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CULTURE, RESOURCES AND CONFLICT

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Stakeholder Negotiations Over Third World Natural Resource Projects

by Hannah C. Riley and James K. Sebenius

Introduction

This article explores three cases in which the traditional model of "bilateral" negotiations between foreign investor and host country government over natural resource utilization was challenged by domestic and international interest groups, striving to protect the environmental, social, and spiritual integrity of locally affected forest lands. Of the three cases—Conoco in Ecuador and Stone Container in Honduras and in Costa Rica—only one, Stone in Costa Rica, produced a negotiated outcome consistent with principles of sustainable development and with the endorsement of all of the key stakeholders. In the cases of Conoco in Ecuador and Stone in Honduras, it is questionable whether the escalation of conflict and the failure to reach a consensus produced a more beneficial outcome, economically or environmentally, than might have been attained through the original negotiations.

Through a review of the failed negotiations in Honduras and Ecuador and of the relative success of the Costa Rican consensus-building process, we seek to identify emerging patterns, which may serve as building blocks for more constructive future stakeholder negotiations. We interpret the three conflicts and the efforts toward their resolution through a negotiation analytic lens, focusing on the directly and indirectly affected parties who may have some influence on the outcome (the "stakeholders"), their interests, their "no agreement" alternatives, the tension between cooperative and competitive actions on all sides, and the actions taken to change the structure of the negotiation.

Case Examples

The three conflicts evolved over a period when environmental groups and indigenous peoples' advocates were gaining in international recognition and political sway. Through media campaigns, local activism, and legal actions, these nontraditional parties increasingly came to be taken as legitimate stakeholders in negotiations over the utilization of natural resources. In each case, issues of rights, identity, and value systems interacted with the more tangible issues under consideration. In the case of Conoco in Ecuador, nontraditional parties challenged oil development in the tropical forest and fought for the legal right to maintain protected areas and for the human and territorial rights of forest dwelling peoples. In Honduras, a broad-based appeal was made for greater government and private sector accountability in the conservation and utilization of forest resources. In Costa Rica, protest erupted over the proposed conversion of undeveloped land in a conservation area for industrial use.

At least initially, both Conoco and Stone approached the projects through the traditional route of "bilateral" negotiations with the host country government, which tended to preclude or sharply limit the role of nontraditional parties (i.e., noncontracting parties who may have interests at stake). In each case, the company failed or succeeded on its ability to integrate the views and interests of nontraditional parties into the negotiation process.

Conoco in Ecuador

In 1986, Conoco entered a risk service contract with the government of Ecuador for oil exploration in an area of the tropical forest designated as Block 16. By 1989, a reservoir of 200 million barrels of heavy crude oil had been discovered. Beyond the value for Conoco, the new find would have enhanced Ecuador's oil production potential by 20%, at a time when oil accounted for more than 40% of exports and fiscal revenues, and the country's external debt well exceeded its GNP.

The company—and, perhaps, some departments of the Ecuadorian government—learned belatedly that Block 16 protruded into the boundaries of Yasuní National Park and the traditional homelands of the Huaroni people. Believing the government would opt for oil development regardless,
the company set the goal of establishing an industry precedent for low-impact oil extraction in the tropical forest and initiated a consensus-building process for drawing up its Environmental Management Plan (EMP). In its explicit quest for stakeholder consensus, the company held round-table discussions and consulted scientists, environmentalists, indigenous peoples’ advocates, and others for suggestions on the EMP.

It is significant that Conoco is a subsidiary of Du Pont, a corporation that had elevated environmental sensitivity (“beyond compliance”) to a core element of its worldwide strategy. Moreover, noting that the bulk of future oil exploration would take place in fragile areas around the globe, Conoco was committed to using Block 16 to establish its reputation as the “developer of choice in environmentally sensitive areas.”

Despite Conoco’s efforts, many international and Ecuadorian rights and environmental groups remained opposed to any form of oil development in protected areas. Activists worried that development would destroy the Huaorani culture and people. Some feared that company promises would not be kept. Others noted the inexorable pressures that would arise from the governments’ fiscal needs and security interests in seeing this sparsely populated area colonized to protect against possible Peruvian incursions.

In May 1990, Conoco convened a meeting at the floating Rio Napo resort, to which all interested parties were invited for the purpose of discussing the draft EMP and consolidating stakeholders’ support for the newly revised plans. The company managed to elicit broad and active participation in the Rio Napo conference, some of which was quite suspicious and negative. Rather than focusing on standards for the EMP, the debate centered on whether development should be permitted at all in the protected areas.

In June, activists’ related interventions upset the ante. The Quito offices of Texaco and British Gas were occupied by protesters and an uprising of indigenous peoples forced suspension of oil production activities. Neighboring Colombia’s petroterrorists had caused more than $500 million in damages, sensitizing the company and government to the threat of further escalation.

In a further attempt to build consensus, the company held discussions with Cultural Survival and the National Resources Defense Council in the United States to explore options that could help facilitate dialogue with local groups as well as other international organizations. Meeting minutes marked “confidential” were soon leaked and broadcast via e-mail to environmentalists and rights activists worldwide, eliciting angry accusations of breaking ranks and attempts to divide and conquer.

When the Ministry of Energy granted final approval in September 1991 of Conoco’s plans, more trouble with activists brewed on the horizon, full stakeholder consensus was nowhere in prospect, and other economically attractive ventures had emerged. Conoco withdrew its proposal. Shortly thereafter a lower profile company, Maxus, took over exploitation of Block 16 with a less salient environmental commitment and a much trimmer compensation package to the Huaorani than Conoco had been discussing.

Honduras

Stone Container Corporation is a major producer of cardboard containers and paper bags. In the late 1980s, the company was concerned about the US economy and trends restricting access to forest lands. Executives began looking to Latin America to expand production activities.

Stone opened discussions through political channels with the Honduran government for the development of a forest management program in the Mosquitia. Stone sought a 40-year renewable lease to harvest pine for processing into wood chips for paper production. The company proposed to provide training and technical assistance in forest management to local communities and to employ 3,000 workers. Stone claimed it would infuse $20 million annually into the economy and generate 15,000 industry-related jobs. To the state agency in charge of forestry, Stone’s proposed forest management program was a welcome investment. The country had lost 2.2 million acres of forest in the previous 25 years, due in good part to unregulated logging and forest fires, and was facing a crisis of desertification and floods due to the loss of vegetation and tree cover.

All negotiations between the company and government were kept strictly confidential, until the announcement in September 1991 of the signing of a Master Agreement for Forestry Technical Assistance and Timber Utilization. The precise terms and language of the Master Agreement were withheld, pending finalization of detailed subsidiary agreements.

Sudden public announcement of an undisclosed agreement with a U.S. multinational (Stone) set off a wave of accusations of corruption and neo-imperialism. A leaked version of the draft agreement—which revealed that it had been negotiated in English-attracted national and international media attention. Environmentalists claimed there were insufficient safeguards to prevent the company from logging the rain forest. Estimates of the territory subject to harvest ranged from 320,000 to 2.5 million hectares. One U.S. environmentalist made a televised accusation that a senior Honduran government official was benefiting financially from the deal with Stone. Even the Miskito peoples’ community, which might have benefited from Stone’s forest management assistance in protecting the hardwood forests, warmly withdrew its support.

On February 27, 1992, while the Master Agreement was before the Honduran Congress and just hours before thousands of protesters were to march on the capital, President Raphael Leonardo Callejas announced the cancellation of negotiations with Stone. Stone made one final attempt to spring back with a revised proposal that addressed social and environmental concerns, but its efforts proved to be in vain. In the end, the government was unable to replace the Stone proposal with another forest management program, and privatization of the Honduran forests proceeded with relatively little oversight.

Costa Rica

As Stone Container was seeking to expand production in Latin America, the Costa Rican government was encouraging reforestation to counter its losses of more than 60,000 hectares of woodlands per year. In April 1989, Stone Container formed a Costa Rican subsidiary, Ston Forestal, to cultivate 24,000 hectares of gmelina tree planta-
tions for wood chip production and export. Ston Forestal would lease land from more than 150 landholders, invest in a chip mill and port facility, and employ between 700 and 1,200 workers. Total investment was projected to exceed $45 million.

Ston Forestal planted its tree harvest in July and began investigating locations for the chip plant and export facility. Unable to meet its requirements using existing ports, the company settled on a virtually undeveloped site at Punta Estrella. Estrella offered the advantages of priority access and direct passage through the deepest waters of a gulf to the Pacific Ocean, highway connection to the plantations, and a secluded area to buffer noise from the plant.

Most environmentalists in Costa Rica did not share Stone's view of Estrella as a favorable location for construction. Estrella was situated in a forest reserve and bordered a wildlife corridor for the migration of threatened animal species. A number of U.S., European, and Costa Rican environmentalists feared that construction would block prospects for protection of the corridor and do irreparable damage to the marine ecology. In 1993, a group of environmentalists launched a media and legal action campaign to prevent Stone from starting construction in Estrella before the 1994 elections.

In May 1994, President José Maria Figueres entered office on an ambitious sustainable development agenda. Local and international environmentalists presented the Ston Forestal project as the new administration's first major challenge. In June, the Minister of Natural Resources, René Castro, formed an interministerial Analysis and Replanning Commission for the case of Ston Forestal, supported by a technical assistance group (GAT) of government advisers. Castro selected GAT members to provide potentially neglected perspectives and to facilitate cross-cultural and intergroup negotiations. GAT members included, for instance, a renowned American biologist and conservationist in Costa Rica and an American attorney familiar with the case of Stone in Honduras.

In July, the government issued a public invitation for written submission of comments and recommendations related to the case of Ston Forestal, to which the company and relevant ministries would respond. The Commission would make its decision, based on information submitted and its own investigations. Each side of the conflict used the opportunity presented by the public invitation for comment to organize its constituents and expert witnesses. The Commission received comments from environmentally concerned citizens from around the world as well as letters from Costa Rican plantation workers, foresters, local community members, and a host of others. The National Association of Costa Rican Ecologists (AECO) submitted a consolidated report of various legal, technical, scientific, and local community opinions and, though unselected by any formally binding process, AECO rose to the forefront to represent the coalition of project opponents.

In August, the Commission released its Final Report, which addressed the legal, social, environmental, and economic concerns raised during the review process. The Commission found the overall project to be sound, but concluded by suggesting that Ston Forestal move its chip mill and dock construction to the existing port of Golfito. In response to the report, Stone reaffirmed its willingness to be flexible, but only in so far as other port alternatives did not lower the efficiency or exceed the cost of Estrella. Minister Castro vigorously supported the move to Golfito, which he perceived as a win-win for conservation and the local port economy. AECO agreed in principle to support the move.

Stone agreed to establish two joint working committees with the government. One technical committee would review the costs and viability of the Golfito alternatives, while another committee negotiated a new contract. The Costa Rican chair of the replanning commission and the American attorney served as co-coordinators of the negotiations. The American conservationist was asked to contribute an environmentalist perspective and to act, with the co-coordinators, as a liaison to the environmental community. The subsequent negotiations were arduous and risked breaking down at one point, when it appeared the company's cost requirements could not be met and a legally binding decision against Stone in Estrella was issued by the Comptroller General.

The parties reached agreement late in January 1995. A signing ceremony was organized at the Presidential House, to which journalists, company and government officials, and local activists were invited. Stone's representative delivered a well-practiced statement, prepared for him in Spanish, in which he pledged that the company would continue to operate by the principles of sustainable development. Minister Castro defined sustainable development as the combination of efficiency, environmental responsibility, and equality through a process of consultation with the public. He hailed the agreement with Stone as the first generation of model agreements in the natural resource sector in Costa Rica and urged the audience to study and review the agreement closely. The control mechanism, he emphasized, would be implemented by a supervisory body of local community members, environmentalists, business leaders, company representatives, and government officials. In closing, President Figueres recognized Stone's contribution to Costa Rica's sustainable development agenda and applauded the constructive contribution of the public to the negotiation process.

Concluding Observations and Questions

It would be unwise to attempt to draw more than tentative conclusions from such a small set of cases, which arose under such disparate circumstances. Yet, there are similarities and differences in the ways in which parties in each case approached and managed the stakeholder conflicts, which are worth noting for future negotiations over the utilization of natural resources in developing countries. The following concluding observations and questions are some of the key points taken from investigation of the three negotiations.

1. The concept of "interests" must be understood to transcend economic stakes. Discussion of "interests" is often interpreted as referring exclusively to parties' material or substantive stakes in the negotiations, such as whether or not the development will take place and under what terms. To analyze the negotiations over the natural resource projects in developing countries, it is useful to start out with a more expansive view.
We suggest that parties' various interests may be loosely characterized under three headings: material and substantive, precedential and reputational, as well as cultural and identity-based. Precedential and reputational interests refer to the desire to affect the perceptions of a wider audience. Conoco's strategy to be recognized as the developer of choice in ecologically sensitive areas may be interpreted as more than an economic interest to gain advantage over its competitors. Some cultural and identity-based interests, such as forms of interaction or recognition for other perspectives, may be met partially through the negotiations process itself, rather than the terms of agreement. The Huaorani, for instance, have been described as an egalitarian and individualist society, which raised concerns regarding community representation in negotiations. Yet, full participation and evident respect for Huaorani parties in the process can further cultural interests. And, although precedential and reputational as well as cultural and identity-based interests should be recognized as distinct from material interests, the substantive terms of an agreement may well influence how much such less tangible interests are respected, fostered, or permitted expression.

A further question focuses on the parties' interests in the outcome of the negotiating process. Some parties have a genuine desire to have objections met and problems solved through negotiations. Others decide that they have an overriding interest in blocking any agreement in the negotiations. Full consensus makes an agreement hostage to the most reluctant party and empowers blocking coalitions. But, as in the case of Conoco in Ecuador, if full consensus is not possible, the company faces the difficult strategic question of what constitutes sufficient consensus or what subset of the stakeholders would constitute a sustainable minimum winning coalition.

In cases where environmental conservation and cultural survival gain international prominence, the scope of the negotiations tends to expand from domestic to international, from bilateral to multilateral, and from formal to informal. As what begins as an essentially domestic issue evolves into a global concern, an obvious shift occurs from the traditional "bilateral" (company-country) negotiations to a multilateral stakeholder process. We have observed in these and other stakeholder conflicts that, typically, twin processes arise: the formal, "bilateral" process between the foreign investor and host country government and the informal process of involvement of interested parties. The formal "bilateral" process is likely to be augmented, in some cases overshadowed, by the "informal" process of stakeholder interaction. From a negotiating point of view, there are explicit processes of formal and informal stakeholder interaction, which are distinct from linked actions, such as campaigns, constituency activation, and coalition-building that affect but are not part of the interactive part of the process. Conoco in Ecuador and Stone in Honduras and Costa Rica were each cases in which the scope of the negotiations expanded due to public international pressure.

Domestic and international publicity and pressure campaigns can matter. Although there are varied potential sources of influence of nontraditional or noncontracting parties, the capacity to build internal and external constituencies as well as to mount major public relations campaigns tend to be critical factors influencing outcomes. Legal access and support within the host country may be important in all cases, but it is unlikely to be decisive. Political influence within the host country is of obvious potential importance in persuading the current government to address nontraditional parties' concerns. Most effective seems to be the capacity to raise the salience and costs of the project for both the company and the government by internal and/or external publicity campaigns. The more the company or government cares about such publicity, the greater the influence it has over nontraditional parties' inclusion in a stakeholder process and over the outcome of the conflict.

Conoco was highly susceptible to criticism by nontraditional parties given its Dupont ownership and its strategic goal of using Block 16 to give it the desired reputation of becoming the developer of choice in environmentally sensitive areas. In Honduras, environmentalists and indigenous peoples' appeals became fused with nationalist objections, which evolved into a politically crushing combination for the government. Likewise, the newly elected administration of President Figueres of Costa Rica was prompted to take immediate action largely by the environmentalists' media campaign.

The relationship between domestic and international advocacy groups can matter. In Ecuador, deep divisions remained among environmental and indigenous peoples' groups both at domestic and international levels, which eventually blocked the potential for meaningful stakeholder agreement with Conoco. In Honduras, the international joined domestic advocacy groups, and they remained unified against the project. In Costa Rica, AECO, as leader of the environmentalists' campaign, benefited from strength and support of national as well as international organizations when it participated in negotiations with the company and government. The deference that came to be accorded AECO by the international NGO community meant that, once AECO was on board, even though Greenpeace ships were sailing toward the Golfo Dulce, Stone could ultimately count on at least tacit acquiescence by the broader environmental community.

The relationship of the informal to the formal processes can greatly influence outcomes. Often the informal process heavily determines the value of a deal versus the "no agreement" alternatives for the company and country. Conoco ultimately obtained formal authority to proceed from Ministry of Energy, but had no consensus in the informal process and had set up stakeholder consensus as essential. Stone and the government of Honduras failed to consult the informal process, as a result of which the formal negotiations were eventually deemed untenable. In Costa Rica, agreements reached through the informal process underpinned the company and government's formal authorization to proceed.

Realizing the potential influence of the informal over the formal negotiations raises an important class of questions, regarding how involved players should seek to configure the relationship between the two processes. In the two cases of Conoco in Ecuador and Stone in Honduras, largely separate informal
processes overwhelmed the formal, defeating major investments and official mandates. In the case of Stone in Costa Rica, the formal and informal merged with the establishment of the Replanning and Analysis Commission and led to a mutually acceptable outcome. This raises the broader issue of whether, in general, the formal and the informal processes should be merged or kept separate.

6 Process choices can greatly affect outcomes. In approaching stakeholder negotiations, there are, at least, two key process questions to be asked. First, how well does the process help the parties engage and solve the joint problem? Second, how well does the process lead the stakeholders to compare the quality of the potential deal with the likely alternative in the case of no agreement? Conoco's best intentions in initiating a consensus-building process for its EMP backfired as environmentalists and indigenous peoples' advocates focused on whether development should be permitted at all in the protected areas. With Conoco's rather than the government's policies at the center of discussion, it did not seem to have been made persuasive that the "no agreement" alternative to Conoco was development of the same area by another investor—and most likely a less accommodating one.

In designing a stakeholder process, there are a number of key characteristics to consider. Who convenes the process? Under whose auspices should the negotiations or consultations be held? What is the content of the agenda, who sets it, and, more broadly, what are the "rules of engagement" for participants in the process? Is confidentiality necessary, appropriate, or practicable? What should be the functions of the process, (e.g., problem definition, joint fact-finding, option generation and evaluation, and commitment and implementation)?

7 Consider "forums" to constructively channel these negotiating processes. Stakeholders should consider processes that have characteristics of "forums" rather than ad hoc adaptations to each new natural resource negotiation. John Dunlop and Malcolm Salter have studied the role of forums in resolving a wide variety of conflicts, including disputes over the utilization of natural resources in a developing country. The essential elements of a forum, in their view, are 1) organizations or groups with some different and conflicting interests, 2) a commitment to discourse and a willingness to make a serious effort to achieve accommodation of differences or resolution of conflict on some questions, 3) recurrent meetings, and 4) specified or recognized procedures that govern the groups' activity. As Dunlop and Salter illustrate with references to numerous cases, ranging from community relations to policy-making to industrial governance, forums may be adapted to widely contrasting contexts and substantive issues. Forums can be characterized by their level, (e.g., local or international, the issues addressed), by their functions, by their duration, and by their level, status and responsibility of participants. For all cases, the design and consultations in preparation of a forum should be approached with great care to ensure the quality and efficiency of its work.

Conclusion

The three cases of Conoco in Ecuador and of Stone Container in Honduras and Costa Rica are too few in number and too diverse in context and substance to use as bases for deriving generalizable prescriptions. One can generalize, though, from these cases that there is a need for the development of organizational capacity on the parts of corporations, governments, as well as interest groups, to design and participate effectively in stakeholder processes. The concluding observations and questions listed above are intended as a starting point toward a systematic approach to analyzing and learning from these and other cases of negotiations over natural resource projects in developing countries.

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