALUATE REMOVING THE NAYSAYER
- BUT FIRST:
- Identify the real problem
  - Is there an easy way to fix the problem?
  - If so, what do you get in exchange?
  - Does culture play a role? -- Scapegoating



## KEY TAKEAWAYS

- Rethink your counterparts
- Establish a timeline with milestones/responsible parties
- Plan relationship-building opportunities
- Don't take "no" for an answer, unless you need to





## NEGOTIATION TIPS



## DURING THE NEGOTIATION -- TIPS

1. Balancing Speaking and Listening
2. How to Build Trust – You Will Need It
3. What To Do If . . . (Tips and Strategies)



# DURING THE NEGOTIATION



## 1. Balancing Listening and Speaking:

- Active Listening:
  - What is left unsaid?
  - Body language – the importance of silence (women and silence)
  - Open questions (“what” and “how”) and mirroring: rapport building
  - Emotional labeling: “It seems/looks/sounds like” [you are concerned about the continuity of the employees after you sell the company]
- Speaking:
  - Speak slowly and clearly
  - Say what you need to say, be explicit and mean it

“I’ve learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.”

Maya Angelou

## DURING THE NEGOTIATION

### 2. How to Build Trust:

- Build your personal rapport
- Be competent and reliable
- Be truthful and show candor
- Be respectful of the other side's time and authority constraints
- Recognize the other side's wins and good explanations
- Make unilateral concessions—and tally them
- Address unfair/unintended outcomes



## DURING THE NEGOTIATION

### 3a. What to do if:

- The other side is closed off
- The other side dominates the conversation
- The other side talks over you
- The other side steals your ideas
- The other side talks to your boss and ignores you



## DURING THE NEGOTIATION - TIPS

### 3a. What to do if:

- The other side is closed off: Ask open-ended questions and give them the opportunity to come back later with specific answers
- The other side dominates the conversation: Bring back attention to the agenda, time or use silence. Slow the negotiation down
- The other side talks over you: Call them on it if necessary or use humor (“here we go again!”)
- The other side steals your ideas: “Love how you put it, that’s what I meant to say.”
- The other side talks to your client and ignores you: Use humor [Pepe/Luis]

## DURING THE NEGOTIATION

### 3b. What to do if:

- There is a mistake or misunderstanding
- You get upset
- You have little leverage



## DURING THE NEGOTIATION - TIPS

### 3b. What to do if:

- There is a mistake or misunderstanding: You acknowledge the mistake and move on. Use “I’m sorry” if you need to. [Analysis of ABA indemnification parameters to the other side]
- You get upset:
  - A negotiation is a marathon, not a sprint
    - If you get frustrated, remember that it is not about you – leave your ego outside
    - Step out of the meeting to cool off
  - Bring someone else in to change the dynamics
  - Try a power pose before the meeting (Amy Cuddy, TED Talk 2012)
  - Remember prior successes
  - Saying “no” is okay, and being generous is also okay



## DURING THE NEGOTIATION - TIPS

### 3c. What to do if: You have little leverage:

- You are respectful (not defensive), honest, and responsive
  - Recognize the other party's leverage
  - Support and legitimize your position: “I understand that my equity contribution is small in comparison to that of others, but no other party has my experience in this sector and specific country.”
- You insert yourself into the process
  - Build a personal rapport with the other party
  - Form a coalition with other parties (if multiple)
  - Take on a process-management role
- Remember: Leverage changes throughout the process

## READING MATERIALS FOR JULY 27

- Bio of Mario Fernandez (Chicora Energy, Co-Founder and Partner)
- [The Investment Logic for Sustainability](#), by Chris McKnett, TED
- [Nations United: Urgent Solutions for Urgent Times](#) – United Nations (2020)
- [The Power of Capitalism](#), by Larry Fink, BlackRock (2022)
- [Why the Sustainable Market Is Flawed](#), by James Mackintosh, The Wall Street Journal (2022)

Optional Reading:

- [How an Organized Republican Effort Punishes Companies for Climate Action](#), by David Gelles and Hiroko Tabuchi, The New York Times (2022)
- [Planned Sale of Emerging-Market Coal Plants Is Test Case For Phaseout Plans](#), by Ed Ballard, The Wall Street Journal (2022)



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