

ROADBLOCKS TO EFFECTIVE UNFCCC NEGOTIATION & POSSIBLE SOLUTIONS: A PROFESSIONAL FACILITATOR PERSPECTIVE

INTRODUCTION

As we approach COP27 in Sharm El-Sheikh, it is timely to recall the phrase, “code red for humanity,” coined by UN Secretary General Antonio Guterres upon the IPCC’s release of the first portion of its 6th assessment report in August 2021. This phrase echoed through the halls and conference rooms at COP26 in Glasgow in November 2021. Yet many long-time observers of UNFCCC proceedings expressed a common view at COP26 that never before had they witnessed such a large chasm between the urgency voiced by civil society and political leaders, including heads of state at the World Leaders Summit, and the ineffectual and sluggish proceedings in the negotiating rooms. With another COP only days away, the time is ripe to rethink the UNFCCC negotiating process.

A FACILITATION AND MEDIATION LENS ON UNFCCC NEGOTIATIONS

UNFCCC negotiation style has been guided by rules and customs that have helped achieve many successes to date, including the Paris Agreement. But with the need for swift action growing ever more urgent, now is an opportune time to consider strengthening the negotiating process. As professional facilitators and mediators who have designed many multi-stakeholder negotiation processes outside the UNFCCC, the authors of this brief observe that the roadblocks often encountered in UNFCCC negotiating rooms are those we have seen in other contexts at the national, subnational and NGO levels. As long-time practitioners, we believe that daylighting the roadblocks is a critical step towards overcoming them in future UNFCCC summits. Therefore, this brief identifies both roadblocks and approaches to overcome them, including potential strategies for presiding officers and suggestions for possible assistance from mediators and professional facilitators.

Hallmarks of Good Negotiations

Before examining the roadblocks to effective negotiation it is useful to consider, in the context of the UNFCCC, some of the hallmarks of good negotiation:

- First, the climate crisis highlights for us that time is of the essence. Therefore, one important hallmark is the ability to make swift progress in UNFCCC negotiating rooms on the many issues addressed under the Convention and Paris Agreement.
- Second, the outcomes of COPs and Subsidiary Body meetings (SBs) should be quality decisions that meaningfully and effectively address key goals of the Convention and Paris Agreement rather than watered-down ineffective responses to the crisis.
- Third, the negotiating process should create positive energy for the negotiators so that they can communicate effectively, harness their creative instincts to problem-solve, listen well and engage with empathy.
- Fourth, effective negotiations are those that result not only in an agreement but in implementation of the agreement. Ineffective negotiations sometimes lead to agreements that are concluded but never realized because the parties lacked the necessary communication during negotiations to forge a durable agreement and expeditiously overcome disputes that later emerge over language in the agreement.

Negotiation roadblocks are often associated with the absence of these hallmarks of effective negotiation.

A Practitioner's Perspective

The following is a discussion of some of these roadblocks based on both the authors' observations and those articulated by negotiators and observers. We present these observations recognizing that they are not the product of a detailed assessment; rather, they suggest possibilities for further study. This brief also includes (1) some examples of how presiding officers, professional facilitators and mediators might overcome the roadblocks and (2) preliminary recommendations pending further detailed assessment. While professional non-party facilitators and mediators aren't embedded in the UNFCCC negotiations, the following discussion suggests opportunities to have them at hand to support negotiations. For more detail on this recommendation and others in this brief, see Better Climate Governance Policy Brief #1, listed below.

ROADBLOCKS TO EFFECTIVE UNFCCC NEGOTIATION

Lack of preliminary collaborative opportunities

Roadblock: Roadblocks can emerge in UNFCCC negotiations when the process moves too quickly into text negotiations before parties have aired their underlying concerns or reached a common understanding on larger principles. This problem stems, in part, from underuse of collaborative decision-making processes that could help UNFCCC negotiators forge consensus through information-sharing and creative problem-solving. The traditional UNFCCC negotiating process at COPs and SBs does not leave room for parties to ask one another for explanations and clarifications or share information.

Solution: One solution might be to provide more opportunities for collaboration, such as Talanoa-style small group dialogues, among negotiators prior to embarking on text negotiations. Before the formal negotiations which led to the Minamata Convention on Mercury, negotiators spent time identifying the 'bricks' (foundations of agreement upon which there was general consensus) and the 'bullets' (topics likely to be the subject of dispute) (Templeton and Kohler, 2014).

Competitive Negotiation Style

Roadblock: The parties to the UNFCCC typically employ a competitive negotiating style, common in many settings. While effective in some situations, unfortunately competitive negotiation can lead to impasse because it tends to work against sharing the information necessary to overcome obstacles. Competitive negotiation can also cause parties to dig in their heels. It is also characterized by parties misrepresenting their bottom-line and making incorrect assumptions about the bottom-line of other parties.

Possible Solutions: One strategy to address impasses that arise during competitive negotiations is to use an intermediary who shuttles back and forth between the parties. While shuttle diplomacy has been used by COP Presidents and other senior diplomats at UNFCCC meetings, much time could be saved if it were more regularly used throughout UNFCCC negotiating rooms. The UNFCCC could build capacity among presiding officers to serve in this role. In non-UNFCCC spaces, professional facilitators and mediators often help parties move past impasses through individual private sessions with each party (or groups of parties), and shuttling between the parties to help them strategically reveal information that will move the negotiation forward. Professional facilitators could bring this practice to UNFCCC negotiation rooms. In addition, professional facilitators could help shift the UNFCCC negotiation room style from competitive negotiation to an interest-based approach in which parties more readily find win-win solutions.

Stressful Negotiating Conditions

Roadblock: Another factor that can cause roadblocks at UNFCCC proceedings is the stress experienced by negotiators who are stretched thin when they are rushing from one meeting to the next. In addition, the intensity and pace of COPs and Subsidiary Body meetings (SBs) leaves little time for negotiators to process what happens in their negotiating rooms and consider creative solutions. Moreover, the discrepancy in size of party delegations can sometimes result in the greatest stress falling on the smallest and least well-resourced parties.

Possible Solution: One approach to remedy stress-related roadblocks might be to provide more opportunities for negotiators to meet on a single topic outside the COPs and SBs. Another approach might be to rely on professional facilitators who can help parties create more robust engagement and planning prior to the summits and map out steps and a timeline for creating success. Finally, additional resources could be provided to parties with small delegations to reduce the stress they experience.

Challenging Interpersonal Dynamics

Roadblock: Challenging interpersonal dynamics can derail any negotiation; this is not unique to the UNFCCC. Interpersonal conflict can cause significant delays in negotiations, impasse, and demoralization of negotiators.

Possible Solution: One approach to address such dynamics might be to train presiding officers in strategies to help negotiators productively express their concerns. Such strategies include summarizing, re-stating, and reframing (see, e.g. Policy Brief 1, Tool No. 4). In addition, presiding officers could rely on professional facilitators who are skilled in carefully and sensitively bringing transparency to unproductive negotiations due to interpersonal dynamics. For example, a professional facilitator will use a break to talk individually to each party and then mediate outside the plenary between the parties with challenging dynamics.

Complexity and Overlapping Issues

Roadblock: It is hard to envision a more complex global problem than the climate crisis. To address the crisis, we need solutions that touch every aspect of governance, cross many sectors and address intersecting issues. Given the complexity, it is not surprising that negotiations taking place in one room at the COP are often related to negotiations taking place in another room. For example, finance for developing countries is an issue that arises simultaneously in multiple negotiating rooms. A party's stance in one room could be influenced by how negotiations are proceeding in another room. For example, differences of opinion in a negotiating room on loss and damage could have an impact on adaptation negotiations in another room.

Solution: Presiding officers can play a bigger role to identify linkages between negotiating processes and convene the parties to help develop common ground on cross-cutting issues. Professional facilitators experienced in complex public policy matters could also help parties set realistic expectations for the time necessary to work through intersecting issues, organize discussions across issues, and find ways for parties to make progress on multiple fronts simultaneously.

Formalistic and Narrow Application of Procedure

Roadblock: Some presiding officers focus narrowly on implementing basic procedures, for example, recognizing speakers in the order they request the floor, addressing procedural motions, and identifying points for decision. Many presiding officers ably carry out such functions but this narrow focus leaves little room to nimbly respond when a conflict or stalemate emerges or when negotiations are not meaningfully progressing. Presiding officers also typically apply a limiting interpretation of "consensus" which can result in lost opportunities.

Solution: Presiding officers could encourage parties to identify challenging issues and then privately guide them toward greater transparency. Presiding officers could also propose a time limit for negotiations on a particular issue, after which the issue is elevated to political leadership, or establish periodic check-ins with the parties to shed light on what's blocking progress in the negotiations. In situations where conflict emerges, it would be helpful for presiding officers to have the aid of professional facilitators who can execute some well-tested facilitation strategies such as reframing, reflecting, straw voting, articulating progress and areas of blockage, and encouraging mutual learning. In addition, presiding officers could apply a more refined approach to achieving consensus (see Better Climate Governance policy brief #2 <https://betterclimategovernance.com/policybriefs/>).

Preliminary Recommendations to Address Roadblocks

Keeping in mind that each solution must be tailored to the specific circumstances arising in a given negotiating room, we recommend that the UNFCCC undertake the following:

- Schedule topic-specific negotiation opportunities outside COPs and SBs to reduce negotiator stress and allow time for creative problem-solving before drafting text
- Use interest-based negotiation in negotiating rooms to encourage information-sharing and win-win solutions
- When a key issue arises across different negotiating rooms, organize discussions that will allow for progress on multiple fronts
- Presiding officers continue to honor the rules of procedure while:
 - Encouraging parties toward greater transparency
 - Establishing periodic check-ins and time limits followed by elevation to political leadership on challenging negotiations
 - Applying a more refined approach in their interpretation of consensus
- Use professional facilitators and mediators to assist presiding officers, help negotiators plan in advance of summits and sensitively address challenging interpersonal dynamics that emerge during negotiations
- Test the preliminary recommendations in this brief through detailed evaluation, informed by the views of UNFCCC parties, observers, the Secretariat and other stakeholders, and through piloting suggested strategies to generate lessons-learned.

CONCLUSION

This policy brief offers preliminary recommendations to overcome the roadblocks to faster, more impactful and satisfying negotiations. A stronger negotiation process will help achieve the goals of the Convention and Paris Agreement and meet the urgency of the moment.

AUTHORS

Joseph A. Siegel, Adjunct Professor, Haub School of Law at Pace University, *The author is not writing this policy brief in any governmental capacity. The views expressed are his own and do not necessarily represent those of the United States or the U.S. EPA.*

Christine Peringer, JD, Mediators Beyond Borders International.

REFERENCES

Rietig, K., Peringer, C. and Theys, S. (2021). Moving forward together: Using facilitation, mediation and mutual learning approaches in UNFCCC negotiations. Better Climate Governance Project. Retrieved from <https://betterclimategovernance.com/policybriefs/>.

Templeton, J. & Kohler, P. (2014). Implementation and Compliance under the Minamata Convention on Mercury. *RECIEL: Review of European Community and International Environmental Law* 23(2): 211-220.

To cite this policy brief: Siegel, J. and Peringer, C. (2022). Roadblocks to effective UNFCCC negotiation & possible solutions: A professional facilitator perspective. Policy Brief No. 7. Better Climate Governance Project. Retrieved from <https://betterclimategovernance.com/policybriefs/>.