

Cultural Values and the Korean Negotiator

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Abstract

Culture has an inarguable role in shaping negotiation. Negotiators' interests, priorities, and strategies are affected by their culture. Each culture shares some similar elements with other cultures while also having its own unique traits. These characteristics can manifest themselves in negotiation behaviors in interesting ways. Korean culture seems to share similar values with cultures of its neighbors, most notably of China and Japan, but it also has differences that emerge with some unique negotiation strategies. This article summarizes and reports modern theories and research results and tries to evaluate how Korean culture affects some of the negotiation styles commonly observed among Korean negotiators.

I. Introduction

Among many factors that contribute to the shaping of a successful or failed business negotiation is the respective cultures of the negotiators involved. During a negotiation process, each negotiator carries a distinctive set of interests, priorities, and strategies. Negotiators' interests are the needs or reasons underlying their positions, and their priorities reflect the relative importance of those interests. Strategies are an integrated set of behaviors chosen to accomplish the goal during a negotiation.¹⁾ Korean negotiators' interests, priorities, and strategies are affected by their culture, which shares some similar elements with other Asian cultures while also having unique

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1) See, for some fundamental concepts of culture and negotiation, JEANNE M. BRETT, *NEGOTIATING GLOBALLY: HOW TO NEGOTIATE DEALS, RESOLVE DISPUTES, AND MAKE DECISIONS ACROSS CULTURAL BOUNDARIES* 25-52 (2d ed. 2007).

traits.

This article is a brief introduction and summary of the relevant theories and research results that attempt to explain how culture affects and shapes negotiation styles, with an emphasis on the behavior of Korean negotiators. This article is organized as follows. Section II discusses the cultural values that shape negotiation styles. Section III focuses on distinctive negotiation styles that may emerge from differences in cultural values. Section IV deals specifically with some of the unique negotiation styles of Korean negotiators. Section V lays out the problems of basing one's judgment of another negotiator's style solely on cultural differences, and discusses certain practical guidelines for coping with cultural differences during a negotiation process. Section VI concludes.²⁾

II. Cultural Values Affecting Negotiation

A culture can be categorized and described in many different ways. In broad terms, however, three types of traits or characteristics are perhaps most commonly used to categorize and describe a culture and to explain why negotiators from one culture or certain cultures sharing common traits employ similar strategies. That is, cultures are often categorized as (1) individualist or collectivist, (2) egalitarian or hierarchical, and (3) low-context or high-context.³⁾ These categories work like labels on a culture, being used to describe different aspects of natural phenomena within a culture. Below we consider these categories more in detail. Before doing so, however, it should be noted that it is a misperception to consider that individuals from a specific culture would show absolutely or even mostly either one or the other set of characteristics in a given category.⁴⁾ That is, it is incorrect to consider that, for instance, the people of one culture are either completely or mostly individualist or collectivist. Rather, it would be more accurate to posit that individuals can

2) This article does not proclaim to put forth novel ideas. A modest goal of the article is to provide readers in the legal community with a summary of the current research and to prompt interest in the field.

3) See, e.g., BRETT, *supra* note 1, at 358-62.

4) *Id.* at 354.

lie on varying points along a value spectrum, without necessarily being at one extreme end or the other. A person from an individualist culture could be more collectivist than the “average” individual from his or her culture or, for that matter, even more individualistic than the average. Nonetheless, categories are made and common characteristics are described since doing so would be helpful in understanding in a systematic manner various traits of a particular culture and the negotiation behavior emanating from such a culture.

Among the broad categories mentioned above, the individualism versus collectivism cultural value is one of the most widely studied characteristics of a culture. This cultural value distinguishes between people who tend to think of themselves as being part of an integral group and those who think that they stand alone. In an individualist culture, people place their individual needs above the needs of the collective, where the collective could for instance be an extended family, a local community, or a corporate organization. On the other hand, in collectivist cultures, it would be the opposite. Korea has been measured to have a collectivist culture.⁵⁾ The way that a negotiator deals with a dispute or confrontation is heavily influenced by this cultural value. Negotiators from more collectivist cultures would be more reluctant to confront the opposing party directly and tend to emphasize collective interests. Confronting someone directly could possibly be seen as a disruption to the group harmony and as such could be shunned by other members of a society. Even if the opposite side is not apparently part of their collective, people from collectivist cultures tend not to confront in an open manner. In order to avoid direct disagreement, people from collectivist cultures would often discuss matters and express their views in a roundabout way.⁶⁾ In a collectivist culture where direct confrontation is in general avoided, the notion of face-saving could be important. To avoid direct disagreement and maintain social harmony, people from collectivist cultures may repress their own feelings and tend not to exhibit their grievances in an open or public manner.⁷⁾

5) Yong-Jin Song, Claudia L. Hale & Nagesh Rao, *The South Korean Chief Negotiator*, 5(3) INT'L J. CROSS CULTURAL MGMT. 313, 316 (2005).

6) Donghoon Kim, Yigang Pan & Heung Soo Park, *High-Versus Low-Context Culture: A Comparison of Chinese, Korean, and American Cultures*, 15(6) PSYCHOL. & MKTING. 507, 511 (1998).

7) *Id.*

On the other hand, those from individualist cultures may not hesitate having a more direct confrontation and may place emphasis on self-interests.⁸⁾

Then, would individuals from a collectivist culture show a greater degree of trust toward others compared to those from an individualist culture? One might expect that the level of trust would be higher in collectivist cultures, with the underlying reasoning that trust would be a necessary and essential quality for individuals in these cultures where preserving in-group relationships could be crucial for the members. However, an interesting study on the levels of organizational trust in individualist versus collectivist societies found that individuals from collectivist societies have a lower level of trust toward outsiders than those from individualist societies.⁹⁾ This finding has important implications because, if this finding were to be true, for instance, corporate organizations from collectivist cultures may be handicapped in their ability to develop trusting relationships with their external business partners. This lower level of trust toward outsiders may also explain the propensity of individuals from collectivist cultures to consider building a long-term business relationship crucial in making a contract with external partners viable and enduring.¹⁰⁾

The egalitarian versus hierarchical cultural values distinguish between cultures that respect and care about hierarchical social status and those that do not. In a hierarchical society, social status translates into social power that is generally long-term, and the status of each negotiator plays an important part in the negotiation process. In an egalitarian society, power is transitory and situational. Individuals from hierarchical cultures may be reluctant to confront directly during a negotiation process because confrontation may be construed to mean a lack of respect for the social hierarchy and may even be considered a threat to the existing social structures. Traditionally, Koreans are known to exhibit a hierarchical attitude. However, Koreans are increasingly exposed to various cultures around the world and are becoming more and more familiar with cultures that differ from their traditional one. In that process, perhaps

8) BRETT, *supra* note 1, at 33-34.

9) Lenard Huff & Lane Kelley, *Levels of Organizational Trust in Individualist Versus Collectivist Societies: A Seven-Nation Study*, 14 ORG. SCI. 81, 87 (2003).

10) This manifestation will be discussed more in detail in Section III below.

many Koreans have adopted Western business values and, if not, taught themselves so that they can comfortably conduct negotiation with those exhibiting Western or other foreign business values.¹¹⁾ Some observed that, as an increasing number of Koreans absorb Western social and business values which lean more towards being egalitarian, frictions between its traditional hierarchical structure and the acquired egalitarian value could be caused.¹²⁾

The third cultural value differentiates between cultures with low-context communication and high-context communication. The concept of high-context versus low-context communications was first developed as part of the encompassing concept of high-context versus low-context cultures, which in turn was devised as a way to summarize how individuals in a culture deal with one another.¹³⁾ In a high-context culture, high-context abstract messages would routinely be conveyed and many things would simply remain unsaid, leaving the culture to fill the gap. In this cultural environment, the choice of words is important since a few words are often expected to convey a complex message. The opposite would be true with a low-context culture, where messages would tend to be concrete and filled with details.

Viewed in the context of the broad-based categorization set forth in this Section, a fundamental difference between a high-context culture and a low-context culture seems to be that a high-context culture can easily be associated with a collectivist culture and a low-context culture with an individualist culture. A collectivist culture would place an emphasis on conformity and would take care not to disturb the existing relationship structure in its community. In this culture, communication would mostly cater to in-group members and therefore messages often would not have to contain details. Characteristics that result due to the intimate relationships among its members are the founding attributes of high-context cultures. Other descriptions of high-context cultures can be seen as having developed naturally due to its collectivist nature. That is, in a high-context culture, there are often effective hierarchical structures and the top authority is usually held

11) Song et al., *supra* note 5, at 314.

12) *Id.* See Section IV below for Koreans' unique negotiating styles that emerge from these frictions.

13) See EDWARD T. HALL, *BEYOND CULTURE* (1976).

responsible for all actions of the subordinates. In this culture, people take commitments to relationships seriously and view them as long-term, while at the same time avoiding direct confrontation. And since context is very important in high-context cultures, it may require a longer period of time for individuals from high-context cultures to deal with a new situation, as the new situation would need to be put in the appropriate context.¹⁴⁾

In many Asian cultures where communication tends to be high-context, meaning is communicated not solely by a person's words or acts, but also by the context in which those words or actions are communicated.¹⁵⁾ Since high-context communication is typically indirect, effective communication requires familiarity with cultural and social cues in different situations. Further, high-context communication tends to avoid logic and to appeal more to emotions and affect. Such communication may require the listener to figure out the speaker's main argument, whereas the logic is clearly laid out in low-context communication. In negotiation, how parties communicate among themselves is crucial for successful results and thus the style of communication that the negotiator is used to and actually uses has a clear effect on the negotiation process. Negotiators from cultures with varying degrees of low- and high-context communications will have distinct confrontational styles and could also use the information provided to them differently from one another. It is often observed that Koreans tend to use high-context communication.¹⁶⁾ To the extent that Koreans exhibit collectivist traits, it does not seem surprising that the social circumstances under which communication takes place are very important in Korea.

While academic literature concerning the effect of culture on negotiation often focuses on these three cultural values, obviously these are not in any way the only values that can be considered. There are many other alternative values and categories that can indeed be considered and one of the widely known and quantifiable methods of comparing different national cultures is the one developed by Geert Hofstede.¹⁷⁾ It is called "Hofstede's five

14) Kim et al., *supra* note 6, at 512.

15) BRETT, *supra* note 1, at 39-41.

16) Kim et al., *supra* note 6, at 517.

17) Geert Hofstede, *The Cultural Relativity of Organizational Practices and Theories*, 14(2) J. INT'L BUS. STUD. 75 (1983). See also Harry G. Barkema & Freek Vermeulen, *What Differences in the*

dimensions” and they include: power distance, individualism, uncertainty avoidance, masculinity, and long-term orientation. Some of these dimensions overlap with the three cultural values discussed above.

Let’s consider these five dimensions briefly. First, power distance measures the degree, large or small, to which people accept the unequal distribution of power within an organization. This dimension could divide people into groups in a similar manner as in the egalitarian versus hierarchical cultural values. Individuals from a hierarchical society are more likely to accept disparate levels of power given to people of different social status within a community compared to individuals from an egalitarian society. Second, the individualism dimension measures people’s preference regarding a loosely-knit versus tightly-knit social framework, and is related to the individualist versus collectivist cultural values. Conceptually, what is to be noted is that, while the individualism dimension from Hofstede’s five dimensions measures an individual’s preference for an individualist society or for a collectivist society, the individualist versus collectivist cultural value mentioned earlier is mostly regarding the actual phenomena, rather than individuals’ feelings or attitude toward it. Third, uncertainty avoidance represents the degree to which individuals tolerate uncertainty and ambiguity in a given situation. This dimension is related to the category of high-context versus low-context communication values. Cultures with a high level of uncertainty avoidance would most likely employ the method of low-context communication. Fourth, masculinity, as opposed to femininity, represents the degree to which people value success and competition compared to other values such as modesty and thoughtfulness toward other people. Finally, long-term orientation measures the degree as to whether individuals are future oriented or whether they are more focused on the present situation. Thus, for instance, people from collectivist cultures may place a high value on modesty and concern for others compared to the value that they would place on personal success and competition, which reflect more feminine qualities according to Hofstede’s masculinity dimension. On the other hand, those from individualist cultures may consider winning over competition and

achieving personal success highly valuable. Hofstede's five dimensions offer a different and interesting perspective. These dimensions are also useful because they provide a measurable gauge in assessing individuals' preference for certain cultural values and allow aggregating the results to establish a national score.¹⁸⁾

III. Cultural Differences in Negotiation Styles

Negotiators commonly manifest a tendency toward specific negotiation styles reflecting their cultural background and therefore, when studying negotiation styles, it would be useful to examine the underlying cultural context as well. When discussing differences in negotiation styles that result from cultural differences, it is easy to compare and contrast two broad categories of cultures, one being Eastern cultures that are generally collectivist, hierarchical, and high-context and the other Western cultures that are individualist, egalitarian, and low-context.¹⁹⁾ With this dichotomy, it would be tempting to attribute a negotiator's behavior to one category or the other. While such a dichotomy would work to offer useful insight in some cases, in others, it may over-simplify and could even confound the notion of the culture that an individual negotiator carries. Cultural values typically lie in a spectrum and the values of a stereotypical Eastern culture, even assuming that such values can be shown to exist, are not necessarily the same values found in a specific country in Asia. Further, negotiators from a specific country would exhibit traits of various cultures among themselves. With this backdrop, this Section will go over some of the different ways negotiating can occur and will examine whether knowledge about the cultural background of a negotiator could be helpful in understanding his or her demonstrated negotiation style and, if so, the extent to which such knowledge could be helpful.

18) Not to dismiss the significance of Hofstede's five dimensions, the article will focus on the three above-mentioned cultural values as these three are most important for the purposes of this article.

19) Hal Movius et al., *Tailoring the Mutual Gains Approach for Negotiations with Partners in Japan, China, and Korea*, 22 NEG. J. 389, 421 (2006).

Negotiators would, implicitly or explicitly, set a goal that they wish to achieve before entering into a negotiation progress. It is often argued that negotiators from Asian countries may consider the main goal of a negotiation not a signed business contract but rather the formation of a long-term relationship between the two sides.²⁰⁾ Contrary to this, it is argued that, for American business negotiators, for instance, the goal first and foremost is to arrive at a signed contract. While there is room for debate as to the accuracy of this argument, to the extent that it reflects reality albeit with some exaggeration, the apparent disparity in negotiating goals could be attributed to the finding mentioned in Section II above that negotiators from collectivist societies may have more difficulty trusting external partners compared to negotiators from individualist societies.²¹⁾ Individuals and organizations from collectivist cultures tend to have an in-group bias, and are suspicious of members of an out-group. Those from individualist cultures carry less of this in-group bias and can be trusting of out-group members more freely. Thus, members of collectivist organizations may require a relatively long period of time before negotiation commences in earnest since they would often need to build a trusting relationship and rapport with an external negotiation partner before delving into discussions on detailed and substantive contracting terms. The ways that different cultures set negotiation goals also influence other aspects of negotiation style such as how they value the amount of time spent negotiating and what kind of contract they desire.²²⁾

Cultures value differently the amount of time devoted to the goals pursued. To the extent that Asian negotiators place an emphasis on creating a long-term relationship with their counterpart, they would be more willing to dispense more time during pre-negotiation phases in order to get to know their counterpart well and, even during negotiating processes, they may prefer occasionally having opportunities outside the negotiation room to create trusting and personal relationships and rapport.²³⁾

20) Jeswald W. Salacuse, *Intercultural Negotiation in International Business*, 8(3) GROUP DECISION & NEG. 217 (1999).

21) Huff & Kelley, *supra* note 9, at 87.

22) Salacuse, *supra* note 20.

23) *Id.*

Seen from a slightly different angle, it could often be the case that Westerners may prefer preparing a contract with detailed provisions, whereas people from some other cultures prefer a contract in the form of general principles.²⁴⁾ A study found that, for instance, the Chinese who have a collectivist culture prefer a general agreement rather than an agreement with detailed rules, because to them the essence of the deal is the relationship between the parties.²⁵⁾ Thus, if an unforeseen situation arises, it is argued, the Chinese may not confine themselves strictly to the relevant provisions that can be found in the contract to find a solution. Instead, or while looking up relevant contract provisions, they may also look to the relationship with their partner and consider whether it would be possible to re-negotiate and reach a compromise agreement.

National tendencies to be averse or prone to risk-taking can also be explained by cultural values at least to some extent. One comparative research on negotiation found that the Japanese are extremely risk averse, while the French, British and Americans are more willing to take risks.²⁶⁾ One explanation about this difference would be that collectivist cultures are more wary and suspicious of dealings with out-group members, and are more reluctant in taking risks than their individualist counterparts. Another explanation would be that negotiators from hierarchical societies would be more hesitant to take risks without taking enough time to gather relevant information and would wait for the chief negotiator to make the final decision, whereas negotiating teams from egalitarian societies might feel less restrained in taking risks without always having to confer with the leader.

Variation in negotiation styles also exists in the organization of the negotiation team. Broadly speaking, there is either a team with one leader that has complete authority to decide all matters, or a team that works in consensus.²⁷⁾ This variation, however, is one example where cultural differences do not fully explain why negotiators from countries with similar cultural traditions do not exhibit the same style. For instance, while both China and Japan are known to have hierarchical cultures, the Chinese seem to

24) *Id.*

25) *Id.*

26) *Id.*

27) *Id.*

favor the one-leader organization, whereas the Japanese are perhaps ambivalent.²⁸⁾ Americans and the French who have similarly individualist cultures also differ in styles. Americans appear to prefer the supreme leader approach, whereas the French are more prone to the consensus approach.²⁹⁾ The spread of preferred approaches in team organization shows that culture cannot explain all traits of a national style of negotiation and that, even if two nations share common cultural values, other differentiating factors can strongly affect how those values manifest themselves in negotiators' chosen styles.

Differences in the three cultural values mentioned in Section II can explain many differences in negotiation styles. However, even two countries that share similar cultural values may show some meaningful differences in negotiation styles. The next Section examines the idiosyncratic negotiation styles of Korean negotiators, while also investigating how culture plays a role.

IV. Korean Negotiators

A typical observation about Korea is that it has a tradition of highly collectivist, hierarchical, and high-context cultural values,³⁰⁾ and that as such Korean negotiators would commonly exhibit characteristics attributable to this tradition. While it would in general be true that Korean negotiators are familiar with this tradition and exhibit characteristics attributable to it, they would also show certain distinctive characteristics. That is, while Korean negotiators share the tradition of collectivist, hierarchical and high-context cultural values with negotiators from neighboring Asian countries, they at the same time show certain unique and idiosyncratic features. In this section, an attempt is made to find these idiosyncratic features.

28) *Id.*

29) *Id.*

30) See Scott Snyder, *Patterns of Negotiation in a South Korean Cultural Context*, 39(3) *ASIAN SURV.* 394, 396 (1999); Ilhyung Lee, *The Law and Culture of the Apology in Korean Dispute Settlement (With Japan and the United States In Mind)*, 27 *MICH. J. INT'L. L.* 1, 26 (2005). While there are many academic articles and other writings on Koreans' negotiation styles that are written in Korean, for the ease of reference, this article generally confines itself to English-language materials and does not refer to Korean-language materials unless there is a specific reason to cite them.

A natural starting point for deciphering what determines Korean negotiators' cultural values and attitude would be to examine the tradition of Confucianism in Korea. Korea's culture has been strongly influenced by a long tradition of Confucian values and norms.³¹⁾ Confucian values, which still pervade Korean interpersonal life as well as its government and politics, strongly emphasizes hierarchy and collectivism.³²⁾ A salient negotiation style of Korean negotiators that can be attributed to their highly collectivist, hierarchical, and high-context cultural tradition is that their negotiation processes could, depending on the situation, possibly be fairly lengthy.³³⁾ Similar to other negotiators from countries with a strong hierarchical and collectivist tradition such as Japan and China, it could sometimes take a long period of time for Korean negotiators to prepare and actually engage in serious negotiation with their counterparts. Thus, a longer period of time may sometimes be required to close a deal after an overall lengthy negotiation process.³⁴⁾ Generally speaking, taking time to get to know the opposite party and to prepare for negotiations would be an important and integral part of the whole negotiation process for a collectivist society, because the thorough vetting process would be helpful in building a trusting relationship with the opposite party and doing so is all but necessary for negotiators from a collectivist society prior to engaging in active negotiation. Also, negotiation processes may well take longer for hierarchical organizations, because there is often only one ultimate decision maker and that individual, who may be the owner or CEO of a business organization, may not be the most informed or may not even be a part of the negotiation team representing the organization.³⁵⁾ In particular, if a hierarchical organizational structure turns into a bureaucratic system, then delays in the decision making process could commonly be

31) This does not mean, however, that Confucianism is the most important determinant of negotiation attitude in East Asia in general. We thank an anonymous referee for pointing this out.

32) Lee, *supra* note 30, at 17-21.

33) *Id.* at 26.

34) Salacuse, *supra* note 20.

35) Many large Korean business corporations have an easily identifiable "owner" (or owner family) who would bear ultimate responsibility for corporate decision-making. Thus in complex business negotiations, it could be helpful to consider whether the owner is aware of the negotiation process and what his or her attitude is regarding the ongoing negotiation process.

observed during negotiation processes.³⁶⁾

Many observers who study Korean culture acknowledge the prevalence of Confucian values, but at the same time they point out that Korea is a society that is in the midst of massive and rapid transformation.³⁷⁾ Indeed, Korea's modern history is an extremely turbulent one and many cultures, with varying degrees, have had an influence in the formation of modern Korea. That is, the nation experienced much turmoil during and before the Second World War under Japanese colonial rule, during a three-year war with North Korea between 1950 and 1953, and during postwar years of political uncertainty, and, from the 1960s, the nation witnessed rapid and dramatic economic growth, followed by political democratization in the 1980s. All of these changes were accompanied by rapid and fundamental changes in social attitudes and practices³⁸⁾ and, to most of these changes, Western cultures have been great influences. Today, if one measures the degree of Koreans' westernization by their exposure to and familiarity with Western cultures, one might even argue that Koreans are among the most westernized people outside of the Western world. To the extent that there are conflicting reports about Korea's idiosyncratic negotiation style, a main source of the idiosyncrasy could be the confluence of various cultural values in today's Korea and the rapid pace of transformation. In order to examine the unique aspect of the Korean negotiation style further, it would be helpful to conduct a comparative study comparing negotiation styles observed among Korean and Japanese negotiators, since both countries are known to share similar traditions but they also have experienced different phases of changes within their respective cultures.

A comparative study on the law and culture of apology in Korea and in Japan is a good example illuminating the subtle differences between the two countries' cultures.³⁹⁾ In this study, various circumstances were examined under which an apology is demanded or used, as well as ways that individuals

36) On the other hand, if the ultimate decision maker with appropriate responsibility is readily available and shows interest in the ongoing negotiation, important decisions can be made without delay and a negotiated agreement can easily be made.

37) *See, e.g., Lee, supra* note 30, at 20.

38) *Id.*

39) *Id.*

respond to such an apology. And it was demonstrated that, in the United States, it is not easy to imagine a situation where an act of apology is sought by a party of a lawsuit or ordered by the court. In Japan, however, the court often requires an act of apology from the wrongful party. Apology in Japan can be interpreted as a means to protect societal harmony. Seen from this perspective, apologizing can be construed to be an act of acknowledging the hierarchical authority in a society and as such apologizing could help prevent a dispute from disrupting the group dynamic. Then it is interesting that, while Korea is perhaps just as collectivist and hierarchical as Japan, there are less occurrences of the act of apology in Korea than in Japan whether such act is required as a result of formal court proceedings or is proffered as a result of certain informal group dynamics.⁴⁰⁾ Some observers reason that Korea, being in a transformative state, has adopted the Western—primarily American—view that it is inappropriate for the court to order remorse for moral wrongdoing and that the injured party would not be receiving a sincere apology if the apology has been compelled rather than given voluntarily.⁴¹⁾ This study illustrates how Koreans' view as to what is acceptable or appropriate in a given situation can be different from the prevalent view that can be found in another country which shares a similar cultural tradition.⁴²⁾

Another study of Korean negotiators found several unique negotiating patterns that are usually not observed when analyzing negotiators from other Asian countries with similar cultural values.⁴³⁾ This study evaluated processes of significant domestic and international negotiations in detail, including negotiations (1) between the Korean government and the International Monetary Fund in 1997 over the terms of a financial bailout and (2) between Korean and U.S. broadcasters and other related parties over broadcasting rights in the U.S. for the Olympic games held in Seoul in 1988. A conclusion drawn from this study was that brinkmanship and instigation of a crisis were

40) *Id.* at 37.

41) *See id.* at 42.

42) This difference can eventually influence social conventions of a society and can lead to a different view about the law since this difference would result in a different view, for instance, as to whether it is constitutional for courts to order an apology. In Korea, there is a Constitutional Court decision which considered whether it is constitutional for a court to order an apology. *See* Decision of Apr. 1, 1991, 89Hun-ma160 (Constitutional Court of Korea).

43) Snyder, *supra* note 30.

key strategies commonly employed by Korean negotiators. Also, the study observed that, during negotiations, redefinition of the nature of the relationship within a hierarchy between two parties frequently took place and that therefore there was a constant need to make efforts to maintain unity within the group in order to avoid fractionalization.

This study further observed that Koreans require the instigation or escalation of a crisis in order to induce them to enter into negotiations and to sustain dialogue to resolve a conflict or problem.⁴⁴⁾ The study, which was conducted in the late 1990s, characterized Korea as a strictly hierarchical and collectivist society in transition towards democracy. The study observed that, during this transitional phase, internal conflicts among Koreans would inevitably take place and that an essential part of the internal conflicts would be the struggle for power and for the redefinition of social relationships. In a power struggle between two parties, the party that has been traditionally more powerful would try to reaffirm old conventions and maintain its social status while the weaker party would rise to challenge them. The study suggests, with the support of historical evidence, that an internal conflict often escalates into a serious crisis before the two sides are drawn to the negotiation table and are ready to resolve the conflict. This negotiation attitude is not necessarily confined to a situation of domestic negotiation. Instead, this study observed, even in international negotiations, Koreans seemed to need a crisis to enter into negotiations in earnest.⁴⁵⁾ In an international conflict, according to this study, Koreans may sit on a problem until it escalates into a crisis in order to mobilize public support and to avoid losing face by resorting to foreign influences until the last possible moment.⁴⁶⁾ The transition of a hierarchical and collectivist society into an egalitarian and individualistic society does not neatly explain this negotiation pattern at an international level.

Brinkmanship is the tactic of threatening to break off the negotiations and it serves several purposes. The direct effect of negotiators using brinkmanship is that having an attitude of brinkmanship could be helpful in assessing the opposing party's bottom line and could at times strengthen the bargaining

44) *Id.*

45) *Id.* at 410.

46) See Michael E. Zacharia, *Negotiating a Deal in Korea: Reflections of a Battle-Scarred Veteran*, 8 PEPP. DISP. RESOL. L. J. 385 (2008).

position of the party which employs the brinkmanship tactic. Also, brinkmanship could exacerbate conflicts and using this tactic could sometimes reflect the need to instigate a crisis in order to force a conflict to escalate into a state inevitably needing dialogue and negotiation. Brinkmanship could also manifest itself when one party is trying to ward off fractionalization of its group due to diverging internal opinions.⁴⁷⁾ That is, by taking an extreme stance, the leader of a party could avoid favoring one faction and alienating others and instead could maintain group unity.

Studies analyzing and explaining the causes of Koreans' negotiating patterns often refer to the struggle for balance between different cultural, economical, social and/or political forces.⁴⁸⁾ Thus, it could be emphasized that Korea is in a transitional state and, with this emphasis, many attempts for balance – together with many failures in the balancing act – could be explained.⁴⁹⁾ In this connection, it is sometimes argued that Korean negotiators struggle to strike a balance between traditional values and modern Western business practices.⁵⁰⁾ While there is perhaps room for debate as to whether Korean negotiators indeed try to strike a balance and, if so, as to what would be the main factors determining the balancing point, many would agree that Korean negotiators' negotiation styles have been changing rapidly as the nation becomes more internationalized and its members become more and more familiar with the social behavior of the members of different cultures. One study even demonstrated that the characteristics that Koreans value highly for a successful chief negotiator – such as the ability to articulate, patience, and the ability to be bi-cultural – seem to reflect closely what modern business practices would require rather than what traditional values would dictate.⁵¹⁾ Korea's evolving economic, political, and social environments are increasingly playing a major role in forming negotiating styles than its traditional culture.

In practicality, internationalization and diversification means that Korean negotiators would increasingly embody diverse layers of cultural values and

47) *Id.*

48) Snyder, *supra* note 30, at 397. *See also* Lee, *supra* note 30.

49) *See, e.g.*, Snyder, *supra* note 30.

50) Barkema & Vermeulen, *supra* note 17.

51) *Id.*

that there would be more and more of individual differentiation. In the legal field, this is in part reflected in the composition of lawyers at large law firms. Large Korean law firms invariably hire foreign qualified lawyers and their numbers are increasing. These foreign qualified lawyers themselves would have diverse backgrounds: some might not have had prior exposure to Korea at all; some others might be ethnic Koreans who were born and grew up in a foreign country and who may have learned about Korean traditional values and culture from their emigrant parents; and still others might be those who were born and grew up in Korea and who received only some part of their education in a foreign country. In addition, Korean lawyers often have extensive exposure to foreign cultures. These days, it is not uncommon to see Korean lawyers with several years of living experience in a foreign country and, regardless of their prior experience, after several years of practice at a law firm, many of them are given opportunities to spend a period over one year in a foreign country to study and/or to practice.

Depending on who among these diverse group members sit at the negotiation table, the counterparty may well have different negotiation experiences. That is, depending on circumstances, the foreign party to the negotiation may find the Korean counterparty to conform to the stereotype or, they may find the Korean counterparty far removed from the stereotype. Thus, it could be important for the foreign party negotiating with a Korean partner to figure out where in the diverse spectrum the Korean party is located. Also, while a negotiator could carry various cultural traits and negotiation styles, certain traits and styles could be elicited and emphasized in the course of a particular negotiation.⁵²⁾ Considering these possibilities, if there are ways to facilitate the manifestation of certain specific aspects of cultural traits which would be helpful for the successful culmination of a negotiation, analyzing the parties' cultural traits and exploring ways to elicit certain traits could serve important strategic purposes.

52) That is, a negotiator may be versatile in the sense that he or she has extensive prior exposure both in a setting where traditional Korean virtues are emphasized and also in a setting where Western-style values are prevalent. If so, the negotiator may exhibit different traits at different settings. The traits that are revealed may reflect the negotiator's own choice, given the circumstances. However, the negotiation counter-party may also have some influence in eliciting certain types of traits.

V. Understanding and Coping with Cultural Differences

To fully understand different negotiation styles in a cultural context or participate in cross-border negotiations, it is important to be aware of the biases that can serve as a hindrance to the successful completion of a negotiation process.⁵³⁾ First of all, while it is helpful to understand the cultural background of the counter-party negotiator, one should be careful not to over-attribute the counter-party's behavior to a nation's culture.⁵⁴⁾ It is important to remember that national culture is only one of many possible factors that have influences on a person's behavior even if it may at times be the most visible. Also, reactive devaluation and in-group and out-group biases could make it difficult for the parties to reach an agreement.⁵⁵⁾ With this type of biases, one would show a tendency to look favorably upon his or her in-group members and to attribute negative qualities and blame failure to the out-group members.⁵⁶⁾ Obviously, members of a party in a cross-border negotiation would readily identify members of the counter-party as the out-group, because of cultural and other ostensible differences. Once this identification and labeling takes place, self-fulfilling prophecies could drive the parties apart as they antagonize against each other rather than come to a fruitful conclusion through the negotiation process. Finally, there is a tendency to mimic the other side's behavior as a way to accommodate their culture.⁵⁷⁾ While this strategy could be helpful in building trust in some cases, in many other cases, using this strategy would not be helpful and may even offend the other side. A better strategy would be to effectively anticipate the counter-party's behavior and prepare ways to understand and accommodate cultures and values.

53) Much of the discussion on such fallacies in this Section, including names of various fallacies, draws from James K. Sebenius, *Caveats for Cross-Border Negotiators*, 18(2) NEGOT. J. 121 (2002).

54) This is called the Rosetta Stone fallacy because of the tendency to view a nation's culture as the Rosetta Stone, the indispensable key.

55) It could be called the "Visual Flying Rules" at Night fallacy.

56) This is sometimes called the fundamental attribution bias.

57) It could be called St. Augustine's fallacy because St. Augustine once gave the advice, 'When in Rome, do as the Romans do.'

While one may relatively easily understand why the style of a negotiator from a foreign culture is different from his or her own, managing a successful negotiation process with such a negotiator could be a whole different matter. The attitude that is required to successfully cope with cultural differences in negotiations could include the following: learning the other side's culture, finding ways to bridge the cultural gap, strengthening the opposing side's sense of security, and avoiding stereotyping.⁵⁸⁾

First, learning the other side's culture thoroughly will allow the prepared negotiator to expect certain behaviors and react appropriately. In the spirit of preparedness, it would be important to know how the other side will act and how they will expect their counterpart to act as well. Second, one could cope with cultural differences by bridging or narrowing the gap. This can be done most effectively by identifying a commonality such as a common professional culture. Third, it is important not to let the other side feel threatened which would not allow for smooth progress during the negotiations. An effective negotiator would strengthen the other side's sense of security, allowing the other side to trust him or her and to move forward in the negotiations. And finally, it is important not to stereotype the opposing negotiators. Cultural descriptions are about central tendencies of a population and it should not be forgotten that individuals within the population show considerable variation. Further, many factors other than a person's culture, such as their education, family background, personality and even factors more susceptible to unpredictable change such as moods influence the way the negotiator chooses to negotiate, so applying a cultural stereotype to one person may well be misleading and would not be conducive to a successful completion of a negotiation process.

VI. Conclusion

Literature shows that the relationship between culture and negotiation is complex. Not all members of a culture behave as the cultural prototype would predict, while at the same time, profiles of different cultures overlap. Cultural

58) Salacuse, *supra* note 20.

norms for negotiation may be cued more strongly in some situations than others. Also, cultural factors at times could take a backseat to other, more influential factors, such as education and corporate management styles. Nevertheless, knowing the link between cultural values and negotiating behaviors can serve as a handy and helpful tool during a process of cross-border negotiation. As the above review of Korean negotiators has shown, the cultural reasons behind certain negotiating patterns can be more telling compared to what the mere observation of those patterns themselves could provide.

KEY WORDS: Culture, Negotiation, Korean negotiator

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