



International Watercourses/River Basins
Including Law, Negotiation, Conflict
Resolution and Simulation Training Exercises



Cover Photograph: © Bob Berwyn

International Watercourses/River Basins Including Law, Negotiation, Conflict Resolution and Simulation Training Exercises

Teacher's Manual

Prepared for FAO by Richard Kyle Paisley
University of British Columbia, Vancouver, Canada



Acknowledgments

The initiative which led to the development of these training materials grew out of discussions with Stefano Burchi and Kerstin Mechlem, legal officers of the Development Law Service, Legal Office, Food and Agriculture Organization of the United Nations (FAO) on the occasion of the Program for the Regional Workshop on International Water Law and Negotiation Skills for Sharing Transboundary Resources in Bujumbura, Burundi in the Spring of 2006. Thank you Stefano and Kerstin for your support and encouragement.

Special thanks also to Bart Hilhorst and Jake Burke of FAO and the SVP Coordination Project and Information Products for Nile Basin Water Resources Management GCP/INT/945/ITA who also tremendously supported and encouraged the production of these training materials.

Table of Contents

1	Setting the Scene	1
1.1	General Debriefing Instructions	2
1.2	The Four Step Debriefing Process	2
2	Exercises	4
2.1	Exercise # 1 Thumb Wrestling	4
2.2	Exercise # 2 Warped Juggle	6
2.3	Exercise # 3 Toothpick Teaser	10
2.4	Exercise # 4 Paper Tear	11
3	“Model” Answer to Simulation Exercise #1 to Stimulate Discussion	13
3.1	Claim in Favour of Upstream	13
3.2	Claim in Favour of Downstream	14
3.3	Tips for Coaching Negotiation Simulations	15
4	Tree Exercise #2	17
4.1	Neighbour 1 Only	17
4.2	Neighbour 2 Only	17
5	Positions vs. Interests Exercise #3	19
6	Prisoner’s Dilemma Exercise #4	21
7	Simulation Exercise #5 – Vancouver River Part II	22
7.1	Confidential Instructions for Stripes– Foreign Minister for Downstream	22
7.2	Confidential Instructions for Dots of Downstream	24
7.3	Confidential Instructions for Dashes, International Legal Advisor to Downstream	26
7.4	Confidential Instructions for Red, Foreign Minister of Upstream	28
7.5	Confidential Instructions for White, Deputy Minister for Upstream	30
7.6	Confidential Instructions for Blue, International Law Advisor to Upstream	32
7.7	Preparation Sheets	34
8	Simulation Exercise #6– The Elinehtton River Basin	36
8.1	Confidential Instructions to A	36
8.2	Confidential Instructions to B	36
8.3	Confidential Instructions to C	37
8.4	Confidential Instructions to D	37
8.5	Debriefing Instructions for Elinehtton Simulation Exercise #5	38

Setting the Scene

Creating a comfortable environment for the study of international water law and conflict resolution in which participants can explore their behaviours is critical. The following are not hard and fast rules but rather salient factors we have found help to create a safe environment conducive to learning. These factors include both “before the session” and “after the session” suggestions as follows:

Before the Sessions:

- Consider group size.
- Eight to twelve is an ideal size for all members of the group to be heard, participate and to produce useful group dynamics.
- Share the intent of your work openly.
- Share the underpinnings of your design: you will be combining experiential and didactic approaches to reach multiple learning styles.
- Pay attention to the seating arrangement.
- Circles and half moons tend to optimize the level of engagement.
- Create clear, open communications about the session.
- What can participants expect? Who will be there? Should they wear comfortable clothes?
- Consider diverse backgrounds.
- You may find that some of the exercises do not translate directly to different cultures. Try a test run with a resident within the environment in which you will be working.

During the Sessions:

- Encourage communication.
Ask the participants to slow down the pace of conversation and to speak authentically from the heart and from the head.
- Use a check in.
Give people a chance to introduce themselves (or each other) and become more present by acknowledging “where their heads are” at that moment. A good question to ask is “What do you need to take care of or let go of to be fully present?”
- Provide participants with options.
No one is required to participate or speak in a debrief. Silence or passing should be proposed, acceptable and always an option. No one should be pressed to talk or disclose more than they feel is appropriate.

The purposes of these exercises are to:

- Raise awareness of habitual patterns of thinking
- Become aware of how the way we habitually think impacts reflective thinking
- Limber up
- Focus on developing the observer in ourselves

Setting the Scene

The outcomes of these exercises should include an enhanced ability to understand our own thinking processes and reflection on how often automatic thought processes can obstruct learning, communication and systems thinking.

We advise using these exercises sparingly to jump-start a learning experience or to punctuate key insights. Stringing several exercises together will not constitute a coherent experience for participants. Rather we suggest you interweave thoughtful lectures, videos, case discussions and small group conversations together with these exercises.

Often your choice of exercise will be dictated by the conditions of play – number of participants, length of time available, attributes of the workshop space and availability of equipment.

Exercises for the Teachers Package were created to accompany the Draft Training Manual for International Watercourses. This document contains general debriefing instructions together with everything you need to know to implement four specific exercises as follows:

1.1 General Debriefing Instructions

There are many methods to begin a successful debrief of the exercises in this manual including the negotiation simulation exercise.

We have found the following four step process to be an effective and memorable procedure to debrief. By “debrief” we mean a process of guided discussion and reflection immediately following a group’s exercise experience.

The objectives of the four step process include organizing the debrief into clear and simple steps and helping learners to develop a methodical and thorough approach to debriefing.

1.2 The Four Step Debriefing Process

Step # 1: Tell the Story

After every exercise and simulation, ask the group to “tell the story”. What happened? What did they see? What did they feel? What did they experience? Consider recording some key points from their comments on a flip chart or overhead. For example, asking the question “what happened?” often elicits responses such as “we didn’t have a plan at first but later we figured it out after a few tries,” or “we wanted to get better each time,” or “at first we were not listening to each other,” or “initially we did not take into account the different abilities of our group members”.

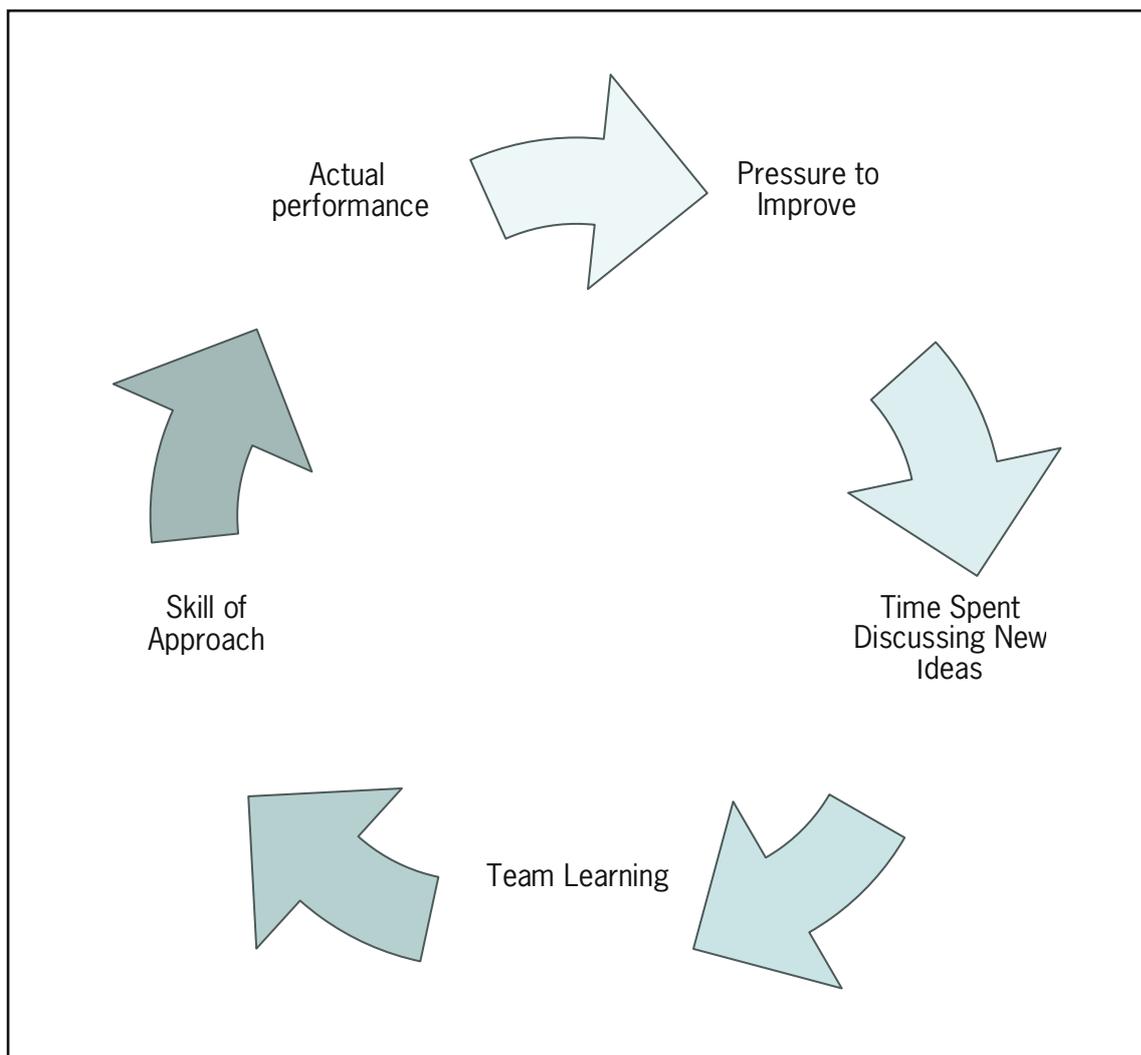
Step # 2: Graph the Variables

Try to depict the behaviour of selected variables over time (e.g. team learning) with a graph. This is an important step toward explaining and eventually trying to understand group dynamics. For example, you might try to plot team learning versus time.

Step # 3 : Try to Draw a Causal Loop Diagram

In a causal loop diagram we connect cause and effect relationships between selected variables. A causal loop diagram is essential as it helps to answer the important question: “what structure could be causing the behaviour we have observed?”

Here is a simple causal loop diagram:



Step # 4: Identify Lessons Learned

What are the insights the group has gained from the exercise? What structures (or in real life, what policies) would the group change to improve results? Where is the area of highest leverage?

Exercises

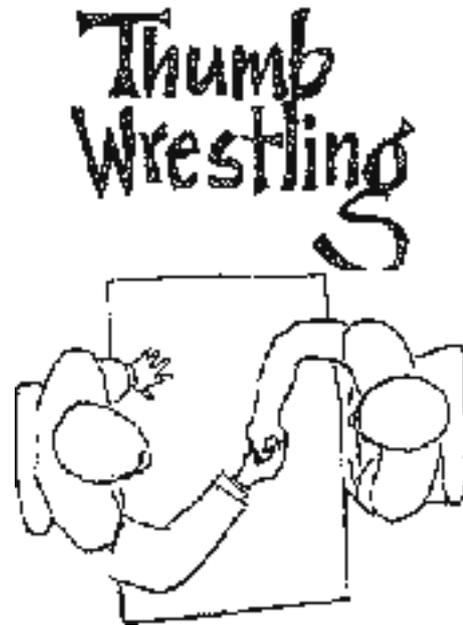
2.1 Exercise # 1 Thumb Wrestling

This exercise uses a well-known children's game (thumb wrestling) to provoke rich discussions about collectively

held mental models of competition and collaboration. I like it because it raises awareness of the barriers and enablers to collaborative competition.

From my experience, talking abstractly about the properties of mental models in a lecture format is a losing proposition.

Eyes glaze over, arms fold, side conversations spring up. But when you engage a group in an experience like thumb wrestling, through which they can have fun and be students of their own behaviour, then you've created a potentially powerful learning experience.



Purpose:

- To show, in real time, how our mental models (e.g., our deeply ingrained beliefs, myths, stories about how the world works) are often transparent and directly affect the actions we take.
- To practice the art of seeing interdependencies and unintended consequences.

Outcomes:

- To expose and explore our implicit assumptions about competition and collaboration.
- A real-time experience of collectively held mental models (e.g., to have to compete to "win").

Context:

- A context for discussing how our mental models or lenses process the information we take in and act on

It is one thing to talk about our mental models and another to see them in action. In the case of this exercise, thumb wrestling gently and humorously exposes our mental models about wrestling, games in general, and more importantly, winning, losing and the potential for win-win situations. My colleagues and I have used this exercise in several ways: to introduce the concept of mental models, as a wonderfully effective practice field for exploring the characteristics of mental models, and as an experiential introduction to conceptual models of thinking processes.

To Run This Exercise:

Number of Participants: Any even number. If there is an odd number, the leader may want to participate.

Time: 10 to 20 minutes (depending on length of debrief).

Space: No requirements.

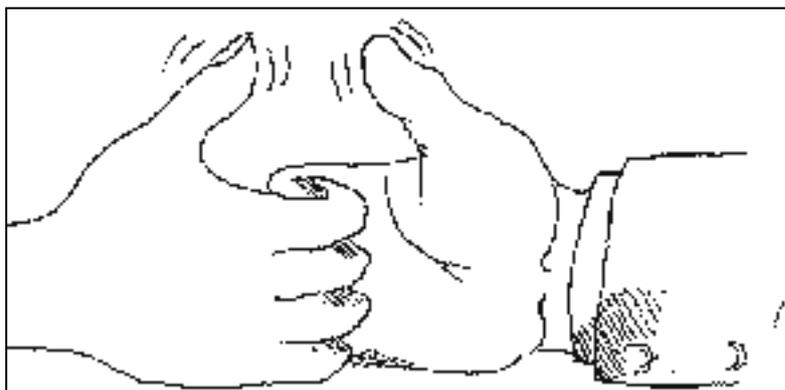
Equipment: None. (Unless you want to give a prize, such as candy, to the winners).

Set-up: Participants sitting in chairs with or without a table.

Instructions

Step 1: Ask participants to find a partner, preferably by turning to the person sitting or standing next to them. If there is an uneven number, the leader may participate.

Step 2: Once everyone is paired, ask the group if they have ever thumb wrestled before. From my experience, more than half have spent long car trips doing this with a sibling in the back seat. Demonstrate for those who don't know what thumb wrestling is. Have the pairs grasp fingers as shown in the following illustration.



Step 3: Explain that the goal is "to collect as many points as you can in one minute." **Important:** Be careful not to set the partners up explicitly as "competitors."

I like to include a first and second prize (i.e. a big and a small bag of M&M candies, especially if I do the exercise in the late afternoon). To get a point, one partner pins the thumb of the other partner (see illustration below).



Step 4:

Before beginning, ask each pair to warm up by tapping their thumbs back and forth three times, then when the leader says "go", begin the thumb wrestling.

Step 5:

After one minute, stop the game (There will probably be a lot of laughter and joking, so go with it and have fun).

Debrief

Ask the partners how many points they've gained. You will hear numbers that tend to hover between one and five, with the occasional pair who manages to get 20 or 30. If you have a pair with a high score, ask how they did it. The answer will most likely be that they cooperated, one person allowing his or her thumb to be pinned by the other multiple times, and then switching. Using this method, the partners have a much better chance of "winning."

My debrief questions are focused on bringing the group through a “what if” exploration: what if we did the same exercise using the lens of a systems thinker?

For example as a systems thinker, we might:

- Consider mental models: what were our mental models about Thumb Wrestling? Typical answers: one person wins and one person loses.
- Look for unintended consequences: in this instance, straight competition creates an unintended consequence: you both lose.
- Look for interdependencies: how can we shift our focus to see various forms of interdependence? For example, instead of looking at each other as two adversarial thumb wrestlers, how can we shift our focus to another, higher leverage form of relationship, i.e., collaboration?

2.2 Exercise # 2 Warped Juggle

You wouldn't think that a group of adults tossing koosh balls, stuffed animals and the occasional rubber chicken would add up to a powerful learning experience.

This one does and it is tried and true. It provides a real-time experience of common system archetypes, and an opportunity to explore our automatic and often transparent process of making assumptions.

After the group has met the challenge posed by the exercise, they have an opportunity to become students of their own behavior as they retrace their actions through group discussion and, if appropriate, causal loop diagramming.

Purpose:

- To work with one or more systems archetypes, including “Limits to Success.”
- To explore the automatic nature of our assumption-making process.
- To experience the power of collective mental models.

Outcomes:

Use and examine the creative process for alternate solutions.

- Draw a loop diagram to map the group's process.
- Extrapolate to other situations in which exploring assumptions and looking for alternative models are useful or critical.
- Surface one or more assumptions about team learning and problem-solving.



This exercise is particularly good as an entree to the topic of mental models, as it allows participants to discover from experience their own processes of assumption making.

Traditionally used as a team building exercise, it is also ideal for considering the parallel processes of team problem solving and team learning.

To run this exercise:

Number of people: Min: 6; Max: 20; ideal 8-12.

Time: 20 to 45 minutes (depending on the length of debrief).

Space: Clear away all furniture to create a space large enough for the group to stand shoulder-to-shoulder in a circle. This exercise can be conducted almost anywhere: in a boardroom, on a lawn, in a corridor.

Equipment: Three tossable objects (i.e. tennis balls, koosh balls, oranges, stuffed animals, rubber chicken). Note: tennis balls can be difficult to catch.

Set up: Have the three tossable objects on hand. If possible show only one object at first, hiding the other two in your pockets.

Instructions

Step 1: Gather the group into a circle, with you as a participating facilitator. Show one of the objects and begin by tossing it to another member of the circle (but not to the person standing next to you). It is important to use a gentle underhanded toss. This is not an exercise that should require expert catching skills. Slow the pace of the toss if necessary so everyone is comfortable with tossing and catching the objects.

Step 2: The person receiving the object tosses it to someone else who has yet to touch it. When all members of the group have touched the object, it is tossed back to the facilitator. The sequence is repeated with each person remembering to whom he or she tossed the object and from whom it was received. When the group has sequential tossing of one object down, you can then introduce two more objects to the tossing.

Step 3: The facilitator asks the group to estimate how long it will take to toss all three objects in the sequence the group has established. Before coming to a consensus on the time, you should state that there are only two rules: 1) everyone must touch the objects once, and 2) they must be touched in the same (human) sequence.

When participants ask for clarification on the rules, it is important that you state there are only two (as outlined above). When participants begin to ask how they might "bend" the rules, the two rules should be your standard response. Also, I ask if anyone has done this exercise before. If they have, ask them to participate, but not to offer the solution.

Step 4: Come to a consensus on the time and then, with one of the participants acting as a timer (a digital watch is preferred), try the sequence again. When all three objects are returned to the facilitator, he or she calls "stop" and asks the person with the watch what the time was. Whatever time they end up with (typically the first effort is close to a minute), you then challenge them to cut that time in half. (To have some fun, I sometimes spur groups on by saying their major competitor has done it in X seconds less). The exercise is complete when the participants feel they have done it in the fastest time possible, usually in a second or two.

Possible Solution

Group members will figure out that they should stand next to the person to whom they are tossing the object. A shuffling then ensues until each is able to pass the object to the person next to them, rather than tossing it across the room.

Variations

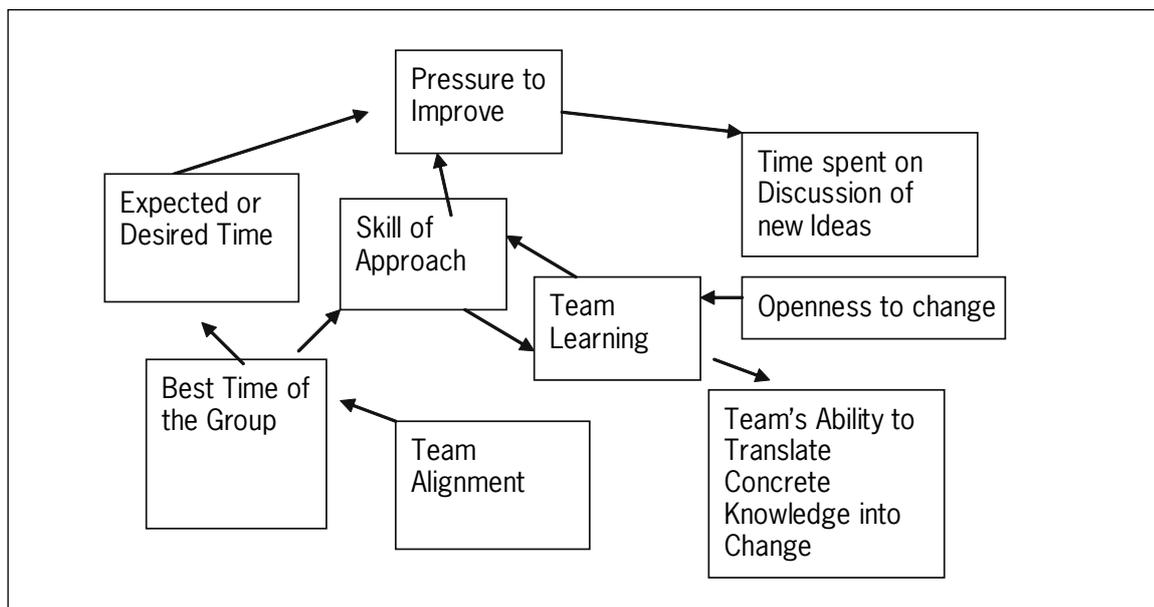
If group members are new to each other, ask each person to call out the name of the person to whom they are throwing the object. The person to whom the object is thrown, receives it, saying, "Thank you, Ann," and then tosses it to the next person, saying his or her name.

You may offer a member or members of the group the role of observer. Another way to phrase this is, "we need a TQM person, any volunteers?" Take this person aside and ask him or her to assess the group's process: what happened when someone had a contrary idea? How did the group solve the problem? What patterns of behavior did you observe?

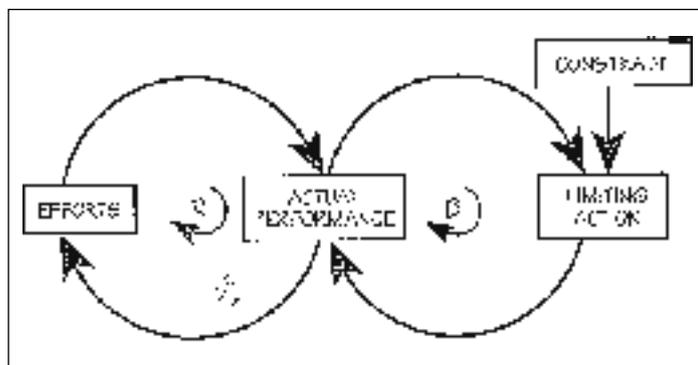
Debrief

What typically happens is that initial efforts lead to improved performance. Over time (usually within the first 5 to 10 minutes), the group cuts the time down from 40 seconds to 10 or 12 seconds but then they encounter a limit. This limit often causes the performance to slow down or even stop, even though efforts to solve the problem may be increasing. An example of "increasing efforts" might be that the group decides to squeeze in tighter together or to throw the ball faster (which actually causes more errors and more delays). At this juncture, the opportunities are rich for gaining insights into individual and group behavior patterns within complex systems.

One way to do this is through the use of causal loop diagramming. Ask the group to identify the key variables in their experience (e.g., teamwork, time pressure, improvements, etc.) and begin, using a flip chart or overhead, to map the relationships between the variables. Here is a sample diagram:



If the group has been exposed to the systems archetypes, ask if they see any such archetype in their own problem-solving process. The “Limits to Success” archetype, for example, typically involves a constraint:



Ask what they think the constraints were. In *Warped Juggle*, the constraint is very often the group’s assumption that there are more “rules” than those stated by the facilitator. What is the limiting action?

The limiting action here can be that participants hammer away at the same approach, without stopping to reflect on their assumptions, hear other ideas or consider other options.

Transference to professional and personal experiences: the group experienced how immediate success can produce subtle constraints, particularly in the thinking of individuals and groups. You might ask: “what kinds of inherent pressures and constraints are accumulating in your organization as a result of its success?”

As a facilitator, you can also point out that the way in which we receive information affects the assumptions we make about that information. In this exercise, the facilitator begins by tossing the ball across the circle. Participants assume that they too have to toss the ball, even though there are no requirements in the rules to do so. The fastest times are actually achieved by not tossing the objects.

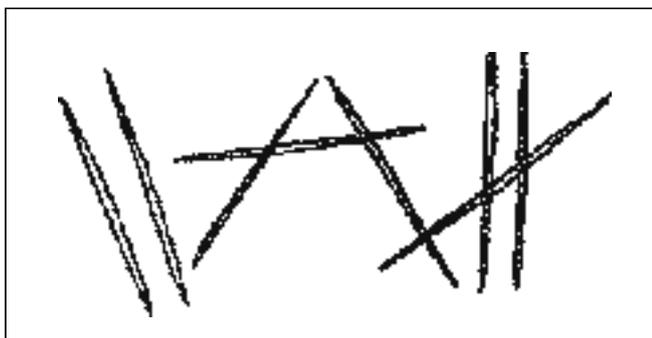
Voices from the Field

“Even though the two rules were spoken and written, one group continued for most of the allotted time tossing the ball as had been demonstrated in the beginning. They improved greatly over time and had a lot of fun and they never redesigned their structure to meet the constraints in a more efficient way as did other groups. In the debrief, they owned that was true of their unit at work. In service they experienced great team spirit and enjoyment and not a lot of innovation, examining of mental models or rethinking processes.”

“Another group immediately understood that their structure could be redesigned, tried the first way, and then spent up until the very last minute planning, and managed to accomplish the task in five seconds. But even this great time* brought some discomfort with the process: there were only a few vocal planners, lots of ideas were disregarded, and there was not much experiential learning. Many felt out of the creative loop. In the debrief, they talked about how in their unit there were a few super planners and many quiet complaining “compliers” which, overtime, produced withholding of resources and dependency on a few. Considering systems thinking, the group talked of an awareness that short term success may actually have the unintended consequence of blocking future learning and greater effectiveness.”

2.3 Exercise #3 Toothpick Teaser

The Toothpick Teaser exercise helps us to explore a universal phenomenon: when given data, whether it is a symptom of a problem to be solved or a schedule to be adjusted, the way the data is presented to us affects the possible questions we ask and solutions we see.



This is true unless “we are highly conscious of our own mental models and assumptions.” More than a simple “thinking-out-of-the-box” activity, this exercise helps us to collectively reflect on our instinctive approaches to problem definition and problem solving.

Purpose:

- To encourage participants to look at all of the factors influencing their ability to learn and solve problems, especially the means by which a challenge or problem is presented.

Outcomes:

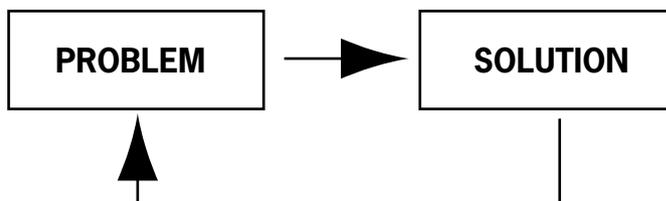
- A mental massage, stretching our brains to think beyond our current mental models.
- An improved understanding of personal problem solving approaches.
- an increased awareness of the power of examining the manner in which data is presented prior to problem solving

Context

To some, this will look and feel like a traditional brain teaser, so be ready for a few groans. I usually have a good laugh with the group and note that later we might talk about those groans, which are a good source for mental model exploration. I often find myself pulling out the box of toothpicks when I want to make the connection between examining mental models and improved problem definition and problem solving. An excerpt of my conversation with a group might sound something like this:

“It’s fair to say that we all solve problems from certain understanding and past experiences. The problems themselves are often not complex and there are many tools out there to help ‘problem solve.’ The complex issues are our understandings, or our mental models. And what we often forget to do in terms of problem solving is to go back and reflect on our original understandings.”

When we cycle back and forth between problem/solution, we are on what Daniel Kim calls “the problem solving treadmill”:



In the toothpick exercise, most of us immediately launch into solving the problem (I did the first time), without considering the mental models we have about the problem or the way in which the problem was presented to us. I consider this a mini-practice field in which we can practice the life long art of consistently reflecting on our mental models.

To Run this Exercise

Any number will work. With large groups (15 or more) you may want to have participants work in pairs

Approximately 2 minutes to explain; 5 to 10 minutes to do

Floor or table upon which to place the toothpicks

6 toothpicks or match sticks per person

If you can set up the room in advance, put 6 toothpicks flat on the table in front of each person

Instructions

If advance preparation wasn't possible, place a box of toothpicks within reach of each person. Ask participants to each take 6 toothpicks and place them flat on the table. Using all 6 toothpicks, ask them to create four equal sided triangles.

Possible Solution

One solution requires the person to "think outside the box" and to break out of the one dimensional mode. Lay three toothpicks flat on the table to form one triangle. Use the remaining three toothpicks to create three new triangles by building a teepee-like structure.

Debrief

Participants are, in a way, "set-up" because I have them place the toothpicks flat on the table in front of them. The solution requires them to think in 3-D. Part of the obstacle becomes the way the challenge is presented. (Warped Juggle requires a similar thinking process.)

Some questions I ask:

How did I "set you up" when I instructed you to put the toothpicks flat on the table?

If you had a partner, in what way did he or she encourage or discourage "out of the box" thinking?

2.4 Exercise #4 Paper Tear

When stakeholders come together in a group, they frequently discover they have different perceptions of what is going on. This is especially true when the group comes together to understand and intervene in a complex system. As divergent perspectives become evident, there is a tendency to increase the frequency and/or the volume with which we express our own thoughts.

What we probably should do is try to empathize more with the listener and discern what they are understanding and what might be the sources of misunderstanding. We assume that if we do an eloquent job of describing our thoughts the hearers will end up with the same images in their minds. This simple exercise shows quickly how unfounded this assumption really is, even when the hearer shares your goals and has strong incentive to understand your meaning.

Purpose:

- To make the distinction between hearing (the biological process of assimilating sound waves) and listening (adding our interpretations of what is said).
- To demonstrate the importance of effective communication skills and listening skills .

Outcomes:

- Heightened listening and communication skills.
- In created awareness and appreciation of the multiple interpretations that can be obtained from the same message.

To run this exercise:

Number of people: Min: 10. Max: 50; ideal 10-20.

Time: 5 to 10 minutes (depending on the length of debrief).

Space: None.

Equipment: 3 sheets of 8.5 x 11 inch paper for each person.

Set up: Pass the paper around the room and ask each participant to take 3 sheets. Keep one sheet for yourself.

Instructions

Step 1: Do not start until everyone has a sheet of paper in their hands. Have participants sit someplace where they can hear you.

Step 2: Tell participants the rules: There is no talking. Participants must close their eyes (or wear a blindfold) and then do exactly what the facilitator says to do. State that the goal is for everyone to produce identical patterns with their pieces of paper.

Step 3: The facilitator reads the following instructions slowly and distinctly: "fold your paper in half and tear off the bottom right corner of the paper." (Pause and allow the group to try this). "Fold the paper in half again and tear off the upper right hand corner." (Pause). "Fold the paper in half again and tear off the lower left hand corner." (Pause). "Open your eyes, unfold your paper and hold it out for the group to see."

Step 4: Participants look at what they have produced and what other have produced in comparison.

Step 5: Ask participants to form groups of three. Have them repeat the exercise with these instructions

- Tell them to pick two people to be the listeners (with eyes closed or backs turned to the communicator) and the other person to be the communicator. Ask them to repeat the exercise with the communicator giving the listeners instructions on how to fold and tear the paper. The communicator does not have to give exactly the same instructions you gave the first time. But he or she does have to go through at least three steps each involving a fold and a tear. After they have completed the exercise ask the listeners to compare their sheets of paper. Are they similar? The majority will be different.
- Ask them to now switch roles. This time allow the listener to talk. Proceed as previously.

After they have finished ask them to discuss what they have noticed about their listening and communication abilities. What did they notice in the three attempts? Did they become more accurate? If so why?

Debrief

Usually each participant creates one of four or five different shapes out of their paper. Participants are likely to be surprised by the different interpretations of the same simple message.

Ask participants to try to describe their experience. How would they describe their listening skills? How effectively did they communicate? What would have happened if they asked more questions before the exercise began? What would be an analogy of this experience in a real organization?

Ask the group to consider where they experienced or saw less dramatic but similar examples of error in communication that lead to unwanted results. What is their work environment like? In general how are questions perceived? Are they encouraged or discouraged?

The important point here is that even at times when we think we are listening or communicating clearly, errors may still occur due to misinterpreting what someone has said or someone misinterpreting what we say. By improving our communication and listening skills, we improve our ability to think systematically and in group settings particularly to function as a team.

“Model” Answer to Simulation Exercise #1 to stimulate discussion: Vancouver River Part I

3.1 Claim in Favour of Upstream

CLAIM THAT UPSTREAM MAY LAWFULLY DIMINISH THE QUANTITY AND QUALITY OF THE FLOW OF THE VANCOUVER RIVER TO DOWNSTREAM.

- A.** Absent a treaty to the contrary, an upper riparian state under the Harmon Doctrine, has exclusive and absolute sovereignty over waters found within its territory.
- 1) Upstream is an upper riparian state, with affected waters lying entirely within Upstream territory and without any known treaty precluding Upstream’s water usage. Accordingly, Upstream may affect the quantity and quality of the Vancouver River waters in any way that in its wisdom it may desire, consistent with the “full utilization” rights it is authorized under customary international law.
- B.** Alternatively, customary international law, as evidenced by the 1977 UN Law of the Non-Navigational Uses of International Watercourses, allows a basin state “reasonable” and “equitable” utilization of the waters of transboundary rivers such as the Vancouver River “with a view to attaining optimal utilization . . . and benefits therefrom”.
- 1) Upstream is a basin state and its use of the Vancouver River for hydroelectric power generation and the development of “green belts” is beneficial to its people and to the geophysical condition of its territory.
 - a) Upstream’s water use need not be the most efficient use available (especially given Upstream’s circumstance of economic underdevelopment), only a “beneficial use” and “with a view to attaining optimal utilization”.
 - 2) Reasonable and equitable utilization, according to the 1997 UN Convention is determined by weighing a variety of relevant factors; the weight to be given each factor is determined by weighing their importance to one another.
 - a) The generation of electricity and the creation of “green belts” are critical to Upstream’s economic development and, in any event, more important than the alleged marginal deterioration of Downstream’s dependency on the Vancouver River.
 - b) Downstream is in no way inhibited from diversifying techniques of food production in the Vancouver River delta and therefore is capable of mitigating any dietary losses it might sustain as a result of Upstream’s use of the Vancouver River.
 - c) Downstream is in no way inhibited from undertaking its own anti-desertification projects and, in any event, opportunities for joint irrigation projects, including projects designed to recover arable land lost to desertification, are likely to arise once this dispute is settled.
 - d) The problems now occurring are most likely temporary.
 - e) The dam is an existing reasonable use that is entitled to significant weight when considering all factors.
- C.** In any event, the principle of equitable utilization does not prohibit pollution altogether.
- 1) Pollution is an unavoidable by-product of Upstream’s lawful and beneficial use of the Vancouver River and therefore to be tolerated.
 - a) Use of pesticides is a necessary and recognized practice for increasing crop yields.
 - b) Increased salinity from reclamation of arid land is an unavoidable by-product of necessary irrigation projects.
 - 2) According to the 1997 UN Convention, pollution is not unlawful unless it causes injury to the downstream riparian state, and such a standard is both ambiguous and overbroad (and therefore unenforceable) in that any use of waterways will arguably cause some changes that can be construed to constitute “substantial harm.”

“Model” Answer to Simulation Exercise #1

- a) Downstream’s claimed harm from pesticide run-off and increased salinization of the Vancouver River does not rise to the level of substantial injury because it neither interferes with Downstream’s existing use of the water nor poses a risk to human life.
 - 3) On final analysis, Upstream has no responsibility to remedy the claimed pollution because to do so would deprive it of its equitable use of water for irrigation to reduce decertification.
- D.** Downstream’s reliance upon various international environmental declarations are to no avail, because these communications are purely hortatory, expressing aspirational goals rather than actionable rights.
- E.** This reflects the general view that developing states such as Upstream, because of the difficult natural and economic conditions they confront, cannot be expected to meet strict environmental standards in their development but only the requirement to avoid substantial negative impacts on the environment.

3.2 Claim in Favour of Downstream

CLAIM THAT UPSTREAM MAY NOT LAWFULLY DIMINISH THE QUANTITY AND QUALITY OF THE FLOW OF THE VANCOUVER RIVER TO DOWNSTREAM

- A.** The Harmon Doctrine (of total sovereignty of upper riparian states over transboundary rivers) upon which Upstream relies is outmoded and, in fact, is no longer an accurate reflection of customary international law as evidenced in state practice.
- 1) Although espoused by both the United States (in dealings with Mexico) and, more recently, India, the Harmon Doctrine has never had a wide following among states and, in fact, it has been rejected by almost all states that have had occasion to take a position in relation to it.
 - a) The Harmon Doctrine has been consistently modified by treaties: there are now over 100 treaties in effect that regulate the use of transboundary waters in a manner that demonstrates that lower riparian states have rights as well.
- B.** While customary international law, as reflected in the 1997 UN Convention, provides that each basin state is guaranteed “reasonable” and “equitable” utilization of transboundary rivers, such utilization must be of a sort that creates no “appreciable” or “substantial” harm to the rights of other watercourse states, and with a view toward “beneficial” and “optimal” utilization which precludes wasteful uses.
- 1) The principle of reasonable and equitable use is now a principle of customary international law and Upstream has violated that principle by virtue of its having caused and continuing to cause substantial harm to Downstream’s dependency on the Vancouver River.
 - a) The uses to which Upstream has put the diverted water are incompatible with Downstream’s pre-existing uses of fishing and agriculture, each having been severely impacted by the Upstream diversion.
 - b) The Upstream dam may not be considered a reasonable existing use because it was incompatible with Downstream’s pre-existing reasonable uses of irrigation and fishing at the time it became operational.
 - 2) Upstream’s use of the flow of the Vancouver River in the instant case is not beneficial or in keeping with the goal of optimal utilization because it is, among other things, wasteful and therefore contrary to international law.
 - a) There is today an emerging customary rule of international law that insists upon shared water resources being put to their most efficient, optimal use by co-basin and co-riparian states seeking to develop international watercourse resources on a multi-state basis.
 - b) Although “beneficial” and “optimal” use does not necessarily mean the most efficient use in the case of an underdeveloped country lacking in capital resources, international financing such as was available to Upstream must be taken into account.
 - 3) At the very least, consistent with the principle of equitable and optimal use, and consistent with customary norms, Upstream should have consulted with Downstream about the uses to which it intended to put the diverted waters to minimize possible adverse effects upon the pre-existing uses of Downstream.
- C.** In any event, pollution which deprives a co-basin/co-riparian state of its equitable share of an international water-

way, as in the instant case, is inconsistent with the principle of *sic utere tuo et alienum no laedas* (one must so use one's own property as not to do injury to another's) which is at the core of the customary international law doctrine of equitable water utilization by co-basin/co-riparian states such as Upstream and Downstream.

- 1) The Trail Smelter Case evidencing the principle of “good neighbourliness” reflects an emerging customary international law norm that specifically prohibits transboundary pollution.
 - a) The 1972 Stockholm Declaration of the U.N. Conference on the Human Environment, among others, insists that all states have a responsibility to ensure that activities carried on within their own territories do not cause damage to the environment of other states or of areas beyond their own territory.
- 2) The 1997 UN Convention which reflects customary international legal expectations, requires that pollution causing appreciable or “substantial” injury to a downstream riparian state's rights or posing a risk to human health, as in the instant case, be abated by the upstream riparian state.
 - a) Downstream's equitable utilization of the Vancouver River has been seriously injured by the Upstream water projects, which have substantially increased the salinity of the water and the pesticide levels in the water, because they will no longer be able to use the polluted water for irrigation or human consumption. Upstream therefore has the duty to cease polluting and to abate the existing pollution.

3.3 Tips for Coaching Negotiation Simulations

Key points of Coaching:

1. The simulation experience should be a positive one.
2. People remember what they say and think for themselves better than what they are told.
3. There is a limit to how much feedback, positive or negative, a person can assimilate; people can remember only two or three points.

Before the simulation:

1. Establish rapport with the group; make sure that you and they have all been introduced to one another.
2. Explain your role as a coach.

During the simulation:

1. Look for specific behaviours/concepts exhibited by the negotiators. These may include:
 - A clear sense of the negotiation process and an ability to move through the steps.
 - An ability to de-escalate the conflict (listening skills, refraining skills, dealing with feelings, focussing on interests).
 - Strategies for promoting and making a transition to interest-based bargaining.
 - Strategies for generating options.
 - Strategies for exerting influence or leverage.
 - Strategies for moving toward an agreement.
2. Take notes that will help you debrief the simulation. Some useful ways to take notes include:
 - Make two columns on your paper, in which you list strengths and problems observed during the simulation.
 - Write down some of the quotations of the negotiators, to use as specific examples of things they did well or might do differently.
 - Use some form of annotation (+ or → in the margin, for example) to help you refer back to specific points in your notes.
3. Interrupt the simulation only if the negotiators are really stuck or if the experience is no longer an opportunity for learning. Tips for this intervention include:
 - Ask the group where they think they are and what ideas they have for what would help.
 - Intervene and moderate a very brief discussion of possible strategies that would help.

“Model” Answer to Simulation Exercise #1

- Give one or more negotiators tips on how to get the simulation back on track.
- Consider modelling an alternative strategy if but do it briefly.
- Get the parties back in their roles and resume the simulation.

After the simulation, debrief by facilitating a discussion.

1. Start by giving the negotiators an opportunity to talk about the experience and how it felt for them in their individual roles.
2. Accentuate the positive elements of the simulation before examining the weaker points.
3. Involve all the participants in the discussion. Some useful questions include:
 - Ask what worked well for you?
 - Ask what did the other negotiators do that helped you relax, become more cooperative or become willing to settle?
 - What was hard for you in your role as an advocate?
 - What could you or others have done differently?
4. Identify two or three key points (such as a sense of the process, strategies for de-escalating the conflict, or interest-based bargaining) which you think were relevant to the simulation as played here. Look at your notes and try to determine what are the most important observations to try to bring out in the debriefing session.
5. Frame criticism in the form of suggestions of things the negotiators may want to try at a future date rather than, “What you should have done is . . .” Be as specific as possible in your positive and negative feedback rather than make general comments which may be difficult for the participants to understand.
6. The debriefing discussion should focus on the process rather than the substance of the dispute.

Tree Exercise #2

4.1 Neighbour 1 Only

THE TREE (ROLE PLAY SIMULATION EXERCISE #2)

A large tree grows between two houses. Most of the year, the tree casts a shadow over one house in the morning and the other house in the evening. The tree is old and its many branches have continued to grow and spread. The tree is a home to many birds and insects. They sing and whistle loudly in the morning. Once each year the tree sheds its leaves, exposing both houses to the cooler winter sun.

The houses are identical and were made by the same builder. The two families that live in the houses are good neighbours. They moved into the houses at the same time 15 years ago. They work for the same company and do the same job. Their relationship has grown and become more respectful over the years. The children of the two families played together on the tree when they were young, but the children have now moved away to their own homes.

Recently a problem has developed. One of the families has asked the other to help them chop down the tree. They say that the tree is blocking the morning sun and that the roof of their house needs repairs from the falling branches and rotting leaves. The other family says that they want the tree to stay. They say that it is like an old friend. It reminds them of their children and gives them shade from the hot sun for half the day.

NEIGHBOUR 1 – For your information only!

Your **position**:

- Chop down the tree.

Your **underlying interests**:

- The tree only provides shade in the morning. You would prefer it provided shade in the afternoon when the temperature is the highest. In the morning you like to sleep in late.
- You are tired of having to clean up the leaves every year. You are getting older and it is very hard to climb up on your roof to remove branches. It is reducing the time you have to relax and it is costing you money for house repairs.
- You remember when the tree was much smaller. You enjoyed the colour it brought to your house and you would sit under it with your family to discuss the day's problems. You liked the tree when it was not so big.
- You need to find a solution to this tree. Your neighbours have been good friends and you hope that they are willing to meet your needs.

4.2 Neighbour 2 Only

THE TREE (ROLE PLAY SIMULATION EXERCISE #2)

A large tree grows between two houses. Most of the year, the tree casts a shadow over one house in the morning and the other house in the evening. The tree is old and its many branches have continued to grow and spread. The tree is a home to many birds and insects. They sing and whistle loudly in the morning. Once each year the tree sheds its leaves, exposing both houses to the cooler winter sun.

Tree Exercise #2

The houses are identical and were made by the same builder. The two families that live in the houses are good neighbours. They moved into the houses at the same time 15 years ago. They work for the same company and do the same job. Their relationship has grown and become more respectful over the years. The children of the two families played together on the tree when they were young, but the children have now moved away to their own homes.

Recently a problem has developed. One of the families has asked the other to help them chop down the tree. They say that the tree is blocking the morning sun and that the roof of their house needs repairs from the falling branches and rotting leaves. The other family says that they want the tree to stay. They say that it is like an old friend. It reminds them of their children and gives them shade from the hot sun for half the day.

NEIGHBOUR 2 – For your information only!

Your **position**:

- Leave the tree standing.

Your **underlying interests**:

- The tree only shades your house in the afternoon. You would prefer it provided shade in the morning. You would like to sit outside in the shade for your morning tea.
- Your son has offered to help out with some of the yearly cleanup around your house. He wants to put the leaves in his garden and will use the dead branches for firewood.
- You have noticed that the tree is not as healthy as it once was. It may be healthier with a thorough pruning.
- You need to find a solution to this problem. You are concerned it will damage your relationship with your neighbours. They have been good friends and you hope that they are willing to meet your needs.

Positions vs Interests Exercise #3

The objective of this exercise is to determine the difference between positions and interests. Positions do not allow for many options other than the one expressed. This makes negotiation difficult as there is only one option available. Interests allow for a far greater range of options to meet the interests in order to form acceptable agreements.

For example, in statement #1, "this dam will be run to maximise power production," does not allow for any other possibility but to operate the dam. In contrast, in statement #9 "I want to secure my crop from drought, to have a stable income," expresses an interest and indeed answers the fundamental question why it is important. The goal of securing crops may be accomplished in many ways, from irrigation to fertiliser to crop rotation etc. The idea that the fundamental interest is to secure income allows for even more options as it opens up the possibility of micro-financing, cooperative systems, new credit unions, agreements on crop prices and so on. All these can be part of an agreement in terms of meeting the interests of the negotiating parties.

Logistics

Break the workshop into groups of 4-10 people. Take the following list of "Positions or Interests" and ask the groups to go through and decide which are positions and which are interests. They should have discussions among themselves in attempts to arrive at unanimous decisions. This discussion will help people understand what constitutes a position and an interest.

The objective is not to have the groups determine all the correct answers; it is stimulate discussion and learning.

When the groups return to the plenary, to save time, have one person from each group represent the group.

Go in turn from one group to the next, having each give its response to ONLY ONE answer.

i.e. Group A gives an answer to #1, Group B to #2, Group C to #3 etc.

For each response ask if there is a different answer from any group. Discuss.

Answers:

#1-P, #2-I, #3-P, #4-I, #5-I, #6-P, #7- I, #8-P, #9-I, #10-P, #11-P, #12-I, #13-P, #14-I, #15-I, #16-P, #17-I, #18-p, #19-I, #20-P, #21-P, #22-P, #23-P, #24-I, #25-I, #26-I, #27- I.

Positions or Interests?

1. This dam will be run to maximise power production.
2. We are concerned that flooding is damaging property (costing money and lives).
3. We need negotiation sessions to be time limited and scheduled well in advance due to other responsibilities.
4. We want to be able to explore options without implying any commitment or support.
5. We are concerned that other countries will want to try to control our domestic affairs.
6. There will be no tourist boats allowed across the boarder.
7. We are concerned that the floods will not be sufficient to fertilise the fields and the water will be too low to feed the irrigation system.
8. We are building the dam.
9. I want to secure my crop from drought to have a stable income.
10. We need more fish to be allowed to migrate upstream.
11. The definition of tributary cannot go beyond a first order stream.
12. We are concerned the dam will affect the fisheries and the ecosystem.
13. I fear that information will be biased and negatively affect potential to have interests met.
14. We want to develop a sustainable economy.
15. We want to develop stable and cheap electricity. This will help us develop.
16. I must have 5 cm of water per day for my fields.
17. We are worried that a fundamental protein source (fish) may be lost or damaged.
18. The dam cannot be built.
19. We want to develop in a way that maintains the environment.
20. This water should be used for irrigation.
21. I will not participate in the negotiations anymore.
22. I do not support doing this research.
23. I need to demonstrate progress to superiors.
24. We are concerned that commitments will not be fulfilled.
25. They want to increase income.
26. I feel intimidated by other negotiators.
27. We need ideas to be considered even if they are not accepted.

Prisoner's Dilemma Exercise #4

Confidential Teaching lessons for the Prisoner's Dilemma Simulation Exercise #4

The lesson learned for this exercise is that the Prisoner's Dilemma scenario is a so-called "social trap" exercise in which long-term maximization requires unenforceable mutual trust, and where significant short-term gains are possible by breaking that trust. Communication must be implicit and is therefore highly ambiguous and subject to misinterpretation. This usually occurs when participants project negative and adversarial intentions that don't actually exist. The exercise highlights the frequency with which we make imprecise and inadequately supported assumptions. It raises the importance of making and keeping assumptions explicit and testing them periodically. The difference between reacting to the other side's moves (or one's perception of what those moves mean, or will be), and acting purposefully to influence the other side to (re)act constructively, is easily illustrated by comparing the experiences of different teams. The monetary variation tends to be dramatic between cooperative and competitive games, and analysis usually suggests that to establish cooperation, some team has to take a risk. The danger of self-fulfilling assumptions is also illustrated. Parties can turn cautious competitors into the cutthroat adversaries they fear by proceeding with preemptive ruthlessness.

Simulation Exercise #5: Vancouver River Part II

CONFIDENTIAL INSTRUCTIONS AND TEACHING MATERIALS FOR NEGOTIATION SIMULATION EXERCISE #5 FOR DOWNSTREAM PLAYERS ONLY

Internal Negotiations

The last time Downstream “struck a deal” with Upstream, the Minister of Foreign Affairs for Downstream ended up losing his post and Downstream members were left feeling cheated and angry. This time around, some preliminary “caucusing” among yourselves will help to establish what Downstream’s priorities are and what you’re hoping to get from Upstream. In order to negotiate with Upstream with a united front, you need to establish your internal priorities on the main issues.

You will have 1.5 hours to reach agreement on your negotiation strategy as a Downstream team. This is the internal negotiation.

In this internal negotiation, you should:

- Discuss at least the following key issues: environment, compensation, employment and security;
- Develop an internal agreement on what you want.
- Address any other issues that are brought forth by your team.
- Prepare for the negotiation with Upstream with the goal of developing an effective strategy for negotiation.

In the follow-up negotiation session with Upstream you will have 1.5 hours to reach agreement (or determine that none can be made) on the issues of concern.

This will be the external negotiation.

7.1 Confidential Instructions for Stripes – Foreign Minister for Downstream

You believe you have been an effective Foreign Minister.

You are able to see the “big picture” for the long term health of Downstream, and know that establishing a good working relationship with Upstream is the best thing for Downstream to do. For you, the most important element is getting a good “package” deal from Upstream. You realize that receiving compensation from Upstream for alleged damages past, present and future may provide needed money to Downstream but may not create jobs nor ensure the health and safety of your citizens. You are going to do everything possible to obtain a package deal as long as it is fair and good for Downstream.

Your team includes Dots, a bright but difficult member of your team as well as a likely rival in the upcoming elections. You are pleased about including the international law advisor because you trust the advisor’s judgment and you want a voice of reason when dealing with Dots. You will work with Dots and the international law advisor to prepare for the negotiations with Upstream. You are very open to their ideas, concerns, and interests. However, since you are Foreign Minister, you are the one who must make final decisions. You support the idea of a neutral facilitator. You are the lead negotiator for your team.

Compensation

Your first priority is Compensation. By making this a key component of your election platform, you believe that you can gain the support of many of those currently sympathetic to Dots. In your negotiations, try to get Upstream's guaranteed support of compensation.

Having their support will surely help guarantee that you will achieve your interest in obtaining compensation. Of course, you know Upstream will not agree to these demands unless they believe that your threat of military action is credible or you can convince Upstream that they are seriously violating international law. In terms of how the compensation is actually paid, you are open to suggestion including obtaining a share of the power currently being generated by Upstream from the dam.

Environment

Your second priority is environment including health and safety. You are worried about the health and safety issues associated with what Upstream has done to the river including the interference with the river fish that has particular cultural significance in Downstream. You have also heard stories from Downstream members about "popping noises" coming from the dam, plus there was that issue with the odor several years ago. You want Upstream to be more responsive. That would mean Upstream would do more to ensure health and safety and at least attend regular meetings (quarterly perhaps) with Downstream so you can hear reports from Upstream staff and get follow-up reports on issues of concern.

You can ask for anything that will ensure that Upstream takes its environmental responsibilities seriously.

You are particularly keen on the idea of restoring the river fish that appears to have been detrimentally impacted by the activities in Upstream.

Employment

Your third priority is employment for Downstream members. You want Upstream to help secure future employment for Downstream members. You would like Upstream to eventually agree to a free trade zone and to a hiring commitment of 5% to 10% of all jobs associated with the dam and the green belts for Downstream members in both the short and long term. You are also open to other economic development ideas that they may suggest.

Security

Your fourth priority is security. This includes food security, energy security and military security. Even though your armed forces are much stronger than those of Upstream, the military route is not a route you would prefer to go.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties' interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

Simulation Exercise #5 – Vancouver River Part II

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

7.2 Confidential Instructions for Dots of Downstream

As you see it, Upstream owes Downstream. The big deal they struck with Downstream on another river 22 years ago was completely unfair, and Upstream knew it.

Your team includes Stripes, a capable but far too conciliatory leader, and Dashes, a legal advisor. While you think Dashes’ advice will be helpful, you suspect that Stripes and this advisor will form a united front of “reason” against you. Thus, you plan to listen to good advice from Dashes, but are also willing to keep Dashes in place if needed. As you see it, if you can get a good deal for Downstream, you can take credit for it in the upcoming elections. If Stripes is too conciliatory on too many issues, you can also use this against Stripes in the elections. At worst, if Stripes is simply giving in, or Upstream is unreasonable, you can make a viable threat. If the negotiations go poorly, you will not hesitate to organize Downstream members to stage protests calling for military action and/or removal of the dam. This is not an idle threat. Neither Stripes nor Upstream are likely to benefit from the media storm that you could create if you need to. Of course, if you do walk out at any point, you risk looking “too radical” for many Downstream members, and thus risk alienating an important number of voters. Finding the right balance is what good politics is all about.

Security

You intend to make security for Downstream your number one priority. By security you mean energy security and food security as well as military security. This is an important election issue. You are well connected with Downstream’s powerful military establishment.

Compensation

Your second priority is to obtain compensation from Upstream for past, present and future harm to Downstream. Although Stripes officially represents Downstream on this issue, you know others in your country who also want Downstream to get as much as possible. In fact, some of your supporters would like to see Upstream pay a lot simply because of the raw deal the Downstream received twenty years ago. This is a symbolic issue. However, you want to start with a very high demand for two reasons: (1) you want to make Upstream well aware of the unfairness of past dealings; (2) you can use your initial position, whatever the final outcome, in your bid for Stripes' job.

Environment

Your third priority is environment including health and safety. You want Upstream to act responsibly and not ignore the worries and concerns of Downstream members. You are tired of Upstream's indifference to Downstream. Upstream must agree to develop an emergency evacuation plan, establish a 24-hour hotline to call if anything suspicious happens and hold monthly meetings, at least for the first year, with Downstream so Downstream can hear reports from Upstream staff and get follow-up reports on issues of concern. You are worried about being unable to hunt, trap and fish in the region below the new dam. You'd like to see Upstream anticipate problems, not react to them. They should set aside a special fund to explore environmental degradation as a result of the development and involve local youth in environmental monitoring. You'd like to see Upstream put aside about \$100,000 for the first year of environmental studies. In addition to this environmental studies fund, you want to have a part in developing the monitoring effort.

Employment

Your fourth priority is employment for Downstream members. You are not particularly interested in having Upstream help secure future employment for Downstream members. Nor are you particularly interested in the idea of a free trade zone between Upstream and Downstream. On the other hand, you do not want to be seen to be opposing anything that might help the lackluster Downstream economy so you are open to any ideas that Upstream may suggest.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties' interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

Simulation Exercise #5 – Vancouver River Part II

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

7.3 Confidential Instructions for Dashes, International Legal Advisor to Downstream

You are pleased by Stripes’ support of your involvement in the negotiations with Upstream. This is a good sign. You’ve been working hard over the past several years to build your role as an advisor. Of course, your role in these negotiations is limited as you are here mainly to ensure that whatever happens makes legal sense.

In addition to this role, you believe that you may be able to help facilitate the negotiations. Although Upstream has negotiated many times before, they may not be sensitive to the hardships that Downstream continuously faces. Similarly, many Downstream citizens incorrectly think that Upstream is flush with money. You want to take advantage of the fact that you are able to see both sides of the picture, and try to keep the talks progressing. Because of your sensitivity to the Downstream groups, you understand that they may not wish to discuss every detail of their negotiating strategy with you. Be respectful of desires for private “caucuses”, but do your best to ensure that Downstream aren’t trying to ambush Upstream with any unreasonable demands at the same time.

Compensation

Your top priority is helping Downstream to obtain fair compensation as a result of what may have been inequitable and unreasonable distribution from past beneficial use of the Vancouver River. In the past, Downstream has tried to obtain extremely high assessments of this past beneficial use. In the end, Downstream had to back down, but Downstream also ended up wasting time and losing credibility.

Employment

The other area you may wish to comment on is economic development. Although ostensibly only a legal advisor, you have been involved in helping forge partnerships between upstream and downstream states throughout the world. One of the

best ways to do this is to find “mutual gains” that would in this case benefit both Upstream and Downstream. There are many ways Upstream could support Downstream at relatively little to no cost to Upstream. For instance, hiring Downstream members as employees is at little cost, since they’d be paying out the salaries to workers anyway. While Upstream has typically offered some 5% to 10% of the total jobs to Downstream members in the past, more recently, this percentage has increased to as much as 20%. An example of a trade-off which benefits both states is a professional development program where special skills, in demand by a particular industry, are taught to eligible Downstream job-seekers. Joint ventures, investment strategy workshops and internship and training programs could also be of great long term benefit to Downstream.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties’ interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

FOR UPSTREAM PLAYERS ONLY

Internal Negotiations

Before you meet with the Downstream group, you need to determine among yourselves what your negotiation strategy will be. Resolving this negotiation is worth a great deal to Upstream, particularly in the face of military action by Downstream. In order to negotiate with Downstream with a united front, as Upstream you need to establish your internal priorities on the main issues.

Simulation Exercise #5 – Vancouver River Part II

You will have 1.5 hours to reach agreement on your negotiation strategy as the Upstream team.

This is the internal negotiation. In this internal negotiation, you should:

- Discuss the key issues.
- Address any other issues that are brought forth by your team.
- Prepare for the meeting with the Downstream, with the goal of developing an effective strategy for negotiation.

In the follow-up negotiation session with the Downstream you will have 1.5 hours to reach agreement (or determine that none can be made) on the issues of concern. This will be the external negotiation.

7.4 Confidential Instructions for Red, Foreign Minister of Upstream

This is only one of hundreds of negotiations you've participated in. You pride yourself on your ability to be tough but fair and always protect the interests of your country. You will work with White and Blue to prepare for the negotiations with Downstream. You are very open to your team's ideas, concerns and interests. However, since you are Foreign Minister you are the one who must make final decisions. You are the lead negotiator for the team.

This is one of the first times you have worked closely with White. You've heard White talk about forging a new long-term relationship with Downstream, but you don't believe you need a "new relationship" to do things in Upstream the way you think they should be done.

Unbeknownst to White, you were very uncertain whether White was the right person for the job during hiring. After all, White seemed to be too progressive, too innovative and too much of a risk-taker for the conservative corporate culture of Upstream. But the Prime Minister convinced you to take a risk. This is your first opportunity to see if White is sensible and protective of Upstream's interests.

Security

You are a former senior military commander. You were the first woman in the history of your country to hold such a position. Your first priority is security. You wish to ensure Upstream's energy security, food security and military security. You are anxious to avoid a military confrontation with Downstream who you judge to have significantly more military hardware than Upstream. However, under no circumstances will you agree to the removal of the dam.

Compensation

Your second priority is to deal with the issue of compensation that you anticipate Downstream is going to raise. You are fearful that the Downstream could seek payments for past, present and future alleged damages. You are worried that Downstream will be greedy. You are particularly discomfited about the idea of paying for alleged past harms and the precedent you fear that might set. If you are somehow forced into paying compensation, you want to obtain some assurances that Downstream will agree to abide by a fair assessment process.

You feel that you cannot agree to other concessions unless you have a reasonable and satisfactory discussion about compensation. You have left the financial details of this portion of the negotiation up to White. But you want him to educate you about what is "fair" so you can be ready in the negotiations with the Downstream. You cannot stand for an unfair precedent.

Health and Safety Concerns

Your third priority is to address health and safety concerns. You understand that Upstream has not been as effective as it should have been. As far as you are concerned, the facts show that Upstream's safety record is superb. However, Upstream's record in communicating this record is quite poor. Thus, you are willing to offer the Downstream what you would offer anyone else. You will provide them the number of the closest regional office in the case of emergencies, work with local officials to train them in emergencies and provide refrigerator magnets with emergency numbers. You will not stand, however, for any attacks on Upstream's safety record.

Employment

Your fourth priority is employment for Downstream. In preliminary talks, White has told you Upstream must win Downstream's trust and strike a good deal by offering other "enticements", particularly in regards to employment. White did not go into detail at that time, but said a proposal would be forthcoming. You assume White means jobs and job training, but you aren't really sure. You also know that Blue will be concerned about the percentage of Downstream members that Upstream must hire. You'll work with Blue to develop a reasonable percentage.

Total Costs

From a purely monetary standpoint, you are willing to pay for other "enticements" to try to make Downstream happy (if White can make a convincing case) as long as the total bill does not exceed \$700,000. Of course, the less money you spend, the better.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties' interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

Simulation Exercise #5 – Vancouver River Part II

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

7.5 Confidential Instructions for White, Deputy Minister for Upstream

This negotiation is an exciting prospect for you. You know you can help Upstream to make significant improvements in its relationship with Downstream. You know that Red, your boss, is pretty old fashioned when it comes to relations. But you are confident you can convince him and everyone associated with the project that working cooperatively with Downstream is the most cost-effective, responsible way to do business. This is your opportunity to gain Red’s trust and begin to steer Upstream in a new direction.

Employment

Your first priority is to get Red to agree to support an economic development office for Downstream as part of the overall deal. In addition to being of help to the Downstream, this office would give Upstream an opportunity to train workers for specialized or technical jobs, distribute information about job and training opportunities and provide a venue for better communication between corporations, government representatives and Downstream. You picture it like a technical college, offering different programs at different times of the year and providing scarce resources such as computers and internet connections for Downstream Members’ use. If it succeeds, it could be a model around the world.

You know you can get this office off the ground in the next few months, including information sessions for locals on the progress of the development. The cost in the first year will be \$400,000, and an estimated \$150,000 to \$200,000 annually thereafter. The long-term payback to both Downstream and Upstream will be many times that. This is a good investment for everyone. You also know that the Downstream will want to have some percentage of short and long-term jobs be reserved for Downstream members. You think this is important — and as long as the workers are properly trained — you think this comes at relatively low cost to the Upstream. On the long-term percentage, you want to keep the percentage as a goal rather than as a commitment (you are willing to go as high as 20%, as a goal) and focus people on the long-term opportunities of the economic development office.

Health and Safety

Your second priority is effectively handling health and safety concerns. You think the standard Upstream offerings in this regard are fine. Upstream provides Downstream with the number of the closest regional office in the case of emergencies, works with local enforcement officials to train them and gives them refrigerator magnets with emergency numbers.

But given Upstream's poor performance in the past, this is not enough. You want to encourage Red, the President, to be more progressive. You'd like the Upstream to send a senior health and safety inspector to meet with Downstream at least once a year. This costs next to nothing and builds good relations. You want Upstream to set up a 24-hour hotline dedicated to safety concerns and worries expressed by Downstream members.

You expect that the cost of establishing, operating and promoting such a hotline in the first year is probably in the neighborhood of \$400,000.

As a fisher yourself you are very keen on the idea of restoring the river fish that appears to have been detrimentally impacted by the activities in Upstream.

Compensation

Your third priority is helping set what compensation will be paid by Upstream to Downstream for alleged damages past, present and future. You are well aware that Red doesn't want to pay Downstream anything particularly for allegations of past damages. However, you believe that Stripes wants to work with Upstream to develop an overall package of agreements. If you can bring some certainty and fairness to the compensation issue, then you believe you and Upstream will have more room to move on other issues, particularly on your innovative projects. If you can help Red secure a fair and reasonable rate, you think Red will be able to be more flexible on other issues.

Other

You imagine that Downstream may ask for other specific concessions. You are open to new and innovative ideas. In general, for any new items that are proposed, you'll have to make sure they are cost-effective and sensible in the eyes of Red. You're pretty sure you can appease Red's budget sense and give a good deal to Downstream, as long as everyone negotiates in good faith.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties' interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

Simulation Exercise #5 – Vancouver River Part II

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

7.6 Confidential Instructions for Blue, International Law Advisor to Upstream

As a close personal friend of the Upstream Foreign Minister you feel responsible for seeing that she does nothing in these negotiations that might jeopardize her career. In your experience, working with Downstream has become increasingly difficult. Now, Downstream often comes to the table with unreasonable demands. To make matters worse, lots of times these do not seem to be the same demands that Downstream citizens appear to care about.

There are several things that are out of your control. First, because you are just a legal advisor, you don't spend Upstream's money for them. It's up to the Downstream and Upstream to figure out how to deal with politically volatile issues like compensation. Second, as for Upstream's policy on health and safety, that's their business too.

There are three things very dear to you.

- First, under no circumstances will you countenance removal of the dam.
- Second you want to try to avoid a military confrontation. However, you are much more of a hawk than Red or White.
- Third, you feel you need guarantees that in a worst case scenario, whatever may get paid to Downstream by way of compensation is on a without prejudice basis and that Upstream acknowledges no fault.

Employment

Your first priority is to help negotiate the employment issue. An issue that you know will come up is jobs for Downstream members in the short and long term. Although it's not unusual to have commitments to hire 5% - 10% of local residents for a project, you've heard rumors that the Downstream may ask for as much as 30%. That would be too big a burden. It makes project management difficult when you have all these new and often inexperienced workers on the job. Besides, if Downstream ends up being too radical, you'd have to worry about them sabotaging the dam site.

Environmental Regulation

Your second priority is dealing with new international environmental regulations. Red and White have not been involved with the complicated environmental permitting for the new Upstream dam and green belt initiatives. You’ve learned (painfully) that the World Bank has taken a new interest in ensuring that new initiatives with transboundary impacts are developed sustainably. The new regulations are more complex, require more monitoring and ecological surveys, and the reporting procedures appear to be very time-consuming. Among other things, you need an additional environmental specialist on site to handle these issues.

Summary

During both your internal and external negotiations you will be meeting with one or more other parties who may, or may not, have similar issues or interests as yours.

During all of these negotiations you should:

1. Present the issues you want to address.
2. Describe the interests or needs you want to have met.
3. Learn about the other parties’ interests and issues.
4. Try to negotiate and reconcile differences you may have within your own team.

To assist you in preparing you might fill out the chart below:

Your issues/topics for discussion:	Your interests or needs:	Your possible options or solutions:
Their issues/topics for discussion:	Their interest or needs:	Their possible options or solutions:

7.7 Preparation Sheets – See Appendix “TEACHING PACKAGE ONLY SIMULATION #5”

PREPARATION SHEET

1. Identify interests.
2. Estimate BATNAs as well as consider aspirations.
3. Generate options and packages.
4. Consider objective criteria for evaluating options.
5. Clarify your authority and theirs.
6. Prepare for process as well as substance.
7. Consider follow-through after negotiations.
8. Put it all together: develop a strategy.

PREPARATION SHEET - ACTIONS AND QUESTIONS

Identifying Interests

1. What are your interests?
2. What are the other side's interests?
3. Which of your interests are of most concern to you?

Assess BATNAs as well as Aspirations

1. What are your best alternatives to a negotiated agreement (BATNAs)?
2. What are their best alternatives to a negotiated agreement (BATNAs)?
3. What might you do to improve your BATNA? To weaken theirs?
4. What are your aspirations?

Generate Options and Packages of Options

1. What information, if any, is missing that you need to make better decisions? Can you imagine gathering any of that information from the other side(s)?
2. What options might you consider to meet your interests and theirs?
3. What reasoned arguments might you use to support these options?
4. How might you package these options to meet your and their interests? Can you identify interests and issues that you and they value differently?

Consider Objective Criteria for Evaluating Options

1. What objective criteria might you use to evaluate the options and packages you have created?
2. Have you considered what is “fair” to you? What might be “fair” to them?

Clarify Your Authority and Theirs

1. Does the other side have the authority to make agreements? If not, what are their limits?
2. Do you have the authority to make agreements? If not, what are your limits?
3. Are there any missing stakeholders (internally or externally) who might later threaten the agreement?
4. Have you built an internal consensus as to your negotiation approach? Do you have those below you, with you and above you on-board?

Prepare for Process as Well as Substance

1. Have you established a process for how you will work together as a negotiating team?
2. Have you developed suggestions for the process you and the other side might use to structure and smooth the

way for your negotiations?

3. Given what you know about the upcoming negotiations, do you think a neutral might be helpful?

Consider Follow-Through After Negotiations

1. Can you imagine commitments and contingencies that will make the agreement more likely to be followed?
2. Are there ratification procedures you or they must follow?
3. Do you want a long term relationship with them when you are done?
4. Are there clear dispute resolution procedures in place?

Putting it All Together: Develop a Strategy

1. In what sequence do you think issues ought to be discussed? What tone do you intend to take? How do you intend to approach “first offers.” What do you intend to reveal? What do you intend to keep confidential? If negotiations do break down, what is your exit strategy?
2. Can you weave the elements of interests, BATNAs, options, packages and objective criteria into a coherent plan of action

Lessons Learned from Simulation Exercise # 5 (for discussion)

The lessons learned from this exercise include:

1. In helping to successfully resolve certain kinds of conflicts, an “interest based” negotiation approach has certain advantages and disadvantages over a strictly legal approach.
2. The success of external negotiations may well be dependent on the success of prior internal negotiations.

Third party neutrals such as facilitators and/or mediators may have a potentially important role to play in successfully resolving certain kinds of disputes.

Simulation Exercise #6: The Elinehton River Basin

Confidential Instructions for ELINEHTTON Negotiation Simulation Exercise #5

TO BE DISTRIBUTED ONLY TO THE INDIVIDUALS PLAYING PARTICULAR ROLES IN THIS SIMULATION EXERCISE!

8.1 Confidential Instructions to A

(TO BE DISTRIBUTED ONLY TO THE PERSON(S) PLAYING THIS ROLE IN THIS SIMULATION EXERCISE)

1. You are very interested in reaching an agreement on the equitable sharing of benefits from the further development of the basin with the other three parties upstream. You know that you will benefit greatly in a variety of ways if the other three parties upstream build and operate dams in their territory in a manner that is beneficial to you. For example, the appropriate operation of dams upstream in B, C and D will allow you to generate significantly more electricity from just your existing dam.
2. You are well aware of situations throughout the world where downstream states have chosen to pay upstream states for benefits they received as a result of activities undertaken in upstream states, and you are aware of the emerging international law in this regard. However, you have an interest in not paying any upstream state for benefits from projects that those upstream states may well find it necessary or desirable to build and operate anyway without your having to make such payments!
3. You are very interested in pursuing options that would continue to guarantee your water "security" while at the same time dealing with the fact that you currently lose 40% every year from your existing reservoir due to evaporation losses.
4. You are interested in sharing in the benefits of the possible export of electricity out of the region.
5. You are prepared to consider a transmission corridor through your country to enable your neighbors to access international markets for their electricity as long as there is something in it for you.

8.2 Confidential Instructions to B

(TO BE DISTRIBUTED ONLY TO THE PERSON(S) PLAYING THIS ROLE IN THIS SIMULATION EXERCISE)

1. You are very interested in reaching an agreement on the equitable sharing of benefits with the parties both downstream and upstream from you for key reasons as follows:
 - a) You have a strong interest in establishing and maintaining an electricity transmission corridor through A to you.
 - b) You have a strong interest in gaining from the possible export of electricity out of the region.
 - c) You have a strong interest in potentially receiving an equitable share of the additional power that A may be able to generate as a result of your operating the existing dam in your country in a way that is particularly beneficial to A.
2. You are advised that the construction and operation of a proposed new dam in C will also allow you to generate significantly more electricity as well as provide you with flood control benefits.
3. You are also willing to consider a transmission corridor through your country to allow C to access international markets as long as there is something in the deal for you.
4. You are aware of situations throughout the world where downstream states have chosen to pay upstream states for benefits they received as a result of certain activities taking place in upstream states. However, you suspect

that A will be reluctant to pay you for such benefits if A believes that you may find it necessary to operate your dam in a way beneficial to A without A having to make any such payments. Ironically, because you are “in the middle,” you have a similar interest in avoiding paying benefits to C if you think that C may find it necessary to operate its dam in a way beneficial to you without you having to share benefits.

8.3 Confidential Instructions to C

(TO BE DISTRIBUTED ONLY TO THE PERSON(S) PLAYING THIS ROLE IN THIS SIMULATION EXERCISE)

1. You are very interested in reaching an agreement on the equitable sharing of benefits for key reasons as follows:
 - a) You have a strong interest in establishing and maintaining an electricity transmission corridor through A and B to you.
 - b) You have a strong interest in potentially receiving an equitable share of the additional power that A and B will be able to generate as a result of your constructing and operating a new dam in your country in a way that is beneficial to A and B.
 - c) You have a particularly strong interest in A and B supporting your application for a loan to the World Bank to finance the construction of a new dam in your territory.
 - d) You have a strong interest in gaining from the possible export of electricity out of the region.
2. The construction and operation of a new dam in your country will allow A and B to generate significantly more electricity, and you have an interest in A and B sharing these benefits with you.
3. You are aware of situations throughout the world where downstream states have chosen to pay upstream states for benefits they received as a result of activities in upstream states, and you are aware of the emerging international law in this regard. However, you suspect that A and B will be reluctant to pay an upstream state for benefits from projects that A and B believe you may find it necessary or desirable to build and operate, in any event, without their having to make any such payments.

8.4 Confidential Instructions to D

(TO BE DISTRIBUTED ONLY TO THE PERSON(S) PLAYING THIS ROLE IN THIS SIMULATION EXERCISE)

1. You are very interested in reaching an agreement on the equitable sharing of benefits with the parties downstream for key reasons as follows:
 - a) You have a strong interest in establishing and maintaining an electricity transmission corridor through A to you.
 - b) You have a strong interest in potentially receiving an equitable share of the additional power that A may be able to generate as a result of your constructing and operating a new dam in your country in a way that is particularly beneficial to A.
 - c) You have a strong interest in A supporting your application for a loan to the World Bank to finance the construction of a new dam in your territory.
 - d) You have a strong interest in gaining from the possible export of electricity out of the region.
2. You suspect the construction and operation in a particular way of a proposed new dam in D will allow A to generate significantly more electricity, and you have an interest in A sharing these benefits with you.
3. You know A has to be very acutely concerned about its current 40% (!) annual evaporation loss from its dam at 1.
4. You are aware of situations throughout the world where downstream states have chosen to pay upstream states

Simulation Exercise #6: The Elnehtton River Basin

for benefits they received as a result of activities in upstream states, and you are aware of the emerging international law in this regard. However, you suspect that A will be reluctant to pay any upstream state for benefits from projects that A believes you may find it necessary or desirable to build and operate, in any event, without A having to make any such payments.

8.5 Debriefing Instructions for Elinehtton Simulation Exercise # 5

Initial Debriefing Questions

- What happened in the groups that reached agreements? What about in any groups that failed to reach agreements?
- What were your individual aspirations and what was your “Best Alternative to a Negotiated Agreement” (“BATNA”)? Did the actual outcome differ from your expectations?
- How did you discover the interests and concerns of the other parties?
- Did the mediator/facilitator, if present, assist in identifying interests? Did you assume you knew them? Did you try to satisfy only your own interests, or did you attempt to find ways to satisfy the minimally acceptable conditions of the other parties?
- What could you have done differently?
- What additional facts and/or law, if any, might have improved this negotiation exercise?

Lessons Learned?

1. Know your aspirations and your BATNA.

The first step in preparing for any interest based negotiation should probably be to determine your aspirations and your BATNA. Your aspirations are the best outcome you can realistically expect to achieve in negotiation. This helps you identify and clarify your goals.

The second step is to figure out your BATNA. This is the minimally acceptable terms you could agree to. Anything more presents you with a better alternative to a negotiated agreement.

By clarifying your aspirations and BATNA prior to negotiations, you give yourself a range to evaluate options or packages that develop during the bargaining process. A BATNA is simply a guideline. If new options arise during negotiations, a person can adjust her or his BATNA accordingly.

2. Focus on interests and not on positions.

Try to discover the interests behind stated positions. If you discover what the other person really wants, you can attempt to invent ways to satisfy them and reach your own objectives as well. If you never discover the other parties' interests, you cannot figure out what you need to offer in order to get what you want.

Always specifically ask what the other person's interests are. Never assume you already know what those interests are. Listen carefully to their concerns and clearly explain the reasoning behind your interests.

It is helpful to invent options and packages as a group, without expecting commitments while you generate ideas. During this time, the group should seek to invent options to maximize joint gains. It is important to try to work with others to create mutually acceptable packages. Packages can be subsequently modified to accommodate unsatisfied interests.

The mediator should make sure each party's interests are clearly spelled out. A private caucus with one or more parties may be necessary to help identify and explore individual interests.

During the debrief, ask the participants how much information they shared with the group. People periodically fear that the others will exploit the information that they share and therefore reveal little. If others do not know your real interests they cannot try to satisfy them. Also, if you inflate your demands in order to have room for concessions you risk losing credibility.

3. Separate the people from the problem and avoid escalation traps.

The mediator should intervene in the event of personal attacks to maintain order and make the attacking party aware of the consequences of such behaviour.

During tense negotiations, discussions sometimes degenerate into personal attacks. Parties should be careful not to instigate personal attacks. If participants are the target of such attacks, the mediator would re-focus the discussions by reminding everyone that their common goal is to negotiate the substance of the conflict.

A common escalation trap results when someone takes a strong position on an issue. Loss of face may prevent that person from agreeing to a different but equally acceptable option. One way to try to avoid this is to refrain from making commitments until the other party's interests are clear and the group has generated a number of options.

4. Understand sources of power in negotiations.

Power originates from political position, knowledge of the situation and the bargaining strategy. Players can increase their bargaining power by building coalitions.

They can agree to support a politically powerful party if that person promises to promote their most important interests. Since a mediator tries to loosen the binds of politically or institutionally conventional options, negotiators can also increase their bargaining power by inventing innovative options that satisfy their own and others' interests.

