

## **Closing**

*Closing remarks:* L.Susskind

### **I. Relationship between Dispute Resolution and Deliberative Democracy**

L. Susskind reflected that deliberative democracy might be upstream of dispute resolution. Dispute resolution focuses on problems in the moment, when people need to make a decision and want input to break a deadlock. They need supplementary activity or an “additional” process of some kind to generate an informed agreement. On the other hand, dispute resolution practitioners seem to be worrying and wondering, “How many times are these people going to go through the same thing?” In order to prevent the same disputes from arising again and again, we ought to be thinking institutionally about changes, adaptations, and advances needed in the governance system. Therefore, in practice, we need to think about the system that produces each conflict and try to fold what we learn from one occasion into the long-term development of new institutional capacity. We are always reflecting on what we can suggest to those disputants with respect to the larger system they are part of. As a result of this Workshop, I think the practitioner involved will be more likely to think about whether the participants in any dispute resolution effort can be asked to work harder to understand why they believe what they believe. Deliberative democracy mandates that they deliberate at the individual level. Can they then engage in a process of deliberation with other representatives (who are doing what they can to speak for a group and not just their own concerns) to think more clearly, to wrestle with their underlying interests, so that they benefit fully from the possibility of reconceptualizing what is going on?

### **II. Criteria for Deliberative Democracy**

Deliberative democracy is a framework, a utopian ideal and not something that has to be achieved tomorrow. It does change what we think about, because in the dispute resolution profession I do not think we have stressed enough the quality of deliberation, systematic polling of more people with whom we do not communicate sufficiently, and the integration of multiple tools. When I asked whether the attributes of EIA were sufficient to meet the criteria for effective deliberation, I was asking if they met some minimal

threshold for moving people into a better deliberative and more democratic process. Although it adds a deliberative quality, it has many flaws. It breaks my heart that this was all we could come up to help us make more environmentally responsible decisions. The fact that it has been copied all over the world with little attention to whether it improve the quality of democratic decision-making is distressing.

### **III. Bias in Mediation**

In response to M. Hajer's question about biases, I think that dispute resolution has a bias towards inclusiveness. We want every process to include as many affected parties as possible. We can disagree on the best way of identifying who they are, but inclusiveness is an important ideal in our practice.

We also have a bias towards reaching agreement (not just understanding, clarifying differences, or laying out options). We reach agreement by helping people understand how they can best meet their own interests (by meeting the interests of others) and by helping them be realistic about what no agreement means for them. The option of dispute resolution or consensus building should be taken seriously because it might produce a better outcome (for all participants) than no agreement. We then work to produce a package with enough in it for all stakeholders to be able to agree. This is what we mean by "value creation."

We have a third bias towards meeting the needs of decision-makers. We put a premium on implementability. Therefore, we work within financial and time constraints, and we need a convener (with legitimacy) to authorize our activities.

We are biased towards tailored results that are situational and do not set precedents. We do not want other people in other situations to be bound by any dispute resolution results we happen to produce.

Finally, we are biased in terms of favoring a way of working that will leave improved interpersonal and inter-jurisdictional relationships in place.

#### **IV. Unjust Process**

I am struck by the notion that every time we make choices in the context of our work, we are inevitably unjust. One outcome of these discussions is that concerns about justice in deciding who is at the table, the opportunities they are given to speak, learn and reconsider, and the impact they have on decisions are more prominent than ever.