

# Best Practices for Deliberating and Deciding

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# Strategies for Deliberation

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## Negotiation Preparation Worksheet

We suggest that you distribute this worksheet to everyone in your organization and encourage anyone involved in any important negotiation to put in the preparation time necessary to answer these questions.

1. What authority do I/we have to make firm commitments in this upcoming negotiation? Who else do I/we need to have approve the analysis (below)?
2. What are my/our interests (in the upcoming negotiation)?
3. What are their interests?
4. What is my/our BATNA? How might I/we improve it?
5. What is their BATNA? If they have a strong BATNA how might I/we raise doubts about how realistic they are being about their BATNA?
6. What options (e.g. packages) might I/we suggest for mutual gain (that meet their interests well and my/our interests very well)?
7. What arguments / criteria / reasons can I/we give for preferring the option (package) that is best for me/us? How can I/we help them “sell” this option to their second table?
8. What implementation problems are likely to arise if they accept my/our proposal and how might they be overcome?

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### Step 1: Educate the Participants

Once the participants have designed a collaborative process and have adopted ground rules to govern the process, they are ready to begin negotiating and seeking consensus.

One of the most critical steps in a collaborative problem solving process is to provide sufficient time for the parties to clarify their interests and concerns. This process of mutual education may take several forms:

- **The sponsoring agency or company may describe its reasons for the proposed action, followed by questions and answers.**
- **Storytelling** -- Each party may recount its own involvement in and general view of the situation.
- **Briefings** -- Technical experts, either individually or in panels, can present an overview of the problem.
- **Field Trip** -- If appropriate, the participants may take a field trip to learn more about the issues.

The process of education is time-consuming and often frustrates inexperienced negotiators. However, the more time the parties invest in educating each other, the greater chance they will have of developing options and reaching agreements.

During the process of mutual education, the participants are asked to identify the important issues, which provide the framework around which solutions are fashioned. They also identify and explain their concerns about each issue.

This process allows the group to jointly define the problems it needs to address. It also provides a non-threatening way for people to interact with each other -- participants focus their attention on gathering and conveying information, which is much less stressful than trying to reach agreements. The participants may also begin to develop a common data base on which to make decisions.

### The History and Context of the Problem

The process of education begins with an explanation of the history and context of the problem. Several techniques are available to facilitate this process:

- **Review the issues identified in the conflict assessment.**
- **Primary/Secondary** -- Distinguish between issues that are of “primary” importance and those that are considered “secondary.”

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- **Individual Views** -- Each person may describe his or her issues to the other parties. This method gives everyone an opportunity to articulate their views and explain why they are important.
- **Round Robin** -- Each individual or group can present one issue at a time until all the issues have been identified.
- **Small Groups** -- In larger groups (more than 25 people), it may be valuable to break into small, diverse groups so that everyone has a chance to participate. Each small group should make a visible record of its discussion on newsprint and deliver a summary report to the general session.
- **Is/Is Not** -- This method helps determine which elements are part of the problem (Is) and which are not (Is not). The “Is” list can be used to build a problem statement.
- **Diagram** -- In many situations, the use of words may be limiting. The use of a visualization of the issues -- flowcharts, drawings, videotapes, or charts -- can often help members of a group develop a shared understanding of the issues.
- **Force Field Analysis** -- This technique can be used by a group to analyze “forces against” resolution of the problem and the “forces for” resolution.

### Identify Interests and Concerns

Once the issues have been identified, the participants must articulate their interests. Interests are the key to identifying workable solutions. An interest is a specific need or condition that a party considers to be important to a satisfactory agreement.

Because people often tend to offer solutions, the chairperson or facilitator should be prepared to remind them to describe their specific concerns about the problem. The identification of issues and interests is often blended into one discussion.

### Step 2: Agree on Data

During the process of educating the parties, it is likely that disagreements over data will emerge -- including disputes over the legal merits or principles involved in a case, technical or scientific data, and public opinion. When the issues involve elements of risk, uncertainty, and predictions about the future, the opportunity for disagreement increases.

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Disputes over data are often characterized by:

- Lack of data;
- Different views about the nature and scope of the problem and what information may be relevant;
- Different approaches and criteria for collecting and analyzing the data;
- The adequacy of available evidence; and/or
- Competing interpretations of what the data mean.

In order for the participants to move forward, they must reach agreement on relevant data.

### Step 3: Invent Options for Mutual Gain

Once the parties have identified the issues and agree on the data, the next step is to generate options to resolve the issue(s) in question.

At this point in the process of building consensus, the goal is to produce the broadest possible selection of alternatives based on the issues, interests, and data that have been generated.

Participants, therefore, must refrain from evaluating the options as they emerge.

Several techniques are available to help generate options:

- **Fragmentation** -- In complex disputes, it is often useful to fragment or separate the issues so that they are more manageable. Options can then be generated for each issue.
- **Task Groups** -- If the issues in a dispute are fragmented, it may be valuable to have broad-based task groups address different issues. Individuals may participate in one or more task groups depending on their interest and knowledge.
- **Brainstorming** -- This is still one of the most effective techniques a group can use to generate ideas.
- **Each Party Develops a Proposal** -- Each party can be asked to develop a creative proposal that responds not only to his or her interest, but also the interests of others.
- **What Others Have Done** -- If there is a successful model that is relevant to the issues in dispute, the group may find it helpful to examine the elements of the model as a means of generating options.

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- **Outside Experts** -- Experts who are not directly involved in the controversy can supplement the group's own thinking and expand the number of options on the table.
- **An Intermediary Gathers Options** -- A trusted individual might conduct independent brainstorming sessions with each party. A list of ideas that come out of these sessions can then be presented to the group for discussion, with the assurance that no idea will be attributed to any one party.

## Creating Value: A Checklist

- |   |     |    |
|---|-----|----|
| 1. Have I/we listened carefully to and probed the interests of the other side?<br>What did I/we learn that was surprising?              | YES | NO |
| 2.  |     |    |
| 3. Have I/we prepared a series of “What-If” proposals to present to the<br>otherside?   | YES | NO |
| 4. Have I/we identified issues I/we should emphasize that are likely to<br>createvalue for the other side? What are they?               | YES | NO |
| 5. Have I/we identified issues that are likely to create value for us?<br>What are they?  | YES | NO |
| 6. Have I/we clarified with the other side our intention to devote time early<br>in the negotiations to “inventing without committing”? | YES | NO |
| 7. Do I/we have the internal sign-off(s) I/we need to engage in a period of<br>inventing without committing?                            | YES | NO |
| 8. Have I/we considered various contingent options that could create value?<br>What are they?   | YES | NO |
| 9. Have I/we sought outside assistance or a fresh perspective on possible<br>waysof increasing value in this case?                      | YES | NO |
| 10. Should I/we consider possible linkages between this negotiation and<br>future negotiations with the other side?                     | YES | NO |
| 11. Would the involvement of a “neutral party” facilitate further value<br>creation?  | YES | NO |

# Strategies for Deciding

## Step 4: Seek Agreement

When different interests have been involved in designing a collaborative process, educating each other, and generating options, they are collectively ready to recognize workable solutions. There are three general approaches for reaching agreement:

- Agreements in principle ... Rely on objective criteria;
- Building block approach; and
- Combining proposals.

### Agreements in Principle ... Rely on Objective Criteria

In the first approach, agreements in principle, the parties move from general to specific agreements. The more general agreements provide the foundation for more detailed agreements.

Using this approach, participants seek agreement on a set of principles or objective criteria to help scope the problem and the range of acceptable solutions. The principles or objective criteria are used to evaluate or filter the range of alternatives that emerge.

There are a couple of different approaches for developing agreements in principle. First, they can be developed by asking parties to suggest a principle that everyone will accept. The group develops a list of possible agreements and then reviews and refines the list by dropping some suggestions and combining or rewording others.

Second, a small broad-based group can draft agreements in principle. The small group may convene after the whole group has discussed possible agreements, or it might be charged with the responsibility of talking with each member of the consensus process to gather suggestions. The product of the small group is then presented to the whole group for discussion and approval.

### Building Block Approach

In the building block approach, the parties begin by agreeing on the specific issues to be addressed. Each issue is then discussed and solutions proposed for it independent of the other issues. The results are put together in a final overall agreement.

This approach to reaching agreement is more manageable than trying to craft comprehensive solutions. Agreement on all the issues is not required, and each solution stands on its own. This allows the participants to move forward on issues where agreement can be reached without having to wait for closure on everything.

The participants can work sequentially or simultaneously on issues. If they work sequentially, they may address the easier issues first. This approach allows them to develop a sense of

accomplishment when they reach agreement, thereby encouraging them to tackle the more difficult problems.

### Combining Comprehensive Proposals

A third method for reaching agreement is to combine comprehensive proposals. If each party has prepared its own comprehensive proposal as a way of developing options, then the participants must review each of the proposals and combine ideas into a mutually acceptable package.

*These three methods of reaching agreement are not mutually exclusive.* In complex disputes, the parties will often rely on more than one method for reaching agreement. Regardless of the method used for reaching agreement, the participants must go through two separate steps -- evaluating the options and making decisions.

There are several techniques for evaluating options:

- **Categorize/Prioritize** -- Participants are asked to group like options into the same category and prioritize within each category.
- **Rank Order** -- Participants are asked to rank order the options from most desired to least desired. Another method for rank ordering is to take the number of items and divide by three. Take the result of the division and ask each participant to select that many items from the total list. For example, if there are 12 items, divide 12 by 3 which equals 4. Each participant is then asked to identify his or her 4 top priorities.
- **Nominal Group Technique** -- This technique is similar to rank order. After categorizing all the issues or concerns, the participants are given a set number of votes (such as 3 to 5). The participants can weigh all their votes on one key issue if it is of paramount importance, or they can spread their votes around to many different issues.
- **Advantages/Disadvantages** -- Participants are asked to list the advantages and disadvantages of each option so the ramifications of each option are understood.
- **What I Like About ...** -- Each person or the person most strongly advocating an idea is asked to identify the desirable features of each option.
- **Criteria Checkerboard** -- The participants are asked to create a list of criteria that can be used to evaluate the options. Using a checkerboard (criteria across the top, options down the side), each option is evaluated.
- **Test or Use Pilot Projects** -- When the potential solutions can be tested before complete adoption, it is often wise to do so. Testing is especially helpful when there are a number of seemingly equal options.
- **Examine What Others Have Done** -- If others have tested or used an option being evaluated, the participants usually benefit from an examination of that experience.

- **Ask an Expert** -- In technically complex disputes, it may be useful or necessary to consult an expert.

There are also several techniques available to facilitate the process of making decisions:

- **Straw Vote** -- Group members make a tentative, non-binding vote on their preference to get a quick sense of where each other is leaning.
- **Both/And** -- It may be possible to select two leading options (both) and combine them (and) into one acceptable solution.
- **Negative Voting** -- Members of the group vote out options that are completely unacceptable. This can be used to narrow a large list of potential options to a manageable size.

### Step 5: Produce a Written Agreement

The next step in the process of building consensus is to produce a written agreement. This is important for at least three reasons:

- It ensures that the parties have heard and understood each other;
- It gives the parties something concrete to take back to their members for review and ratification; and
- It will help transform agreements reached through an ad hoc, informal collaborative process into formal decision making channels.

*Perhaps the best way of producing a written agreement is the “single-text procedure.” One person, or a small group of participants, is designated to produce a draft that captures the sense of the agreement. It should be understood by all that this is a working draft and not a final document.*

Once a draft is complete, the participants should be asked to “improve the draft,” as opposed to preparing written comments about its shortcomings. The draft should be reviewed and revised by the participants until agreement or “closure” is reached.

### Step 6: Ratify the Outcomes

Depending on how the issue of representation was initially handled, many of the individuals involved in a collaborative negotiation may well speak for several people or organizations.

These representatives must now return to their constituents to see if they can support the final draft of the agreement -- the objective is to bind the parties to the agreement.

This is a critical juncture in a collaborative process. If the representation issue has not been addressed effectively, members of the affected group may not only oppose the agreement, but also criticize their representative. Even if the representative began the process with adequate backing, the negotiations may have ranged widely and produced a settlement that varies significantly from what the group expected. *This suggests that the representative must educate his or her constituents throughout the process:*

- to help the group reassess initial expectations in light of new information; and
- to explain how the settlement reflects the group's interests, even though it may not satisfy all their expectations.

### Statement of Agreement

To foster consistent communication and understanding, it is often useful to prepare a *Statement of Agreement*. This one-page statement should explain the consensus-building process, the nature of the outcomes, attachments, and the strategy for implementation. It should be signed by one or more representative from each caucus.

### Public Involvement

The participants should consider how to communicate the agreement or proposal to the general public. What role should the participants play in any type of public meeting? Ideally, the participants should explain the process, the outcomes, and the rationale, and then respond to questions and comments from the audience.

### Splinter Groups

During the process of ratifying the agreement, the participants in a collaborative process should be on the lookout for potential splinter groups -- that is, when one or more members of a group that supports the outcome announce that they are dissatisfied and will attempt to block implementation. The likelihood of splinter groups may provide a disincentive for many interests to participate.

How can you respond to splinter groups?

- First, each party to the process must assess the legitimacy and authority of the other parties at the table. While some splinter groups cannot be anticipated, others can. If splinter groups are anticipated early on, it may be possible to incorporate their concerns before a final draft of an agreement is prepared.
- Second, the process by which each participant seeks ratification from his or her constituency should be spelled out in the ground rules. In some cases, the representative can commit the organization he represents, while in other cases a poll of the full membership may be required.

### Contingent Commitments

Sometimes a representative will return to the consensus-building group and report that final ratification is possible only if some additional changes are made in the draft. Other representative may object -- “Why didn’t this issue come up earlier?” It may mean that representatives must return to their constituencies with a revised draft of the agreement.

This problem can often be handled by securing contingent commitments from the constituent groups -- “We can support the agreement if the following changes are made,” or “We support the agreement in principle, but something must be done about [some issue].” Agreements in principle are valuable because they make it possible to avoid another full round of review -- assuming of course that minor changes can be agreed to by the participants.

### Techniques to Foster Agreement<sup>1</sup>

When participants enter into a consensus-building process, they must balance a variety of needs in order to find an agreement that satisfies their self-interest. The participants must be concerned about three often competing goals: (1) assuring constituents that their interests are being adequately and vigorously represented; (2) persuading the other participants to consider your needs and interests; and (3) building a relationship among all participants that can support the joint implementation of agreements.

Here are a few techniques to help you build agreements:

- Don’t “get naked and run wild.” Slowly build confidence and trust by:
  - Sharing information
  - Building a consistent pattern of behavior
  - Developing an atmosphere of dealing in good faith
  - Keeping your word.
- Remember that while information is a form of power, other participants have to know what you need in order to make useful offers. Disclose your interests.
- Continually test your assumptions about what the other participants want and what their priorities are. Respect their interests. Pay attention to relationships.
- Deal in packages. Remind one another that all offers and agreements are tentative until all of the issues are settled.
- Make sure that you and the other participants are regularly checking with your constituents

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<sup>1</sup> This section is based, with permission, on Gerald W. Cormick, “Techniques to Foster Agreement,” *Canadian Environmental Law Newsletter* (1994).

as information is developed and positions altered.

- Use the facilitator or mediator to try out ideas. He or she should be willing to shuttle back-and-forth testing ideas.
- The more secure -- the safer your opponents feel, the more likely they will alter their positions and consider innovative accommodations. Search for mutual benefits.
- Be prepared for joint meetings. Review what is likely to occur. Make sure the facilitator or mediator has established an agenda.
- Remember the “80-20 rule” -- if you are effectively using a facilitator or mediator, you are probably spending more time in separate meetings and caucuses with the facilitator or mediator (80%), than in joint sessions with the participants (20%).

## Implementing Outcomes

A consensus process must not only provide a context for reaching agreement, but also create some certainty that the agreement will be implemented. Without some clear indication that the results of the process will have teeth, the incentive to reach agreement is greatly diminished. The key to successfully implementing agreements is to develop an implementation plan as part of the negotiated agreement -- not as an afterthought. In response to this need, several key features that to be considered.

### Link Informal Agreements to Formal Decision making

The fundamental challenge of implementing negotiated agreements is how to link the results of an ad hoc, informal, collaborative process to formal decision making arenas. Negotiated agreement may call for legislation, new administrative priorities or programs, cooperative initiatives among multiple agencies or organizations, research, and many other types of activities. How can these recommendations be linked or incorporated into the appropriate arena for implementation?

The most important strategy for addressing this challenge is to ensure that representatives from the organizations and agencies that may be called upon to help implement any agreement are actively involved in the process from the very beginning.

This involvement will allow the implementing bodies to articulate administrative and policy constraints and priorities early on -- thereby not allowing the negotiating parties to develop expectations that cannot be satisfied. It also allows them to develop a sense of ownership and commitment to the agreement, and thereby increases their willingness to accept responsibility for implementation.

### Develop a Schedule for Implementation

The participants should propose a schedule for implementing the results of the collaborative process, providing some expectations as to how long an agreed outcome will take to be put in place and how long it will last. The schedule should include a clear statement of:

- what needs to be done;
- how it will be accomplished;
- when the results are needed and expected; and
- who is responsible for what.

This schedule of implementation provides a very explicit mechanism for holding the participants to their commitments. In this respect, the schedule of implementation serves as “performance measures” -- objective measures of the commitment of individual parties and the overall performance of implementing the agreement.

A schedule for implementation is best generated by first deciding what needs to be done and by what date, and then identifying the person responsible.

### Monitor Implementation

A collaborative process should include a process of monitoring implementation to check compliance and measure the success of the settlement in terms of objective standards.

The monitoring process must also take account of changing circumstances. For example, individuals who participated in the negotiations are often replaced by newcomers, and it is important for some designated body to inform them of the terms of the agreement. Monitoring is a means of achieving this.

A variety of monitoring mechanisms can be established to ensure that the agreement is being executed, including:

- Delegating to an administrative agency or legislative committee with primary decision making and implementation responsibility to monitor implementation; or
- Appointing a broad-based steering committee to oversee implementation; or
- Retaining a third party to monitor implementation.

Some mechanism for periodically reporting back to the original negotiating group must also be incorporated.

The process of monitoring the implementation of an agreement is critical and should be approached with as much attention as the agreement itself.

## **Create a Context for Renegotiation**

By the time an agreement is reached, it often represents an enormous investment of time and energy. It is important to protect this investment with a provision for reconvening the parties should something go wrong or if the circumstances of the situation significantly change.

The participants need to spell out the terms under which the parties will reconvene, including:

- The apparent violation of the terms of the agreement by one party;
- The failure of the settlement to produce agreed-upon results; or
- One or more of the involved parties feels its interests are threatened.

They also need to indicate exactly what the reconvening procedure should be, so that there are no surprises or unsatisfied expectations.

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## **Anticipating the Problems of Follow-through: A Checklist**

1. Will it be necessary to monitor performance during implementation of the proposed agreement? If so, who will have this responsibility? How will disputes over interpretation of monitoring data be resolved? Who will cover the cost of monitoring and the cost of resolving monitoring disputes?
2. What relationship building commitments might help to build trust and make it easier to deal with “surprises” in this case? What deadlines or milestones for reconsidering or reconfirming our commitments in this case will we build into the agreement?
3. What dispute resolution mechanisms will we rely on if problems emerge during implementation? Who will activate and/or pay for these?
4. What might be done to enhance the nearly self-enforcing quality of each element of this agreement?

What organizational incentives and controls are we promising to adjust in order to help ensure effective implementation of this agreement?

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