

Book Review

Negotiation, Things Corporate Counsel Need to Know but Were Not Taught

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Negotiation, Things Corporate Counsel Need to Know but Were Not Taught, by Michael Leathes, ISBN: 978-90-411-6734-7, 302 p. Wolters Kluwer, 2017, Alphen aan de Rijn, The Netherlands

The author, Michael Leathes, worked as corporate counsel for international companies such as Gillette, Pfizer and BAT in various countries during his career. He has also been a member of the Board of the Institute for Dispute Prevention and Resolution in New York and of the International Mediation Institute. Although he modestly had the manuscript peer reviewed by many experts, his own vast experience and wisdom shows right from beginning to end of this book. The objective of the book is to provide the reader with the knowledge and tools to be a creative negotiator with authority and control over process in order to add value to the outcome. The book contains not only well written, accessible theory, but also many lively examples and practical materials.

The book covers much ground and takes the reader on a journey through the entire landscape of negotiation and mediation, stopping at many places of interest along the way. Even the experienced traveller, who follows Michael Leathes on his journey, will come across viewpoints and places of interest that were unknown or deserve to be re-visited with this able guide.

The book deals with many aspects of negotiation and mediation and is a clear testimony to the close relationship between negotiation and mediation. A negotiator can significantly benefit from mediation skills, just as a mediator who is a good negotiator may benefit from a better understanding of what may be transacted and how.

In the book, there is a balance between theory and practice, both from literature and the author's own experi-

ence. Although this may be helpful for those with a special interest in some of the topics that are subject of the appendices to the book, the appendices, 7 in total, spreading over almost 100 pages, to my feeling, are selected somewhat at random. These appendices, with almost one-third of the total number of pages, perhaps take up a bit much space in the book. To a large extent, they consist of models and articles that can easily be found online (e.g., IMI and CPR conflict diagnosis tools). Also a selection of previously published articles by others is included as appendix, covering topics which are quite adequately covered by the author himself earlier on in the book. And why include as an appendix an Arb-Med-Arb contract clause and not also others, covering other hybrids in addition to only a clause pertaining to the combination of arbitration, mediation and arbitration? This, however, need not keep interested parties from scanning through the content of these appendices to see whether something of interest can be found in them. This may well be the case. Another observation is that the index – which fortunately is not missing – for my taste, could have been a bit more extensive and detailed.

The bulk of the book is dedicated to well-divided topics that have to do with negotiation and mediation. The coverage of the various aspects of negotiation is comprehensive. There are always nuances thinkable, of which I mention two. The discussion of BATNA (best alternative to a negotiated agreement), is fitted, I think, into the somewhat sombre spectrum a worst alternative to a negotiated agreement (WATNA) and a probable or rational alternative (PATNA or RATNA). A somewhat more positive spectrum could keep the various options for outcomes of negotiation connected to an ideal outcome and a deal (compare the Brink Bar at <www.mediate.com/pfriendly.cfm?id=11729>, consulted

27/04/2017). To have the parties – either jointly or individually – go over all the four options, ideal, deal, BATNA or WATNA, quite often brings to mind which option to better choose: an ideal solution will be difficult and probably not achieved, so – although this will require concessions – a deal will be preferable to their BATNA or WATNA. I prefer the combination of these four options over BATNA, WATNA and PATNA or RATNA, which, as said, overall have a somewhat sombre connotation.

The topic of anchoring is discussed predominantly within the context of fixed-pie negotiations. It might have been emphasised more that in non-fixed-pie negotiations, it may be advisable to postpone mentioning an anchor for as long as possible. This can be helpful to find out more of what is important to the other party and consequently with the help of logrolling try to trade off what has appeared to matter more to the other party against what matters less in respect of one's own position. One sometimes learns more from listening and probing than from early positioning by dropping an anchor. In fixed-pie (mostly distributive) negotiations, dropping an anchor early on can prove to exercise an important influence on the outcome, according to some, even stronger than the BATNA. Other theories favour waiting until the other party drops an anchor, so as to help determine the zone of potential agreement. These ponderings, however, are no more than nitty gritty, compared to the wealth of theoretical and practical knowledge to be found in this book. The book begins and ends with a plea for the creation of an international negotiation institute, backed by top educators, businesses, professional service firms and professional bodies to set high-level global negotiation knowledge and skills standards, as well as an international code of negotiation ethics. Whether this will ever see the light of day or not, it is to be recognised that negotiation is a vital skill required by everyone, regardless of their professional focus. It enables deals and settlements to be conducted and concluded efficiently and effectively. Michael Leathes proffers that legal education needs to include negotiation skills. In that, he agrees with Claire Mulder, who put in a similar plea elsewhere in this Journal for mediation skills. Also elsewhere in this Journal, David Weiss extends a similar suggestion for the curriculum at business schools. Michael Leathes underscores that negotiation is a hard, not soft, set of skills. I dare say, it is not just a skills' set or an art, but a science. The skills are the deployment of the knowledge, which can be picked up or improved upon by reading and re-reading the valuable contribution Michael Leathes has rendered to the science of negotiation. There are many books on negotiation around, most of them either very voluminous or very thin, not many are as concise, complete and illuminating as this one.