Confessions of a lucky negotiator

Tommy Koh
The Straits Times, 7 May 2014

Success in negotiations between states involves the use of many skills, including an ability to develop genuine friendships with foreign diplomats. But as one veteran negotiator points out, a good deal of luck is also involved.

IN JUNE last year, I received a letter from the president of Harvard University, Professor Drew Gilpin Faust. She informed me that, on behalf of the Programme on Negotiation (Law School) and the Future of Diplomacy Project (Kennedy School), Harvard would like to invite me to visit the university in April this year, to receive the Great Negotiator Award.

Receiving an award from Harvard is hard work. At Harvard, I had to meet Professor Robert Bordone and his class at the Law School, Professor Jim Sebenius and his class at the Business School, and Professor Nick Burns and his class at the Kennedy School. I was also invited to speak at the Belfer Centre of the Kennedy School at lunch on Asean and the great powers.

On the fourth day, I was questioned for three hours at a public hearing by Prof Sebenius, Prof Burns and Ms Susan Hackley, managing director of the Programme on Negotiation, as well as by professors and students from Harvard, the Massachusetts Institute of Technology, Brandeis and the Fletcher School for Law and Diplomacy.

The following were some of the most frequently asked questions:

Is negotiation an art or a science?

Negotiation is both an art and a science. It is a science because it is possible to identify the characteristics of a good negotiator. It is also possible to identify the techniques and practices in the tool kit of a good negotiator. Negotiation can be taught.

Negotiation is also an art because a good negotiator should also have a high emotional intelligence and cultural intelligence. There is increasing recognition of the fact that we think both with our heads and our hearts. To succeed in a negotiation, we should aim to connect with our negotiating partner cognitively, emotionally and culturally.

Can you give an example where emotional intelligence and creative intelligence played a positive role in a negotiation?

Negotiations between countries often stumble because the negotiators do not understand each other or do not like each other.

A few years ago, Malaysia and Singapore were locked in a dispute over Singapore's land reclamation activities in Pulau Tekong and Tuas.

The Government appointed me as the leader of the Singapore delegation to negotiate with Malaysia. The late Mr S. Tiwari, head of the International Affairs Department of the Attorney-General's Chambers, was a member of our delegation.

Fortunately, I was a good friend of the leader of the Malaysian delegation, Tan Sri Ahmad Fuzi Haji Abdul Razak, and Mr Tiwari was a good friend of the Malaysian Attorney-General, Tan Sri Abdul Gani Patail. The fact that the four of us liked and trusted one another was a great asset. When the negotiations became acrimonious, we would adjourn the plenary meeting and the four of us would meet in a huddle. Several difficult issues were resolved in this way.

Is it possible for a small country to negotiate effectively with much bigger countries?

The conventional wisdom is that we live in an unequal and hierarchical world. Big countries enjoy much more power than small countries. They compete with one another on a playing field which is not flat but tilted in favour of the powerful countries.

I must confess that this narrative does not resonate with me because it does not reflect my experience. Let me explain.

In 1990, I was asked to lead a delegation to negotiate an agreement with China for the establishment of formal diplomatic relations between our two countries. At our first meeting in Beijing, the Singapore side explained to our Chinese friends that although we wanted the negotiation to succeed, we were not prepared to humiliate Taiwan, to abrogate our existing agreements with her or for our leaders to give up their right to visit Taiwan, in their individual and private capacities.

The negotiations were successfully concluded and formal diplomatic relations were established in October 1990.
In the past 24 years, relations between China and Singapore have expanded and deepened in all sectors. My only regret is that the Chinese have been trying to claw back the concession they made to us regarding visits.

This is not acceptable. China must honour its agreements.

In 2000, I was asked to lead a delegation to negotiate a free trade agreement with the United States.

At the first meeting held in Washington, DC, in November 2000, I made it clear to our American friends that although we wanted an agreement, it must be fair and balanced. I said that a bad agreement was worse than no agreement and that we were prepared to walk away from the negotiation if we could not agree on a fair outcome.

After two years of strenuous negotiations, we did arrive at a good agreement. We are currently celebrating the 10th anniversary of the coming into force of the US Singapore Free Trade Agreement. During the past decade, trade between our two countries has boomed, increasing by over 100 per cent for services and 85 per cent for goods.

The agreement, especially its provisions on intellectual property rights, has made Singapore an even more attractive destination for US investment.

Based on these and other experiences, I would say that it is possible for a small country to negotiate effectively with bigger countries. The small country should be prepared to

defend its national interests. Its negotiators should conduct themselves with dignity and demand that they be treated as equals by their negotiating partners.

Why is timing important to the success of a negotiation?

Timing is important in human affairs. This is true in negotiations, especially in multilateral negotiations. Let me cite an example from the process of negotiating the Rio Declaration of Principles on Environment and Development. The subject was assigned to the Third Committee of the Preparatory Committee for the Earth Summit. The chairman of the committee was getting anxious that there was no agreement on the text at the final session of the committee. In good faith, he produced a chairman's compromise text.

Unfortunately he acted too soon. The developing countries rejected his compromise proposal, accused him of being biased in favour of the developed countries and quite unreasonably, decided that they would no longer negotiate under his chairmanship. Instead, the delegations met under the informal co-chairmanship of India and Norway. I decided not to interfere and waited for the right moment to strike.

A few weeks later, India and Norway asked to see me and appealed to me to take over the negotiations. I agreed on two conditions: (a) that India and Norway would prepare a negotiating text for me; and (b) that we conduct the negotiation in a closed group of 16 delegations, with eight each representing the developed and the developing countries. We worked round the clock for two days and agreed on the text of the declaration.

The moral of the story is that the chairman must know when to intervene and, when the moment was right, he must intervene decisively to clinch a deal. The mistake of my colleague was that he intervened too soon when the delegations were not ready to make a deal. He also failed to win the trust of the developing countries.

How do you succeed when chairing major multilateral negotiations?

I chaired the United Nations Conference on the Law of the Sea in its two final years, 1981 and 1982. I also chaired the Preparatory Committee for the UN Conference on Environment and Development (Earth Summit) from 1990 to 1992.

At Harvard, I was asked how I managed to bring those two negotiating conferences to a successful conclusion. My flippant answer was that it was with great difficulty! My serious answer was that I had to play many roles: as the manager of a complex negotiating process, as the coordinator of many parallel negotiations, as the chief problem solver, as the choreographer of a complex dance, as a conductor of an orchestra, and, most of all, as the unifying and optimistic leader of an enterprise. I had to use every component of my tool kit. I had to use all of my intelligences: cognitive, emotional and cultural.

Most of all, I had to be lucky. At the Earth Summit, I was lucky that the chairman of the Group of 77, to which all developing countries belong, was a wonderful ambassador from Pakistan, Mr Jamshid Marker. I was lucky that, with the United States being unable to lead the developed countries, because president George H.W. Bush was seeking re-election in 1992, the European Union agreed to take on that role. It was led by an outstanding delegation from the Netherlands.

I was lucky in being able to appoint several talented colleagues to chair the various negotiating groups which I had established.

Finally, I was very lucky to have enjoyed the support of colleagues from all parts of the world. Without their support, nothing could have been achieved.

The writer is the rector of Tembusu College at the National University of Singapore.