Paris climate talks: a case study in high-stake negotiations

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Speed read

In this negotiation case study we analyse the UN climate talks in Paris, which involved two weeks of international diplomacy at the highest level. Many of the negotiation strategies used in Paris are equally relevant to executives, lawyers, and decision-makers in a commercial context.

James Young-Drew of Wigley & Company attended the Paris conference as a co-convenor of the New Zealand Youth Delegation 2015.

Below, James outlines important learnings from the talks, including the consensus-building 'indaba' method of resolving issues, requiring that parties propose self-determined contributions prior to entering negotiations, and a useful reminder that in even the most complex of situations, the simplest solution should never be written off.

This article was originally published in Lawtalk. James' earlier interview with Lawtalk about the New Zealand Youth Delegation is available here.

The Detail

As an officially accredited observer to the Paris climate talks, I witnessed first-hand the frenzied, high-stake exchanges between some of the most experienced international negotiators on the planet.

There are powerful negotiation strategies to be learnt from Paris, all of which are relevant to executives, lawyers, and decision-makers alike.

Following the November terror attacks, the mood in Paris was grim. The talks were pervaded by a strong sense of purpose and, as the deadline drew ever nearer, palpable desperation. By the end, I regularly witnessed huddles of diplomats asleep in the corridors, absolutely spent after their third straight all-night negotiation.

For further context, imagine being confronted by a problem of unprecedented complexity and consequence. Any progress will require consensus from hundreds of disparate stakeholders. The issue is further marred by legal limitations, language barriers, diplomatic considerations and a history of failure.

This was the situation facing the United Nations and the French Presidency in Paris where, after years of preparatory meetings and then two weeks of non-stop negotiations, they brought about the adoption of the first ever universal climate change agreement on 12 December 2015.

Much has been written about the substance of the agreement and whether it does enough to combat the threat of climate change. In this article, however, I'll address

procedural aspects of the conference as a case-study in high-stakes negotiation. What are the key strategies we can take from Paris?

'Indaba' negotiation method

To overcome the complexities of multi-party negotiations, the UN employed a decision-making process known as an "indaba" (pronounced *in-dar-bah*), a form of meeting used by the Zulu and Xhosa people of Southern Africa. As the conference progressed, officials increasingly relied on face-to-face indaba sessions to tackle unresolved issues.

Indaba participants take turns to speak, often in a standing circle, but instead of entrenching a negotiating position, each speaker must state (a) their "red line" (a bottom-line position which cannot be crossed) and, more importantly, (b) their proposed solution to achieve consensus within the group.

Given the tight deadlines of the conference, the indaba method was lauded by diplomats as an efficient means of ensuring all parties had an opportunity to be heard, while simultaneously bridging differences and achieving breakthroughs where other forms of negotiation had failed.

Bottom-up contributions

In contrast with previous international efforts to combat climate change, the parties in Paris shifted away from imposing "top-down" legal obligations. Instead, the Paris model requires each party to proactively determine its own level of commitment towards the common cause, then review and escalate these commitments at regular intervals going forward.

In socio-political terms, this non-binding "bottom-up" approach was necessitated by the United States Senate's unwillingness to ratify a legally-binding climate treaty. The issue of whether these "bottom-up" commitments can be legally enforced underlies much of the criticism directed at the Paris agreement as a whole.

What this framework achieves procedurally, however, is to stimulate stakeholder engagement. 187 out of 196 states have now submitted the details of their intended contributions. These parties entered the Paris conference with self-determined contributions already on the table, creating a benchmark from which negotiations could proceed.

Christiana Figueres, Executive Secretary of the United Nations Framework Convention on Climate Change, has described the Paris agreement as a new model of 21st century diplomacy, establishing *"very different ways of dealing with challenges and very different ways of delivering solutions"*.[1]

Could this new model of co-operative state governance lead to a comparable shift in proactive problem-solving in private sector negotiations? Requiring parties to prepare the details of their contributions before starting negotiations could pay dividends when developing multi-party commercial agreements, for example, or when approaching a complex dispute from a more solutions-focused perspective.

Eleventh hour crisis

There is always a possibility that negotiations will go pear-shaped at the last minute. In Paris, this took the form of the US objecting to a single word in the dying moments of the conference.

The offending clause stated that developed countries "shall" undertake economy-wide emission reduction targets, whereas developing countries "should" undertake the same. In legal parlance, "shall" denotes a legally binding obligation, while "should" does not. Several parties maintained that the "shall"/"should" distinction was a deliberate and crucial component of the clause. However, realising that a legal

obligation would require Senate ratification under US treaty law, secretary of state John Kerry put his foot down.

What followed has all the makings of UN negotiation folklore. In a diplomatic concession that arguably prevented the entire agreement from being re-opened for debate, the French Presidency agreed to modify and dismiss the "shall"/"should" problem as a typo caused by sleep-deprived officials.

The extent to which this explanation reflected the intent of other parties is unclear. In the words of The Guardian:[2]

> *"Was it a stitch-up? America's great escape? Or a genuine error? Either way, the world had a historic, universal climate change deal".*

There are a multitude of lessons we can take from this incident.

For starters, it's evident that the role of the chairperson or facilitator is critical, that a single word or phrase can be of the utmost importance, that best laid plans can still go awry at a critical moment, and that in negotiations nothing is decided until everything is decided.

But, above all else, it's a useful reminder that in even the most complex of high-stake situations, the simplest solution should never be written off. A typo, indeed.

James Young-Drew is a solicitor at Wigley & Company in Wellington. He attended the UN Paris climate talks as a co-convenor of the New Zealand Youth Delegation 2015.

1. *The Guardian* "Paris climate deal offers flame of hope, says UN official" (17 January 2016)

2. *The Guardian* "How a 'typo' nearly derailed the Paris climate deal" (16 December 2015)

Wigley+Company
PO Box 10842
Level6/23 Waring Taylor Street, Wellington
T +64(4) 472 3023 E info@wigleylaw.com
and in Auckland
T +64(9) 307 5957
www.wigleylaw.com