

Cross-Cultural Negotiation Capability for Foreign Investment: Beyond Legal Systems

Luis E. Ore*

Social and economic forces are challenging the way people do business around the world and interact with others. Globalization is making our world smaller and cross-cultural situations are at the core. International trade and foreign investment constitute part of this fast-growing development of international relationships. Regardless of specific legal systems, law firms and international lawyers help clients to find new markets and must help them with cross-cultural negotiations because many issues involved in international transactions contain cultural challenges.

Governments around the world need and want to receive as much fresh capitals and foreign investments as possible to improve the conditions of their economies and ultimately the living conditions of their national population. As international and foreign investment increases in developing countries, economic development and conflicting situations become more interrelated with environmental issues. Local, regional and national governments, business people and investors, local communities and population in general deal with the challenge of balancing environmental protection on one plate and economic activity and development on the other.

* Luis E. Ore is founder of ORASI Consulting Group Inc., a training and development consulting firm specializing in negotiation and relationship management: Assisting businesses with cross-cultural and international negotiations, strategic alliances, organizational changes, and foreign investment, especially among United States of America and Latin-American countries. M.A. with focus on conflict management, organizational and cross-cultural communication, J.D. from University of Lima, Peru, and extensive training in negotiation and conflict management from CMI International Group, Western Kentucky University, Lipscomb University, and the Program on Negotiation at Harvard Law School. Correspondence: 2600 Chandler Drive Apt. 934, Bowling Green KY 42104 email: luis.ore@orasicg.com

A legal framework is crucial to protect foreign investments. Beyond legal systems and right-based approaches to deal making and dispute resolution, shareholders of foreign investments and professionals in charge of negotiating and designing deals as well as professionals in charge of the implementation of investments and projects many times tend to overlook or generalize cultural factors. Overlooking or generalizing cultural factors when managing negotiations and relationships with potential local strategic partners or local communities and other stakeholders might determine the success or failure of the endeavor.

Besides governmental issues and regulation compliance surrounding all aspects of foreign investment, foreign investors have to deal with local parties whether they are potential strategic partners or local communities where the projects and facilities will be placed. Intercultural and cross-cultural awareness among international business and foreign investors is increasing dramatically but sometimes simplistic approaches to dealing with cross-cultural differences can prevent parties from reaching shared understanding, creating value on the negotiating table or generating lasting agreements.

When foreign business executives deal with foreign investment in other places than their home countries – a host country, they may face multiparty negotiations with diverse stakeholders. It is common to think that the main negotiations will be done with the government who will welcome the foreign investment, and this is a very important negotiation because the governments can assure its commitment to respect the rule of law, legal framework, democratic institutions and international accords. The government will grant permits and rights to initiate the investment projects. However, foreign investors might deal with potential strategic partners that have the knowhow of the market and networks that can facilitate the performance of the business. Foreign investors can also deal with local communities, sectors of the population and other stakeholders

that can support or prevent implementation of international investment or projects or facilities, in general, any economic activity intended by the foreign investors.

Cross-cultural and multiparty negotiations in which several people with diverse cultural backgrounds are bargaining on behalf of themselves or others are more complex than two-party negotiations but generate more potential opportunities to create value. Foreign investors might face cross-cultural and multiparty negotiation - a negotiation that involves more than two parties with interests at stake – when attempting to implement a project or facility in areas where local communities have interests and might want to voice their needs and concerns.

Foreign investors might face difficult situations such as the one faced by Stone Containerⁱ, a foreign investment American-based company in Honduras, when after reaching an agreement with the Honduras' government to develop an extensive forest management program and harvest 320,000 hectares of pine forest for 40-renewable-years, and after having it publicly announced, local communities around the country, and environmental groups and activist, raised their voices and protest on the streets. Ultimately, the government cancelled the negotiations with the foreign investors and Stone Container's project was not implemented.

In this case, it is important to highlight the fact that coalitions were formed to oppose the foreign investment and gained national and international attention and support that influenced the government in such a way that it was practically forced to withdraw its support to the foreign investor. Sebenius (2006) defines coalitions as “subsets of actors who coordinate their actions to achieve common desired goals”. Susskind and colleagues (2005) explain that “Parties often seek to create ‘winning coalitions’ that maximize the chances of making an advantageous deal for coalition members. In other cases, they may seek ‘blocking coalitions’ to protect gains or interests that may be threatened by emerging deals.” (p. 396).

The fact is that Stone Container's foreign investment project was negotiated with the government with a high degree of secrecy and the people of Honduras accused its government of corruption when they did not disclose the draft agreement. It seems that the population did not trust in their government, neither governmental agencies nor their established processes. The negotiation of this foreign investment project between the government and Stone Container had an approach that Professor Susskind calls "Decide-Announce-Defend". The parties negotiated and made decisions about the investment privately, reached an agreement with the actors who grant the authorizations, made a public announcement, and defended it when they found opposition. This project could have benefited Honduras economy and its population at large, but the negotiation process initiated to implement the investment project caused the formation of a blocking coalition that prevented the success of the foreign investment.

The Stone Container investment project showed that the way an investment project is introduced to local communities and other stakeholders might have an impact in its future development. The announcement of investment projects might bring excitement to local communities because of the potential of creation of new jobs for the local people and because it can bring development. The announced foreign investment project can also result in certain degree of uncertainty, perhaps member of local communities will have a sense of fear and be afraid that their life style will be threaten. This fear can lead to anger and potential social conflicts.

Foreign investments might positively or negatively affect the local communities where the facilities or projects will be placed or established. Beyond recounting the definitions of cultural dimensionsⁱⁱ, investors need to make sense of how cultural factors affect negotiations a people's interaction in order to understand the challenges they may face when evaluating the viability of the investment project, its implementation and the strategy to apply.

In general, when facing conflicting situations most of the people face the dilemma to fight or flight. Many people when feeling threatened will choose to fight for survival with an either/or mindset - a win/lose mindset - and the conflict can seriously escalate. Some dimensions or categories can explain the dynamics of how members of local communities can respond and react while facing foreign investment that might cause them feel threatened.

Local communities that belong to individualistic societies tend to fit into the universalist dimension approach to the application of norms. People aligned with this dimensions tend to believe that the rule of law is universally applicable to all as equals. Members of Individualistic societies also tend to have a small power distance dimension and tend to be more egalitarian societies. These characteristics might lead negotiators to believe that when communities feel uncertainty, fear or anger while facing a potential foreign investment project that might affect natural resources; they look at the court system to protect what they considered as their rights. This might be considered a rights-based approach to the potential conflict. On the other hand, local communities that belong to collectivistic societies tend to fit into the particularistic dimension approach to the application of norms. People aligned with this dimension tend to belief that the rule of law is applicable to particular individuals differently and that some people have more benefits than others based on determined conditions. Members of collectivistic societies also tend to have a large power distance dimension and tend to be more hierarchical societies. These ideas might lead negotiators to believe that members of this sort of society tend to distrust their court and legal system. Therefore, when these local communities feel uncertainty, fear or anger while facing foreign investment that might affect natural resources its members tend to reach out political power to demand the protection of their life style, status quo or their rights. People will tend to apply a power-based approach and participate in rallies and

protest to call to the attention of political leaders and any other powerful group to protect their interests, needs and concerns.

A different approach was taken by the government of Costa Ricaⁱⁱⁱ while facing Stone Container's project in Costa Rica. The Stone Container's project consisted of cultivating 24,000 hectares of gmelina tree plantations for wood chip production and exportation. The company planted trees harvest and initiated investigating locations for the plant and export facility. When the company found the proper location's facility for construction, environmentalist groups launched a media and legal campaign to prevent the construction due to their concerns for the potential damage to the environment. A new government came to power in Costa Rica and facing the current situation, the government named an inter-ministerial commission to analyze the situation and render a decision. The commission was supported by a technical assistance group to facilitate cross-cultural negotiations. The commission encouraged stakeholders to provide feedback and requested written submissions of recommendations. The commission would make a decision taking into consideration the recommendations and its own investigation. The commission made a decision, rendered a report, approved the project but requested relocation, and further joint working committees with the government and other stakeholders continued negotiating. At the end, stakeholders worked together and the company pledged its commitment with principles of sustainable development.

In this case the Costa Rica government managed the process and worked as decision maker but taking into consideration the concerns of several stakeholders, it played a role that legitimized the process and facilitated the negotiations between the parties. Other governments have been more proactive facing this sort of potential differences. One example is the Office of Environmental Justice of the Environmental Protection Agency^{iv} that designed with the help of

the Consensus Building Institute (Macey, 2003), guidelines to be considered when environmental justice advocates deal with conflicting perceptions of environmental quality. In December 2007, the Peruvian government announced its intention to create an Environmental Ministry to improve the management of environmental issues and assured to the international community its commitment to fulfill environmental obligations. This has been a crucial decision due to the fact that Peru has recently signed a free trade agreement with United States, and it is negotiating free trade agreements with Canada, China, European Union, and Asian-Pacific countries. This governmental initiative can result in an increase of foreign investment in Peru.

Governments can design processes to take care of the needs and concerns of all stakeholders when facing a foreign investment project. But there is no reason why a private foreign investment company cannot design a process to better face multiparty negotiations in the host country. One approach might be to design a consensus building process taking into consideration cross-cultural issues. A foreign investor will decide to engage stakeholders in a consensus building process to make a decision whether to invest or not. The investors have to take into consideration cross-cultural issues when designing a process for multiparty negotiations. Conoco's case^v in Ecuador might be an example of the failure of a process and the importance of process design and cross-cultural considerations.

From a cultural standpoint, in the case of Latin America, according to Hofstede's research, the average of the highest cultural dimension is Uncertainty Avoidance (UAI), which indicates the low level of tolerance of Latin Americans for uncertainty. Therefore, as a result of this high uncertainty avoidance dimension, Latin Americans are very risk adverse and do not easily accept change. (Hofstede, 2008). However, the distrust issue can be not only founded on cultural factors, but also on situational factors. Latin America has being object of diverse socio-

economical movements; national governments and administrations has gone from right-wing to left-wing back and forth, from democracy to dictatorships, alleged corruption has been a significant factor, and ultimately the lack of consistency with economical measurements has left behind the vast majority of the population including local communities. Local communities and its members might have the perception that the foreign investors come to take the wealth of their land or damage it with their economical activities leaving them worse off.

Whether it is a cultural or a situational factor, distrust seems to be pervasive in low income local communities in Latin American, especially native communities from Andean zone. Trust and distrust of the local communities in foreign investors might be a common belief, a cultural tendency of risk avoidance or a degree of uncertainty, or it might be a situational factor. Distrust in negotiations regarding a foreign investment project can prevent its implementation. If the local communities distrust the foreign investors, the population might not want to deal with them nor have the investment projects implemented in their ancestral lands.

Fisher and Brown (1988) share crucial points to enhance trustworthiness “be predictable, be clear, take promise seriously, and be honest.” (p.112). Foreign investors can apply these ideas to improve their trustworthiness when dealing with local communities. Susskind (1996) recommends to “act in a trustworthy fashion” and affirms that “(...) to inspire trust one must shape expectations; or, put it as simply as possible, we must “say what we mean and mean what we say”. But, even if the foreign investors behave in a trustworthy matter, levels of bias and cultural lenses of the local communities’ members can prevent them to perceive the foreign investors behavior as trustworthy. The foreign investors have a chance to shape the local communities expectations and perceptions by engaging the communities in direct honest and

open talks to address the distrust issue. Foreign investors will have to be open to the possibility that the distrust is based on situational factors, cultural factor or people's perceptions.

Foreign investors should open dialogue to allow members of local communities voice their views of risk and find ways to satisfy their concerns. It is also possible that perception of incompatible intentions or conflicting interest is voiced by the local communities as lack of trust in foreign investors or skepticism about their intentions. It might be that the interests, concerns, and fears of local communities have not surfaced. This is the reason why going "below the line"^{vi} or uncovering the underlying interests behind the positions of the parties is so crucial. Foreign investors should address the needs and concerns of the local communities if they want to overcome any sort of impasse, resistance, and reach the support or consent of the local communities for the planned investment project.

It is also possible that the local communities distrust the process or system they have in place to deal with their interests, needs and concerns – legal procedures. How the projects are announced to the communities can affect its acceptance or resistance. New and reliable processes can serve to overcome the lack of trust that local communities might have in the ones already in place. Therefore, another way to build trust might be by designing a process that takes into consideration the concerns of the local communities.

Preparation for negotiation and consensus building forums need to foresee and address the potential challenges that personal or cultural factors can affect the design and implementation of the negotiation process with local communities. Considering the principles of consensus building^{vii}, the principles for project planners dealing with conflicting values^{viii}, suggested by Professor Susskind, the "Phenomenological Model of a Conflict Process" developed by Ledereach^{ix} and applying cross-cultural dimensions that could significantly affect the negotiation

process, following a proposed integrative, interest-based and cross-cultural approach to multiparty negotiations for foreign investment.

After preparation sessions about the cultural tendencies of the members of the local communities where the foreign investors plan to develop a project and after a typical negotiation strategy planning session analyzing the seven elements^x develop by Fisher and colleagues (1991), the foreign investor can begin a multilateral negotiation process.

Getting In

Manage reputation upfront: Building Trust and Managing Connections

A foreign investor representative or a facilitator hired by the foreign investor should seek a trustworthy local community leader, show respect for his or her leadership status and acknowledge the autonomy of the local community. Request an opportunity to meet him or her and explain that a foreign investor is interested in developing a project in the area and the company would like to explore beneficial opportunities for both, the local community and the company. It is crucial to create a safe environment for these talks, expressing upfront that the investor is aligned with the principles for project planners when dealing with conflicting values developed by Susskind and Field (1996).

It is important to make clear that any proposed development project will follow these principles because this will shape expectation and create hope. Foreign investors have to express sincere interest to learn more about the local community and its people, its culture and history. These initial talks can begin shaping and building trust. The facilitator or company representative has to share the company's belief that this project can bring benefits to the local community. Explain that the foreign investor would like to develop an investment project in this local area, but any decision made about investing and developing the project would have to take into considerations

the needs and concerns of the local community. The company would like to learn about what the interests, needs and concerns of the local community might have. This joint effort should also serve the purpose to identify other community leaders and gather information about who might represent other stakeholders or who should be represented in these exploratory conversations. The facilitator should arrange to be introduced by this initial contact (a trustworthy leader of the community) to other leaders and representatives of the community. This identification process should take into consideration collectivistic and individualistic dimensions because it is crucial to identify who should be at the negotiating table and what the circles of influence might be. It is important to consider the relevance of power distance dimensions at this stage and that this first contacted leader might vouch for the goodwill and sincere intentions of the investing foreign company. This might also build up trust in the process.

Once the leaders and citizens of the community - that will represent several voices of the community - have been identified, and the facilitator or company representative has been introduced by the initial trustworthy leader, the representative of the company or a hired facilitator should explain the reason of his or her presence. The purpose of the representative gathering is to prepare an assessment of the needs and concerns of the community to be taken into consideration and determine what would be the best way to proceed considering the investment opportunity. The facilitator can also serve as reality check and help the local communities assess their alternatives and the company's alternatives. Local community members might be informed about the legal procedures by which the company could just obtain a governmental permit to initiate and develop its investment project without the approval of anyone else, but the company cares about what the local community thinks about the investment project, what the local community's needs and concerns are, what the local community would

like to see in the future, and that the company would like to have the local communities input and have the community participating in the decision making process to make a decision whether to invest or not invest.

The facilitator should create hope for the process and express that a lot of learning will take place as this process moves forward while the company and community build a positive relationship.

The facilitator has to express that that he or she “hope(s) that when a mistake or misunderstanding occurs, as some inevitably will, both sides will see it as a natural part of the learning process and redouble the efforts to reach an understanding of the other’s point of view”

(Malhotra, 2004, p.4) The facilitator must affirm the belief that this potential project can benefits to the community and the belief that needs and concerns of everyone involved will have to be taken into account in any decision made about the investment project. The facilitator must to share a sincere curiosity to learn about the stakeholders, as Malhotra affirms, “by taking the time to understand the other’s party’s history, culture, and perspective, you send the message that you’re committed to the negotiation and the relationship – an integral step in trust building” (Malhotra, 2004, p.4).

When listening for interests and interacting with others, there are cultural implications that need to be taken into consideration. According to professor Meierding (2007) diverse levels of understanding and reciprocity exist: Meaning, Credibility and Resentment. When people are interacting and listening for interests foreign investors’ representatives and facilitators need to be aware that the recipient of the message might not understand the message delivered (Meaning), or might understand the message delivered but don’t believe in the contain of it (Credibility), or might understand the message delivered, he or she could believe the message but does not like the sender of the message (Resentment).

Once the facilitator has gathered enough information about the issues and interests of the stakeholders, a draft agenda for a consensus building forum can be developed, but this agenda should not be closed, it should be open to the possibility to include any other topic or issue that might have been missed. Culturally this is important because member of collectivistic societies tend to approach negotiations with polychronic dimension – holistic and circular thinking - and they can be refrain from participating in a forum if they think that their other concerns will not be included.

Getting Through

Stakeholders' Involvement

In general, people get upset when decisions that affect them are made without taking into consideration their concerns. Stakeholders will be better off if they negotiate a joint agreement or at least if they are consulted and able to provide feedback about their concerns when others make decisions.

From a collectivistic stand point, relationships need to be built and taken care of when negotiating agreements and when facing multiparty negotiation with foreign investors that come from a individualistic society. Foreign investors need to understand that there might be other circles of influence that can work behind the scenes to build a winning or a blocking coalition in favor or against the investment project. Foreign investors need to be aware of whom the real decision maker is and if it is a formal authority, what the likelihood of changing a decision previously made due to social or political pressure would be.

Joint assessment

Once the groups of stakeholders come together, they should think together to evaluate and improve the informal needs assessment previously referred, and perhaps include topics that were

missed need to be address. Once the agenda is ready people can be engaged in problem solving to find practical solutions to the issues at hand. This group problem solving effort should follow some organizing framework and be facilitate by a professional facilitator with cultural sensitivity and awareness. Before having the parties make decisions about how they should resolve the challenges at hand, they should have believable information for all the stakeholders. Stakeholders should start with an exchange of information upfront. The stakeholders should exchange information even if the interpretation of those facts and forecast based on those facts are perceived differently. At this stage, stakeholders have to suspend judgment to be able to creatively approach the challenges. Stakeholders have to work together to determine what information they have and what they do not have, and reach consensus about what type of information they want to find. Therefore, before the stakeholders get engaged to make decisions of any type about how to solve the challenges they have, they can engage in a joint fact-finding process, a collaborative process to deal with technical difficulties, by which parties decide together what information they need and how information is going to be gathered, analyzed and interpreted.

It is also possible that after the information is gathered, even if the local community and other stakeholders and the foreign investors agree on the data, they may have different forecasts and fact interpretations. Foreign investors can make the most of differences in forecast and risk preferences. The foreign investors can offer contingent commitments to ease the local communities' worst fears. Fear and risk generates distrust. One cause of fear might be the expectation of what will happen in the future. Fear and anger can cloud people's reasoning, but differences in beliefs about how future events will unfold can be bridged by contingent

commitments which are “deal structures that permit parties to ‘bet’ on their predictions by specifying different payoffs based on future events”. (Bordone & Moffitt, 2006, p.3).

It is important to highlight that in cases in which the implementation of a foreign investment project may affect environmentally a local community, it might be necessary to make the local community members more than just better off. As Professor Susskind might say contingent commitments need to be convincing enough that local communities consider that prospective risks of establishing a foreign invest project is worth taking. (Susskind, 1996)^{xi}

Talking, Chatting & Working Arrangements: Joint problem solving and citizens choice

The objective of joint problem solving is to try to create agreements that leave everyone better off than they would have been if no agreements had been reached. The problem solving approach has to take into consideration additional cultural factors. Besides the “levels of understanding and reciprocity”, other significant cultural factors must be taken into consideration when dealing with people that have potentially diverse cultural backgrounds. Thinking processing styles can affect and actually frustrate a negotiation process. A Monochronic person tends to have a linear thinking process, following precise points of the agenda, and makes commitments as they follow the items on the agenda. A Monochronic sees time as money. A Polychronic person tends to have a more holistic thinking and jumps from one idea to other and then comes back to the initial one. A Polychronic person considers all the options and items of the agenda items as total package. A Polychronic person sees time as relationships. Direct and indirect communication styles are also relevant factors. Some people can be indirect when talking about relevant issues and “go around the bush”, while others go straight to the point and criticize the former for not being able to have a frank dialogue whereas the indirect communicator criticizes the direct communicator because of his or her lack of tact when talking about issues and threatening

behavior. It is also worthy to consider that typical individualistic people tend to approach negotiations in a straight forward and competitive approach, Americans are well know for the expression: “Get down to business” while members of cultures that are more collectivistic tend to be less task oriented and more relationship oriented, for these people the negotiating parties need to get to know each other and then they can talk about business. Time view also affects the negotiation process while some people want an itemized agenda clearly divided by units of time; others need to take the amount of time needed to address a situation or concern. This can be compared to a children’s game in which, who ever looses their patience and their temper, looses the game. If a negotiating party looses its patience, he or she will loose the deal. Another sensitive topic is the standard of fairness among different cultures. As Meierding (2007) affirms there are different standards of fairness. There are the objective criteria under the legal framework, there is a equity theory, that people should receive something based on their contribution to the creation, and there is a cultural based theory, which uses cultural values to determine what is fair, for example, it can be fair based on seniority, status, gender criteria or based on necessity.

Once stakeholders and foreign investor have developed a draft agreement, groups of stakeholders should take a written version of the draft agreement back to the constituencies they represent for discussion and gain more feedback and insights from them. This stage can bring additional concerns of the local communities up to the surface along with potentials resistance or challenges for implementation. Some researchers suggest broadcasting a cable/TV session, but these problem-solving sessions could be recorded and made available to who ever might be interested.

Getting Locked

If during any stage of the multiparty negotiation process stakeholders get stuck and locked, in their interactions or run into an impasse, the facilitator should go back to the process, moving away from position toward interests and rectifying any potential cultural misstep. Honoring and sharing appreciation for the culture and identities of all the parties is always rewarding.

Getting Out

Stakeholders groups and foreign investor representatives should try to foresee the obstacles that the implementation of the investment project might run into. Parties should keep ongoing learning and development relationships. Once the foreign investment project development has been approved, the communication channels should be kept opened to gain feedback to ensure that implementation is aligned with what was previously agreed and keep making joint decisions with local community members to address any raising concerns. As Susskind (1996) affirms, “if impacts or risks, such as mercury poisoning, are worse than expected, the citizens ought to be involved in formulating revised mitigation strategies” (p.175).

There is a common tension between establishing foreign investment in developing countries and impacting the environment of local communities. But foreign investors and local communities can work together to reach mutually satisfactory agreements that take into consideration interests, needs, and concerns important for each stakeholder. Even if there are huge cultural differences among the potential negotiating parties - foreign investors, local communities and other stakeholders – there is always a chance to bridge this gap. Because culture can be compared to an iceberg which has its values, beliefs and worldviews influencing people’s thinking and behavior under the water, a professional facilitator can dive in by respectfully and curiously probing and listening while being aware of the different levels of understanding. Paying attention to cultural issues, respecting differences, learning about the local communities

where the projects wanted to be established, honoring the others' culture, appreciating the others' identity, acknowledging emotions, framing the foreign investment as a mutually beneficial opportunity and engaging stakeholders in decision making processes will build the trust required to have positive working relations among foreign investors and local communities. Countries will welcome more foreign investment, improve the conditions of their economies and ultimately the living conditions of their people.

ⁱ Sebenius, J., & Riley, H. (1997). Stone container in Honduras (A & B), *Harvard Business School Cases # 897-172 and 897-173*. Examines Stones Container's negotiations with the government of Honduras in which after negotiating with the foreign investor due to stakeholders' opposition the government withdrew support to the investor.

ⁱⁱ Edward T. Hall, Geert Hofstede, and Alfons Trompenaars are some of the leading researchers that have studied cultural dimensions and differences in different settings. Some examples are: Hall's dimensions of Monochronic / Polychronic in processing styles and High Context/Low Context in communication, Hofstede's dimensions of High / Low Power Distance, individualism / collectivisms and Uncertainty Avoidance, as well as Alfons Trompenaars's dimensions of Universalism / Particularism regarding the applications of rules in society have brought about a higher sense of awareness that people must take into consideration when dealing with others. These cultural dimensions help negotiators understand the behavior and thinking of negotiating parties. However, cultural awareness is not enough; governments, business men and women and local communities dealing with international business and foreign investment need to move from cultural awareness to cross-cultural competence and building cross-cultural negotiation capabilities that allow them to efficiently negotiate and reach their goals and objectives.

ⁱⁱⁱ Sebenius, J., & Riley, H. (1997). Stone container in Costa Rica (A & B), *Harvard Business School Cases # 897-140 and 897-141*. Examines Stones Container's negotiations with the government of Costa Rica in a development project in which the government played an active role managing a process to bring the stakeholders together reaching a settlement.

^{iv} Macey G. , & Susskind L. (2003). *Using dispute resolution techniques to address environmental justice concerns: Cases studies*. Cambridge, MA: The Consensus Building Institute. CBI developed guidelines for The Office of Environmental Justice Environmental Protection Agency within the U.S. Environmental protection Agency to use ADR and consensus building processes to address people's environmental concerns.

^v Salter, M. & Hall, S. (1994). Block 16: Conoco's "green" oils strategy (A, B, C, & D), *Harvard Business School Cases # 394-001, # 394-005, # 394-006, and # 394-007*. Examines Conoco's negotiations with Ecuadorian government in the development of a \$600 millions oil field project that failed during its attempts to reach consensus with stakeholders.

^{vi} "below the line" is a concept that means that parties in conflict should look below the parties' positions to understand the interests, needs, and concerns and other motivations underlying the positioning bargaining

^{vii} Principles and phases of consensus building: convening, assigning roles and responsibilities, facilitating problem solving, reaching agreement, holding people to their commitments. (Susskind & Cruikshank 2006, pp. 20-22 pp.)

1. In any group or organizational effort to make decision, it is crucial to clarify the responsibilities the people involved have to others they are presumed to speak for, or otherwise present.
2. Once a group gets together, it should not start work until its members clarify what their mission is, decide what their agenda will (and will not) include, and settle upon the ground rules that will guide their conversation.
3. Before a group tries to make decisions on anything, the participants should engage in joint fact finding.
4. Groups should try to generate agreements that leave everyone better off than they would have been if no agreement had been reached.
5. It is important to hold people working in groups responsible for taking a written version of a draft agreement back to the people or groups whom they represent.
6. Groups should always think ahead about things that can go wrong as they try to implement whatever decision or agreements they reach.

^{viii} The principles for project planners dealing with conflicting values were suggested by Professor Susskind and Field (1996):

1. Fairness in process and substance matters, especially when there has been past inequities.
2. Discussion around the design and implementation of controversial developments requires meaningful input from all stakeholders.
3. A community must be left substantially better off if it is expected to “host” a development
4. Decision-makers (including citizens, as stated in principle 2.) should have access to the best technical advice available, but technicians should not make what are essentially political decisions.

^{ix} Ledereach developed a “Phenomenological Model of a Conflict Process” to analyze and guide conflict management in different cultural settings. Here is used based on the work done by Augsburgers, D. (1992).

^x Fisher and colleagues (1991) in their work develop an approach to negotiations analysis and strategic planning using 7 elements: Communication, relationships, interests, options, legitimacy, alternatives and commitments.

^{xi} “In the case of communities anxious about risky facilities such as (mines), unless the residents stand to become better off than they will be without such facility, why should they agree to accept the risk involved? Even a contingent promise to clean up, pay medical expenses, or cover the loss of property values won’t be enough, especially if the community is relatively well off. Even if the community is not well off, recent emphasis on environmental justice suggests that poor and minority communities, just like everybody else, do not want to bear undue and unfair risk. The only way to site such facilities successfully is to promise the community something valuable – something that they define as ‘worth the risk.’ (...) However, the concept is straight forward: Contingent commitments need to be sufficient to convince an angry public that prospective risks are worth taking” (Susskind & Field, 1996, p.151).

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