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Negotiating with Chinese – some practical considerations

By Charles Parton

The author's experience of negotiations with the People's Republic of China (PRC) was in the diplomatic world. The advice which follows is generally relevant to all forms of negotiating with Chinese counterparts. However, some aspects may not fit well in business negotiations, for example the wisdom of using go-betweens who are not members of either side of the negotiation.

Before negotiations begin

The Chinese generally adopt a confrontational attitude in negotiations. They see negotiations as a battle to be won; compromise is more likely to be seen as a retreat or defeat. This may be a cultural trait, reinforced by the political nature of the Chinese Communist Party (CCP) and its innate (possibly, increasing) suspicion of foreigners. But it is also a conscious and contrived device aimed at controlling the atmosphere and putting the foreigners on the back foot. It is important not to be either surprised or alarmed at this.

Chinese negotiators usually have a brief handed down to them which has been decided at a high level. Ground level officials may know the subject better, but their input is small. They have very little, if any, leeway for taking the initiative. This too partly explains the often aggressive nature of Chinese negotiations: the official has no choice but to fight hard for the objective his superiors have set. Compromise would mean a departure from orders handed down. If deadlock results, officials prefer to report back to higher levels to obtain a revised brief or authorisation to proceed.

This mindset contrasts with that of Western negotiators. Again, possibly for cultural and educational reasons, they are more inclined to see both sides' points of view, to aim to get together to solve a problem through give and take, and to be imaginative in coming up with compromises. Their systems prize and reward these traits. This contrasts with the CCP, which prizes and rewards loyalty, obedience and the implementation of orders. Imagination and innovation can be dangerous.

The Chinese will have made fastidious preparations before they enter negotiations. They will have studied the foreign side's interests and likely positions, as well as the personalities of the negotiators if they are known inside the PRC. Depending on the importance of the negotiations, they may well have worked hard through cyber and intelligence channels to find out the other side's brief.

Western negotiators should do the same. 'Playing it by ear' puts them at a disadvantage. And home ground is best. Wherever possible negotiations should be held outside the PRC.

The start of negotiations: First moves and 'principles'

Not infrequently, in advance of negotiations, the Chinese will make certain demands or announce 'principles'. These are represented as fundamental, unshakeable. Sometimes they are, but sometimes they are not. Often the Chinese will say that they will not enter into detailed discussions until their 'principles' are accepted. The aim is to set the agenda on their own terms, to circumscribe the negotiations before they begin. Sometimes they serve as a 'concession' to be made later, in exchange for a real concession from the other side.

It is important to scrutinise these 'principles' carefully, to push back and, if necessary, to refuse to come to the table until they are redefined. This is to avoid

limiting the outcome of negotiations before they have even started, since the 'principles' will have been carefully designed to be consistent with an outcome favourable to the Chinese side's more detailed position.

The foreign party is usually asked to speak first and to reveal its hand. It is unwise to start with an honest statement of your position: the Chinese will assume it is not. Whatever you advance, they will criticise and reject it as 'unacceptable'. At best, any credit is bestowed grudgingly. The Chinese instinctively dissemble their own position and build in valueless concessions. Foreigners must do the same (this is true of all negotiations, but particularly so of those with the Chinese). A tough opening stance is essential.

It is wise to adopt an artificially negative attitude to some element of Chinese requirements, especially one which is of little value to you. You can then use it as a 'concession'.

Because the Chinese officials' brief has been set at a high level, it may be unrealistic and contain few detailed ideas of what can be implemented in practice. The Chinese side may often rely on the foreign side to produce suggestions in order to take the negotiations forward. In doing so, great care must be taken not to make concessions too early.

The middle game

The Chinese are reluctant to make concessions or to reveal their hand. This frequently results in a period of doldrums, because they cannot afford to be accused by superiors of giving way too early. They will use a number of techniques to undermine the opposition:

- Exaggerate their own magnanimity;
- Question the foreigner's good faith;
- Become abusive and accuse them of not showing respect;
- Hint at, but not make, concessions;
- Apply time pressures;
- Use leaks and publicity to intimidate (the Chinese press are at their beck and call), while at the same time reacting angrily and questioning 'sincerity', if they perceive the foreign side to have leaked details of the negotiations;
- Show an ability to ignore logic or relevant facts without embarrassment;
- Reiterate bad arguments;
- Pay no attention to what the other side is saying; and the,

- Use of intermediaries to convey messages, either to explain their constraints or to explore concessions.

The response to the above tactics must avoid taking them personally or reacting in kind or in anger. They are negotiating ploys and should be treated as such. Showing one's feelings or frustrations does not advance the cause. Never apologise or admit a mistake; insist on one's own sincerity. Attacking Chinese sincerity risks them losing face and acting emotionally. It is better to make Chinese negotiators uncomfortable, for example by suggesting that their attitude is not serious or by implying (never saying) that they are behaving in a way in which civilised people would not. Wit and humour are dangerous: they rarely translate well.

At times it may be useful to be ambiguous. Generally, Westerners dislike inconsistency, but indulging in it on occasions may be no bad thing. The Chinese are far less uncomfortable with both ambiguity and inconsistency.

Making progress – concessions

All negotiations involve concessions – on both sides, since neither side can expect to achieve all its aims. It is important not to offer concessions too early. The Chinese will pocket them and give little in return.

Do not expect your concessions to be described as concessions or to see the Chinese side also giving ground. They will describe concessions as a 'return to reason' and as not deserving of a reciprocal Chinese move.

Concessions should be advanced in a way which allows them to be taken off the table if the Chinese side does not also give ground. It is better to hint at concessions, preferably in informal conversations (e.g. over dinner or in breaks). During the Hong Kong Joint Liaison Group negotiations, the British side usually made progress away from the formal setting when the heads of delegations met for a chat. It was made clear to the Chinese that anything suggested would only be advanced formally at the negotiating table if the Chinese reaction had been clearly spelled out informally in advance. It was also made clear that if the Chinese side reneged on what had been agreed informally, the offer on the table would be removed.

However small your concessions are, inflate their importance. It is not wise to belittle Chinese concessions. Rather one should show appreciation, but deplore how long it has taken the Chinese side to come up with them.

During the Hong Kong negotiations serious sticking points were ungummed by the use of trusted intermediaries, who could explore with leaders in Beijing ideas which were not to be tabled formally, unless progress was promised. Such intermediaries were not given access to British positions. There were also many who offered their services and were not to be trusted. Use of intermediaries may not be applicable in a business negotiation.

The end game

This can come quickly once the Chinese feel that the foreigners' position is fully known or time pressures are telling on them. They happily abandon their 'unshakable principles' without blushing.

Time pressures need careful management. The Chinese are usually able to be more patient (they have no electoral cycle or press to assuage) and winning through a war of attrition, even at greater eventual cost to themselves, may be more important. But time can also be used against them, for example, if a Chinese leader is about to visit the foreigners' country and the negotiations need to be successfully concluded before the visit.

At no stage should the foreign side indicate that they may have deadlines for completion of the negotiations. If flights home or other business are unavoidable, the impression should be given that the reaching of an agreement will have to await another round of talks – on the Westerner's turf. Real deadlines must be concealed.

It is a fair bet that negotiations will take far longer than estimated. Negotiators and their head offices have to be prepared for that, as well as to walk away from a deal if it does not meet pre-agreed bottom lines. This would also represent a big defeat for the Chinese side, which is likely to compromise as a result. The Portuguese negotiators were able to delay the handover of Macau by two years, precisely because they convinced the CCP that they would simply walk away from the negotiations and leave Macau without an agreement.[1]

The Chinese are quite happy to use hunger and thirst as weapons in negotiations on their soil. If negotiations extend long into the night, they can eat, drink and sleep. They frequently do not provide victuals to the foreigners. Sensible negotiating teams should prepare by taking their own food and drinks and be prepared to shut their eyes in sleep for an hour or so.

[1] Carmen Amado Mendes, *Portugal, China and the Macau Negotiations, 1986-1999* (Hong Kong: Hong Kong University Press, 2013), p. 108.

Almost invariably at the 11th hour and 59th minute the Chinese will introduce an unacceptable demand. This is a try-on (this tactic was used during negotiations for the European Union's Comprehensive Agreement on Investment: at the last moment the Chinese inserted a demand that the agreement would not apply to countries which excluded Huawei from their 5G networks). Tired, hungry, and thinking of the home journey, foreigners may be tempted to give ground. Do not.

It is not over when it is over

The Chinese are quite likely to reopen a point you thought was settled earlier in the negotiation; they are likely to claim that it was always conditional. Often language in the agreement text which is fudged in order to glide past an obstacle will return to haunt you.

Anyone who has dealt with the CCP knows that negotiation only truly begins after everyone has signed on the dotted line. Almost invariably the CCP seeks to reinterpret the negotiation after the agreement is inked. This was amply demonstrated in the memorandum of understanding and agreement over Hong Kong's new airport, amongst other instances. Prepare for this psychologically and in substance, and by avoiding ambiguity in an agreement as much as is possible.

Lax security will undermine negotiating efforts

It is vital to maintain document and conversation security when negotiating inside the PRC. Conversations in break-out rooms will be monitored. The contents of unattended briefcases, computers and phones will be copied, particularly if left in hotel rooms. Any sensitive information should be kept on one's person throughout the negotiator's time in the PRC, including during any sightseeing or entertainment.

No one should go to the PRC with their usual electronic media. Always take a 'burner' phone and computer with the minimum information on them, and not connected to systems back at home.

And finally…

The negotiations do not necessarily stop outside the room. During breaks, dinners, entertainment and even tourist trips what you say to Chinese opposite numbers can be noted and used in the negotiations.

And an obvious point: before you start, know clearly your own goals and where you can and where you cannot compromise. Every negotiator should arrive at the table with clear instructions from back home on the circumstances which mean walking away without a conclusion. Careful preparation for failure is as important as careful preparation for success.

Never relax at the end of negotiations. Read both Chinese and foreign language texts with a gimlet eye. During the Hong Kong negotiations on the use after 1997 of land previously used by the British military, after agreement had been reached and texts exchanged, the Chinese side added a single comma to the English text. It took a further two days of negotiating to remove a small piece of punctuation which radically changed the meaning of a clause.

About the author

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