

The Process of Informals in the Fifth Committee

It was close to midnight in Conference Room 5 at United Nations Headquarters when Thomas Schlesinger closed his files and left for home a satisfied man. Schlesinger, a senior Counsellor with the Austrian Mission to the United Nations and Austria's representative in the Fifth Committee, had successfully tied up a contentious resolution that demanded lengthy sessions of informal diplomacy. And now he was left only with the task of notifying the Committee Chairman that unanimity had finally been reached, and the resolution adopted.

Schlesinger was appointed Coordinator for informal consultations to finalize a draft resolution on "pattern of conferences", the second largest resolution the Committee had been tackling. It dealt broadly with conferences in the United Nations, their timing, duration, utilization of translation and interpretation facilities, and documentation of meetings, and it needed Schlesinger's skills to "gavel" (announce as adopted) the final resolution.

The Fifth Committee works hard to pass its financial and budgetary agenda without a vote. Besides its own agenda, it also has to approve unanimously the budgetary requirements arising out of the work of the other five committees. Often, its own work has to be delayed as the other committees await word from the Fifth on proposals sent to it. Working towards this exhaustive consensus is a "unique process in multilateral diplomacy", says Schlesinger. To insiders, this process of consultations between diplomats is known as the "informals".

Reforming the budget: Resolution 41/213

The evolution of the informals is linked to General Assembly resolution 41/213. In the mid-1980s, the United Nations was faced with severe financial crunches, which forced the Organization to borrow from peacekeeping funds to meet needs in other areas. Member States began criticizing the methodology of the budget accounting, and arrears kept on increasing.



Informal consultations in Conference Room 5, one of the smaller rooms at UN Headquarters in New York.

August 1986, the Group submitted seventy proposals to the Assembly, but there was no consensus in the Group on streamlining the budget process. So the Assembly on its own passed resolution 41/213. A key part of this resolution states that the Fifth Committee must achieve the "broadest possible agreement" in passing the budget.

"This is the reason why you have a very interesting decision-making process in the Fifth Committee", says Schlesinger. "With the necessity to find a consensus or the broadest possible agreement, you need a different mechanism of decision-making. It's not looking for majority in counting votes, it is bringing each and every Member State on board." Reaching this state of broadest possible agreement involves many levels of consultations.

To pass a draft text, first it has to be introduced in the formal negotiations. If there is strong disagreement in the "formals", the matter is pursued in the (1) formal informals, (2) informal informals, (3) least formals, and (4) political meetings.

Off the record, on the record

The Fifth Committee convenes for formal meetings in Conference Room 3 in the General Assembly building of the UN Secretariat. One level below the street, in a broad, long corridor, doors lead into the various conference rooms that accommodate anywhere between 40 to 830 people.

The Committee's formal meetings, just like other committee meetings, are announced in advance in the *UN Daily Journal*, and are scheduled between 10 a.m. and 1 p.m., and 3 p.m. and 6 p.m.

Delegates occupy chairs behind small rectangular wooden plaques bearing



Thomas Schlesinger, Coordinator in 2001, pattern of conferences

their country's name. A headset attached to the arm of each chair is used for listening to interpretation in the six official languages of the United Nations (Arabic, Chinese, English, French, Russian, Spanish). A few feet above the ground, set into the wall, are booths where interpreters sit behind glass panels doing simultaneous translation into and out of the official languages.

Collen Kelapile of Botswana, Coordinator of the pattern of conferences in 2000, says, "Statements are usually in written form and a few are circulated in advance to facilitate the work of translators and interpreters, and for other delegations who may want hard copies to brief and seek instructions from capitals. Full conference services are provided, and staff of the Department of Public Information (DPI) prepare press releases."

If diplomats agree on a text in the formals, the Chairperson recommends that the Committee adopt it and report it to the Assembly, where 189 Member States vote on it for final adoption. If disagreement surfaces in the formals, diplomats pursue the text into the second level of talks—the formal informals.

Says Schlesinger: "An agenda item is introduced in the Fifth Committee and when Member States are not prepared to take an immediate decision, the report is continued in informal consultations. The Chairman closes the formal considerations and asks that those be continued in informals, and nominates a coordinator, who is a colleague in the Fifth Committee."

Schlepping a resolution from formal to informal meetings before going back to formals implies that the language of the text is not acceptable to at least one of the delegations. Remember, under resolution 41/213, they are expected to achieve the broadest possible agreement.

The formal informals are also announced in the *UN Daily Journal*—they are, however, not official meetings. In the formal informals, representatives of the Secretariat clarify the language and inform delegates of any precedents. Though interpretation services are available, there is no tape recording and DPI officers do not prepare press releases.

Schlesinger says that the informals were not so formalized when they first began. "Currently, the formal informals in many instances are almost a continuation of the formal meeting with one difference—you don't have summary records. It's off the record."

In these formal informal sessions, the Committee chairperson is not always present. "These chairpersons are high-ranking diplomats who have many other tasks to perform and can therefore not afford to be quibbling with junior 'experts' on how to cross the 't's' and dot the 'i's' during such sessions, which are usually in the late afternoons, evenings, late nights and sometimes into the early morning hours", says Kelapile.

In formal informals, forging a consensus rests on the shoulders of the Coordinator. "The first part is the question-and-answer session", says Schlesinger. "The Coordinator invites Member States to submit language proposals. If one wants result A, other Member States do not want result B, and only then does the role of the Coordinator really start". Schlesinger says that the Coordinator has to work with the delegations to shape a consensus. "And this is the very tricky part. It is very difficult for the Coordinator to put something forward and not appear biased to either side. It does require negotiating and coordinating skills to bring together views that are very far apart."

Schlesinger says that behaviour patterns do not "change dramatically" in the beginning of a formal informal meeting. "You very often find a repetition of a position taken in a formal meeting, but delegations have the time to better elaborate." But the formal informal negotiations are not always successful, partly due to elements of formality that linger and prevent a diplomat from candidly speaking to his colleagues.

"In the formal informal meeting, delegations address the Coordinator as Mr. Chairman or Mr. Coordinator, or Madam Coordinator or Madam Chairperson. In response, the Coordinator addresses the delegations as the distinguished representative of a Member State", says Schlesinger.



"You need this relationship of friendship and mutual understanding, because otherwise you are not successful in negotiations."



Diplomats in the Fifth Committee unwind at the nearby Vienna Cafe. During least formals meetings, some Coordinators avoid moving delegates into the Cafe and prefer that they remain in the Conference Room, in order not to give the impression that it's a "Vienna Cafe decision".

A first-name basis

In the third level of negotiations—the informal informals—small drafting groups meet in a corner of Conference Room 5 or even outside it, while the Chairperson sits in the centre of the room.

"Where you move to the corner of the room, you dispense with interpretation and hopefully stay in the corner with the most interested delegations", says Schlesinger, "then later come back to the centre, say if an agreement was reached—or go straight back to the formal informal for the chairperson or Secretariat officials to apprise the delegations of the agreement reached and ask if it can be formally announced."

But the informal informals do not always lead to a consensus. If this happens, the Coordinator generally brings together the interested delegations and in some instances is himself invited to attend. These least formal meetings could take place anywhere, from the nearby Vienna Cafe to the offices of Secretariat officials. "That's usually where the most controversial issues are being solved", says Schlesinger.

Collen Kelapile calls them "informal, informal informal" meetings. "These become very

Coordinators would rather stay in an area close to Conference Rooms 5 and 6 than move to the Vienna Cafe.

useful when negotiations have stalled and the facilitators have to beg for compromises that may facilitate agreement. These kinds of negotiations yield consensus", he says.

The fourth level in informal negotiations is the political meeting. When diplomats cannot agree in the least formals, the Ambassadors themselves take over and agree on a compromise. "It involves also a carrot-and-stick approach", says a Committee delegate who requested "diplomatic anonymity". "Normally, it takes the form of a reminder that 'I value the bilateral relation between us as much as you do'. It must give you the impression that someone speaks with my interest at heart, so you would revisit your position to meet it some place on the other side", explained the diplomat. When asked if anyone had approached him that way, he said he had heard it from his colleagues who were approached.

Another active diplomat of the G-77 developing nations said on condition of anonymity that "powerful" nations apply "subtle pressures and friendly pushes" to remind other nations to change their position.

However, a diplomat of the group of developed nations said: "It is correct *in the sense* (sic) that powerful nations have an extensive network of diplomats, and are aware of positions of other developing and developed nations. So it's natural that in a bilateral dialogue they put their concerns across clearly. Friendly pushes and subtle pressures usually work with those who want to be pushed. But a developing country, he said, would never give in to friendly pushes if that is against its best interests. "You are pushed gently in the direction you are likely to take ... and developing nations apply subtle pressures too. Sometimes, when it works", he added, "it's beyond their wildest expectations!"



Transparency versus secrecy

Since informals meetings are not recorded, the coordinator's role comes under keen scrutiny from colleagues. Schlesinger says that issues of transparency are important to him. In the past, Directors and Assistant Secretaries-General had offered their conference rooms to Coordinators for a limited number of negotiators for these least informals. "This raised questions of transparency", he says. "Therefore, when I coordinated in the fall last year, I tried to stay in Conference Room 5 and take every decision there." It is one of the smaller rooms in the basement of the Secretariat.

The consequences

With six years of experience with the Fifth Committee, Schlesinger says that in his personal opinion the consequence of these informals is two-fold: first is the impact on representatives of the Secretariat and academics; and second, the relationship between diplomats.

When delegations cannot rely on official documents to recall precedents, Secretariat representatives are accompanied by note-takers from their departments. "I know that memos are written by representatives of the Secretary-General so that institutional memory as to how a decision was reached is preserved. These notes are not open to the public and to delegations", he says. "If scholars or academics want to find out how decisions are taken in the Fifth Committee, they clearly are at a disadvantage, because what they see is from summary records—first, there is a formal meeting where delegations have opposing views and no consent, but miraculously, after one, two or three months, a decision is reached again in the formal meeting."

The second consequence, Schlesinger says, is the atmosphere among the delegates. "If you negotiate in the informals, convincing other delegations depends upon your personal negotiation style. At the end of each session, the Fifth Committee is meeting days and nights, and even on the weekends. You then need a relationship of mutual understanding because otherwise you are not successful. That is why you also see great friendship across a regional adherence and positions taken", he says. "By the way, it's the tradition on the weekends that you don't dress formally—you come in turtleneck sweaters and what have you."

A language that is ambiguous

If academics or journalists become puzzled over how or when a country changed its opinion, it is not always easy for them to find the answer. Negotiations at any of the four levels of informals are off the record and closed. As discussions move deeper in the process of informals, it means that a consensus on the language is more difficult to reach. The final text that is acceptable to all diplomats involved can contain what is colloquially referred to as "constructive ambiguity".

"It is a euphemism for contradictory requests to the Secretariat", says Schlesinger. For example, in the text on pattern of conferences a provision states that all resources should be made available for meetings. Then in the same paragraph, there is a request to the Secretariat to continue providing these resources on an ad hoc and as-available basis. "Then it is only the practice of the Secretariat that determines what is the actual meaning of that", according to Schlesinger. "And Member States in subsequent years are apprised of this practice, and if they approve and don't give a different direction to the Secretariat, the practice is maintained."

However, Kelapile holds another view. "It is an ambiguity that is not only difficult for the Secretariat to implement but also often opens the door to subsequent frictions over divergent interpretations."

He offered an example of how "constructive ambiguity" could complicate matters. "A particular delegate wanted staff of a certain peacekeeping mission who had been relocated from point A to point B to be given an allowance for their hardship in the new station. Now in drafting the document, when the delegate was talking in terms of a monetary allowance, the meaning in the text apparently read that allowance must be made for debating this proposal in future meetings. In the next session, the concerned delegate looked at the document [edited by the



Collen Kelapile, coordinator in 2000, Pattern of conferences.

Secretariat] and asked, 'What happened to the allowance I requested?' Here you have to understand that the Secretariat meant something else."

Another instance, says Kelapile, was when they were debating the administration of justice in the UN system. "An advisory committee had identified a gap between the Statute of the UN Administrative Tribunal and the Administrative Tribunal of the International Labour Organization. We were discussing whether the right way to draft would be 'to ask the UN to close that gap, to bridge that gap, or ask the UN to narrow it with a view to closing it'."

Constructive ambiguity in a text helps a country to move away from a position it initially defended when such language may create difficulties once the Secretariat implements it, says Schlesinger. "On the one hand, it means a leeway for the Secretariat, and, on the other hand, if the imaginary boundaries are overstepped, then the Secretariat receives criticisms". These imaginary boundaries are defined by the "national interests" of all countries negotiating the text. He adds that the Secretariat is certainly aware of the different positions and is frequently asked by delegations how it would implement a "constructively ambiguous"

decision. Says Schlesinger: "I therefore refrain from saying it is unfair to the Secretariat to use constructive ambiguity." What also happened in the past was that a representative of the Secretariat would make their understanding known to Member States. "They phrase it diplomatically."

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Michel Tilemans, Belgian delegate to the Fifth Committee.

Michel Tilemans, representative of Belgium, says: "It takes a certain time for any reform to capitalize. It is normal that you do not have a resolution that is clear-cut, definitive and with immediate results. ... It's a step-by-step approach, to construct year after

year. One should not dally, but should certainly take into consideration in this constructive ambiguity the need to reach consensus, to build up—sometimes quite fast, but still step by step—towards a visible reform."

Schlesinger's "golden rules"

Much of the consensus in the informals depends upon the personality and individuality of the Coordinators. Says a Committee delegate about Schlesinger, Kelapile and Coordinators of the Fifth Committee in general: "They are excellent, neutral, well prepared and smart."

Schlesinger is also a scholar of the UN financial history. He contributed a chapter on "Financing and Financial Crises" in a book entitled "The United Nations—Law and Practice", (2001 Kluwer Law International).

"I would say a golden rule when you arrive in the Fifth Committee is 'master and demonstrate that you have in-depth knowledge of a topic'. You cannot rely exclusively on the fact that you're under instructions of your Capital. In the Fifth Committee, you have to constantly be aware of the latest developments so that capitals may revise their instructions."

Schlesinger's other golden rule is fairness. As a conciliator of different interests, he must not only be fair, but also appear to be so. "I'm a delegate of the Austrian delegation, but in my capacity as Coordinator I'm not Austrian—I'm coordinating in my personal capacity, neither an Austrian nor from the European Union. It's just Thomas Schlesinger." He matter-of-factly adds that he takes care to see that he distributes satisfaction and dissatisfaction equally

in the room. "One of the duties of a Coordinator is to show the middle way out. And the middle way is that you may be siding with one side of the room, but you have to offset it by balancing it on another issue."

"Go to the Fifth, Collen!"

Collen Vixen Kelapile was with the UN desk in 1998 in the Foreign Ministry of Botswana when he learned of his transfer to New York. His supervisor, fifteen years older than him, called and offered him sagely advice: "Collen, if you want to know the UN system, don't hesitate to take the Fifth Committee." Kelapile dived straight into it. Says another diplomat about him: "He is smart, knows the subject thoroughly."

Both Schlesinger and Kelapile became coordinators quite quickly. Schlesinger, within a year of his arrival at the United Nations, coordinated a resolution on human resource management in 1997. "A tough subject", says Kelapile, who himself was the Coordinator last year on the pattern of conferences.

One criticism of the process of informal negotiations, which holds for all Committees, has been the secrecy of proceedings. Schlesinger differs with that opinion. "These negotiations are open to all delegations of all Member States," he stresses.

That night, as the text on the pattern of conferences was approved by midnight, and before Schlesinger left for home, many delegates were seen walking across and offering him a firm handshake of appreciation. A fair mind attracts its own admirers. □



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"We don't celebrate, it's the wrong word—we sit together and are happy that the negotiations are over. It's not that we go to a bar and drink! I think a lunch is something symbolic."