

# Kluwer Mediation Blog

## Deal Facilitators Can Help Transform The Brexit Negotiations

Michael Leathes (Corporate counsel & author) · Saturday, October 22nd, 2016

Days after June's UK Brexit Referendum, US Secretary of State John Kerry advised that: *It is absolutely essential that we stay focused on how, in this transitional period, nobody loses their head, nobody goes off half-cocked, people don't start ginning up scatterbrained or revengeful premises.*

Yet since then prominent voices on both sides have engaged in grandstanding and hostile sabre-rattling, entrenching themselves into opposing positions. Both sides publicly play out professed non-negotiable principles to their respective political constituencies, distracting from the extreme intricacies, interests and impacts. They are winding up the emotional tension and digging themselves deeper into holes. Battle lines have effectively been drawn. The situation bears a striking resemblance to a fully-blown dispute. Before it escalates further, the UK and EU need to agree to engage deal facilitators and have them in the frame well before the negotiations begin next year.

If the two sides engage impartial neutrals, the highly complex, multi-faceted, extremely important Brexit negotiations would take place within a detailed process framework, with rules of engagement, discipline and decorum. Both sides need to spend all their energies focused on interests and seeking options for mutual gain.

Impartial deal facilitators would not arbitrate, but mediate. They would assist the EU and the UK to develop solutions that work to the benefit of everyone. Without facilitators, many possible options may not be tabled, explored or traded by the negotiators for fear of their offers being exploited. Impartial neutrals can use process techniques to enable negotiators on both sides to overcome these impediments. They can put forward balanced and objective suggestions, steer the sides to apply a consistent process, and avoid the reactive devaluation effect that arises when an idea is expressed by one side to the other.

There are many precedents, within and outside Europe, for political and trade deals facilitated by experienced impartial neutrals. Such facilitators can readily be found in Europe, but in the Brexit negotiation, the facilitation team can best be led by people without a direct and tangible stake in the outcome. Facilitators from outside Europe.

Singapore's Ambassador Tommy Koh is an example. In his distinguished diplomatic career, Ambassador Koh has represented both Singapore and the United Nations on complex matters of international law, environmental policy, trade and dispute resolution. He has been Singapore's Chief Negotiator in free trade agreement talks with the United States, served as President of the

Third UN Conference on the Law of the Sea, Chairman of the Preparatory and Main Committees of the UN's "Earth Summit" in Rio, and UN Special Envoy to the Russian Federation and the Baltic States. When the ten member countries of the ASEAN wished to negotiate their Charter in 2007, it fell to Ambassador Koh to reconcile the competing interests and the divisive mandates relating to sovereignty, international law, human rights and trade issues. Ambassador Koh received the Harvard Program on Negotiation's Great Negotiator Award in 2014.

William Ury is a North American example. The author of the ground breaking international bestseller *Getting To Yes* and other influential negotiation books, he co-founded the Harvard Negotiation Project and the Harvard Program on Negotiation. He established, with former President Carter, the International Negotiation Network. He has advised on and mediated in numerous political conflicts around the world, including ethnic wars in the Balkans, the Middle East and the former Soviet Union. Among his many awards is the Russian Parliament's Distinguished Service Medal.

Both the EU and the UK have repeatedly and recently issued policy statements demonstrating their strong support for the use of mediators to resolve acrimonious and damaging disputes. This is not an idea that conflicts with their public policy agendas.

If people of the standing and experience of Ambassador Koh and William Ury were to be invited to lead a distinguished group of similarly impartial and experienced facilitators, it could well make the difference between catastrophe and success for both sides. This may be the world's most important negotiation. The stakes are high for both the EU and the UK. The negotiations need to be handled dispassionately and responsibly.

*Michael Leathes is a co-founder and formerly a director of the International Mediation Institute. He is the author of a book on negotiation, to be published by Wolters Kluwer in January 2017.*

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