
Negotiation of International Cooperative Defense Acquisition Agreements: A Case Study

By

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PREFACE

The quality of the U.S. government depends directly upon the quality of the people who serve it. At nearly every level of government, public employees are involved in multibillion-dollar, sometimes life-and-death decisions. The government should concentrate on those things that cannot be satisfactorily performed in the private sector. This includes taking a leadership role in pursuing leading-edge, high-cost research with uncertain or long-term payoff, planning and providing specialized joint-use facilities, providing a world class educational system, and *seeking international agreements that assure a level playing field.*¹

Norman Augustine
Chairman and Chief Executive Officer
Martin Marietta Corp.

There exists a plethora of information about the generic subject of negotiation. Library shelves are filled with books and articles. Self-help audiotapes offer to reveal the secrets of successful negotiation. Courses abound in both the government and the private sector. Turning to an increasingly important subset—international negotiation—very little is available, even though international negotiation often differs markedly from the domestic variety. Almost all that exists is for the negotiation of business agreements. As for government-to-government agreements negotiation, virtually no information exists, especially for cooperative defense acquisition programs.² One can only speculate about this dearth of information. Is it because there is no economic incentive to publish it? Lack of interest? Our consistently excellent past negotiation results? Or, perhaps we just do not bother to prepare ourselves when we meet our allies across the negotiating table? Readers are invited to form their opinions after reading this article.

Every year representatives of the Department of Defense negotiate agreements for cooperative acquisitions with our allies³ totaling many millions of dollars⁴ and with potential expenditures totaling in the billions. These agreements for setting forth the terms and conditions of a cooperative acquisition program are normally called a Memorandum of Understanding (MOU) or Agreement (MOA). Responding to perceived deficiencies in U.S. negotiations, two years ago the Defense Systems Management College (DSMC) instituted a new workshop to train our negotiators, and allow them to experience a most realistic simulated negotiation. The workshop director, the author of this article, recently completed a four month assignment in the Pentagon on the staff of one of the Military Department's office of international acquisition. During this assignment, the author had the opportunity to observe an actual negotiation for a potential cooperative acquisition program. The purpose of this article is to present these observations as a case study of contemporary government-to-government negotiation activities; and to provide lessons learned and three fundamental rules for the benefit of future negotiators.

BACKGROUND ON THE COOPERATIVE ACQUISITION PROGRAM

The nations of France, Germany and the United Kingdom had begun a cooperative development of a new defense system.⁵ The U.S., pursuing a similar system development, became interested in the European program. The U.S. was invited by one of the European nations to explore cooperation. While never explicitly stated, one of the European nations was opposed and the other one was ambivalent to U.S. participation. As U.S. interest increased, the interested Military Department spent \$700,000.00 pursuing the possibility of a cooperative program: \$350,000.00 for a technical assessment of the European development, and \$350,000.00 for travel and support to the exploratory negotiations. This included hiring an expert consultant to help formulate the U.S. going in (i.e., initial negotiating) position. The U.S. had determined that there would be a significant cost savings in a cooperative program. It was also determined that the European system would meet most of the U.S. requirements, and certain modifications were possible to totally satisfy our needs.

The U.S. assembled a negotiating team comprised of an SES [Senior Executive Service] level head of delegation and a technical/scientific advisor from the appropriate Service laboratory/center. The Program Manager, a military officer of colonel/captain (O-6) rank, was part of the team. Expert legal advice was provided by counsel from the Service headquarters.

The U.S. had a funded program, but the priority was not high and support from all elements was not solid. The Europeans had already committed \$250 million for their program. The U.S. had \$25 million to contribute. If cooperation proved impossible, there was not enough funding for the U.S. to go-it-alone.

TACTICAL ERRORS

The U.S. was invited by the European participating nations to attend several negotiating sessions, and present its proposal for participation in the cooperative program. The U.S. delegation went to several meetings at European locations. The author, because of his Pentagon assignment, went to one of the early exploratory negotiations as an observer.

The author was in a unique position in that he could focus on the form of the negotiation, rather than be distracted by the technical content issues. Just prior to the negotiation, it was learned that the U.S. team had never heard of DSMC's workshop in international negotiation nor were they aware of DSMC's guidebook for assisting U.S. negotiators.⁶

The following tactical errors were observed during the negotiation session:

- **Narrow, Inflexible Position:** The U.S. point of view was that the Europeans would be delighted with the U.S. contribution of \$25 million—found money that could be used for additional project purposes. However, the Europeans viewed this as only a ten percent contribution to the program research and development costs. This was unacceptable, since the U.S. would require equal rights in virtually all aspects of the program. In fact, one European national delegation was very clear in its belief that the U.S., once a full participant, would dominate the program in pursuit of its own interests. The U.S. held to its view on funding without presenting any other options. We appeared to have no fall back positions worked out in advance of the negotiation. Our position was never presented in a total program (life cycle) context. Production offtake and follow-on support benefits/tradeoffs were never presented.⁷ In short, the Europeans did not need the U.S. contribution, and saw disadvantages to our participation.

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- ***Failure to Control Information:*** The U.S. revealed its lack of an alternative—there was no competing U.S. development program, only a product improvement to an existing system. This clearly weakened our position. The U.S. also stated that additional funds could be requested. While it was noted that success was unlikely, it still opened the possibility. Not surprisingly, the meeting ended with the European position that a trans-Atlantic cooperative program was not possible until the U.S. delegation requested and obtained the additional funds to come up to a full 25 percent contribution level.
 - ***Body Language Told a Lot:*** The weakness of our position was also revealed and reinforced by the body language of the U.S. delegation. Nervous laughter, excessive perspiring, and a general appearance of a lack of confidence gave away much of our position. Interestingly, one other national delegate also revealed his prejudices with his body language. This delegate appeared grim and refused to look at the U.S. delegation until we revealed that we had no alternative development program. For the remainder of the session, he was most cordial to the U.S. delegation.

The U.S. delegation returned to Europe for one last negotiation about a month later. No additional funds were forthcoming. The Europeans held firm to their position, and the U.S. withdrew from further negotiation, although the Europeans inquire periodically about the status of the U.S. technical effort. All of the tactical errors discussed above, as well as many others, are clearly addressed in DSMC's Advanced International Management Workshop.

LESSONS LEARNED

There are several lessons learned from this experience which may be of benefit to other U.S. negotiation teams during the early exploratory stages of a potential cooperative acquisition.

- ***Spending a large sum of money to support a negotiation does not insure success.*** At least \$700,000.00 was spent during the exploratory negotiations for support and technical assessment. There was no indication of a lack of funds to repeatedly send a four person team across the ocean to negotiate. Funds were available to hire an outside consultant. However, the U.S. commitment to actually fund the development was in question.
- ***High grade/rank with technical expertise does not insure success.*** The team was headed by an SES grade civilian, and included a military officer at the O-6 level (the Program Manager). The technical and legal expertise of the team members was apparent. The knowledge of at least one of the team members in international acquisition programs was superb. The team structure was textbook excellent.
- ***Expert contractor support does not insure success, especially if he/she does not attend the negotiation.*** The consultant employed to help formulate the initial U.S. approach to cooperation was an unquestionable expert in the field. However, the consultant was employed in the beginning only; he neither attended any negotiation session nor reviewed results. Consequently, the U.S. team appeared locked in to a narrow, inflexible position. The use of an expert consultant could be of significant benefit, but he/she should probably be retained in some capacity throughout the negotiation.

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- *The word is not getting to the right people about DSMC education, publications and consulting for improving negotiation results.* DSMC's Advanced International Management Workshop has been in existence for over two years, yet the people actually negotiating are not attending in sufficient numbers.

THREE GOLDEN RULES OF INTERNATIONAL NEGOTIATION

Applying years of personal experience and a vast amount of dialogue with others *experienced* in government-to-government international negotiations, I proffer these three golden rules.

- **PREPARE** — Most international cooperative project agreements are exceedingly complex, often taking years to conclude. Months of preparation are required before serious negotiation begins. Proper team member selection, team building, and research are essential for success.
- **EXPERIENCE** — Repeatedly I hear of other nations sending the same people to their negotiations. I have witnessed this myself. Unfortunately the U. S. continues to send inexperienced people. It is essential to select experienced people for the negotiation team, or compensations must be made in other ways.
- **TRAINING** — This is the most ignored rule of all. We have excellent training at the DSMC. A virtual mountain of guidance documentation exists to assist our negotiators. Yet my experience is that most of those that take advantage of the training do so after experiencing the difficulties of flying blind through a negotiation. Over and over I hear students say: "If only I knew this before I negotiated, I would have done things very differently."

CONCLUDING REMARKS

It is a well known fact that people retain visuals much better than written text. Therefore, I propose a visual that I hope that the reader will retain after the words contained in this article are long forgotten. Examine the three golden rules of international negotiation, and extract the first letter of each rule. Follow the rules and you will avoid the all too often resulting U.S. position—pulling the proverbial PET rabbit out of a hat.

The Office of Secretary of Defense and the Military Departments should insure that their negotiators are adequately trained before they start committing millions of taxpayer's dollars.⁸ The solution: The Defense Systems Management College international acquisition courses must be designated as "Qualification Mandatory Courses"⁹ for acquisition personnel assigned to international acquisition programs.

ABOUT THE AUTHOR

Mr. Kwatnoski is a Professor of Engineering Management in the Executive and Short Courses Division, Defense Systems Management College. He is the Director for International Acquisition Courses. Prior to coming to the DSMC, he spent nearly two years on the staff of the Office of the Secretary of Defense in the Offices of the Deputy Undersecretary for Technical Warfare Programs and Research and Advanced Technology. Mr. Kwatnoski has a Bachelor's Degree in mathematics and a Master's Degree in Engineering Sciences.

¹Public Employees and the Global Landscape," *Public Manager*, Vol. 21, Norman R. Augustine, Spring 1992. Emphasis added to the last phrase of quote.

²*Politics of Compromise: NATO and AWACS*, Arnold Lee Tessmer. National Defense University Press, 1988. [This is the only publication in the open literature that the author is aware of specifically regarding government-to-government international negotiations. It is not a book on how to negotiate, but a historical documentation of events which occurred during the negotiation of the NATO AWACS Multilateral Program agreement.]

³Allied and friendly nations with which the U.S. has authority to enter cooperative acquisition programs are the NATO nations, plus Japan, the Republic of Korea, Australia, Egypt, and Israel.

⁴According to the 1990 "Report on Defense Cooperative Research and Development Projects," DoD's resource allocation for Nunn Amendment Programs totaled \$645 million during the five year period FY 86-90.

⁵Both the specific project and the interested Military Department are purposely not identified.

⁶*Guidebook for Preparation and Negotiation of International Armaments Cooperation Memoranda of Understanding: Strategies, Tactics, and Positions*, Jerry A Coode, Defense Systems Management College Guidebook, March 1991. FOR OFFICIAL USE ONLY.

⁷"Offtake" is a commonly used term in international programs where merely refers to the number of production units procured by each nation. Since research and development is normally considered to be only 10-20 percent of the total acquisition cost, perhaps better arguments could have been made for U.S. participation based upon procurement considerations and communality of follow-on support.

⁸The Navy has consolidated management of all its international activities under the Navy International Programs Office (NAVIPO). This office has made a concerted effort to centralize negotiations and training their negotiators at DSMC. Furthermore, the Navy is the lead service for the development of a computerized International Agreements Generator, a potentially useful tool in the hands of the trained negotiator.

⁹DoD Regulation 5000.X-R, *The Acquisition Career Management Program*, Final Draft. July 1992. [See definition of "Mandatory Training Courses."]