THE 3-D NEGOTIATOR

Negotiation Design for Large, Multistakeholder Projects

Here’s how to move beyond the decide-announce-defend and full-consensus approaches.

BY JAMES K. SEBENIUS

Both at home and abroad, corporations often undertake large-scale projects—such as oilfields, power plants, and even shopping malls—that attract the attention of groups concerned about potential downsides, including pollution and urban sprawl.

What's the best way to design the negotiation process when outside groups want a place at the table? Broadly, two very different approaches represent the extremes within which most choices fall: (1) decide-announce-defend, or DAD (named by my colleague Lawrence Susskind), in which only those parties legally required to sign the relevant documents negotiate with each other and then preemptively announce the results; or (2) full consensus (FC), in which the full set of stakeholders to a project, perhaps including activist and environmental groups, seek consensus.

These two strategies—or, most commonly, a hybrid version—can steer a negotiation toward hardball, distributive battles or toward cooperative, joint problem solving. Yet it's not always clear which direction to take. After all, process-design choices generate different options, cause different information to surface, mobilize supportive or opposing coalitions, and enhance or damage relationships—and therefore significantly affect your negotiated outcomes. In this article, I will compare different types of process design (DAD and FC, and hybrids of the two) and then offer a checklist to help you choose the right format for your next large-scale negotiation.

Negotiation design differences: DAD versus FC

Under the decide-announce-defend approach, parties to a deal privately make decisions about a project, negotiate terms with those who must formally approve the deal, and then make a public announcement. The objective: To generate a comprehensive, legally binding, and permanent contract. This agreement, which ideally grants recourse to the courts or binding arbitration, will govern the details of the relationship. If opposition arises from outside parties, the negotiators defend their decisions as best they can and make minimal adjustments as necessary.

In the Harvard Business School Publishing case brief “Stone Container in Honduras and Costa Rica” (Product # 9-800-137), Hannah Riley Bowles and I describe how, in 1991, Chicago-based Stone Container Corp., then one of the world's largest paperboard manufacturers, used a DAD-like approach on a major forestry initiative in a region of Honduras that suffered from “pirate logging” and accelerating deforestation. Stone negotiated the deal privately with Honduran President Rafael Leonardo Callejas and his relevant ministries and, at the president's request, announced the deal in general terms. The negotiators kept the details secret until regulations could be finalized.

Leaked versions of the agreement, which suggested that a huge amount of land would be earmarked for logging by Stone over a long time frame, alarmed the Honduran Congress and other groups, including unions, local competi-
tors, and international activists. On the eve of major protests, the president rescinded his support for the project, and Stone withdrew from the effort. Arguably, Stone's proposal could have benefited most major interest groups in Honduras—yet the DAD process stimulated the formation of a nearly unstoppable blocking coalition.

Compare that story to the full-consensus approach, which aims to reach agreement among stakeholders to a large-scale project. While getting a deal remains an objective, building ongoing relationships becomes a greater priority. Striving for a framework document, the formal contracting parties seek support from an expansive set of stakeholders and expect to adapt and renegotiate. (In his November 2003 Negotiation article, "When an Angry Public Wants to Be Heard" [Reprint # N0311C], Lawrence Susskind outlines a similar process.) When successful, FC generates wide support; the downside, however, is that the most reluctant—and sometimes most extreme—party can hold consensus hostage.

In their Harvard Business School Publishing case series "Block 16: Conoco's 'Green' Oil Strategy" (Product # 394001), Malcolm Salter and Susan Hall show how Conoco used an FC approach as it sought to draw together a diverse set of stakeholders for its environmental management plan (EMP) for oil extraction in the Oriente region in Ecuador. The U.S. company spent millions of dollars developing its EMP and sought consensus from affected groups, including Ecuadorian government ministries and domestic and international advocacy groups; the process culminated in a four-day meeting on a floating hotel on the Rio Napo. Various groups voiced deep skepticism about Conoco's true intentions, and the consensus-building effort failed. Ultimately, an Argentine oil company developed the land with what many observers viewed as considerably less concern for local issues than Conoco displayed.

Broadly speaking, sponsors often expect that the DAD approach will be quicker and simpler than FC and likelier to produce definitive outcomes. Because of its focus on achieving legitimacy and wide support, FC typically takes more time, generates more complexity, runs a greater risk of impasse, and is less under project sponsors' control.

Sometimes a hybrid of DAD and FC is the best solution. In 1995, Stone Container finally reached stakeholder agreement on another forestry project in Costa Rica in which groups such as Greenpeace and Costa Rican environmental organizations became actively involved. Credible outside experts served as technical advisers to government officials, who organized the process and ultimately reached a decision about the project after widespread and formalized consultation. While this project also attracted significant protests, the process generated new options and the support that Stone needed—though short of full consensus—to move forward with a version that was widely hailed.

**Negotiation design dimensions: A checklist**

As this overview has suggested, your organization can apply a variety of DAD, FC, and hybrid approaches to large-scale negotiations over forestry, mining, real-estate development projects, and so on. Here, I offer a checklist of negotiation design categories for you to consider, beginning with two cross-cutting considerations. (For more detail, see Lawrence Susskind, Sarah McKearnan, and Jennifer Thomas-Larmer's book *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement* [Sage, 1999].) Whether your overall negotiation design philosophy is DAD or FC, or a hybrid of both, raising these issues is usually preferable to falling into a set of important decisions by default.

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**Design choices: Explicit or implicit?**

When planning upcoming talks, should you and the other parties discuss the range of design choices explicitly or let them unfold on the fly? Clarity is usually preferable, because discussion can spur efficiency and commitment and head off misunderstandings—but not always. In contentious situations, the prospect of endless haggling about the "shape of the table" can consume valuable time. Before launching a negotiation about the negotiation, consider the context and the people involved.

**Design choices: Imposed or negotiated?**

Should one side try to impose its design-choice preferences, or should the choice be open to group negotiation? When your company stipulates elements of the process, you can gain control—but you may also generate resentment from parties that could later subvert the decision. For instance, a well-intentioned Conoco set forth its process "rules" in Ecuador, only to have others aggressively contest them.

Once you've thought about whether your design choices should be negotiated, it's time to consider several important options.

**Auspices.**

Without deep consideration, Conoco, in its Rio Napo meeting, implicitly decided that the negotiation process

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should be under its own "auspices"; it would host the negotiations, chair the proceedings, and lay out the process. Although Conoco hoped for full consensus, this early decision was disastrous, signaling partisanship and unilateral control to the more skeptical participants. By asking the government or a third party to host and chair the process, Conoco might have set up a more successful negotiation.

In other cases, such as that of Stone Container in Costa Rica, it made good sense for government entities to host the deal forum since, by law, the government had ultimate decision responsibility. When principal parties are at odds, a neutral third party, such as a mediator, may well take the lead in chairing the process.

Mandate.

Parties also need to be very clear about the intended output of their forum. Do participants have voting rights or merely the ability to discuss possibilities? Should any agreements arising from the forum bind the participants and their constituencies, or will your agreements merely be advisory to some other body, such as a government agency, that will later reach the formal decision?

In Costa Rica, Stone Container and other stakeholders served merely as government advisers, but their choices carried considerable weight. An ambiguous mandate can sink a deal.

Participants.

When it comes to complex negotiations, the choice of who issues invitations and who participates can be vital. Should participants be full principals in the process or nonvoting observers? You can directly negotiate such choices or invite groups to select representatives who may or may not have the power to bind their constituents. The underlying vision of the process—DAD or FC, or a hybrid of both—helps determine the breadth and basis of participation.

For more elaborate negotiations, parties may seek coordination, logistics, and process support from a body specifically created or hired for this purpose. In some cases, mediation or outside technical expertise may be desirable, especially when negotiators have divergent expertise and limited resources. To avoid actual or perceived bias, the issue of who pays for such support—the project proposer, an outside entity such as a foundation, or some combination of stakeholders—must be carefully considered.

Agenda and staging.

Negotiators must decide whether to set an agenda at the beginning of talks. Should issues be specifically related to an intended contract or formed by a wider set of stakeholders, as is common in the FC process? Once you’ve established an agenda, it’s time to decide who will deal with which issues. Participants might be broken into subgroups to confront specific issues, or they may negotiate each issue together.

Your negotiations can be ad hoc or consciously staged. For example, you might begin talks by jointly defining problems, followed by fact finding, negotiation of agreed-upon issues, and a decision and commitment phase.

Procedures and decision rules.

Procedures to be decided upon include determining whether to appoint a chair, how to recognize speakers, and how to adopt, revise, and accept documents. When it comes to the actual procedure for reaching agreement, at one extreme, ad hoc deliberation can occur informally; alternatively, decisions may be made through majority rule, through sufficient consensus—enough support to reach a meaningful decision—or by full consensus.

External communication.

Frequently, groups will have conflicting opinions about what information to share with those outside the negotiation, including constituencies and the press. When stakeholders trust one another and are genuinely committed to solving their joint problem, a more closed process will be productive.

However, a more open process will be less apt to generate controversy and opposition from "excluded" stakeholders and constituencies.

Postdeal arrangements.

The deal forum may or may not have a life beyond the agreement. Parties may agree in advance on a process for implementation and any possibilities for adaptation or renegotiation. Ultimately, your choice of process design can affect whether you achieve the results you intend and whether interested parties believe that the outcomes of a negotiation were fair, respectful, and inclusive.

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