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## **Influencing negotiations in the UN Crime Programme: Ten rules to follow<sup>1</sup>**

*Note: the following description are the personal opinions of the author and does not reflect the position of any institute or government.*

As with so many negotiations, success at UN Crime Programme meetings depends on preparation of one's own position, anticipation of contrary positions, and an ability to influence the course of the negotiations. Negotiators come in many shapes and sizes, representing member states both large and small, and there are no hard-and-fast rules as to who will "win out" at the end. At times, the outcome may even depend on chance statements, suggestions or events. Nonetheless, in the experience of the author, the more influential and successful negotiators in Vienna tend to fit a distinct (and rather loose) profile. The author suggests, and not merely facetiously, that those interested in negotiating in Vienna might wish to learn the following rules:

1. Be polite.
2. Avoid pomposity.
3. Take a crash course in haggling.
4. Be prepared.
5. Learn English.
6. Learn and use certain stock phrases and "agreed language".
7. Learn the importance of form over substance.
8. Drink lots of melange and forget about your social life.
9. Either bring colleagues or learn how to be in two places at the same time.
10. Develop a sense of humour.

1. *Be polite* (and never dis the chairman). International diplomacy is based on at least superficial respect for the views of the other players, even if you not only totally disagree with these views but cannot understand how any sensible person could suggest them. One can succeed in negotiations only if one respects, and has the respect of, the other parties. Persons from different cultures have different styles, and the use of blunt language (especially when interpreted into the other five working UN language) may unintentionally be regarded as impolite or offensive, taking attention away from the substance.<sup>2</sup>

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<sup>1</sup> This annex is very loosely based on Matti Joutsen, *Negotiating Conventions in the United Nations: Ten Rules to Follow*, in Marc Groenhuijsen, Rianne Letschert and Sylvia Hazenbroek (eds.), *KLO Van Dijk. Liber amicorum prof.dr,mr. J.J.M. van Dijk*, Wolf Legal Publishers, Nijmegen 2012, pp. 177 – 190.

<sup>2</sup> In one very difficult negotiation, where the participants had strong disagreements, one person was heard to whisper to the chairperson "you must feel like you are herding cats". This was unfortunately misheard by one interpreter – and interpreted – as "you must feel like you are hurting cats". A representative from that language group angrily criticized the whisperer for having accused the chairperson of strangling kittens.

This politeness can be seen, for example, when participants are referring to the interventions made by earlier speakers. No matter whether one agrees or disagrees with a statement, the rule is to thank the “[distinguished] representative of X” for his or her statement and then go on to say if one supports it or, with great regret, cannot support it.

It is of particular importance to be polite to the chairperson. One of the key functions of the chairperson is to serve as the neutral arbitrator who seeks to identify the points of conflict, ascertains the views of the participants, and tries to piece together wording that would achieve consensus. If the chairperson’s impartiality is questioned, this could endanger the success of the entire negotiations. The politeness is shown in that participants, when they are speaking for the first time at a session, almost invariably express sentiments along the lines of the following: “Thank you Mr/Ms Chairman for giving me the floor. Since this is the first time that my delegation has the opportunity to speak at this meeting, I would like to convey to you, and through you to the other members of the Bureau, our profound respect for the important work which you are doing. We would also like to assure you of our country’s commitment to the success of this work...” (and so on).<sup>3</sup>

2. *Avoid pomposity.* In an article published during the 1980s, Thomas Mathiesen identified what he calls the “importance norm” and the “self-importance norm” at UN Crime Congresses.<sup>4</sup> Essentially, the first requires that everyone respects the importance of the work beyond done, even if it does seem silly at times. The second is clearly linked with the one-up-manship that is so often evident in any social activity, work or play; if a participant is able to project the aura of importance (or of experience, or of being knowledgeable), perhaps the participants will pay closer attention to his or her views.

Indeed, some pomposity can at times be detected at UN Crime Programme meetings, and some individual participants do appear to try to bolster their self-importance. At times, this is apparently done for tactical reasons. For example, there are some speakers who never use the first-person singular in referring to themselves, but always speak about “my delegation”: “My delegation is of the view that ...” Apparently, these speakers believe that an argument would be more persuasive if the audience understood it to reflect the collective view of the Government of a member state, and not just of one person. (At times, however, the tactic can misfire, especially if most listeners in the room are quite aware that the delegation in question consists of only that one person, and the speaker says something like “My delegation is of the view that we would prefer to wait until after lunch to speak on this issue.”)

These examples of importance and self-importance, however, appear to be becoming more infrequent. There is currently less pomposity than what was evident in earlier United Nations Congresses or other UN Crime Programme meetings. This presumably is related to the fact that most of the participants are

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<sup>3</sup> The importance of this pattern of behaviour is shown in the fact that at almost every meeting, if a representative omits something along the lines of this formulation in his or her first intervention, he or she may request the floor again simply to apologize for not having first congratulated the chairperson on being elected.

<sup>4</sup> Thomas Mathiesen, FN-kongress som kulturfenomen (UN Congresses as cultural phenomena), *Nordisk Tidsskrift for Kriminalvidenskab*, Oslo, vol. 73, no. 2 (April 1986), pp. 157 – 160.

representatives of the permanent missions based in Vienna, and have generally worked with one another for many years. After such a long time, how often can one repeat the same phrases to the same audience?

3. *Take a crash course in haggling.* The UN Crime Programme deals with a large variety of issues, on many of which there are considerable differences of opinion as to what, exactly, should be done: cybercrime, assisting victims, review of the implementation of the United Nations Convention on Transnational Organized Crime, including references to human rights in resolutions worked out within the framework of the Crime Programme, and so on. Different individuals and different countries have different experiences with crime and criminal justice, and thus they have different priorities. Some countries have a strong practical or political reason to address the issue of trafficking in cultural property; others do not. Some countries want to involve non-governmental organizations more actively in the national and in particular in the international response to crime; others do not.

The UN Crime Programme follows what is known as the “spirit of Vienna”, which calls for consensus on all issues, without the taking of a vote. The chairperson seeks throughout the process to ensure that all the delegations agree on the formulations used in draft resolutions or the report of the meeting. Because of the intense nature of the negotiations, and because a large proportion of the negotiators are career diplomats who do not have personal practical or academic experience in criminal justice or international co-operation, arguments based on criminology or criminal justice have limited value, and more weight is placed on political and national priorities.<sup>5</sup>

That is not to say that substantive arguments are not made; indeed, they often are. Especially the larger delegations may have participants with extensive practical or academic experience who can readily explain why certain formulations suggested by others simply would not work in practice, or would have significant drawbacks. Yet other delegations may have participants who can quickly direct a logical mind at even the more obtuse questions and outline the key issues so that these can be better understood.

However, the stilted nature of the negotiations at times make rational discourse difficult at best. With over 100 member states attending some of the UN Crime Programme meetings, the floor needs to be given in turn to each and all who have requested permission to speak. If the participant from country A happens to disagree with a participant from country B, it can often take many interventions before he or she can get the floor back and reply, by which time the focus of the discussion may already have meandered off on a tangent.

As a result, the more successful negotiators include those who are good at haggling. The following gives some of the rules that these inveterate wheeler-dealers appear to follow:

- Find out in advance who your main opponents might be, and find out what their interests are. At times it is necessary to find out why ideas are being opposed, and whether the opponents would be

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<sup>5</sup> This development can be seen to be related to the strengthening tendency to see crime and criminal justice as national security issues. While it is true that academics and practitioners represent a great variety of approaches, they can be said to have a greater tendency to see crime and criminal justice as social (or economic, or medical) issues.

satisfied either by a minor change of wording, or whether (for example), they might have to be brought on your side by promising to support some of their own initiatives.

- Be careful of “blind-siders”. With over 100 delegations in attendance, and with the constant turn-over in the participants, it is not enough to simply assume that certain delegations will be on your side, or at least would not speak out against your proposal. At times, opposition might pop up from a completely unexpected source. Worse, when one delegation goes on record as being against your proposal, there is a strong likelihood that subsequent speakers (especially if they come from the same regional group) would say that they tend to agree with these nay-sayers.
- Work the corridors. Now and then, it is important to enlist as many speakers as possible to go on record as being in support of your proposal; this may induce others to jump on the bandwagon of support.
- Get the support of key delegations. If such key delegations come out in your support, this can help considerably to win the field. Another tactic, especially important in matters with a political dimension, is to get the support of delegations from as many different regions as possible.
- Set up positions as bargaining chips (even if they may seem rather extreme) and insist on them as long as necessary. This is an unusual tactic, but also it can be seen to be used now and then. By not showing your hand too early, it may be possible to appear to be satisfied with a compromise – and yet this “compromise” may be the position that you had wanted to achieve from the outset. (Without the benefit of ESP, it is difficult to know how often this tactic is used at UN Crime Programme meetings. However, towards the end of some negotiations there tend to be more and more examples of delegations stating that they want an entire paragraph or even section deleted from a draft resolution. Often, this leads to slight amendments of the text of these paragraphs “as a compromise”, perhaps along the line that the delegations in question wanted in the first place.)

4. *Be prepared.* The old Boy Scout motto of “Be Prepared” serves many delegations in good stead in negotiations. For example, the drafting of resolutions may require familiarity with past or ongoing work in other parts of the United Nations system, for example in Geneva or New York. The drafting of resolutions may also require familiarity with previous UN Crime Congress declarations, and with key resolutions from earlier sessions of the Crime Commission or of the Conferences of States Parties. When some delegations try to invent new refinements or terminology, or delete tried-but-true mechanisms, others may jump in and point out that the phrasing in question is based on a key text, and ask for justification for making any changes.

5. *Learn English.* Since the United Nations has six working languages (Arabic, Chinese, English, French, Russian and Spanish), all official documentation has to be translated into these languages, and the sessions benefit from (as always) excellent simultaneous interpretation. Nonetheless, in practice, English is the dominant language. Most of the participants based in Vienna are able to read English-language proposals, and fluently discuss questions of drafting in English. In addition, and with the exception of the Latin American and Caribbean group, where the dominant language is Spanish, most of the regional groups rely on English as their *lingua franca*. And when informal negotiations are held or lobbying is carried out across regional divides, this tends to be in English.

Most importantly, English dominates drafting. Although many representatives can speak in any of the other working languages, the discussion over a turn of the phrase is almost inevitably in English, and the English language text remains the yardstick to be used.

6. *Learn and use certain stock phrases and “agreed language”*. In accordance with the “consensus norm” identified by Mathiesen, delegations that disagree on certain points tend to be pressured by the chairperson to find language suitable to all. On the other hand, delegations applying the “my-country norm” identified by Mathiesen tend to try to avoid accepting any wording that would force them to change their domestic law or practice or, more importantly, to go against their strong views on how international criminal policy should be conducted. If delegations in the minority fail to block wording with which they disagree, then they can fall back on a set of defensive ploys, all of which involve inserting certain stock phrases that weakened the nature of the obligation, or even emasculate it entirely.

The first such ploy is to replace the obligatory “states shall ...” with the much weaker “states may ...” or even “states may consider ...”. Other formulations along the same line include the exhortatory but non-binding “states are called upon ...” and “states are encouraged to ...”. One more phrase, “states shall consider ...” may seem binding at first glance, but ultimately all that it requires is that states consider something. What steps they actually take is left entirely to their discretion.

The second ploy is to insert a condition: states are required to undertake certain measures, but only for example those that “may be necessary, consistent with its legal principles” or “to the extent appropriate and consistent with its legal system”. Even the insertion of the simple phrase “where appropriate” leaves each state with a margin of appreciation in deciding how to implement the resolution in question.

The third ploy is to subject everything to domestic law. It is, of course, understood that different legal systems require different measures for implementation. For example, in some countries the police carry out measures which, elsewhere, are carried out by investigating magistrates, or the courts. Furthermore, Continental law countries rely primarily on statutory law, while common law countries continue to place considerable weight on court practice. Finally, different legal systems used different concepts. Accordingly, now and then a paragraph may be inserted in a draft resolution obliging states to do something “in conformity with fundamental principles of its domestic law.”

In the drafting of resolutions in Vienna, at times a delegation may seek to insert a somewhat modified version of this phrase, “subject to the fundamental principles of its domestic law”. The difference at first seemed innocuous. However, when there is an obligation to do something “in conformity” with domestic law, the obligation to do something remains; domestic law only governs how it is done. But if the obligation is to do something “subject” to domestic law, then, logically, the state is not required to do anything that would go against its domestic law.

7. *Learn the importance of form over substance*. All words are not created equal. In the work of UN Crime Programme bodies, it is possible to identify four categories of words, from the most to the least important: words as such, words in an optional paragraph, words in brackets, and words in a footnote.

When words are left as such in the text of a draft resolution in informal negotiations, the assumption is that they reflect the general consensus of the participants. They benefit from the rule of inertia: unless someone is later able to persuasively argue why these words should be amended or even deleted, they are allowed to stay in the text, all the way through to final adoption.<sup>6</sup>

If a state is not satisfied with a formulation in general, it may suggest a completely different formulation or an entirely new paragraph as an “option”. Much of the work in informal negotiations is spent on trying to eliminate the options, so that just one text remains. Thus, options existed on sufferance. It is the survival of the fittest, with the options brandishing pistols at twenty paces.

When brackets are used, they denote words or entire phrases that had been questioned by one or several delegations. These delegations may disagree with the entire purpose of the words or phrase, or they may simply feel uncomfortable with the wording. Again, considerable time can be spent on debating whether or not the brackets could be “lifted”. (This phrase may give rise to considerable confusion. At times, delegations may say that they want the brackets deleted; the chairperson would usually then have to ascertain whether it is only the brackets themselves that are to be deleted – in which case the words would remain in the text - or whether it is the words in the brackets that are to be deleted.)

Words in a footnote lived an even more tenuous existence (and this category does not appear very often in practice). Every now and then, a country or group of countries may strongly disagree with the view of the majority. For them, it is often important to have their views clearly reflected in the drafting, even in a footnote, so that when the matter comes up again, the reason for their disagreement would be clear, and in the meantime they may have succeeded in getting more allies. However, once words have been demoted to a footnote, it usually proves very difficult to get them back into the text.

8. *Drink lots of melange and forget about your social life.* Vienna is a city well known for its great variety of excellent coffee. The coffee bars outside the meeting rooms at the Vienna International Centre serve quite a few of these varieties, but it seems to be melange that is the drink of choice for many participants. Filling oneself with caffeine proves to be a good tactic for a variety of reasons. First, it helps to keep the participants awake during the long sessions; at times, listening to delegations raise the same points, over and over again, can become mind-numbing. The participants must, nonetheless, stay on their toes. The chairperson may seek at various stages to push things along by moving on to the next paragraph in the negotiations, and asking if there are any comments. If no participant raises his or her country’s nameplate, the paragraph may be gavelled, and the chairperson proceeds to the next point. Anyone who tries to reopen a gavelled paragraph could be subjected to considerable peer pressure.

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<sup>6</sup> A further distinction can be made between words in an “operative paragraph” of a draft resolution, and words in a “preambular paragraph”. The operative paragraphs are generally regarded as the most important part of a resolution, since they lay out policy or establish mandates. The preambular paragraphs in general give the context of the draft resolution: concern over certain developments (such as the increase in certain forms of crime), pleasure over certain other developments (such as meetings held, or decisions taken), and what key resolutions have previously been adopted on the subject. Now and then, a contentious issue may be shifted, with appropriate rewording, from the draft operative paragraphs into the preamble of the draft resolution, thus in effect giving it less political weight.

But melange also had other functions. Coffee breaks are used for informal consultations and for lobbying. When a particularly difficult point arises, the chairperson might ask the key delegations to step outside and come back with an acceptable formulation. If the issue proves to be very vexatious, the chairperson might even declare a “15-minute coffee break” for the entire informal negotiations, and the time is used – often quite successfully - to lobby for support for whatever proposals are on the floor.

In general, the pace of the negotiations in Vienna can be deceptively slow. Sessions usually do not begin on time, and fifteen-minute coffee breaks may last half an hour or longer. As the French ambassador warned participants towards the end of one meeting in Vienna, “forget about your social life”. Evenings tend to be free for most participants, but especially on the third and fourth day of one-week meetings, some informal discussions continue until late at night.<sup>7</sup>

9. *Either bring colleagues or learn how to be in two places at the same time.* Although the work at UN Crime Programme meetings formally takes place in one and the same room, delegations with only one participant may soon find themselves in difficulties. In addition to the formal meetings and the informal negotiations (many of which are going on at the same time), many regional groups meet constantly throughout the meetings to review developments, discuss proposals and plan strategy. The two-hour lunch breaks are often filled with drafting meetings or at least informal discussions.

As a result, key members of delegations (and especially the members of the Bureau, i.e. the chairperson, the vice chairpersons and the rapporteur) may soon find themselves overworked. When dealing with one matter, they may quite often be interrupted by someone tugging on their sleeve, saying that they are supposed to be addressing another topic somewhere else.

10. *Develop a sense of humour.* The final lesson is an elective one, not a requirement. A sense of humour makes surviving meetings at the UN Crime Programme easier.

Humour can also be also deliberately at UN Crime Programme meetings.<sup>8</sup> Humour may come in handy at times to defuse a tense atmosphere. Some of the more successful and respected chairpersons resort to it now and then, at times cajoling participants to agree, good-humouredly dangling the promise of a coffee break before them. One chairperson, when told by a national representative that he seemed to have strong views on a sensitive issue at hand, immediately replied that he may be strong, but has no views; at another tense time, he closed his statement by noting that he was “your obedient servant” – but then added in a stage whisper, “almost”.

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<sup>7</sup> The Secretariat generally has to work not only the hours during which the participants are meeting formally or informally, but late into the night, checking and rechecking the texts and ensuring translation, editing and dissemination for the next morning.

<sup>8</sup> Some participants - although quite rarely – used sarcasm as a tool to get their own point across. However, sarcasm as such was dangerous, since it was in violation of the politeness norm.