

WORKSHOP REPORT

Dispute Resolution Workshop

Victoria, BC Canada
June 8 - 9, 2004

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SKILLS FOR FACILITATING MULTIPARTY PROBLEM SOLVING AND NEGOTIATION
Workshop given by Alex Grzybowski for World Fisheries Trust
June 8 and 9, 2004

DAY 1

Each person introduced him/herself and said a few words about what he/she was hoping to learn from the workshop. These were noted on a flipchart to help guide the workshop. Our list of expectations contained the following:

- Where are people coming from? What are people's motives?
- Relationship building. "They just don't get along."
- Facilitation tools.
- Effective engagement.
- Tools and strategies of problem solving.
- Micro and macro-scale problem solving.
- Integration of initiative
 - Power sharing
 - Consensus building

Alex Grzybowski also outlined a few objectives for our group:

- Define and understand facilitation
- Learn how to assess a situation. For example, what is the best 'macro' strategy - workshop, meeting, other?
- Understand interest-based negotiation and position-based negotiation

A few definitions:

Conflict - mutually exclusive objectives

Dispute - mutually exclusive actions

Issues - substance of dispute

Parties - those with direct interests

Interests - underlying motivations

Resolution Alternatives

1. use power
2. get someone else to decide (3rd party)
3. seek advice from wise person or expert
4. confront (may include violence)
5. collaborate
6. submit
7. avoid
8. assisted negotiation (mediation or facilitation)

How to decide which one to use? There is a dispute resolution continuum. The details will be outlined as we go along.

What is facilitation?

- Facilitation is defined broadly.
- A facilitator plays many different roles, from making observations about group function to managing the group process.
- Facilitators are called in at different stages in a group process.
- Facilitators have process experience. Background experience on the substantive issues of the discussion is helpful, but not required.
- Facilitators are impartial.
- A facilitator does not impose a solution.
- The facilitator builds ownership of the process amongst participants.
- The facilitator is there to serve all of the participants.
- Facilitators enhance group effectiveness.

It was noted that it's hard to be free from bias and pre-conceived objectives. It's best to be up-front about these so the group will trust you.

Alex Gryzbowski added that making the process explicit helps define impartiality.

WFT has a desired outcome for the CIDA project, so we are not unbiased facilitators. Our objective is sustainable livelihoods, and we have a vision for that outcome. We also understand that our goal has many possible outcomes.

Alex Gryzbowski says the facilitator's opinion should not matter. It's best to let ownership of ideas go and let the participants make decisions, and make sure everyone is aware of the consequences. This will build legitimacy.

Facilitator skills:

- Communication - identify critical interests, translate concepts between communities
- Maintain impartiality while providing advice (no favouritism)
- Keep process on track
- Help parties deal with process breakdowns

Ethics

- Avoid advocacy, be impartial.
- Stay out of debate - provide advice, but don't talk too much. It's especially important to allow silence to evolve.
- When offering advice, it's better to say, "One example I know of..." or "I've heard that..." instead of "I think that..."
- Maintain confidentiality.
- Demystify, explain yourself and the process. In mediation, it's okay to take more of a power role, but in facilitation it's important not to hoard control as knower of all sides (avoid manipulation).
- Address power imbalances without building biases.
- Maintain cultural sensitivity.

Facilitation Process

- structures
- voluntary participation
- consensus building
- range of perspectives

Assessment

- issues
- parties
- policy context
- problem context

What factors are important in making an assessment?

- Issues - history, clarity, type, urgency, scope of potential resolution, risk
- Parties - identifiable, informed, interests, relationships, incentives, expectations, capacity
- Policies - government priorities, engagement
- Problem - precedents, cultural differences, public opinion, political involvement, election cycle, logistics (where will everyone meet, etc.), who will implement outcome?

Conflict analysis framework

- key question
- assessment guideline
- design considerations

Homework: Assess a multi-party problem or conflict and design an effective process response.

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Fishermen

Colonies (2 in WFT area, 20 in state)

(Pedro, Pirapora)

(Votim, Três Marias)

Associations (1 in WFT area; different from colony structure)

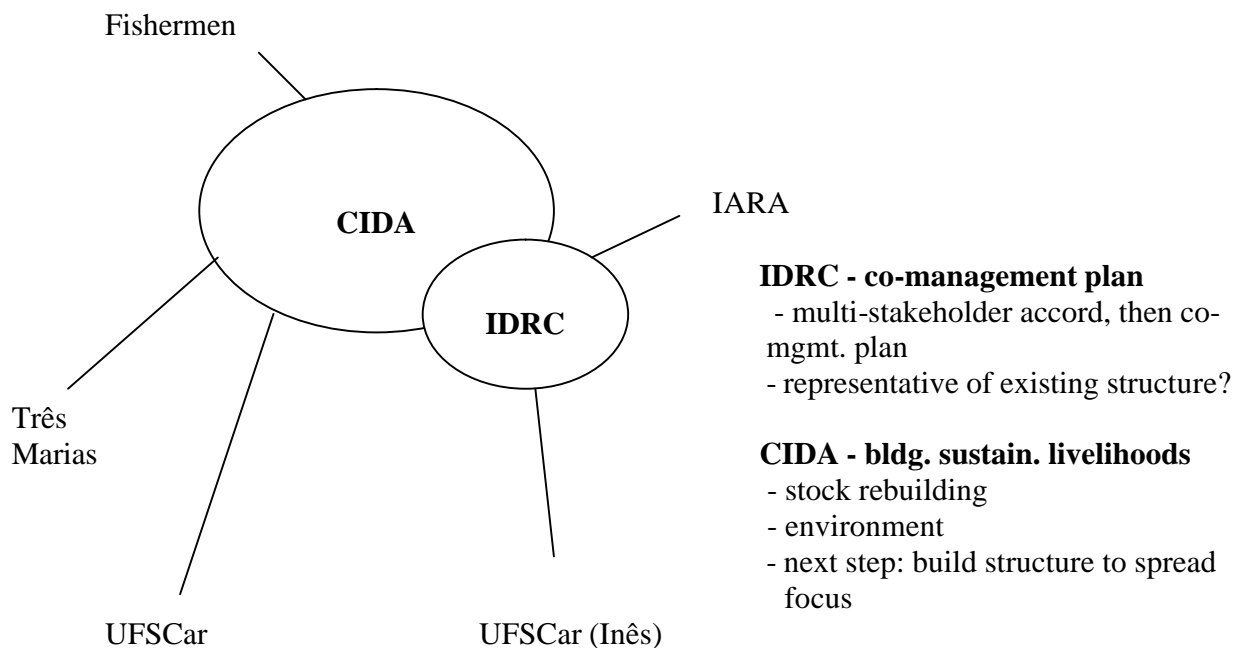
Illegal fishermen (1 in WFT area)

Both the colonies and associations are represented by the Federation of Pescadores at state level.

(Raimundo, Três Marias)

All federations are represented at the federal level by Confederations.

Projects



Other interests include:

- UFMG (stock rebuilding/environment)
- IBAMA (stock rebuilding/environment)
- Barbara Johnsen (community development)
- IEF (State Forestry Institute/State Environmental Ministry, makes fishing laws)
- SEAP (alternative livelihoods)

History:

- IARA spent 10 years in Amazon establishing co-management structure with rubber-tappers, then fishers
- IARA wants to pilot study in São Francisco basin, would disrupt existing colony/federation structure (is this good or bad?)
- IDRC financially supporting IARA, WFT wrote proposal to secure \$, so WFT has some involvement in project

Questions:

- Is IARA/IDRC project representative of existing structure, or how could it be more so? Could it be made to work within the structure of colonies?

Concerns:

- Elimination of commercial fishing is not an option.
- Our goal is to promote participatory processes, so reverting to the traditional method of lobbying and pushing through the revised decreto would be contradictory.

Solution:

- Alex Gryzbowski suggests that when a decision seems very difficult, you need more information.
- Use questioning as a tool to address an issue in a participatory fashion.

Terms of Reference

Term of reference describe the work that must be done, along with important information on how a negotiation process should proceed. Terms of reference should normally address the following points:

- Mandate and issues
- Process structure (scope) and membership
- Context for the decision (How does the decision relate to other planning initiatives in the area?)
- Role of governments
- Specific tasks
- Products (ex. maps, plans, policies, agreements)
- Approval process
- Timelines
- Monitoring and review of the approved plan
- Groundrules
- Workplan

Process Design

While terms of reference describe the process mandate and the work that must be done, the Process and Procedures document describes how the participants are going to work together. A process and Procedures document should address the following points:

- Structure: meetings, workshops, etc.
Workshops: consider benefits. Put yourself in participants' shoes.
Working groups: product focus. Promote collaboration, result is action plan.
Training: intended to develop skills. May be used to bring people together for an event not related to the big decision at first, to help establish relationships.
- Principals: self-design, timing and location, costs and benefits
- Decision group: who and how?

Process Design tips:

- Keep it simple, give the groups something to react to (can be intentionally ambiguous). For example, if drafting a new decreto, first draft a set of terms of reference that address everyone's concerns. This way you're bringing something to the table for them to discuss.
- Balance safety with the need for progress.
- Address power imbalances
- Recognise that this is THEIR first agreement (celebrate success).

DAY 2

Terms of Reference

- broad definition, many types

In the case of the CIDA/IDRC projects, it's important to establish:

What is their relationship to each other?

How do they work together? (Mechanical components.)

Necessary to immediately establish protocol:

What are the shared principals?

Whenever the two groups work together, terms of reference will be established.

For example, two groups meet, and one group has a new idea. Following a discussion, the second group agrees that the idea fits within their mandate. The two groups would then set up simple protocol:

"We agree to support each other. Our position is.... Your position is...."

This can be as simple as an email message:

"My understanding is..., ..., Can you confirm so that we don't have any misunderstanding?"

When person replies, protocol is established.

An example in our case would be:

CIDA/WFT has as its objectives to enhance the environment and sustainable fisheries.

IDRC/IARA is interested in promoting the rights of fishermen.

In establishing protocol, we agree to:

- Co-operate, keep each other informed of our activities, respect existing structures, fisheries, government and stakeholders.
- Establish a communication plan: when talking to the media, how do we characterise each other?
- When we enter into collaboration, we will establish terms of reference as required in a participatory/collaborative manner.

Dispute Resolution

When a problem is put forward, rather than quickly try to assess and provide an answer, reframe the problem as a question to get information about what's important to the people involved.

Dispute Resolution Clause

A continuum of dispute resolution tactics exists, as follows. Any one may be effective at resolving a dispute. In the extreme, binding arbitration or termination of partnership (divorce) may be the only solution.

- Inform (as per protocol saying “we will resolve disputes in a timely manner”). For example, when you make plans with a friend to meet for lunch in a week, you agree to let each other know if for some reason you can’t make it. This is informing the other party of a problem or barrier.
- Meet
- Jointly look for advice from 3rd party (funders, expert). This can enhance transparency; and lets everyone involved know that you’re seeking big-time help.
- Mediation
- Arbitration
- Binding arbitration
- Termination

Dispute resolution clauses can be

FORMAL	or	INFORMAL,
but they must be		
EXPLICIT	not	IMPLICIT.
This leads to		
ACCOUNTABILITY	and	TRANSPARENCY,
which makes		
TRANSFER (of responsibility and ideas) possible.		

We agree that our project could improve on being EXPLICIT to effect TRANSFER.

What mechanisms/structures are we using to effect transfer?

One way has been to hold meetings/technical visits including groups of many perspectives, so they can build personal relationships that will persist. WFT has been explicit in the purpose of these meetings.

Building Trust/ Establishing Relationships

- Make small commitments and deliver. (It’s important that these are small commitments at first.) Words are cheap, actions are powerful.
- Establish reciprocity: “I’ve listened to you, now you need to listen to me.”
- Don’t threaten. “We really need to find a way out of this. I’m committed to that, but you need to help me. To do that, you need to.... In return, I will....”
- LISTEN. Your ears are the most effective tool in your kit.
- Don’t assume anything about the other party. In the face of the unknown (dark) it’s easiest to assume the worst (there’s a tiger in there that’s going to bite me).

MICRO-SCALE DISPUTE RESOLUTION SKILLS

Communication (especially listening)

Active listening involves:

- Eye contact
- Responding appropriately
- Paraphrase/summarise. “So what you’re saying is…”
- Not interrupting!
- Seeking clarification “Do you mean…?”

Reframing

If someone makes a negative statement, ask questions to clarify concerns.

- Restate/paraphrase to clarify and affirm statement in a “positive-future focussed” way.
- Ask “open” questions, starting with *who*, *what*, *where*, *when*, and sometime *why*. (Be careful that questions starting with *why* don’t threaten/judge. For example, the question “Why do you feel that way?” has the potential to make the person being asked feel threatened. Better to say, “What experiences led you to that belief?”)
- Closed questions are those that can be answered with “yes” or “no”. Closed questions rarely give information.

For example:

“This meeting is a waste of time. I’m not participating anymore!”

“What is it exactly that makes you feel this is a waste of time?”

“Well, I’m tired of people saying they’re going to do things and not following through.”

“So you feel that this process is lacking accountability.”

“Yes, we seem to get together to discuss the same problems all the time and no one ever does what they say they’ll do to work on them!”

“What we really need to do is establish a system of accountability and measuring progress.”

“That would be better.”

The 3 Questions (to get information)

1. What is your issue?
2. What is your solution?
3. How would that solution solve your issue?

First two are usually easy to answer. “I don’t like him/her.” “Let’s get rid of him/her.” The third is harder. “Well, he/she would be gone.” Does that really solve the problem? Maybe someone else would fill the position who presents the same barrier.

Summarising

Distilling down the outcome of a meeting

- Effective to use a flipchart to write down ideas/key words from the meeting.

- Write words that people actually used, don't use your own! (Perception will be that you are co-opting the meeting.)

Establishing trust/relationships

Between disputing groups, mistrust is common. Make the situation clear to all involved.

- Communicate effectively
- Deliver on small, incremental promises

Why do processes break down?

- Extreme positions
- Lack of resources to participate
- Lack of incentive for some parties
- Lack of critical info
- Poor communication

Action (minor breakdowns)

- reframe negative statements
- take a break
- shift to easier questions
- encourage parties to evaluate alternatives
- point out importance of relationships
- refer to progress made so far

Actions (major breakdowns)

- adjourn and allow parties to re-evaluate
- encourage parties to evaluate alternatives: best, worst, most likely (due diligence step)
- assess likelihood of agreement
- summarise progress
- use a small group of moderates
This doesn't always work, but in some cases it can be effective to select a small group of people from the larger group and sequester them to discuss the problem. The small group then returns to the larger group with suggestions. This does not have to eliminate some people from the decision-making process, but can bring about new ideas that the whole group can evaluate. It may be easier for some people to be open when they aren't speaking in front of a large group of peers and community members.
- refer to experts or higher authority for advice. (This may only happen some time into process.)
- agree to disagree on a sticky point if it doesn't prevent resolution

Ways to address a Power Imbalance

- Share information
- Provide training
- Ensure full/equal participation (lever for facilitation). Special techniques are required to accomplish this. Try to ask for input from less vocal/less powerful.
- Slow the pace. (Sometimes those in a position of power want to rush the process through.)

- Point out patterns of power
- Help underpowered parties build on their sources of power.
Ex. positional dynamics, locality of meeting. Bring academics to farm instead of bringing farmer to agricultural conference.
- Ensure resources and information are available.

NEGOTIATION

Voluntary participation is essential.
99% of social interactions are negotiation.
May be position-based or interest-based.

Definitions:

position(s): ideal solution (for each person)

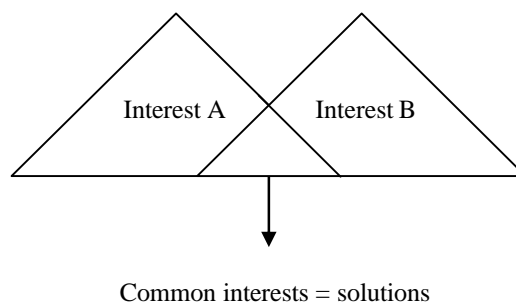
interests: what people really want or need to get out of a situation; these are procedural, psychological and substantive (important to consider all three); interests include the needs, wants, fears, desires, and concerns that underlie a position

Positional negotiation

- Solution is either “this” or “that”
- Outcome is either win/lose or lose/lose
- Parties perceive themselves as adversaries
- Each demands more than he/she expects to receive
- Example is bartering in a market

Interest - based negotiation

- rather than divide the pie, make the pie bigger
For example, two people are arguing over two books. Each person wants one of the books. One outcome is for each person to get half a book. Another solution would be for one person to throw in another book that they don't really want in exchange for getting the whole book that he/she really wants.
- negotiators value things differently
- don't leave anything “on the table”
For example, if a party has goods or service to offer to help sweeten their deal, it should be included in negotiation.



Negotiation Styles

- Parties may be asked to prepare an interest statement (not a position statement) before a meeting. This establishes a pre-condition that the discussion will be interest-based. If this has not been done before a meeting, time can be spent at the beginning of the meeting getting to this place.
- It may be important to establish a safe place for off-the-record discussion (with constituent approval). Behind-closed-door discussions can be very important in reaching resolution. This does introduce a risk of alienation of some parties, and therefore requires approval of all stakeholders. This is then set up as one component of the process.
- Set expectations and reinforce them.
- Don't use the word "but", it negates everything the other person just said. The word "and" is better.
- Assess alternatives.
- Don't make assumptions.
- Understand and inform parties that interest-based negotiation is not very common (even in Canada), but when it is used it is very powerful.
- An effective strategy might be to have a specific event with project leaders, including an introduction of facilitation training/negotiation.
- With difficult participants, try reframing, or bring in someone to chair meetings beyond facilitator.

More information on these topics can be found in the manuals published by the Institute for Dispute Resolution, University of Victoria:

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