



Photo: Alexandre Duret-Lutz

Negotiating Agreements in Multi-party, Multi-issue Contexts

BY DR. EVAN HOFFMAN, EXECUTIVE DIRECTOR, CANADIAN INTERNATIONAL INSTITUTE OF APPLIED NEGOTIATION

The initial hope and eventual failure of the recent climate talks in Copenhagen are illustrative of the difficulty of reaching an agreement in complex negotiations between numerous actors. Clearly, multi-party talks such as the ones in Copenhagen make reaching an agreement a more complicated task than in bilateral talks, and this

task becomes all the more difficult if there is also more than one issue under consideration. Multi-party, multi-issue negotiations involve those situations in which there are multiple actors, each pursuing his or her distinct (usually divergent) agendas on a number of different topics or issues. This makes for a unique negotiating



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environment that calls for a different negotiating strategy in order to reach an agreement. Some examples of these types of negotiations include Moldova's recent negotiations to join the European Union (EU), nearly any peace talks aimed at ending wars, and most environmental disputes.

Governments at all levels are often faced with addressing multi-party, multi-issue disputes. Many of these disputes have a public policy or high profile public dimension. For example, most land claims or fishing rights disputes will involve a number of different government agencies from multiple levels. As will disputes over cases of alleged large-scale and/or institutionalized physical or sexual abuse, such as was seen in Cornwall, Ontario, a few years ago when abuse allegations lead to the Cornwall Inquiry. Moreover, there will likely be a number of nongovernmental organizations, community groups, business owners and other parties involved in the dispute as well.

Aside from the high-visibility of these disputes and the resulting increased media attention, these types of disputes can also often be emotionally charged. That is, the disputing parties will likely be very impassioned about the dispute and emotionally invested in its outcome. Consequently, the potential for conflict, and even violence, can be very high. Sometimes, in these types of disputes, even the smallest development can trigger an outbreak of violence, as was seen in the Oka crisis when the announcement of plans to proceed with a new golf course resulted in an armed stand-off between the Mohawk community and the police.

Taken together, these features of multi-party, multi-issue disputes can increase the pressure on all of the parties to reach an agreement that is acceptable to everyone. While a number of different types of processes, such as public consultations or inquiries, might be used to address these types of disputes, it is very likely that negotiations will be used as well. In fact, sometimes negotiations between the disputing parties, be they formal or otherwise, might lead to the decision to initiate one of these other processes. However, there is no "one size that fits all" process that will be apparent in each and every complex negotiation because each dispute is unique and dynamic, involving a distinct and ever-changing mix of actors.

All of these negotiations, however, whether within the public domain or along a "litigation track" headed for trial, share three characteristics. That is, they create challenges for negotiators in the areas of preparation, complexity, and participation.

I. PREPARATION

Negotiators in complex multi-party, multi-issue disputes will want to spend ample time undertaking their preparations prior to the commencement of negotiations. These preparations might include the following tasks:

- Seek clarification about the structure of the negotiation

process and any expectations related to probable outcomes. Prior to investing time, money, and other resources into the process, parties would be well-advised to critically assess whether the proposed negotiation process is the right one for addressing the dispute, and more fundamentally, whether they should even have a role in the negotiations. Perhaps a party will determine that it will need to enter the process only at a later point, once other key milestones have been reached. Taking the time to assess this prior to entering the negotiations can save a party resources that may otherwise be wasted in a flawed, inadequate, or even unnecessary negotiating process. If it is determined wise to proceed, a party can then move onto the additional preparatory steps listed below.

- Undertake background information gathering and research on all of the other parties by addressing the following questions: Who are the other parties? What are their positions? What are their underlying interests and motivations? Who will likely align with us (and against us) and why? Can we form alliances or negotiating coalitions in order to increase our negotiating power?
- Consolidate your party's position prior to the commencement of negotiations: Diverse and varying views are likely within a negotiating party. Negotiations can proceed much smoother if there is internal unity within the party so that it can speak with a single, unified voice regarding its positions on the various issues. This leads to the next point.
- Nominate one party spokesperson and establish internal communication and decision making channels and processes prior to the commencement of negotiations. This will help ensure that the representative is empowered to speak for the entire group, and that his or her authority can be maintained throughout the negotiation period. Additionally, parties should also establish internal procedures for managing leadership changes (Will the party spokesperson rotate? Under what conditions will the spokesperson be asked to step-down or be replaced? How will a new spokesperson be chosen, by unanimous vote, by seniority, or randomly?).

In general, if adequate preparations cannot be made in time, a party may wish to seriously consider the possibility of asking for a delay in the start of negotiations, because it is certainly better to enter into negotiations feeling well prepared and confident. This will also likely increase a party's efficiency and effectiveness at reaching a better deal sooner.

II. COMPLEXITY

PROCEDURAL COMPLEXITY

It may be obvious that the greater the number of parties in a negotiation, the more complicated the process will become, but be

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prepared for this complexity to affect every aspect of the negotiating process. That is, the joint development of procedural guidelines and ground rules, the provision of opportunities to speak, the scheduling of negotiation sessions, the sharing of information, as well as joint decision making, will all require much more time and concentration than is the case in bilateral negotiations.

DISPUTE COMPLEXITY

Of course, complexity is also a consideration in terms of the actual dispute. The dispute will likely have multiple, inter-twined issues to be addressed, and the unpacking of these into smaller more manageable units for discussion will need to be considered. Breaking down the dispute into smaller, more manageable units can be done along many lines, such as dividing the negotiations into different sectors. In the case of the peace talks to end the war in Bosnia, for example, multiple simultaneous talks on the military, the constitution, the division of territory, and other themes were held and each thematic group reported back to the main mediator. If the talks proceed in this fashion, parties may consequently need to be ready to divide into smaller negotiating teams, each with its own command control structures in place.

III. PARTICIPATION

Adding to the complexity factor is the question of participation. As noted earlier, every dispute is unique, and inevitably, there will be a number of different parties with an interest in its resolution. This raises the following question: Who will be involved in the negotiations? Negotiating teams will want to decide in advance who needs to be at the table in order for them to reach their desired outcome, as certainly some parties to the dispute will be more relevant than others. In answering this question, they should assess the following:

- Whose participation is vital to reaching an agreement and whose is less-so? Are they currently represented at the table? Why or why not?
- Is there a party that clearly does not need to be at the table because its involvement is irrelevant to reaching an agreement?
- Is there anyone that should be excluded from the talks on other grounds?

As negotiating teams work to answer the above questions, they may find that they need to conduct secondary, side-negotiations with one or more parties that may or may not already be at the table. Once again, this increases the complexity factor and new ways to feed the results from these secondary side-negotiations into the main negotiations will need to be devised.

IV.

THE CASE OF THE RENFREW COUNTY WINDMILLS

An ongoing example of a series of complex and informal negotiations revolves around the proposed placement of new windmills

in various locations throughout Renfrew County, located approximately five hours North of Toronto in Eastern Ontario. The parties to this conflict appear to be in a stalemate and the final outcome is uncertain.

In recent years, several green energy development firms from the Toronto region have come to the area in search of private properties to develop new wind power projects. While some local residents and politicians initially viewed this as a welcomed opportunity to bolster economic development in an impoverished area, the initial enthusiasm quickly gave way as conflict about the windmills escalated. Amidst a host of growing concerns about the proposed developments, the energy firms garnered local opposition when it was announced that most, if not all, of the energy produced would be exported from Renfrew County to Southern Ontario.

Nevertheless, spurred on in part by the lure of higher premiums offered by the province of Ontario for power generated via the wind, these energy companies were eager to quickly install new projects. They approached private landowners and, in a large number of cases, they reportedly made deals to utilize their land. As word of this rapid progress spread, local dissent grew. In some cases, neighbors were pitted against neighbors as those who had signed on with the companies found themselves at odds with those who did not agree with the project for safety or other reasons, or simply because they thought the development was moving too quickly. Since test sites were quickly established, there was a growing sense that if the development was not stopped immediately, the entire county would quickly be ‘overcome’ with new windmills

These concerns were not alleviated by either the regional authorities or the energy companies. It was reported in several news outlets that company officials were difficult to reach, and when they could be reached, they would shift responsibility for answering the difficult questions to other staff, or simply not answer any questions at all. Clearly, if they could better articulate their position and have a single company spokesperson deliver their message, they would have been more successful in gaining local support for their efforts.

In response, several locals banded together to form new opposition groups to the wind projects. One such group went on to work closely with local elected officials. Some of their first steps included collecting more information by visiting other sites in Ontario and elsewhere where windmills were already located and conducting independent research on the health and environmental effects of windmills. They went on to share this information with others in the hopes that a wise decision could be made about the windmills based on proven scientific evidence. This undoubtedly also strengthened their negotiating position, as they were now armed with the appropriate background research to support their positions.

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Additionally, this group distributed anti-windmill signs around the county, joined public protests, undertook awareness raising and education efforts through their blogs, appealed to local officials, and made a presentation to the Standing Committee on the Green Energy Act. Moreover, this and another group in the county joined a province-wide coalition of like-minded groups called Wind Concerns Ontario.

In response to this growing opposition movement, Ontario's premiere promised months of public consultations on the matter. This did not appease the public's concerns in Renfrew County, however, with many people claiming that the consultation process was rushed and not nearly inclusive enough.

The federal government also tried to appease local concerns. In March 2009, the local MP announced that one of the county's constituents would be meeting with senior officials from the office of the Minister of Health in order to discuss health issues related to windmills. In the same press release, the local MP also clearly stated her position that she respected the rights of individual landowners, but that well-informed decisions must be made based on the facts and research related to the adverse health effects of windmills. In essence, the local opposition groups gained an ally when this MP announcement was made, because her position on the matter was nearly identical to theirs.

In a further effort to curb the growing unrest, and provide some time for things to settle down after a series of heated council meetings on this subject were held, many of the local municipalities eventually placed moratoriums on approving any wind power projects.

While successful in taking some of the initial pressure off the municipalities for having the final say on which projects would be approved, this move also increased the dispute's complexity because the struggle then shifted to another level. That is, the provincial government then indicated that it will not let local opposition stand in the way of new green energy projects and, if need be, approval for such projects would move from the municipal level to the provincial level. While some municipalities in Renfrew County did not react with surprise to this announcement, it is clear that if they wish to retain control over the projects in their jurisdictions, another set of side-negotiations between themselves and the province may need to occur in order to resolve the issue of who has final authority to approve projects.

The current situation appears to be at a stalemate, and the question of whether the local opposition will be overrun by the power companies and the province or if a compromise will be reached remains to be answered. Certainly, some aspects of these negotiations, such as forming a well-organized opposition group to deliver a single and clear message via one designated spokesperson, and increasing the power of that group by joining with others in a coalition, were textbook examples of what to do. Sadly, however,

the majority of the remaining features of this case, such as the power companies' failure to sit down with the opposition groups for a structured and meaningful dialogue, plus the province's threat to end-run around local opposition while providing meaningless public consultations, should be considered examples of what not to do in complex negotiations between numerous actors.

Negotiating in multi-party, multi-issue contexts creates numerous challenges in terms of making adequate preparations, managing increased complexity, and ensuring inclusive and adequate participation of all those parties who are vital to reaching an agreement. However, success is still possible in these types of contexts, and if parties prepare for the unique challenges of negotiating in these contexts then they should be well-positioned to fully participate in and make the most of the talks.



DR. EVAN HOFFMAN is presently the Executive Director of CIAN. Evan is also an Associate Faculty member of the MA in Human Security and Peacebuilding program at Royal Roads University, Victoria, where he teaches a course on the prevention of deadly conflict, and an Adjunct Professor with the Graduate Program in Conflict Resolution at Antioch University McGregor where he is the Chair of the Concentration in International Mediation. Evan Hoffman holds a PhD in Political Science from the University of Canterbury (New Zealand). He can be reached at ehoffman@ciian.org.