
Using Devising Seminars to Advance Collaborative Problem Solving in Complicated Public Policy Disputes

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In many public policy situations, formal negotiations and collective problem solving are inhibited by a lack of good ideas that can get the buy-in and support of all involved stakeholders. We suggest that devising seminars provide a promising approach for helping to overcome this barrier. A devising seminar is an off-the-record, facilitated workshop that brings together representatives of core stakeholding interest groups to brainstorm mutually advantageous approaches to address collective challenges. In this article, we explain what devising seminars are, how they work, and how they can help with complex public policy disputes. We illustrate through the case of the Devising Seminar on Arctic Fisheries and conclude with lessons learned from that experience.

Key words: multiparty negotiation, public policy disputes, devising seminars, facilitation, Arctic region, environmental disputes, fisheries, collective problem solving, brainstorming, private forum, Track Two negotiations.

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Introduction

Sea ice in the Arctic is retreating rapidly. This could have far-reaching effects on the well-being of important fisheries, global oil and gas supplies, the survival of indigenous peoples, and political relationships among the many nations that border the Arctic Ocean (Anisimov et al. 2007). Efforts to respond to possible ecological damage and prevent geopolitical battles over how Arctic resources are managed will require intricate negotiations and a great deal of creative problem solving. Unfortunately, there is currently no adequate forum through which to confront these challenges, and many of the countries involved are already taking unilateral action that could preempt the interests of others.

In situations like this, we believe that bringing together carefully selected representatives of core stakeholding interest groups to brainstorm mutually advantageous plans or strategies can greatly advance collective problem solving. Unofficial conversations, if properly structured, can generate the key elements of what could ultimately become formal treaties or binding agreements (Susskind et al. 2003).

Seeking to advance collaborative problem solving in the Arctic, the Massachusetts Institute of Technology (MIT) Science Impact Collaborative and the Program on Negotiation (PON) at Harvard Law School hosted the Devising Seminar on Arctic Fisheries in September 2014.¹ Based on our experience, we believe this approach — which is similar in some ways to the “problem-solving workshops” pioneered by Herbert Kelman (Kelman 1972; Kelman 1996) and other forms of Track Two diplomacy (Chigas 2003), but distinct in a number of important ways — can greatly advance efforts to reach mutual gains outcomes in the Arctic and other situations of public policy conflict.

Devising Seminars and How They Work

Originated by Roger Fisher and others in the 1970s, a devising seminar is an off-the-record, professionally facilitated, face-to-face problem-solving session, which can last for as little as one day or continue over an extended period (Hulet 2013). The idea behind such a seminar is to provide a setting in which constructive dialogue can take place among a mix of high-level stakeholders and nongovernmental representatives who otherwise would not have an opportunity to engage in face-to-face problem solving because of various political and institutional constraints.

Unlike Track Two diplomacy, which brings together nongovernmental actors to address questions in parallel to official forums, devising seminars — like the “parallel informal negotiations” discussed by Lawrence Susskind, Abram Chayes, and Janet Martinez (1996) — include both unofficial and official stakeholders, and bring people together in their personal rather than their official capacities. Devising seminars are not intended to produce

binding agreements. Instead, they help parties explore their differences, understand each other's interests, and generate "good ideas" — that is, strategies and responses that can meet the most important interests of key parties, while taking into account scientific or technical input. None of the participants' names are mentioned in any of the written products that emerge from a devising seminar, nor is their participation ever made public. Whatever good ideas emerge from a devising seminar must subsequently be integrated into formal deliberations by individual parties acting on their own.

When Roger Fisher began hosting devising seminars more than thirty years ago, he engaged PON faculty and influential people involved in difficult conflicts, ranging from hostage negotiations to international economic crises. During the half-day brainstorming sessions he organized, which were generally held over dinner, Fisher asked participants to envision actions or approaches that the parties involved might take the following day to open up opportunities for resolution, or to at least ease tensions. At the end of these seminars, Fisher, William Ury (a graduate student at the time), and others wrote up advisory memos reporting on the outcome of the seminar. These advisory memos were then sent to selected individuals who they thought might be able to influence the situation (Hulet 2013). The intent of these sessions was to bring together experts, often academics, to generate good ideas about how to break a deadlock or get out ahead of an issue, and to share these ideas with individuals who might be able to somehow move them forward (Hulet 2013).

Over the last thirty years, the MIT-Harvard Public Disputes Program has hosted a handful of devising seminars on a range of topics, including the social responsibility of multinational corporations, the safety of genetically modified organisms, the land claims of indigenous peoples, and the concerns of disadvantaged communities in the United States adversely affected by large manufacturing facilities. During this time, the devising seminar approach has evolved. Seminar conveners now try to engage the relevant stakeholders in joint fact finding and collaborative problem solving rather than relying on what outside experts suggest (see Hulet 2013). This involves a careful process for identifying stakeholder representatives and involving them in agenda setting. Such an approach is a lot closer to the ongoing problem-solving workshops hosted by Herbert Kelman (see Kelman 1972, 1996). In contrast to Kelman's problem-solving workshops, however, devising seminars put more emphasis on bringing the full array of involved or potentially affected stakeholders together in their personal capacities.

The Key Components of a Devising Seminar

Devising seminars can take many forms. They may consist of one meeting or a series of meetings and may happen over one day or an extended period of time. While devising seminars may vary to some extent in how they are

structured, they share several key elements. Each is characterized by a similar purpose and method of preparation, including a stakeholder assessment process. Each also provides a professionally facilitated private forum in which participants engage in their unofficial capacities. Finally, each seminar should produce a final report intended to disseminate the ideas generated through the process.

Purpose

A devising seminar often is initiated at the request of a decision-making body that is stymied in its dispute resolution efforts. The purpose of a devising seminar is to invent mutually advantageous proposals in response to an existing or potential conflict. The process does not seek to produce formal agreements. Participants are asked to put forward ideas without committing to them in their formal capacity. They are urged to suggest actions that could gain the support of most, if not all, of the stakeholders involved in the situation. By encouraging participants to brainstorm and invent mutually acceptable packages (and to provide explicit reasons or evidence to back them up), devising seminars create a setting in which people can imagine possibilities they otherwise might not be able — or willing — to consider (Susskind 2014).

Preparation

To be successful, a devising seminar requires substantial preparation, including the completion of a full-blown stakeholder assessment. A stakeholder assessment involves one-on-one, off-the-record interviews with a wide range of individuals, including representatives of government entities and organizations involved in the dispute, as well as technical and scientific experts who can provide well-informed perspectives on what is known and not known about the issues in question.

Interviewers ask stakeholder representatives to share their perspectives, interests, and concerns as they pertain to the issue. All the information that interviewees share must remain anonymous; if interviewees are to be frank, they need to be assured that what they say won't later be used against them. The interview findings are recorded in a stakeholder assessment report, with responses anonymized and usually categorized by stakeholder group. To ensure accuracy and to be certain that critical information is not missing, the team conducting interviews must allow all interviewees a chance to review and suggest revisions to the draft report.

Once finalized, the report is shared with all devising seminar participants in advance of the workshop. Seminar participants are asked to read the stakeholder assessment report carefully prior to the workshop so they can arrive at the seminar already informed about each other's views and concerns.

Stakeholder assessments completed prior to devising seminars serve several functions. They provide stakeholders a chance to clarify their own perspectives. They also provide a way for stakeholders to share their

interests and concerns with other participants prior to the workshop. This allows everyone to begin with a clear understanding of all participants' concerns, which also saves time during the actual seminar because it eliminates the need to go around the table and ask everyone to summarize his or her views. Additionally, during interviews, stakeholders can identify informal and unofficial representatives to participate in the seminar on their behalf.

The process of completing the interviews, distributing a draft, revising it, and sharing the final stakeholder assessment can easily take several months to complete, especially when the parties are scattered around the world. Sufficient time must be allocated for this critical preparation phase.

Participants

Devising seminar participants should include representatives from most if not all stakeholding parties. They should also include a range of technical or scientific experts who can offer well-informed answers to any factual questions that arise. Engaging influential stakeholders in addition to technical experts (rather than just engaging technical experts, as did Fisher in his original devising seminars) is advisable for several reasons. First, engaging people who understand completely the constraints that disputants face will increase the likelihood that the ideas put forward are "actionable." Additionally, successfully convening influential actors involved in a difficult situation to imagine new ways of interacting can lay the groundwork for future collaboration and increases the likelihood that whatever mutually acceptable ideas emerge will have advocates willing to fight for them.

Professional Facilitation

Skilled facilitation by a professional neutral is critical to the success of a devising seminar. Facilitators serve several essential roles. They must create and maintain an environment in which all the parties can think creatively and work together to envision new responses. To do this, facilitators need sufficient knowledge of the topics being discussed to be able to guide the conversation and recognize when clarification or further information is helpful. At the same time, they must remain neutral on the substance of the issues throughout the preparation, execution, and follow-up to the seminar — this neutrality is essential for maintaining the trust of the participants and ensuring that participants feel ownership of the proposals that emerge.

Facilitators must also help participants communicate effectively. They can do this by watching for nonverbal cues, such as body language, that might convey additional information about what is — and is not — being said and give insight into how listeners are reacting to other participants' statements. They can also listen for and tactfully call attention to overlapping interests among the parties and help participants clarify vague or half-formed but potentially useful ideas. Additionally, the facilitator should shepherd the conversation toward a mutual gains solution by reminding

participants about the purpose of the seminar and helping them see opportunities for creating value. As Roger Fisher put it, the power of a neutral facilitator stems from helping involved parties work out ingenious solutions that reconcile the legitimate interests of all sides (Fisher 1983).

Private Forum

One of the most important qualities of a devising seminar is the confidentiality it provides. Generally following Chatham House Rule (see Chatham House Rule 2015), devising seminars are held off the record and without observers or media present. The facilitation team takes notes throughout the workshop to capture the key points of agreement and ideas that emerge, but nothing is attributed to any individual, and participants are not identified in any of the publicly available workshop materials. This privacy encourages participants to “think out loud” and consider new ideas, even if those ideas have not been officially vetted. It can allow participants to put aside their typical party-line arguments and to explore creative options, without fear of retribution from their constituents. This confidentiality can also allow individuals who do not want to be visibly associated with a given issue or point of view to participate in developing new proposals.

Unofficial Participation

Participants in a devising seminar come together to generate good ideas and new options, not to reach agreements or make decisions. To encourage this, facilitators ask them to engage with each other in their personal rather than their official capacities. This makes it easier and safer for involved parties to develop, express, and consider new ideas. It also increases the likelihood that participants will engage on an equal footing, and thus encourages the active participation of less powerful stakeholders.

Product

The final elements of a devising seminar are the production and dissemination of a summary report. The summary report should share the most important ideas and points of agreement that emerge from the discussion. This report can take many forms, from a single page memo directed to a specific person or group, to a more general summary of the ideas generated that can be shared broadly.

In some cases, the summary report’s intended audience may be identified well in advance. In others, the audience may not become clear until after the process. Regardless of the exact form the report takes, the facilitation team should draft it based on the notes taken during the meeting. To provide necessary context, the summary report often describes the devising seminar, the institution that convened it, and the facilitation team, and lists the general categories of people who attended. Individual seminar participants should not be identified, and the ideas in the report should not be attributed to any individual.

Before it is finalized and distributed, the draft summary report should be shared with all the devising seminar participants for their review to ensure that it accurately captures the ideas discussed. The summary report is a valuable product: the ideas it contains have been generated through a process of collaborative problem solving, which gives stakeholders greater confidence that these options can generate widespread support.

The Devising Seminar on Arctic Fisheries

Recognizing the challenges facing a wide array of Arctic stakeholders, the Program on Negotiation at Harvard Law School and the Massachusetts Institute of Technology Science Impact Collaborative hosted the Devising Seminar on Arctic Fisheries in September 2014. The seminar brought together twenty-four participants for two days to discuss emerging risks to the Arctic fisheries, gaps in basic scientific understanding about Arctic ecosystems, and possible strategies for implementing a precautionary approach to the future of Arctic fisheries.

Participants included representatives from all the Arctic Council member nations — Canada, Denmark (via Greenland), Finland, Iceland, Norway, Russia, Sweden, and the United States — as well as representatives from a range of science organizations, nongovernmental organizations (NGOs), indigenous peoples, and relevant industry groups. The seminar's fundamental goal was to identify good ideas that could inform decision making by governments and various official bodies whose actions could either threaten or protect newly accessible areas of the Arctic.

Before the workshop, the facilitation team from PON and the MIT Science Impact Collaborative completed a stakeholder assessment. This involved interviewing more than forty people from a broad range of stakeholder groups around the world who have long-standing interests in the Arctic. During interviews, which were conducted on a not-for-attribution basis, interviewers asked stakeholders to express their perspectives on seven important topics: (1) new risks to Arctic fisheries posed by retreating sea ice; (2) strategies for protecting fish stocks; (3) gaps in scientific knowledge relevant to Arctic fisheries; (4) the possible need for new monitoring systems; (5) the unique concerns of indigenous communities; (6) techniques for reducing the impact of oil spills; and (7) the possible need for new treaties or institutional arrangements to protect Arctic fisheries. We incorporated the results into a thirty-page document entitled "Devising Seminar on Arctic Fisheries Stakeholder Assessment," which summarized the views of each major category of stakeholders on each of the seven topics. We then circulated the draft stakeholder assessment to all interviewees for their comments prior to finalization.

Once the stakeholder assessment was complete, PON sent formal invitations to several representatives of each of the major stakeholder categories. The two-dozen participants who agreed to attend included

representatives of every Arctic Council nation, the fishing and oil and gas industries, indigenous peoples (such as the Inuit and Saami), environmental NGOs, and scientific and research organizations. Prior to the devising seminar workshop, we shared the stakeholder assessment report with these participants. Participants were encouraged to familiarize themselves with the assessment before the event and to come ready to brainstorm mutually advantageous options and ideas, rather than to rehash the past or rehearse official positions.

The event itself included an informal dinner, during which people were encouraged to meet each other, and a formal full-day brainstorming workshop the following day.

The ground rules for the devising seminar were simple: with the help of a professional facilitator, the group was asked to search for possible responses to each of the seven topics (the same topics stakeholder assessment interviewees were asked about) and to generate ideas that could gain unanimous or nearly unanimous support from everyone present. Nobody made speeches or officially stated their stakeholder positions. We encouraged participants to take part in their personal rather than official capacities. They were assured that no names would be appended to any workshop materials, including the final summary report. No press was in attendance, and no photos were taken. These protections encouraged freewheeling problem solving: the participants did not have to fear that their comments would get them in trouble with their constituencies or the public.

Participants sat at a horseshoe-shaped table, facing each other. The facilitation team sat at a table at the front of the room. As the discussion unfolded, the facilitation team captured points of agreement on a large overhead screen that everyone could see. At the end of the discussion of each topic, the facilitation team offered a summary of emerging agreements, which participants could respond to and help clarify.

By the end of the session, many participants expressed surprise that so many points of agreement had emerged. Some of the ideas for managing Arctic fisheries amid the uncertainties created by climate change that participants agreed on included:

- The risks to Arctic fisheries need to be carefully differentiated in terms of risks affecting different geographic zones (e.g., Central Arctic Ocean as compared with peripheral/sub-Arctic seas), risks to existing fisheries versus potential/future fisheries, and risks that are specific to Arctic fisheries and those that are much broader than or external to Arctic fisheries.
- Significant investments of money, time, and resources are required to address major gaps in scientific understanding and monitoring of Arctic fisheries and associated ecosystems. This will require collaboration and coordination among research groups and stakeholders. A new

research organization specifically dedicated to Arctic studies may be needed.

- Involved parties should commit to ensuring that the voices of indigenous people are heard, understood, and valued. Two-way transfer of knowledge between indigenous peoples and other decision makers is necessary.
- A precautionary approach to managing Arctic fisheries should be taken while building up a scientific knowledge base. Interim arrangements are needed to coordinate research and monitoring, facilitate ongoing communication, and prevent unregulated fishing in newly emerging areas. Any interim measures should incorporate a clear trigger that would signal a move from interim measures to the next phase of fisheries management.
- While new arrangements may be necessary, regulatory regimes and other arrangements that are already in place could be quite helpful in addressing emerging concerns about Arctic fisheries management.

The summary report was presented at the Second Arctic Circle Assembly, a meeting of more than more than one thousand participants from Arctic nations convened by Ólafur Ragnar Grímsson, the president of Iceland, in Reykjavik in October 2014. The results were also presented at the Arctic Frontiers Conference in Norway in January 2015. Importantly, the document is now in the hands of the senior leadership of each of the Arctic Council countries, the Indigenous Peoples Organizations with Permanent Participant status in the Arctic Council, and many of the most active scientific and civil society groups with interests in the Arctic. These entities can cite or draw on the good ideas in the summary report in any way they choose. Stakeholders can advance these ideas with the confidence that they have wide-reaching support because they were generated through a collaborative effort involving representatives of most key stakeholder groups, albeit unofficially.²

Organizing Devising Seminars: Lessons Learned

Based on our experience with the Devising Seminar on Arctic Fisheries and past seminars, we have learned the following lessons.

Skilled Facilitation

A skilled and knowledgeable facilitation team is critical. It takes a team of professional neutrals with substantial background in the relevant issues and an awareness of the institutional dynamics involved to produce a useful stakeholder assessment. The facilitation team takes on even greater importance during the devising seminar itself. They must frame and enforce ground rules with the permission of the participants, manage the group's time,

produce a rapid and accurate summary of key points of agreement, know when and how to introduce scientific input from the range of participating technical experts, and be able and willing to disseminate seminar findings to other forums without taking credit for the group's success.

Trained facilitators know how to draw out hidden points of agreement and identify disagreements that must be addressed. They know how to draw in participants who prefer to stay on the sidelines and use one-on-one conversation to help participants make stylistic adjustments that will enhance their effectiveness. Such activities go well beyond the usual role that moderators play in most international discussion groups.

Adequate Time

It is critical to set aside sufficient time. Depending on the scale of the issues and the stakeholders who need to be contacted (how many and how difficult they are to reach), preparing a stakeholder assessment can take months. The interval from the time stakeholders see the stakeholder assessment report until the actual date of a devising seminar needs to be long enough to allow potential participants to make the necessary arrangements to attend. The effectiveness of a devising seminar requires that enough time be allocated for preparation, as well as for the seminar itself.

Informal, Confidential Problem Solving

Creating space for off-the-record, informal problem solving is enormously valuable. One of the most unusual and valuable aspects of a devising seminar is that it provides an off-the-record opportunity for stakeholders and technical representatives to engage informally to brainstorm and envision new approaches to difficult problems. Giving participants opportunities to engage with each other in personal rather than official capacities and on equal footing nurtures this brainstorming process. Facilitators should also encourage participants to be open to new ideas. Additionally, any documents emerging from the seminar must not name the participants — this will alleviate participants' concerns that they will experience backlash from their constituents.

Packaging Agreements

The devising seminar should focus on “packaging” agreements. The seminar seeks to produce a consensus agreement, proposing ideas and approaches that could gain widespread support, not just a compilation delineating the interests of each stakeholder group. So the emphasis needs to be on developing acceptable ideas — that is, not suggestions that appeal only to the person offering them, but rather suggestions that simultaneously meet the interests of all (or nearly all) of the other stakeholders.

In some situations, parties may reach agreement about what should be done to address a specific issue; in other situations, consensus hinges on encouraging the parties to make trades across issues (Susskind and

Cruikshank 1987). Not every party cares as much about every issue. So one group of stakeholders might be willing to accept a less than ideal way of handling one issue as long as they can count on achieving what they want on issues of greater concern to them. For this to work, the whole group must work through all the issues on the agenda before anyone is asked to commit to anything. Either the parties agree to a package that covers the full agenda or there is no agreement at all. In this context, making sure that participants work through all issues before trying to reach agreement is critical to achieving consensus on suggested approaches.

Number of Participants

Devising seminars are not constrained to small groups of participants. Our experience suggests that fairly large numbers of participants can successfully engage in the process as long as capable facilitators set clear ground rules. The number of participants will influence the amount of time required to move through issues and therefore should be factored into the time allocated for the seminar.

Additional Considerations

In addition to the above lessons learned, we suggest the following to any group or organization thinking about organizing a devising seminar.

1. Be prepared to invest the time and money necessary to prepare a serious stakeholder assessment, or don't bother. In the eyes of the stakeholders, the assessment gives credibility to the seminar. It also allows seminar participants to focus on problem solving rather than what might be called "station identification" (e.g., stating and restating their positions).
2. Be thoughtful about who you invite — not just in terms of the categories of groups represented, but also with regard to the capacity of the individual participants to engage in informal brainstorming.
3. Well-thought-out ground rules are crucial. We offer example ground rules (mostly for illustration purposes) in Table One.
4. Hold the event in a place likely to appeal to the people you are trying to attract. The venue should be comfortable and conducive to intensive work.
5. Use a video screen that everyone can see and react to as notes are captured and good ideas listed in real time. Gone are the days of hand-writing and flipcharts.

Finally, it is important to keep the goal of the devising seminar — to engage the most relevant stakeholders in informal, consensus-based problem solving, not just debate or conversation — front and center. The entire process must be designed with this aim in mind, and all participants must be encouraged to engage accordingly.

Table One
Sample Devising Seminar Ground Rules

1. Everyone will engage in their personal rather than professional/official capacity.
 2. There will be no speeches or statements of official positions.
 3. Participants will listen to each other actively and try to understand the perspectives and interests of others.
 4. All participants should search for “good ideas” that can gain the unanimous or almost unanimous support of all people present.
 5. The facilitator will manage the meeting, keep the discussion on track, and ensure all participants have a chance to speak and be heard.
 6. This session is off the record. There will be no names attached to any materials emerging from the seminar.
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Conclusion

Stakeholders who participated in the Devising Seminar on Arctic Fisheries and those who participated in previous PON devising seminars have reported that the seminars helped them consider more seriously the views of other stakeholders, generated options that ultimately shaped final and formal agreements, and helped them think more clearly about their own interests. Based on our positive experience and preliminary evidence, we believe this approach has great promise for advancing collaborative problem solving on a broad array of public policy issues — but only if host organizations and skilled facilitators take the initiative to organize and host such seminars. Additional research would help us better understand the effectiveness of devising seminars and what they add to the toolbox for collaborative problem solving. For now, we are encouraged by our experience and look forward to advancing this approach with our colleagues in the field.

NOTES

1. More information about the Program on Negotiation at Harvard Law School is available online at www.pon.harvard.edu. More information about the MIT Science Impact Collaborative is available online at scienceimpact.mit.edu.

2. The Devising Seminar on Arctic Fisheries summary report is available online at dusp.mit.edu/sites/dusp.mit.edu/files/attachments/project/AFDS_SummaryReport.pdf. The Devising Seminar on Arctic Fisheries Stakeholder Assessment report is available online at dusp.mit.edu/sites/dusp.mit.edu/files/attachments/project/AFDS_StakeholderAssessment.pdf.

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