

**USING CASE STUDIES OF ACTUAL NEGOTIATIONS TO
EVALUATE DISPUTE RESOLUTION AND TO
DESIGN MORE EFFECTIVE DISPUTE RESOLUTION SYSTEMS**

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Introduction: As more and more government authorities turn to the use of alternative dispute resolution techniques to resolve natural resource conflicts, preparation of case studies can be a useful tool in evaluating early experience and helping to develop and institutionalize more effective systems of dispute resolution. This brief working paper provides advice on the purpose, scope, content, and applications of such case studies.

Purpose: The purpose of case studies is to illustrate, with concrete examples, the application of negotiation techniques to resolution of complex public policy disputes.

Scope: The case studies should examine public disputes at the site-specific, regional, or trans-boundary scale. By "public disputes," we mean that at least one public agency is involved, as well as an array of non-governmental organizations (NGOs).

It is best to focus on negotiations that produced a specific outcome or agreement. Even better is to examine an agreement that has been implemented. However, we don't need to insist on "success stories"; valuable lessons can be learned from negotiations that do not succeed.

Organization: Case studies are easiest to follow if they begin by setting the context for the problem, and then track the sequence of the negotiation, beginning with the pre-negotiation tasks, then the actual negotiation, and, finally, any post-negotiation implementation measures. For a site-specific dispute, it is valuable to include a map to help orient the reader.

For a dispute that transcends national or state boundaries, it is especially important to highlight the differences between positions taken by national delegations and the views of NGOs on all sides which attempt to influence the course of negotiations.

Linkage to Negotiation Theory: While case studies need not reference the literature on negotiation theory, they can illustrate the importance of key principles. In addition, case studies can point up where practical experience supports negotiation theory, and where theory and practice may diverge.

Length: A reasonable length is ten to fifteen pages. Case studies should contain enough details to enable readers to grasp the events without getting too bogged down in minutiae.

Source Materials: First-hand recollections of participants (i.e. participant observer research), interviews, newspaper accounts, meeting invitations, agendas and summaries, and published documents can all be useful source materials.

Excerpts of Interim Products and Negotiated Agreements: Excerpts from groundrules, agendas, rosters of participants, and draft agreements help readers grasp the content of the negotiation. For example, in CONCUR's case study of the Louisiana Comparative Risk Project (CONCUR Working Paper 92-01), we included excerpts of a final ranking of issues and the signature pages, showing ratification of the agreement.

Use of Quotations: Quotations from actual participants provide first-hand accounts which can enliven a description of negotiations. Before using quotations, however, one must secure permission from the persons cited. It is also useful to anticipate that participants in ongoing negotiations are much less likely to go "on the record" than negotiators who have finished their work.

Some Questions to Address: Table 1 suggests a series of evaluative criteria for assessing the effectiveness of public policy mediation. Please note that the questions track the mediation sequence. Of course, case studies need not address all of these questions.

Application of Case Study Findings: The findings from case studies can be useful in a variety of applications, ranging from giving feedback on the performance of individual negotiators or facilitators to guiding the institutionalization of alternative dispute resolution (ADR) techniques.

For example, while working as an Associate of the Harvard Program on Negotiation, I participated in two research projects that involved documentation of actual negotiation. In the first, a review of the Environmental Protection Agency's experiments with regulatory negotiation, we conducted "exit interviews" with parties to gauge their satisfaction with the process, and to give advice to EPA about structuring future regulatory negotiations.

In a second project, our team evaluated fifteen cases of negotiation of Superfund toxic waste sites between EPA and the Potentially Responsible Parties who were liable to help pay for the clean up. From this body of experience, we drew a series of recommendations to strengthen the way EPA prepared for and structured negotiations in future.

In still another study, I was asked by the Hewlett Foundation to evaluate the use of negotiation and collaborative problem-solving techniques by two leading US environmental organizations--the Environmental Defense Fund and the Natural Resources Defense Council. The Foundation had been approached by both organizations for major grants, but it was unwilling to make funding commitments without more information about the organizations' performance

records. While the focus there was on the role of specific organizations, the case studies confirmed the strong commitment of the respective organizations (which had both used litigation extensively in their early years) to the use of ADR techniques. (Coincidentally, the case also showed that senior members of both organizations who had strong negotiation skills lacked a way to pass these on to junior staffers.) As a result, the Hewlett Foundation agreed to make major grants to both organizations to support their participation in facilitated dialogues over natural resource issues.

Conclusion: A stronger linkage needs to be made between the practice of dispute resolution and the documentation of results. Case studies, which both track the chronology of a case and present the richness of the negotiation, represent an excellent way to accomplish this goal.

Table 1: Suggested Criteria for Evaluating the Success of Public Policy Mediation

Evaluation Criteria: Preconditions for Successful Public Policy Dialogues	Cluster of Questions for Measuring Success
Was there a Suitable Auspices for Negotiation? Was a Suitable Mediator or Mediation Team Involved?	Which organization served as the host auspices for negotiation? Who proposed the negotiation? How did the mediation team gain entry to the dispute? What was the training and technical expertise of the mediation team? How was the mediator selected? What evidence is there that the mediation team had the trust and confidence of the parties?
Was a Clear, Logical Agenda Set for Negotiation?	How were the issues for negotiation framed? Who was responsible for drafting the agenda? Was the agenda sufficiently bounded to allow progress to be made, but broad enough to allow tradeoffs across issues? Were issues added as the negotiation progressed?
Was There Effective Participation of Affected Stakeholders?	Which stakeholders were included? How were they recruited? Were any important stakeholders (government, greens, industry) excluded? Was there continuity of representation? Were parties required to report back to their respective constituencies?
Was There A Joint Fact Finding Process to Establish a Technical Foundation?	Was available information pooled? Were data gaps identified? Was technical expertise recruited? Did technical experts generate or interpret new information? Was there an effort to "translate" technical information into a form that all parties could understand?
Was There an Effective Mechanism to Craft and Finalize a Specific Agreement?	How were major issues broken into manageable sub-issues? Were multiple options developed? Was technical information applied to evaluate the consequences of policy alternatives? Were parties encouraged to make tradeoffs among issues? Were actions ranked in order of priority? Did parties use a negotiating text? If not, what was the vehicle used to develop the agreement?
Was There an Effective Mechanism to Bind the Parties and Eliminate Barriers to Implementation?	How were parties bound to their tentative commitments? Was there a step of "checking back home"? Was there a formal procedure for ratification? Were some items identified for early implementation?