

Dear Colleagues,

It is a real pleasure to be here today!

Let me first thank my dearest colleague, Daniela Di Francia, for having invited me to take part in the Commission as Vice-President.

It is an honor and a pleasure to be seated here today amongst such an exquisite panel.

My name is Filipa Correia Tenreiro; I am a Portuguese lawyer admitted to the Portuguese Bar and have established myself in Italy since 2007.

Currently, I moved to Milan and I am now working in the prestigious Law Firm Valente Associati GEB Partners, dealing predominantly in Contract and Commercial Law, Export Control Law, EU and International Tax Law.

Having introduced myself, I would immediately suggest to turn to today's topic: Preparation of International Negotiations.

As David A. Lax and James Sebenius say *“savvy negotiators not only play their cards well, they design the game in their favour even before they get to the table”*.

As you all know, Portuguese are known worldwide for their codfish, music (fado) and football (soccer for American speakers).

Some of the best soccer players or soccer coaches are Portuguese – stars like Cristiano Ronaldo and Jose Mourinho, as you might already know.

Last year, we had also a FIFA soccer agent under the spotlight; Jorge Mendes, an excellent example of a savvy negotiator, who was nominated as best “Soccer Agent of the Year.

Jorge Mendes is a registered FIFA Agent. In 1996, he set up the Gestifute company which is specialized in career management. Besides his career management activity, he also provides assistance to his clients in other areas, such as management of image rights and sponsorships (Polarissports), career planning and communication (Gestifute Media), providing his clients with a “meticulous, thorough and professional service”.

Mendes is known for closing hugely lucrative contracts, representing almost all Portuguese international players, including José Mourinho. I was fortunate enough to get an interview.

The key for his success – Mendes’s ability in building **relationships and trust**.

For him, reputation, reliability, trust and a good relationship with the counterpart with whom he is negotiating is crucial to achieve a successful negotiation.

As I have been told, Mendes prepares his negotiations in each detail, although he does not follow any specific format.

The reason for that?

He says that each negotiation is unique, requiring a specific and tailor-made preparation.

He starts out by searching as much information as possible on the parties and interests in the game. As we all know, information within international negotiations is power.

For Mendes, besides information, experience is the best asset that one can have. In his opinion, technical courses/preparation can be important but what really matters, in his own words, is paying attention to the counterpart in order to anticipate its next move, and playing the highest card at the right moment, replying with the strongest point.

Mendes does not follow a specific personal format - as I said before - although he prepares each negotiation in great detail within its own context.

As you can see, negotiation is all centered in Mendes. Usually - and oddly enough (if I must say) - the Lawyer’s presence will be required only in the final closing, to draft final agreements. In other cases, where there is greater complexity (e.g. International Tax considerations, domestic/internal laws involved), Lawyers will join the negotiation table at an earlier stage.

With regard to representation, I asked if Mendes had a sort of Mandate or Power of Attorney in order to better understand his relationship with his clients. In all those cases where they already know the client, there is no mandate. He simply discusses with his clients their goals, ambitions and economic expectations in detail, and then he will act alone, with neither a mandate nor his client’s presence.

The game at this stage will be played only by Mendes; the soccer player will enter the field only after the closing of the negotiation. In the few cases in which they do not know the client (very few, actually) they may ask for a written mandate/document in order to know the clients ambitions and interests before any further negotiation.

As far as sponsorships are concerned, contracts are all, or at least the majority – negotiated by Polarissport team. Also in this case, there is no lawyer’s presence in the majority of the decisions made and actions undertaken within these negotiations.

Mendes has built a strong reputation within his area of action, undoubtedly he has acquired a solid experience over the years, having one of the best soccer players network.

He represents the *gladiators* of a new era, building negotiation on seriousness, experience, strong preparation and long-lasting relationships.

I must agree that all these factors are extremely important and are the key ingredients of a negotiation; however, in my opinion, we cannot only trust in our own experience or natural skills. We need to be well prepared, and we need to be aware of how to prepare in detail a structured negotiation in order to get the most of it.

Business executives or Lawyers often fail to derive maximum benefit from their negotiation because one or both sides undervalue the preparation phase.

On the other hand, we cannot only rely on preparation in order to succeed.

Among the personal qualities, a good negotiator needs to be knowledgeable, have a strong attitude and presence, ability to listen actively, be in control of his emotions, communicate persuasively, and be a natural problem solver who has the ability to think strategically. Negotiators need to think strategically, because negotiators are also entrepreneurs, able to build value or even enhance the expectations of their clients *vis-a-vis* a specific deal. Of course, a good cultural level, intuition, charisma, good communication skills and a strong technical preparation are also required.

A negotiation must be designed in detail, anticipating all the moves, gathering all the possible information, and calling the right players to the game.

This creation of value must be anticipated in order to be able to improve our own BATNA (Best Alternative to a Negotiated Agreement).

The idea that negotiation is all played with tactics at the bargaining table is obsolete now.

Negotiators nowadays must think strategically, entrepreneurially, and are able to design value-creating deals before their arrival at the bargaining table.

We need to be able to “pre-shape”/”pre-design” the game we play!

But HOW CAN WE SHAPE THIS GAME?

IS THERE A STRUCTURE of PRE-Preparation that one should follow?

The answer is YES, of course.

Let’s start with the structure of the negotiation. Lax and Sebenius, defend a 3D Dimension of the negotiation. For them, traditional theories of “Win-lose” or “Win-

Win” are too restrictive. Centering negotiation at the bargaining table is too redundant for these two authors.

They defend a 3-dimensional structure which is not always followed by all Negotiators, as we can see in their chart.

The **First dimension** is TACTICS – traditional phase, centered on tactics, people, relationship.

**SCOPE: *Maximizing Effectiveness at the Table***

In this phase the personal skills of negotiators, hard-ball techniques (and how to deal and avoid them) will come into play as well as, different styles (more or less cooperative, aggressive, etc), differences with culture and etiquette, communication skills, etc. As we know cultural aspects and etiquette cannot also be forgotten in a cross-border negotiation; although they might seem too obvious, and yet, they can make a big difference for the success of a negotiation. During this phase negotiator will also be centered will be focusing on building a solid relationship.

The **second** is DEAL DESIGN

**Scope: *Engineering the Deal***

2D Negotiators go beyond the tactics and interpersonal process, and go straight to the crux of the matter. They will be focusing on identifying potential (economic and non-economic) value sources and on building agreements that may possibly create value for both parties.

The **third** is SETUP: In this third dimension, it is essential to deal with all the problems related to scope *“Common problems in this often-neglected third dimension include negotiating with the wrong parties or about the wrong set of issues, involving Parties in the wrong sequence or at the wrong time, as well as incompatible or unattractive no deal options”*.

Negotiators need to think beyond the current deal, thinking big, to verify if the right players are at the table, or if for example, we could gain value by calling a competitor or third parties to the negotiation table (this can be a good tool to fight bluffs or have the counterpart immediately raise their initial offer), or by even soliciting outside offers.

Other useful ways for negotiators to create value is to change the points and issues under discussion as well as the interests at stake. And by using all of the latter moves, negotiators can claim value not only for themselves but can even help enhancing value for others. They are able to take the right action at the right time, changing the game to gain maximum advantage.

Negotiators will analyze the structure of the deal, its effectiveness and its potential, and will be able to set up, or if necessary, reset the table.

Some of the possible questions that a negotiator should ask within this phase are:

- Are the right parties at the table?
- How shall I make them come to the table?
- In what sequence and on what basis should they be approached? Separately or together? Publicly or privately?
- How to “organize” the issues under discussion? Shall we discuss them separately or should they be combined?
- What are the no-deal alternatives?
- Etc.

There are other authors that defend this theory of value creation. Adam Brandenburger and Barry Balebuff (in *co-opetition*) discuss ways of claiming value and say that “*To change the game of business, you have to alter one or more of its five basic elements:*

1. *Players*  
*You can alter the mix of competitors for your company.*
2. *Added Values*  
*Whichever company adds the most value to the value net holds the power. Change the added value of the various players and you change who holds the power, and the game itself.*
3. *Rules*  
*If you can change the rules by which the game is played, you can influence who will be most successful. In business, the rules are negotiable.*
4. *Tactics*  
*By altering the players’ perceptions, you can change the outcome of the game. Perceptions are shaped by tactics.*
5. *Scope*  
*By understanding how other commercial games influence this game, you can take advantage of any implicit boundaries other parties are using to improve your own competitive position, and change the game.”*

Negotiators, in order to create the most possible value, have to be able to manage this 3D dimension easily, being able to draw from the immediate deal and catch elements that can contribute to increase value.

By understanding the above mentioned stages of the negotiation procedure, negotiator will be better prepared and able to provide enhanced results, ensuring efficient agreements that maximize the joint returns aimed at by the parties.

In order to do this, it is advisable to have a MAP.

Negotiators need to “scan widely” all the aspects in the game, which should result in an accurate and detailed **Map of all the parties, interests, processes**, etc. This map will allow the negotiator to pick the right sequence of questions to be addressed, to call the right parties, setting the game at its best level. It is important to identify also possible elements with a more favorable setup, mapping backwards from the most promising structure for the deal to the current structure, using and managing the information that is gathered before and during the negotiation. This document will be useful not only for the proper setup of the negotiation and to get the most of it, but will be very useful for the construction of settlement offers.

My suggestion is to prepare this map in a very detailed manner including all the relevant aspects and have this document fully prepared well in advance of the negotiation. I would advise that in those cases where the map is too long, the ideal would be to prepare a short one-page summary in order to have a global vision during negotiations.

But, what should be included in the MAP?

a) MAP THE PLAYERS AND THE PROCESSES

It is important to start by **identifying the Parties** (actual ones/ and potential ones), their interests and expectations, their internal hierarchy and influential power, their roles within the negotiation itself, their charisma and reputation (finding the style and main character of counterpart) or even their number.

We must gather as much information as possible on the other Party(ies) before the negotiation starts (this phase includes also cultural aspects and formalities, style of the negotiators involved and their usual approach to negotiation) in order to ensure that the right parties are addressed in the correct order. We must consider that sometimes decision-makers are not at the table (this is very usual especially in Middle East Countries).

In addition, we must be able to identify Parties that can contribute to create value or even call the right person to the table in order to enhance our BATNA (Best Alternative to a Negotiated Agreement).

It is also important to have an idea of the other Party’s bottom line – its ZOPA (Zone of Possible Agreement). The ZOPA gives an idea if there is margin for value-creation. If one or both parties have a very attractive BATNA, we could have a situation where there is unfortunately no ZOPA.

At last, we need to keep all influential players well monitored and duly followed.

Another Key aspect to take into consideration for the mapping is:

- b) ISSUES under discussion.

Sometimes it is difficult to know all the issues under discussion beforehand, since Parties can hold information and only release it at a later stage.

- c) The same consideration shall be given to the mapping of INTERESTS at stake, priorities and goals of the other parties as well as their power and their “points of concession”.

This item is hard when even Parties are not aware of their interests or their needs, and they arrive at the negotiation without having defined all their interests. It's important to map also known alternatives/options to the mapped interests (including all of the interests under discussion, the principal ones, as well as the secondary ones) and to rank them.

Negotiators should even include in the map the difficulty and cost of reaching an agreement with each of the parties and the importance or relevance of having its support.

Hence, negotiators need to be able to understand the other party's expressed positions (in order to find out one's real interests), so as to properly link the discussion of the issues, making good use of any available leverage or strong points, and to understand its trade-offs.

- d) Another key brick for a negotiation that should be included in the Map is BATNA (Best option outside the negotiation).

It is important to have a clear picture of both BATNAs (ours and theirs). In order to understand the true value of a BATNA, negotiators need to weigh their key points and their weaknesses. Logically, the more powerful our BATNA, the more can we demand.

We must stress that a monitoring activity is required throughout the entire negotiation. Parties, processes, interests and even BATNA can change during a negotiation. Therefore, constant review and monitoring cannot be put aside in an international negotiation.

After preparing the map in detail, a Negotiator will be able to map backwards (from the ideal point to the current state); this method will allow the negotiator to understand the most auspicious sequence of discussions.

Notwithstanding the above, sometimes the creation of joint value is at risk or limited only because the information does not flow as it might have. Parties may be holding key information or may unveil it only later on. In general, books usually include some examples to overcome the “barrier of information”, recommending often to:

- a) Prepare and ask a lot of questions at the bargaining table;
- b) Search beneath the other party's/parties' positions;
- c) Start by revealing information, in order to provide some incentives for the other party to do the same; etc.

As I said before, accurate "checking points" and monitoring is advisable. A detailed analysis shall be made in all the 3 negotiation stages. Start by verifying if there is any problem within the first dimension: check for people-related obstructions, like missing communication, lack of trust, misrepresentations or misperceptions, etc.

Then, check on the deal design dimension, verify if the proposed agreement offers sufficient value to the parties or if a no-deal is might be more attractive.

And at last, check on the set-up of problems due to a selection of wrong parties, wrong interests, related to process (sequence or basic process choices).

In conclusion, what I wanted to stress today is the importance of preparation for an international negotiation, even for those more experienced or for naturally talented negotiators.

Although Mr. Jorge Mendes is without any doubt a rather experienced and talented negotiator, in my opinion he could benefit from the professional expertise of a Lawyer (not only for the closing or drafting of the agreement). All the 3 dimensions must be taken into serious consideration. Focusing only at the bargaining table can make experience negotiators lose possible value/gain.

Thank you for your time and patience; I'd like to finish with a famous quote from Karrass, that has always kept me going throughout my negotiating meetings:

"IN BUSINESS AND IN LIFE, YOU DON'T GET WHAT YOU DESERVE, YOU ONLY GET WHAT YOU NEGOTIATE", and the more preparation we take to the table, the better will we "design" the final outcome.

Thank you once again.

Filipa Correia Tenreiro

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