Abstract

Purpose: The purpose of this paper was to examine a resource negotiation between a company and an Indigenous community and the negotiation approach used by the aforementioned company.

Design/methodology/approach: The data relating to a one year period was gathered from the community in a two stage process and subjected to content analysis.

Findings: The data indicated that the company primarily adopted a power-based negotiation approach, based on the company’s retention of power, inappropriate communication, representation and timeframes, the absence of rules and pretence at negotiation.

Research limitations/implications: This study was limited in that it only covers the communities point of view. Due to time and money limitations the companies point of view was not sought.

Practical implications: This study provides recommendations around community representation, communication and unity that could reverse the one sided

Originality/value: This paper adds to the literature as it looks at resource negotiation and the approach taken by a certain company from the perspective of an Indigenous community.

Keywords: Negotiation; Indigenous communities; interests approach; rights approach; power approach.

JEL Classification: G21; J30
PsycINFO Classification: 3630
FoR code: 1503
Introduction

A substantial amount of research has been dedicated to the topic of how resource managers can best communicate with Aboriginal communities when negotiating resource use agreements. There are several Australian and State Government protocols that offer guidelines for engaging with Aboriginal people; however, these established guidelines are too generic to be applicable or effective for resource negotiations or indeed the place-based interests of Aboriginal communities (Bauman 2006; Carter 2010). Carter and Hollinsworth (2008) state that there is a need for non-Aboriginal Australian companies to be exposed to the diverse aspects of Aboriginal culture and that more effective engagement and negotiation models can be designed that are tailored to individual Aboriginal language groups, communities and situations (Bauman and Williams 2004).

This paper explores one resource agreement from the perspective of one (language based and geographic) community of Aboriginal people. First, we provide an overview of resource negotiations with Aboriginal communities. We then discuss the theoretical background of this research by examining three negotiation approaches (interests, rights and power). We then develop three propositions regarding the influence of the three negotiation approaches on resource agreements. Next, we describe the exploratory qualitative study used to investigate these propositions with the community, before we discuss the results and their implications for Aboriginal communities and future resource negotiations.

Resource negotiations with Aboriginal communities

A fundamental goal for Aboriginal communities who deal with large scale mining development is to achieve a better standard of living for community members (O’Faircheallaigh 2006). Aboriginal people have a mandated right to be consulted and to share in resource benefits, this implies that consultation and negotiation processes need to be sensitive to Aboriginal social and cultural expectations, and not adversely affect social networks, relatives, and wellbeing (O’Faircheallaigh 2006). A study by O’Faircheallaigh and Corbett (2005), of a large number of recently negotiated agreements between Aboriginal communities and mining companies showed that the potential benefit of agreements have so far not been effectively realised. Even though there are advantages to resource companies, communities and the Government in maximising outcomes for Aboriginal people (i.e., certainty, stability and security), resource agreements to date have provided only limited net benefits to Aboriginal peoples (O’Faircheallaigh 2004; Stephenson 2003). It is therefore questionable as to what extent Aboriginal communities are effective players in the negotiation process (Carter 2008).

The right to negotiate requires all parties to negotiate in good faith and both parties to have the intention to come to an agreement (Burnside 2009; Stephenson 2003). Yet it provides only limited bargaining power for traditional land owners as the current legislation does not allow traditional owners veto rights over resource developments (Stephenson 2003). Furthermore, Aboriginal communities are faced with the pressure of having to complete the negotiation process and agree to the best possible outcome for the community within a six month timeframe. If an agreement is not reached within that timeframe, both parties can request arbitration before the National Native Title Tribunal (NNTT), they can grant a lease to mine the resource, refuse to grant a lease, or grant a lease with conditions attached. To date, there has never been a case to which the NNTT has refused to grant a lease and moreover, the
NNTT has generally not attached conditions to the granting of such a lease (O’Faircheallaigh and Corbett 2005). It is timely to question the nature and extent of Aboriginal people as effective players in the negotiation process.

A negotiation model developed in 1991-92 by the Cape York Land Council (CYLC), namely the ‘Cape York Model’, has been described as being a successful negotiation model that takes into account both Aboriginal interests and mining interests. This model produced substantial financial and other benefits to Aboriginal communities (O’Faircheallaigh 2004). The model suggests a two part agreement where government only becomes involved in the process after developers and communities negotiate the main points of the agreement. The model proposes seven stages: initiation of the process; creating a framework for negotiations; information gathering and community consultation; establishing a community-held position; establishing the conduct of the negotiation process and an in principle agreement; endorsement and signing of the agreement; and implementation (Mazel 2005). The best outcomes of the process are achieved when sufficient resources are available to conduct and implement the agreement, when adequate information is given to Aboriginal communities, the negotiations have the right people designated as participants (inclusive negotiations) and sufficient time is allowed to reach the agreement (Stephenson 2003).

The negotiation literature

Negotiation has been defined as ‘the process by which people with conflicting interests determine how they are going to allocate resources or work together in the future’ (Brett 2007, p.1). During the negotiation, it is often the goal or goals that define the issue that links both parties together and is the cause of any dispute (Lewicki et al. 2006). All negotiations have certain characteristics in common - there are two parties or more, there is a conflict of needs and interests between the parties, and the parties are involved in the negotiations by choice (Lewicki et al. 2007). Furthermore, there is an expectation of give and take, that parties prefer to come to an agreement rather than dispute, and that successful negotiations involve tangible (a monetary price) and intangible (psychological motivation) factors (Lewicki et al. 2007).

As the literature on negotiation processes with Aboriginal communities is fairly scant, this research explores the utility of the negotiation approaches of interests, rights and power proposed by Ury, Brett and Goldberg (1993) with, and from the perspective of, a specific Aboriginal community and resource negotiation. All three approaches (interests, rights and power) may exist in a single dispute and parties may choose to focus on one approach or move between the three approaches during the resource negotiation process. Each of the three approaches offers a different strategic alternative to the parties involved (Lytle et al. 1999).

Interests approach

Interests are defined as ‘the concerns that motivate proponents to advocate specific solutions; the “why” behind positions’ (Shmueli et al. 2008, p. 360). The positions taken by parties are aimed at achieving solutions to satisfy their interests (Shmueli et al. 2008). Negotiations about interests arise when each of the interdependent parties cannot agree on the interests relevant to each party such as the attainment of money, personal benefits or scarce resources (Harinck and Dreu 2004). Hence, an important part of negotiations is to gain an understanding of the other party’s interests as well as your own party’s interests. Future desires or aspirations are the basis for interest-based negotiations (Drake and Donohue 1996). Starting the negotiation by focusing on interests is perceived to be a low risk. The interest approach is seen as the best approach when the other party is cooperative and there is a solution that could possibly suit both parties (Lytle et al. 1999). The risk involved when opening negotiations with an interests approach is that one party might see this as a sign that the other is seeking settlement. An interest approach indicates that parties are attempting to learn the underlying needs, desires and concerns of the other party, and an attempt is made by both parties to identify ways to reach reconciliation (Lytle et al. 1999).
Rights approach

Focusing on rights implies that parties will try to determine how to resolve a dispute by applying a standard of fairness, contract, rules or law (Lytle et al. 1999). These standards must be negotiated in every situation as the standards vary in different situations (Colosi 2002). According to Tinsley (1998), the rights approach makes use of existing rules or laws to shape the nature of the negotiation even though parties might not agree on which rules or law to apply to the negotiation. This is likely to lead to a compromise that does not realise potential gains for both parties (Lytle et al. 1999).

A specific approach examined by Movius et al. (2006), makes use of the rights approach and endeavors to create an integrative outcome, namely, the Mutual Gains Approach (MGA). This approach focuses on creating value for all parties by recommending options that meet all parties’ needs and by using objective criteria to fairly divide gains (Movius et al. 2006). This approach has four stages, (i) prepare, (ii) create value, (iii) distribute value and (iv) follow through. The MGA especially focuses on finding rules or laws which can assist in making difficult decisions in the negotiation process. Preparation is the most important step as it encourages parties to understand their own key interests and the key interests of the opposite party. This step relies on the principle that it is important to turn single-issue negotiations into multiple-issue negotiations to achieve better outcomes (Movius et al. 2006). For example, mutual gains can be achieved by trading across issues that are valued differently by parties, inventing options neither party had thought of, creating contingent agreements to avoid future disagreements and by adding new issues for discussion. The division of the actual gains of the outcome should be postponed as long as possible and following through requires monitoring, alignment, relationship-building and dispute resolution provisions (Movius et al. 2006).

Power approach

Power in the negotiation context is ‘the capacity to control one’s own and others’ resources and outcomes’ (Magee et al. 2007, p. 201). The negotiator’s power is critical for success as it influences the allocation of rewards in an agreement (Kim et al. 2005). Indicators of power include rank, gender, status, intelligence and reputation (Watkins 2007). People who see themselves as powerful are less likely to listen to people who see themselves as having lesser power and can often act without serious consequences for their own party (Reardon 2004). Moreover, people with the least amount of power have a tendency to be very careful in their actions, which sometimes will put them at a disadvantage during negotiation. They are also more dependent upon the other party for their outcomes (Reardon 2004).

Five different types of power behaviours were noted by van Kleef et al. (2006), coercive; reward; legitimate; expert and referent power. Coercive power means that punishment can be given, or taken back for undesirable behaviour. Reward power involves the capacity to reward a desirable behaviour. Legitimate power is when the other party believes the opponent has the right to exercise power, for example, because of their status or rank. Expert power means the power gained from experience or knowledge. Lastly, referent power comes from the relationship with the other party - one party attains the admiration, identification or attraction of the other party and is seen as powerful.

In summary, negotiations take place because people, and the institutions they represent, want to progress their interests (Watkins 2007). Any decision about how to commence a negotiation process should be based upon a careful analysis of the parties, their goals and the situation (Lytle et al. 1999). Because of the minimalist outcomes received by Aboriginal communities from resource negotiations (Howlett 2010), there is need for research to identify the negotiation outcomes Aboriginal communities would like to achieve with resource companies, and the most appropriate negotiation approach for Aboriginal communities to achieve that outcome. Specifically, our research will attempt to understand the negotiation approaches exhibited by a resource company during an ongoing resource negotiation with a specific community from Queensland (hereafter referred to as the ‘community’). Hence our research question is ‘From the community’s perspective, what are the negotiation approaches adopted by the resource company when negotiating resource agreements?’
Research propositions

In order to address the research question the following three propositions are proposed:

<table>
<thead>
<tr>
<th>Proposition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1</td>
<td>The community is of the opinion that the resource company applies a primarily interest based approach to the negotiation process.</td>
</tr>
<tr>
<td>P2</td>
<td>The community is of the opinion that the resource company applies a primarily rights based approach to the negotiation process.</td>
</tr>
<tr>
<td>P3</td>
<td>The community is of the opinion that the resource company applies a primarily power based approach to the negotiation process.</td>
</tr>
</tbody>
</table>

Method

This research was suggested to the community by the researchers, and supported by the community. The community prefers to remain anonymous and has asked not to be identified as part of their consent to participate in the research and the standard Australian ethical guidelines for research with Indigenous communities. (see AIATSIS Guidelines for Ethical research in Australian Indigenous Studies 2012, Principle 13). This research method was also used by Foley (2004) and Ball and Janyst (2008) when exploring similar research. The purpose of this study is to understand the community’s perception of the negotiation approaches used by a resource company when negotiating resource agreements.

The study adopted a qualitative exploratory research approach which provided the researchers the opportunity and the flexibility to draw out and unravel a complex set of issues specific to the negotiation experiences of members of the community (Easton 2010). As discussed, the importance of place-based and in-depth research reflects the specific interests of a particular Aboriginal community, reflected by this research design. The sampling is a ‘purposeful’ sampling technique, chosen to work with those people most involved or interested in the outcomes of a specific negotiation.

The study adopted a two stage data-gathering process. Stage 1 consisted of two focus groups with members of the community and Stage 2 consisted of nine in-depth interviews with members of the community. Protocols were developed to control the contextual environment for both stages, ensuring that the data collected was consistent, accurate and valid. Members of the community were identified by one of the elders of the community and the researcher’s personal knowledge of the community and its members. Once each transcript was transcribed, thematic coding and cross case analysis were manually conducted to identify the major themes (Barbour 2008). Coding of data involved identifying within the transcripts and interviews the data that related to the research question around interests, rights and power. This type of content analysis is described by Holsti (1969) who suggest this technique is an objective and systematic approach to identifying the characteristics of data, from which inferences can be drawn. This is supported by Weber (1990) who states that content analysis is a valid research method which uses a set of procedures to make valid conclusions from text. After coding the data, themes were identified that best described the data found and how they represented interests, rights or power in negotiation. Themes were verified with all community members who agreed that the themes matched their perspectives about the negotiation.

Tables 1 and 2 describe the themes, and rate the themes as strong, medium, weak or no comment. The themes were rated on the grounds of (i) how often the themes were mentioned within the focus groups and interviews and (ii) the strength of the discussion. To ensure confidentiality and for ease of reference, focus groups have been referred to as FG1 and FG2 and as such do not identify individual focus groups participants. Interviewees are referred to as Interviewee (IN) 1, 2, 3, 4, 5, 6, 7, 8, and 9. The results of the focus group data followed by the interview data are presented in the following sections.
Findings

Focus groups

The four identified themes pertaining to the negotiation process underpinned by the interest, rights and power approaches are shown in Table 1.

Table 1: Focus group summary of identified themes

<table>
<thead>
<tr>
<th>Themes</th>
<th>FG1</th>
<th>FG2</th>
<th>Total comments</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Inappropriate community representation</td>
<td>S</td>
<td>S</td>
<td>6</td>
<td>S</td>
</tr>
<tr>
<td>2 Company has all the power</td>
<td>S</td>
<td>S</td>
<td>6</td>
<td>S</td>
</tr>
<tr>
<td>3 Communication with community</td>
<td>M</td>
<td>S</td>
<td>9</td>
<td>M-S</td>
</tr>
<tr>
<td>4 The timeframe set by the company</td>
<td>M</td>
<td>S</td>
<td>8</td>
<td>M-S</td>
</tr>
</tbody>
</table>

S=Strong Support, M=Medium Support, W=Weak Support, NC No Comment

The first theme identified, with strong support from both focus groups, highlighted the inappropriate community representation during negotiations. For example, the barrister representing the community was paid by the resource company. Certain members of the community saw this as a conflict of interest, as shown by this quote from FG2, ‘this is the person who works for us, you gotta be mindful to, there is a conflict of interest here, who is paying him? The company we are negotiating with! The solicitor and the company, when I went on the plane, they were all sitting together. So he is on something like AUD$300 an hour and they also send their own solicitors, to make it seem he (the barrister) is speaking for us.’ The other issue in relation to fair representation for the community was that representatives frequently do not have the best interests of the community at heart and these roles are not filled by the community’s ‘own’ people. FG2 cited, ‘the mining companies they will always have an Aboriginal project officer, but he is from another tribe, he is not one of ours. He is on the payroll and his job is actually to push the deal through to…’. ‘They don’t give you the chance to appoint your own person to that position’.

The second theme identified, with strong support by both focus groups, is the perception that the company leveraged its power by making threats to the community that they either agree with the outcomes proposed or end up with no agreement but the resource company retaining the right to use the land. This is illustrated by FG1, ‘if we don’t agree on a price the government is gonna put its bid in,... there was only one inevitable outcome and it wasn’t going our way,... if you don’t do it then someone is gonna take it anyway. So that’s their idea of negotiating mind you’. This was also the sentiments of FG2, ‘that was just their final offer and that was it. ... they had us where they wanted us really, if we didn’t agree with what we got they just wait and get it through government’.

Thirdly identified, with medium support from FG1 and strong support from FG2, was the theme around the lack of understanding from the company of the community’s interests. The focus groups revealed that the community felt the company did not communicate with them in a clear and interruptible manner. The company used language that was not easily understood by the community and made them feel they were not being treated fairly and honestly. According to FG1, ‘they all said these big things very fast’. This was supported by FG2 which stated, ‘they talk in riddles and they’ll beat you at every turn’.

The final theme highlighted was the limited timeframe set by the company for the resource negotiation to be finalised, with medium support by FG1 and strong support by FG2. The community felt they were rushed into making their decisions as the timeframe did not allow them the opportunity to discuss the information with their families. FG1 stated, ‘they wanted it over and done with as quick as possible’. FG2 extended this argument by stating, ‘they wanted it
done in their time, not our time’, as well as, ‘we were actually rushed into making decisions without bringing the information back to family groups you know?’

**Interviews**

Four major themes were identified in the interviews, depicted in Table 2. The first theme that emerged with the overwhelming strong support by the interviewees was that the resource company held all the power during the negotiations. This made the community feel that their interests were not upheld, and they were forced into agreements set by the company. IN2 cited ‘The company has all the power big time, they are negotiating totally from a power-base.’ IN7 expressed an opinion that ‘well no matter what you negotiate the company is always gonna come out on top, cause if they’re not making a profit you’re not gonna get anything.’ IN9 felt that ‘If we don’t agree with what the company wants us to agree with they will get it another way, and we’ll end up with nothing.’ The general consensus of the participants was that they felt that their interests were ignored and they end up with an outcome that does not look after the community’s best interests.

**Table 2:**

<table>
<thead>
<tr>
<th>Themes</th>
<th>IN1</th>
<th>IN2</th>
<th>IN3</th>
<th>IN4</th>
<th>IN5</th>
<th>IN6</th>
<th>IN7</th>
<th>IN8</th>
<th>IN9</th>
<th>Total Comments</th>
<th>Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Company has all the power</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>NC</td>
<td>S</td>
<td>S</td>
<td>10</td>
<td>S</td>
</tr>
<tr>
<td>2 Absence of rules</td>
<td>S</td>
<td>S</td>
<td>M</td>
<td>M</td>
<td>S</td>
<td>NC</td>
<td>M</td>
<td>M</td>
<td>S</td>
<td>11</td>
<td>M</td>
</tr>
<tr>
<td>3 Communication with community</td>
<td>S</td>
<td>NC</td>
<td>NC</td>
<td>S</td>
<td>NC</td>
<td>S</td>
<td>NC</td>
<td>S</td>
<td>S</td>
<td>6</td>
<td>M</td>
</tr>
<tr>
<td>4 Company pretence</td>
<td>S</td>
<td>S</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
<td>S</td>
<td>S</td>
<td>5</td>
<td>M</td>
</tr>
</tbody>
</table>

S=Strong Support, M=Medium Support, W=Weak Support, NC=No Comment

The second theme highlighted with medium support from interviewees is the absence of rules or laws during the negotiation. This lack of rules makes the community feel as if there was little equality in the negotiation process and consequently leading to an outcome unfair to the community. IN2 stated, ‘I don’t know of any law that is used during the negotiations.’ IN9 pointed out that, ‘The company doesn’t go by the rules, or laws, they don’t allow us to know what our rights are. We need people that know the rules to apply them for us.’

Next, and with medium support, was the lack of communication from the resource company with the community. For example, the company was perceived as not communicating all details to the community and also communicating in language difficult to interpret by some community members. IN8 pointed out ‘I reckon that they should sit everyone down and tell everyone at the same time instead of having one person go here and another person go there, because it’s just like Chinese whispers by the time it gets to you and how do you know what’s true and what’s not?’ IN6 stated ‘They need to talk at our level, we don’t know what they mean. I like to see them talk in a language we know, you don’t want to ask what they mean all the time.’

The fourth and final theme identified with medium support from interviewees was regarding the company’s pretence at negotiating. Interviewees generally believed that the company just wants to be seen to be looking after the community’s interests; however, the perception was that the company was only concerned with ensuring its own interests were accounted for. As IN1 cited ‘The company has been pretending, they weren’t really interested in our needs. They were there for show.’ IN2 pointed out, ‘Their (the company) main and only concern is that their shareholders have a good return on their investments, there is not much in the sense of corporate social responsibility.’ This statement found further support from IN3 who stated, ‘They (the company) are not really interested in the blackfella at all. There only here to make money.’
Discussion

This study sought to determine, from the opinion of the community, the nature of the negotiation approaches adopted by the resource company when negotiating resource agreements. The two strongest themes as they were identified by both the focus groups and the interviewees are examined next, followed by a discussion of the remaining four themes with either support from focus groups or interviewees.

The company retains all the power

The strongest theme, from both the focus groups and interviews, was the community perception that the company asserted all the power during negotiations. The company made threats to force the community to agree to outcomes, made the community feel that their interests were not important, and that the company used its influence to advance its own interests. This theme is aligned with the power approach, as threats are a display of power behaviour (Pruitt, 1983). More specifically, the company exhibited coercive power, that is, that punishment can be given, or taken back, for undesirable behaviour (van Kleef et al. 2006). This was seen when the community referred to the company's strength (its money, size, Government support) to force the community to agree with the outcome the company has defined.

Communication with the community

Again both focus groups and interviewees strongly suggested that the communication process was lacking. The community felt that the company did not provide them with all the relevant information and used language which was hard to understand for some community members. The company was seen as having more information which enabled them to make more informed decisions than the community throughout the negotiation process. The literature states that one of the factors influencing a good outcome is adequate information provided to a community (Stephenson 2003) and the lack of information provision can be perceived as exhibiting a power approach by the company. Indeed, O’Faircheallaigh (2006) states that in order to prevent harm to Aboriginal social networks and Aboriginal people’s wellbeing, the consultation and the negotiation process needs to be sensitive to Aboriginal ways of being.

Inappropriate community representation

The focus group data also found that there was a lack of community representation during the negotiation process. The community felt that employment of representatives by the company (i.e. the barrister) constituted a conflict of interest and the representative might not have the community’s best interests at heart. This could be interpreted as the resource company exhibiting a power approach by maintaining control over the community’s representatives. Consistent with the literature, power is defined by Magee et al. (2007, p. 201) as, ‘the capacity to control one’s own and others’ resources and outcomes’ and the approach is seen as a power-based negotiation approach.

Timeframe set by the company

The focus groups also identified that the timeframe determined by the company was of real concern. The company could be conceptualised as taking a rights approach in this instance, as the company is following the stated law. There is a six month timeframe for both parties to come to an agreement in the negotiations, after which either party can request arbitration (Stephenson 2003; Burnside 2008). However, the community feels that the timeframe does not allow sufficient time to disseminate the information to their families and other community members and discuss the proposed negotiations. Stephenson (2003) stated a six month timeframe is not adequate for Aboriginal communities to come to an agreement which is beneficial for them. Retaining this strict deadline is aligned with a power approach as the company is not prepared to consider an extended timeframe for community consultation.
Absence of rules

The interviews identified a (perceived) lack of rules during the negotiation process. Tinsley (1998) states that the rights approach to negotiation must involve the use of existing laws and rules. The community did not feel they were treated fairly during the negotiations as there were no set rules or laws to guide the process, nor was there an explanation of any rules (if they existed). This could be seen as a failure by the company to explicitly follow a rights approach as the company decides which rules to use and/or to discuss these rules with the community.

Company pretence

Finally, the interview data revealed the community’s perception of the company “going through the motions” or wanting to be seen to be negotiating. The community felt that the company was trying to portray a positive image while in reality not being concerned with the community’s interests. Research by O’Faircheallaigh (2004), has shown that the genuine level of concern from the resource company for the Aboriginal community has a large influence on the outcome of the negotiations. The community’s feelings that the company was not interested in the community’s interests, may have a large influence on how the outcome of the negotiation is seen by the community.

Conclusion

After analysing the data from the two focus groups and nine interviews, we conclude that a predominately power-based approach was used by the resource company in this negotiation of a resource agreement. Thus, $P_3$ was found to be the most supported research proposition. Overall, the results of this research offer a template for assisting in understanding the negotiation approaches used by the resource company during resource negotiations. In particular, it has identified specific power issues which can be redressed through a better designed negotiation approach.

This research has contributed to the existing resource negotiations knowledge from a specific Aboriginal community’s point of view and thus provided a basis for future research. Negotiation is an important factor when companies have an interest in resources that are on Aboriginal peoples traditional lands. The negotiation approach chosen by the company for the negotiations with an Aboriginal community is of great importance to the outcome, as well as the ongoing relationships between the community and the resource company, once the agreement is implemented. It is hoped that the current results will stimulate additional research into the negotiation approaches used by companies when negotiating resource agreements with Aboriginal communities.

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References


