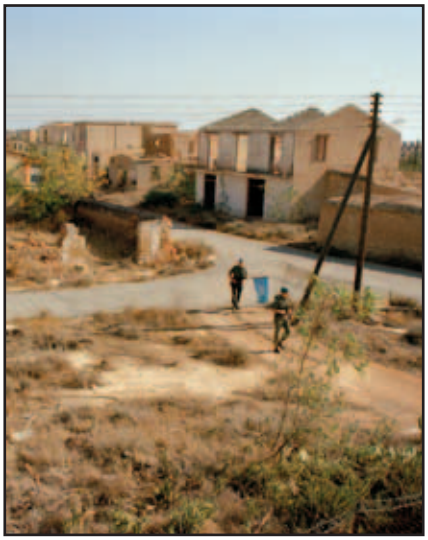
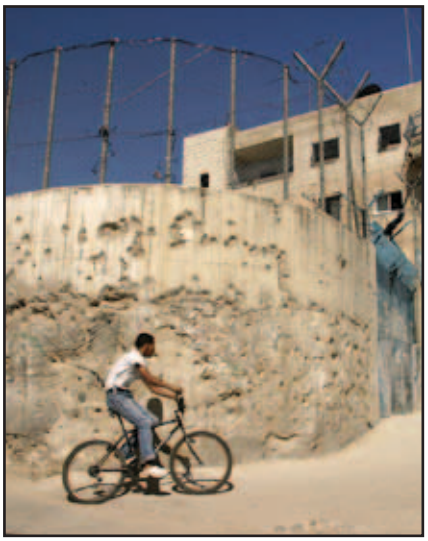
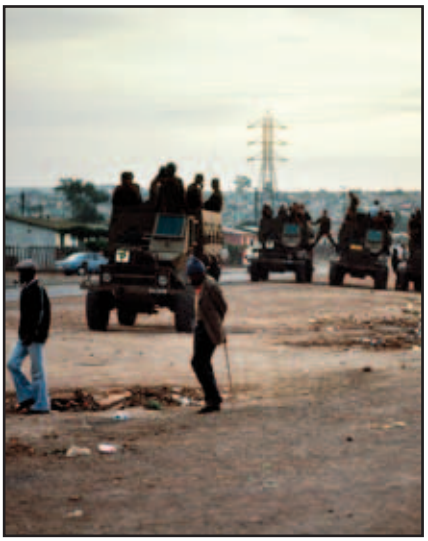
PIN·*Points*

The Processes of International Negotiation Program *Network Newsletter 34/2010*







The Impact of History, Memory, and Culture on Negotiation

Conflict and Context Change • Work of Memory • Transforming Conflict • Copenhagen Climate Conference – An Assessment • Community-Level Mediation in the Judicial Branch

IIASA International Institute for Applied Systems Analysis
www.iiasa.ac.at

From the PIN Steering Committee

Editorial

PIN will no longer be located in Laxenburg after this year. On January 1, our paths will part, as IIASA wants to limit itself to the technical aspects of its work, while we want to broaden our horizons to analysts and practitioners. During our 23 years at IIASA, we have published our 23 books and served as an ambassador and publicity agent for the Institute in our roadshows and publications.

PIN has tackled major problems and concepts associated with the subject of negotiation and pushed back the frontiers of knowledge about it. We have just published a book analyzing the blockages in the climate talks and ways to circumvent these (*Facilitating the Climate Talks*, 2010). One of PIN's earliest books was International Environmental Negotiation (1993), more relevant than ever. Two works tell how to negotiate with terrorists (since we do, anyhow) (*Engaging Extremists and Negotiating with Terrorists*, 2010). *Diplomacy Games* (2009) focuses on which types of formal models are useful for negotiation practice and analysis and in what ways. Another volume resolves the 'peace vs. justice' issue that has always plagued peacemaking (*Peace vs. Justice*, 2005), while yet another study reverses common thinking about the relation between escalation and negotiation (*Escalation and Negotiation*, 2005). *Getting It Done* (2003) revises current ideas about the nature of negotiations on international regimes, and three other works tell how to use national and professional culture in negotiation (*How People Negotiate*, 2003; *Culture and Negotiation*, 1993; *Professional Cultures*, 2003). Another study draws unique lessons from the exercise of preventive negotiations on a dozen issue areas (*Preventive Negotiation* 2003), while *Negotiating European Union* (2001) is the only work to date to have analyzed the EU as a negotiation forum. We could go on, but we are out of breath…

While our readership at IIASA is not as large as we would like, our publications have reached a significant audience outside the Institute and have been cited and used for teaching; the first edition of our flagship volume, *International Negotiation* (1993, 2003), has sold out and the book is now well into its second edition, with its successor, *The Sage Handbook on Conflict Resolution* (2009), also doing quite well. We have carried our message, by invitation and in our roadshows, to a good dozen and a half leading universities and another half dozen research institutes around the globe. Additional invitations are currently in the works and we will accept them, though unfortunately not as ambassadors for IIASA.

Within the Institute, PIN initiated a number of gap-bridging activities. We brought policymakers and practitioners to IIASA (e.g., the Theorists Meet Practitioners workshop, which drew 15 Ambassadors and 30 other diplomats, military officers, and government representatives). Furthermore, with its limited capacity, PIN was able to bring together IIASA scientists with policymakers and practitioners (e.g., the Caspian Dialogs brought together IIASA scientists and researchers from other think tanks with policymakers from the region).

PIN's objective is to discover more about the mechanisms, regularities, concepts and systems associated with negotiation, the primary mode of social decision-making in human interaction. We will continue to carry out our work, and will announce our new home in the next issue of *PINPoints*. You will continue to receive our newsletter and see our books appear. At an IIASA Council Meeting, former Director Leen Hordijk wanted IIASA programs to be able to say of themselves that they are the best in their field; we can say today (as we did then) that we indeed are the best international think tank program in the field of negotiation process analysis. We will continue to foster research and contribute new knowledge for a better understanding and practice of – as Howard Raiffa, IIASA's first Director, put it – the Art and Science of Negotiation.

Mark Anstey, Rudolf Avenhaus, Guy Olivier Faure, Fen Osler Hampson, Ariel Macaspac Penetrante, Paul Meerts, Mordechai Melamud, Valerie Rosoux, Rudolf Schüssler, Gunnar Sjöstedt, Mikhail Troitskiy, I. William Zartman

Contents

4 Connecting Context and Content – Why the Weak Can be the Winner
Why Uncertainty Can be an Asset and Why it Can be a Weakness

6 Memory and International Negotiations
Putting the Past Aside for a Moment to Resolve Conflicts, but Then Returning to Confront the Past in the Long Term

9 Copenhagen 2009: Success, Failure, or What?
How to Strategically Facilitate Climate Talks for the Future

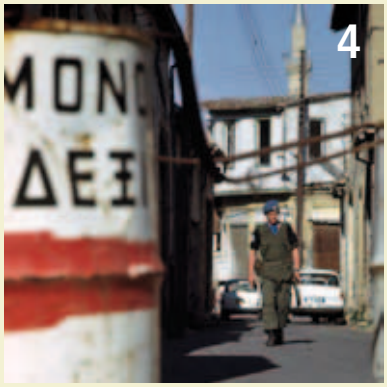
12 4th International Biennale
A New Approach to Commercial Relations –
Can Trade be Approached and Organized Differently?

13 Court-Annexed Mediation in the Philippines – Community Involvement in the Judicial System
Recommendations for Bridging the Gaps

16 Forthcoming Book on Climate Change Negotiations
Climate Change Negotiations – A Guide to Resolving Disputes and Facilitating Multilateral Cooperation

17 Netherlands Negotiation Network
Contrasting Private and Public Sector Negotiation Processes

19 Forthcoming Books on Terrorism
Engaging Extremists: States and Terrorists Negotiating Ends and Means
Terrorist Negotiations: Who Holds Whom Hostage?



Cover photos:
John Isaac | UN Photo
John Isaac | UN Photo
Snyderdf | Dreamstime.com
Azembishar | Dreamstime.com
Stephenie Hollyman | UN Photo
UN Photo/x

Connecting Context and Content – Why the Weak Can be the Winner

Trying to understand a negotiation process without its context is not helpful in explaining what happens, why it happens and when it happens. Despite this, most negotiation literature tends to either exclusively focus on procedure and process, parties, and people or on positions and products. Taking the environment of these phenomena into account certainly complicates matters, touching, as it does, on the tension between vertical and horizontal research: If you dig into the matter vertically, it becomes difficult to include much of its horizontal context. The same dilemma is found in negotiation. The risk is that the in-depth working groups appointed to negotiate on a given issue lose touch with related questions being dealt with in other committees. A good compromise might be reached, but the trade-offs are not necessarily used. Package dealing is not feasible and optimality can thus not be achieved.

The famous Chinese strategist Sun Tsu claimed that strategy entails the transformation of a situation in such a way that it becomes ripe for victory. In other words, you cannot resolve a problem without changing its context. Sun Tsu implied that conflicts arise from a particular situation and cannot be resolved unless the environment that generates the problem is dealt with. With reference to negotiation, this means that not everything is negotiable right from the start. In order to arrive at a solution, the context may have to be modified to create conditions that allow for the initiation of the process of exploration, bargaining and decision-making. The concept of the Mutual Hurting Stalemate (presented in *PINPoints* 11: 2-3 [1997]) could be of some help with regard to timing, i.e., on when negotiations ought to be initiated, considering that getting the relevant people around the table is often the most difficult part. However, the Mutual Hurting Stalemate is not applicable in every cultural context. The hypothesis that one has to suffer in order to be able to recognize that change is necessary may very well be a typically Western rationalist notion. In some cultures suffering is the highest privilege – he who suffers is a hero. In such a cultural context, suffering is more likely to aggravate the problem subject to negotiation than to resolve it.

Source: http://flickr.com/photos/bluefootedbooby

A copy of The Art of War by Sun Tsu, Special Collection, University of California Riverside.

Structural power asymmetry no longer guarantees victory (if indeed it ever did). Today, the weak also have missiles and if they do not, the adversary's planes can be used to destroy the towers of the mighty. The underlying logic can be turned upside down: In the new millennium, it is easier to control a state that is well-structured than to dominate a failed state. Why? Because there *is* nothing to control. Somalia, for example, is out of control and the most modern warships of the world cannot put an end to the pirates who launch their attacks from tiny boats. Winning a conventional war in Iraq was not particularly challenging. Controlling the country after the structures have collapsed is the problem. Chasing the Taliban out of Kabul was also not too difficult. However, who will be the winner in the end? An approach that has long been recommended but always rejected is now being implemented: Serious talks with the Taliban about power-sharing. Why? Because the context is so much in favor of the Taliban – and their willingness for sacrifice is so much stronger – that the structural power of NATO will lose out against the situational power of the 'weaker' party.

The less structured the opponent is, the more difficult it is to control him. In negotiation, this can pose both a problem and an opportunity. Remaining ambivalent until the very end comes with the risk of failing to reach an agreement. On the other hand, remaining ambivalent throughout most of the negotiation process can be very useful in keeping options open. And the more options and alternatives are available, the higher the process power is that can be generated. The British, for example, are extremely adept at keeping their hands clean for as long as possible, while working consistently to arrive at a "fair" solution, or at least one that is very fair for them. They combine flexibility (throughout the process and toward the people) with toughness (in the defense of their interests). This type of behavior is ingrained in their culture and language. Some negotiations *can* only end in an agreement, if they involve constructive ambiguity: Parties can interpret the final result in their own particular way and will therefore agree to it. Depending on the situation, uncertainty can sometimes be an asset or a weakness. For the weak, uncertainty is usually a strength, as it enhances their room for maneuver, while confining the effectiveness of their opponent with his more powerful resources. That is, ambiguity always favors the conceding party. The withdrawal of Israeli armed forces from occupied territories opened the opportunity to not withdraw from other areas, at least,

Source: Yutaka Nagata | UN Photo

United Nations Peacekeeping Force in Cyprus (UNFICYP) . A soldier of the 3rd Battalion Royal 22nd Regiment of Canada on foot patrol duty on an abandoned street in the Green Line near Paphos, II Gate.

Source: Jpatokal | Wikipedia

"UN Buffer Zone" warning sign on the south (Greek) side of the Ledra Crossing of the Green Line in Nicosia, Cyprus.

if one goes by the English version of Resolution 242 (not the French one).

Weaker parties can be winners if they exploit the context that is most favorable to them. A good example is the accession of the Republic of Cyprus to the European Union. The fact that the Greek part of Cyprus wanted to join the European Union was widely seen as the only incentive that could be used to reunify the Greek and Turkish parts of the island. The Turkish Cypriots seemed to be ready for unification as demonstrated in the results of a referendum at a later stage. The majority of the Greek Cypriots, however, did not support reunification with their fellow countrymen in the North, yet it was anticipated that the desire to become an EU member would wither the Greeks' resistance to a settlement. The EU, for its part, was of the opinion that a divided island with a strong military Turkish presence would generate instability and possibly create problems for Europe. The Southern Cypriots were of a different opinion, considering that a divided island kept the Turkish Cypriots out of both the government and the economy (the North is poor and the South is rich), while many landowners also profit from the separation. The Republic of Cyprus in the South used the context to emerge as the winner. The Greek Cypriots exploited the opportunity that the EU was in the midst of an enlargement process, which involved an additional eleven states. They convinced their compatriots in the Greek Government to threaten to veto an enlargement including Central Europe, if the EU did not initiate membership negotiations with Cyprus. Since EU membership of Central Europe was of far greater importance to the EU – especially Germany – than the accession of a unified Cyprus, the latter was able sneak in through the backdoor to become a full EU member. The opportunity to reunite Cyprus in a peaceful way was thus lost.

Another example of context change is the European Union itself. The bilateral French-German relationship in the second half of the nineteenth and the first half of the twentieth century did not foster stability, let alone an effective process of negotiation for resolving their differences. The World Wars were necessary to make Europeans realize that the formerly bilateral process had to be replaced by a multilateral process, or better, by a supranational one. In and by themselves, these crises did not suffice to propel the emergence of the European Communities. The threat emanating from the Soviet Union to its existence and the willingness of Germany to accept responsibility for the atrocities committed during World War II – combined with an internal balance between the UK, Germany and France, on the one hand, and the smaller and medium-sized powers, on the other – produced a context change that allowed negotiation processes to become the most effective tools in governance. Context and content became clearly interconnected and thereby optimized the effectiveness of the policy tool negotiation. This transnational negotiation process shaped the institutions of the Union which channeled the processes. In that sense, the European Union might very well be much more about these processes than about their content. Perhaps the process itself is more important than the question what the finalité of the Union will or should be. It is more about the road itself than about the targets envisioned.

The significance of context change for effective governance and negotiation was understood by the Swiss long ago. A fairly weak and landlocked country without natural resources, with two different religions and four official languages was previously one of the poorest European regions and is now one of the richest countries in Europe. For others, the light at the end of the tunnel only became visible at a later stage. During the peace negotiations in Paris in 1919, which resulted in the Treaty of Versailles, the French Minister of Trade and Industry suggested to not occupy the German Rhineland and Saarland, but instead to create a joint regime in which the French and Germans would collectively decide on the coal and steel in these areas. The chief French negotiator Clemenceau rejected this idea. However, the Minister of Trade and Industry had a young assistant. His name was Jean Monnet.

Paul Meerts

Further Reading

Zartman, I. William & Rubin, Jeffrey Z., eds. (2005). Power and Negotiation, The University of Michigan Press.

Source: Sebastian Zwez | Wikipedia (www.securityconference.de)

An example of context change in the European Union is the bilateral French-German relationship, 45th Munich Security Conference 2009: Dr. Angela Merkel (le), Federal Chancellor, Germany, conversing with Nicolas Sarkozy (ri), President, French Republic.

Memory and International Negotiations

What is the link between memory and international negotiations? To address this issue, at least three scenarios merit attention. The first scenario considers the role of memory within the framework of *conflict management*. In this context, negotiators aim to transform conflict from a violent into a political expression. In the second scenario, negotiators address the role of memory within the context of *conflict resolution*. Here, negotiators not only seek to limit and contain violent conflict, they also intend to resolve conflicting issues. Finally, the role of memory can be considered in terms of *conflict transformation*, in which negotiators aim to establish positive long-term relations between the conflicting parties. In this context, the objective is the profound transformation of the parties and their relationships, as well as a modification of the situation that created the conflict in the first place.

Conflict Management: Putting the Past Aside

The question of how to cope with the past is one that is systematically raised when international or inter-community conflicts come to an end. It is impossible for the conflicting parties to forget the suffering inflicted by the other throughout the course of the conflict. Consequently, negotiators have to take the diverging and often contradictory perceptions of the conflict into account. However, it is not particularly useful to exclusively focus on these perceptions. On the contrary, in order to move ahead, it is often crucial to put the past aside.

In the Middle East, the contradicting narratives of the Israelis and Palestinians on the creation of the state of Israel in 1948 are built on the negation of the existence of the other to bolster the justification of their own cause. Within the framework of the Oslo Process, the parties initially clung to their past legacies and repeated their demands for reparations and punishment as the basis of their position. Yet as Abu Ala'a declared following the initial exchange of grievances between the two sides, "Let us not compete on who was right and who was wrong in the past. Let us see what we can do in the future." Uri Savir recalls telling him, "I'm sure we can debate the past for years and never agree. Let's see if we can agree about the future." Indeed, as Zartman asserts, discussing the future actually means reconciling two rights, not re-addressing ancient wrongs (Zartman 2003). Robert Malley, who participated in the Camp David negotiations, shares this future-oriented perspective. He claims that the objective of any political agreement should be to not assess historical realities. "In the Middle East, each side develops a narrative of its own history. But negotiators cannot deal with representations that have been shaping the identities of the parties for decades." His conclusion is clear: "Firstly, the political conditions for peace [have to be dealt with]. Afterwards, a potential work on memory [follows]" (Malley 2001). Accordingly, when a conflict comes to an end, memory has to be put into brackets. The so-called "miracle" of democratic transition in Spain has often been presented as an example of a tacit agreement, which can be summarized in a few words: The future should be given priority and the past should be silenced.

Source: Eskinder Debebe | UN Photo

A warehouse facility damaged during the recent fighting located on the grounds of the United Nations Relief and Works Agency for the Palestine Refugees in the Near East (UNRWA) Headquarters.

Conflict Resolution: Dealing with the Plurality of Interpretations

However, disregarding the past in the long term is likely to prove ineffective. Apart from its immediate impact, a disregard for the past leaves many problems and misunderstandings unresolved. Furthermore, "oblivion" does not really act as a barrier that impedes the recollection of past painful events; in most cases, it only postpones a serious reflection on past events. That is, the mechanism of oblivion appears to have a negative effect on the relationships between the protagonists.

This is evident in the current situation in Bosnia. Since the end of the war, the awareness of belonging to different communities has been anything but attenuated. The promise of a joint future seems to have dissipated with the collapse of a united Yugoslavia. Past suffering and persecutions have come to light. Street names, hymns, and flags have been replaced and changes made to the content of textbooks. In other words, the past has undergone a process of reconstruction. The result is that Bosnia's identity groups are now characterized by their incompatible beliefs and views of each other. While the Dayton Agreement upholds a united Bosnian state, it also has fostered the subsistence of three separate territorial entities – a Serb, a Croatian, and a Muslim entity. In each of these communities, children already learn that the ag-

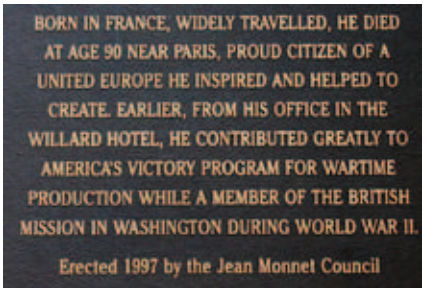
gression was initially perpetrated by the other, who continues to represent the enemy. When the different parties recall the same event, it is interpreted as a crime by one side and as a portrayal of glory by the other. Despite their divergences, all parties apparently share the same goal: To erase any memory that might encourage peaceful co-existence in the future.

It would be naive to consider the recognition of others' interpretation of the past from a normative perspective. The work of memory is a process that only the conflicting parties themselves can initiate. Clearly, states are reluctant to admit that violence was committed for their sake and in their name. Nevertheless, negotiators have to take into account the potential risk of a nationalist view of the past. Numerous examples demonstrate that this type of perception frequently leads to an escalation of violence and occasionally even to a resurgence of armed conflict. To be successful in the long term, negotiations to resolve a conflict must eventually address the past.

In this regard, the case of South Africa constitutes one of the rare examples of conflict negotiation in which the past with all its complexity and contradictions was confronted. The negotiations that made the transition from apartheid to democracy possible were explicitly based on the need to acknowledge "gray areas" that had occurred in the past and to undertake a joint "work of memory." To close the chapter of apartheid, a deliberate link was established between the proceedings of the South African Truth and Reconciliation Commission (TRC) and the granting of amnesty. To receive amnesty, an offender had to apply to the TRC, participate in its hearings and fulfill all its requirements, including the requirement of full disclosure. The purpose of this "restorative justice" was to provide healing and restoration for all concerned – for the victims in the first place, but also for the offenders, their families and the community at large. It would be naive to view the objectives of this approach with too much optimism. Memory work in post-1994 South Africa has above all been shaped by political constraints and, more specifically, by the balance of power between the parties. The issue of amnesty for human rights offenders was based on a political deal between the outgoing political elite (the National Party) and South Africa's new political power, the African National Congress (ANC). The TRC was in fact a compromise solution forced on the country by those in power who refused to surrender it without a guarantee that they would not be prosecuted once they stepped down. In the end, the TRC faced a lot of criticism and was surrounded by controversies and riddled with disputes. The principle objection to the TRC's approach was that it sacrificed to some degree the rights of the victims and survivors and their legitimate need for justice. Nonetheless, aside from its frequently described shortcomings, the TRC did at least have one merit: It opened the floor to the victims of both sides and provided them the opportunity to "tell their side of the story."

Source: A Tannenbaum | UN Photo

Apartheid - A segregated beach at Stranofontein near Cape Town reserved for 'White Persons only'.



Source: dbking | Wikipedia

Jean Omer Marie Gabriel Monnet (November 9, 1888 - March 16, 1979) is regarded by many as the architect of European unity. Never elected to public office, Monnet worked behind the scenes of American and European governments as a well-connected pragmatic internationalist.

Conflict Transformation: Reassessing Past Representations

The work of memory does not represent a normative model or a magic solution which can be applied to any given international conflict negotiation process. However, it can, in the long term, be a useful supplement to the series of political, legal, economic, and cultural tools generally used to produce forward-looking outcomes. In this regard, the Franco-German case is particularly interesting because it serves as an example of a long-term process of rapprochement. This process has been ongoing between France and Germany since the end of World War II and demonstrates that relations between former enemies can indeed be transformed. For over a century and a half, incessant reminders of past confrontations had created entrenched positions on both sides of the Rhine. These clashing perceptions of the other gave rise to belligerent discourses which called for the obliteration of the ancestral enemy. In 1950, however, Jean Monnet and Robert Schuman emphasized the utter necessity to "demobilize" people's minds on both sides. This has been achieved by the two states' systematic efforts to prevent being locked into memories which are strictly nationalist. The objective was not to impose a specific picture of the past and thus present different realities. Instead, the objective was to 'iron out' the conditions in order

to establish a "cohabitation" of divergent experiences. The Franco-German experience demonstrates that – despite certain disagreements – national memories can be altered and are indeed negotiable.

The Franco-German case indicates that at least four conditions are required to undertake an effective work of memory. The first requirement is that the timing has to be right; all parties involved must be prepared to participate in the process. That is, they must perceive themselves as being caught in a mutually hurtful stalemate and that they are convinced that there is a way out of it. The Franco-German case is particularly revealing in this regard. The loss and devastation caused by World War II opened the French and German leaders' eyes to the intolerable costs and inanity of their conflict. Moreover, they recognized that European unification would bring their antagonism to an end.

The second prerequisite is directly linked to the first one, and concerns the protagonists' intentions and resolve. A process of rapprochement through a work of memory can only be successful if all parties acknowledge that it is necessary and beneficial. Former belligerents will only be ready to commit if they believe that this approach directly serves their national interests.

The third condition is fundamental to the work of memory: The personal aspect. The representatives of each party are, ideally, skilled negotiators, i.e., flexible, receptive, creative, patient, and tenacious. However, in addition to these qualities, they must have the support of their people. Hence, the personal past of the respective leaders also plays a very important role with regard to credibility. The process of rapprochement and the work of memory will run more smoothly if it is advocated by an individual who accomplished heroic actions against the enemy with whom reconciliation is now being sought. This hero calls on his/her people to undergo a transformation, just as he/ she him or herself did, i.e., to overcome the resentments toward the former enemy. The historical legitimacy of Charles de Gaulle, for example, probably facilitated the change in view of the Germans and of war among the French populace. Nelson Mandela in South Africa was also such a figure.

Ultimately, the outcome of the work of memory depends on popular support. Even if the representatives of all parties deem this work of memory necessary, it cannot be imposed upon their people by decree. Accordingly, the work of memory is dependent on both a political and public momentum. Without "top-down" political support, the efforts of a few individuals and/ or groups will not suffice to influence the entire population and to give clear signals to the opposing party. Conversely, without the "bottom-up" support of the population, modifications to official memory by political representatives remain sterile and useless. The real question thus is not necessarily whether or not the past should be confronted – but rather when, how, and who should initiate such an exercise.

Valerie Rosoux

Source: Gail Benson | Dreamstime.com

Statue of Nelson Mandela at the Groot Drakenstein prison near the town of Franschhoek, Western Cape, South Africa.

Planning Meeting to Develop a Negotiation Handbook for the Inspection Team

A joint PIN/IIASA and CTBTO workshop will take place on 15 –17 June 2010 at the Vienna International Centre (VIC) to develop an On-Site Inspection (OSI) Handbook on Negotiations

Tuesday, 15 June 2010, Morning Session

Opening statement
Presentation of negotiation as an inspection technique and the need for guidelines
Case study: Negotiations in IFE08 (Integrated Field Exercise 2008) – Inspection team's perspective
Case study: Negotiations in IFE08 – Inspected state's perspective

Tuesday, 15 June 2010, Afternoon Session

Case study: Negotiations in IFE08 – Observer's view of the point of entry negotiations
Negotiation training during the 1st training cycle and view to the 2nd training cycle
Suggested structure of a negotiation handbook for the Inspection Team

Wednesday, 16 June 2010, Morning Session

Treaty balance of power or Which is the stronger side?
Power sources and tools of the IT (Inspection Team) and ISP (Inspected State Party) – Presentation and discussion
Cooperative vs. non-cooperative ISP – Can the IT actually recognize and utilize?

Wednesday, 16 June 2010, Afternoon Session

Negotiation strategies available to the IT or How to create a win-win situation
Discussion and proposals on negotiation strategies and their application by the IT

Thursday, 17 June 2010, Morning Session

IT internal negotiations – Prior and during inspection
Discussion on handbook contents
Discussion on training methods

Thursday, 17 June 2010, Afternoon Session

Recommendations outline
Summary of meeting – Main conclusions

If you would like to attend the workshop, please contact:
Ariel Macaspac Penetrante (macaspac@iiasa.ac.at)

Copenhagen 2009: Success, Failure, or What?

Only a couple of months before the 2009 Climate Conference in Copenhagen, many commentators predicted that the outcome would be successful, that it would introduce a new version of the Kyoto Protocol. These expectations were particularly high in Western Europe. Numerous politicians and other decision makers obviously believed that the European Union would play a leading role in Copenhagen. However, the EU did *not* manage to do so, and the Copenhagen meeting did *not* produce compulsory international regulations on how the nations of the world should reduce their greenhouse gas emissions. The lack of such a binding commitment from Copenhagen is the primary reason for the general assessment that the 2009 Climate Conference was a failure.

However, the question whether the 2009 Climate Conference was a relative success or failure is highly complex. On what grounds can we say that Copenhagen was a failure considering that it is far from obvious what its outcome was? All its results were not necessarily expressed in formal documents produced at the Conference. It is also unclear how the official results should be properly interpreted in an evaluation, i.e., it is debatable what the appropriate criteria for an assessment of the Climate Conference should be.

A Brief Account of the Copenhagen Accord

An evaluation of the Climate Conference must begin by determining its immediate official accomplishments. A significant number of these achievements is indicated in the Copenhagen Accord, which the Conference of the Parties to the UN Framework Convention on Climate Change (COP15) *takes note* of in a formal decision. In the informal text of the Accord, the parties to the Copenhagen Conference express forward-looking objectives concerning a number of important issues:

- **The overall objective of the climate talks**: The Accord stipulates that the average temperature in the atmosphere should not be permitted to rise more than 2°C and indicates the possibility of limiting the temperature increase to below 1.5°C.
- **A mitigation strategy**: The overall objective of the climate talks is not transformed into quantitative targets for emission reductions. The Copenhagen Accord suggests a bottom-up approach whereby developed and developing countries submit their pledges to the UN Framework Convention for information purposes.
- **Measurement, reporting and verification (MRV)**: The Accord calls for MRV measures pertaining to mitigation. In this regard, the indicated strategy is constrained by the lack of binding quantitative commitments with respect to emission reductions. The Accord suggests that MRV activities should be carried out domestically and reported to the Convention through national communications.
- **Accord on short- and long-term financing**. Pledges were made to financially support developing countries: US$30 billion for the period 2010-2012 and a further US$100 billion a year by 2020. New institutions were established to support and manage this undertaking: A mechanism on REDD-plus, the Copenhagen Green Climate Fund, and a Technology Mechanism. [1]

Copenhagen 2009: A platform for opinions, concerns, and exchange.

- **Regime development**. The Accord included a general guideline for the further development of the UN climate regime after the Copenhagen meeting. It was suggested that there will be some provisions for "international consultations and analysis", a concept yet to be defined. This is a general guideline for future negotiations.

Assessment of the Copenhagen Accord

The Copenhagen Accord does not represent a comprehensive inventory of all the formal results of the Climate Meeting in Copenhagen. The work of the Conference unfolded on several tracks leading through different negotiation bodies, notably the Conference of the Parties to the UN Framework Convention on Climate Change (COP 15), the Conference of the Parties serving as Meeting of the Parties to the 1997 Kyoto Protocol (COP/MOP 5), and the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA). Supported by still other bodies, this negotiation machinery produced formal results that are not mentioned in the Copenhagen Accord. Nevertheless, the Accord represents a reasonable basis for a discussion of how the Climate Conference in Copenhagen should be evaluated.

Many observers assert that the Copenhagen Accord represents a "clearly weak" result and even "a step backwards from the Kyoto Protocol". The informal status of the Accord is an obvious indication of this weakness, as it is not a formal decision of COP/MOP 5 or COP 15. Many analysts fear that the "unsuccessful" outcome of Copenhagen implies that developed countries can now evade the long-term commitments many of them had made to reduce their greenhouse gas emissions in the negotiations on the Kyoto Protocol. The weak Copenhagen Accord will also allow developed countries to circumvent the full implementation of their earlier pledge to economically support developing countries to cope with their growing climate problems related to, for example, more frequent hurricanes,

1 REDD stands for Reducing Emissions from Deforestation and Forest Degradation. It refers to a set of steps or mechanism designed to use market/financial incentives to reduce the emissions of greenhouse gases from deforestation and forest degradation.

The polar bear, a symbol of the melting ice in the Arctic, poses for the photographers.

stronger floods or increasingly rapid desertification processes.

The general dissatisfaction with the Copenhagen Accord implies that it is regarded as the final outcome of a separate event, the COP15/COPMOP5. The criterion with reference to the success or failure of Copenhagen is how it will affect global warming. Provisions in the Copenhagen Accord for compulsory and quantified emission reductions similar to those in the Kyoto Protocol would have been one means of creating a positive effect on the atmosphere's temperature. Instead, the informal character of this agreement is associated with an expected low impact on global warming.

A process perspective means that the Copenhagen Climate Conference, or any other meeting on climate change, should not be regarded as a separate event but as an episode in a long-term regime-building process. The process began in the mid-1980s in the form of seminars and workshops organized by the international scientific community with the participation of policymakers and international civil servants. In 1992, the United Nations Framework Convention for Climate Change (UNFCCC) was created, followed by the Kyoto Protocol in 1997 and the post-Kyoto negotiations of today. Within this process, all meetings and any other significant events are linked by forward- and backward-looking continuities.[2] This implies that the question of how these meetings and events will affect the future climate regime-building process is an important criterion in an assessment of the Copenhagen Accord, or the Copenhagen Conference more generally.

A process perspective of the 2009 Copenhagen Conference yields a considerably more positive assessment of what it has achieved than if the criterion "direct climate impact" is used. The elements of the Accord referred to above thereby acquire a more complex, but also more positive meaning.

It is clear that the formulation of an overall objective for the climate talks (a maximum 2% temperature increase) does not generate any immediate mitigation effect on global warming, but may nonetheless facilitate future climate negotiations considerably.

Article 2 of UNFCCC states that the Framework Convention's ultimate objective is to "achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

2 For an elaboration of this idea, see Sjöstedt, G. (2005). What Did the World Summit on Sustainable Development (WSSD) Accomplish? Suggestions for an Outcome Assessment" in Churie Kallhauge, A. & S Jöstedt, G. & Corell, E. (eds). *Global Challenges. Furthering the Multilateral Process for Sustainable Development*, Sheffield: Greenleaf Publishing.

Not everybody was convinced of the effectiveness of the measures discussed during the negotiations.

Since 1992, this clear statement has given general direction to the UN climate talks, but has also become increasingly problematic since the establishment of the Kyoto Protocol in 1997. The goal formulation in UNFCCC Article 2 corresponds well to the Framework Convention's primary function to give general direction to the new climate negotiations in the UN and provide it with a conceptual/political framework. The general objective expressed within this framework was sufficient for the negotiations on binding emission targets in the Kyoto Protocol to reduce emissions. The emission cuts envisaged were less than 10%, a figure that was quite modest in comparison with the 60% - 80% reduction demanded by the global scientific community. There was no doubt that the emission cuts debated by leading delegations of the Kyoto talks were relevant and, at the same time, well within the scope of acceptable "concessions".

However, in the post-Kyoto talks that formally began in Montreal in 2005, it soon became clear that relative emission aims were unsatisfactory. In order to move from unobtrusive 6-8% to more costly 20-30% reductions, politicians had to explain to their constituencies to what extent their sacrifices – in terms of emission cuts – contributed to the diminishment of the global problem of climate warming. In other words, negotiating parties needed an ultimate goal to serve as a benchmark for the assessment of emission reductions.

In order to determine such an ultimate reduction goal was not simply a political choice, but also depended on scientific analysis of the different approaches chosen, notably annual emissions of greenhouse gases, concentrations of greenhouse gases in the atmosphere or the yearly average temperature of the atmosphere. It is against this background that the Copenhagen Accord's formulation of a temperature goal should be seen. The determination of a single long-term objective for the climate regime-building process is likely to smooth the progress of the post-Copenhagen climate talks on mitigation.

Furthermore, other elements of the Copenhagen Accord become more important when they are evaluated in terms of likely process effect instead of immediate climate impact. Thus, the lack of binding commitments with regard to mitigation is compensated to some degree by the fact that developing countries were significantly more involved in the mitigation negotiation in Copenhagen than they had been at earlier COP and COP/MOP meetings. This process development may help pave the way for a comprehensive mitigation agreement in the future.

The promises made by developed countries to support climate policies in developing countries with billions of US dollars are not legally binding, but still have a high degree of credibility. It is very likely that large flows of short- and long-term financing will move from developed to developing countries in upcoming decades. This huge amount in aid will have a direct and positive impact on climate policies in poor countries with no resources available for either mitigation efforts or adaptation to the disastrous consequences of global warming. Another noteworthy effect may likely be an increased willingness of some developing countries to accept some binding commitments in future climate talks.

A more effective and trustworthy verification system in the emerging climate regime also has a potential of becoming a significant facilitator in future negotiations. The role of verification is not limited to prevention or deterrence of free-riding. Multidimensional uncertainty is one of the main obstacles in the climate talks. National reporting associated with the establishment of a verification system may become a negotiation facilitator in its own right, because it generally contributes to the decrease in issue uncertainty.

In several ways, the Copenhagen Accord reflects a regime-building outlook, which is different from a legally-oriented perspective that focuses on regulations and rule compliance. The regime perspective is more long term and concerns gradual changes over time. The Copenhagen Accord signifies both a long- and short-term regime development.

The short-term development mechanism refers to the procedure for national reporting on planned emission reductions prior to February 1. Once this is completed, it will perhaps not have the characteristics of international law as is the case of the ratified Kyoto Protocol, but it will nonetheless represent a large set of political commitments to cut down the emission of greenhouse gases. It will be politically costly to pay no regard to these commitments.

The formula for long-term regime development is "international consultations and analysis". Despite its very vague conceptualization, this approach may come to have positive long-term consequences for climate negotiation, because it seems to signal an awareness that new approaches to climate negotiation are required in order to accommodate the increasing involvement, growing negotiation capacity and assertiveness of developing countries.

An analysis of how the Copenhagen Accord affects future negotiation on climate change is not only important in its own right. It is also the beginning of an approach toward strategic facilitation of the climate talks: Ways to ease future negotiations by using current measures. This approach is developed and applied in a PIN book, which will be published soon: Climate Change Negotiations: A Guide to Resolving Disputes and Facilitating Multilateral Cooperation

Gunnar Sjöstedt

Conveniently arranged posters sought to remind visitors about the climate issues at stake.

Track 1: Negotiation and Inter-Organizational Relations
Track 2: Negotiation and International Trade
Track 3: Law, Conflict Management and Enterprises
Track 4: Trade Relations, "Business Diplomacy" and Conflict Resolution
Track 5: Regulation and Negotiation

4th International Biennale

17–18 November 2010 at NEGOCIA, Paris, France

A New Approach to Commercial Relations

The 4th edition of the International Biennale on Commercial Negotiation, organized by NEGOCIA, with PIN members cooperating in the scientific organization, will focus on the relations between trade and negotiation. Economic globalization, which places trade at the center of international relations, has generated a situation of interdependence. This phenomenon has been accentuated by the economic development of emerging countries and, more recently, by the effects of the global financial and economic crisis.

The rising complexity of inter-organizational negotiations in a highly competitive context increases the risk of conflict and calls for greater emphasis on new approaches to settling trade disputes, particularly on mediation, transaction, and arbitration. Similarly, several multinational companies and SMEs are – with or without the support of the state – increasingly asserting their position on the international scene by negotiating new markets, but sometimes operate in an environment that is vulnerable to political conflicts and terrorist threats. At the same time, governments are adopting commercial approaches presently being applied in the corporate world with a view to developing their national economies. The emergence of environmental and societal issues in international trade negotiations should also be taken into account.

This combination of heterogeneous, yet profoundly interlinked factors raises the question of how to approach and organize trade differently. In this regard, would it not be true to say that negotiation provides a tool both for analyzing the evolution of trade relations and for helping establish new trade relations to encourage multilateralism?

Track 1: Negotiation and Inter-Organizational Relations: New corporate approaches to negotiation and commercial relations; commercial negotiation and sales; inter-firm relations and negotiation (suppliers/retailers, etc.); impact of legislation on negotiation; corporate partnerships and networks (SMEs, franchises, purchase centers, etc.); conflict and cooperation in commercial negotiation; market structure and market power in negotiation; inter-firm relations, negotiation and trust; a formalized approach to inter-organizational negotiation strategies; organizational change and performance in commercial relations; inter-individual commerce: The many faces of negotiation; inter-firm relations and international growth; e-commerce and negotiation.

Track 2: Negotiation and International Trade: Negotiations at the WTO: Conflict and agreement; asymmetry in WTO negotiations; stability/instability of international trade agreements to be guaranteed; Economic Partnership Agreements (EPAs) between the EU and the ACP; external trade and negotiation; resolution of conflicts between investors and NAFTA Member States; negotiation in international economic organizations (WIPO, OECD, OPEC, ECOWAS, EBRD, IMF, World Bank, etc.).

Track 3: Law, Conflict Management and Enterprises: Conflict management and mediation; conflict management and arbitration; conflict management and evolutions in law; conflict management and international trade conflicts.

Track 4: Trade Relations, "Business Diplomacy" and Conflict Resolution: Business relations between governments and multinationals: Toward the emergence of a form of private business diplomacy?; business diplomacy: How are SMEs affected?; partnerships between NGOs and multinationals: How effective are they in terms of preventing and resolving conflicts?; international trade and terrorism; convergences and divergences between trade and diplomatic negotiations; negotiation and mediation of multinationals in political conflicts; negotiation and mediation in inter-state or intra-state political conflicts.

Track 5: Regulation and Negotiation: Governance of international regimes; financial regulation; labor market regulation; environmental regulations; corporate social responsibility and its stakeholders.

If you would like to attend, please contact:
Guy Olivier Faure (guyolivierfaure@yahoo.fr)

Court-Annexed Mediation in the Philippines – Community Involvement in the Judicial System

The involvement of communities in the Philippine judicial system further contributes to the country's unique legal system, which is a blend of civil law (Roman), common law (Anglo-American), religious law (Islamic) and indigenous law, and is the result of the country's colonial past. Aside from religion (e.g., the Quran as the primary source for Muslim law, particularly in Muslim communities), communities play a major role in the Philippine judicial system, with communities intervening as mediators to assist conflicting parties in reaching an acceptable agreement. The pre-colonial traditional practice of dispute settlement through the so-called "barangay justice system" was institutionalized by Presidential Decree No. 1508 (Establishing a System of Amicably Settling Disputes at the Barangay Level) on 11 June 1978 by President Ferdinand Marcos. This system comprises the "lupong tagapamayapa" (Committee of Peace) and the barangay captain, who serves as its chairman. The Committee intervenes as a mediator at the barangay (village) level. Furthermore, the Supreme Court "en banc" Resolution No. 01-10-5-SC of 16 October 2001 stipulated guidelines for the institutionalization of mediation, which promotes a paradigm shift in the resolution of disputes from a rights-based (judicial) to an interest-based (mediation) process, thus paving the way for the recognition of the significance of community level mediation. Following a pilot test of mediation in the Court of Appeals (CA), the Supreme Court approved the institutionalization of Appellate Court Mediation in 2004. Hence, the courts are in charge of determining the possibility of an amicable settlement, whereas consultation with the barangay (village) mediators serves as a prerequisite for the acceptance of cases. Courts request certificates from barangay captains that the dispute was indeed submitted to the committee, but could not be resolved through community mediation. The symbiotic relationship between communities and courts through the de facto integration of community level mediation in the judicial system is a pragmatic response to the congestion of Philippine courts. In this regard, the judicial system has experienced both a top-down and bottom-up process with reference to the institutionalization of mediation in the judicial system.

Source: Skvoor | Dreamstime.com

The Philippines is divided into 13 judicial regions, where judges of the regional trial courts are posted.

Source: Wikipedia

The Philippine Code of Arms

This essay addresses some theoretical and practical problems of the community-level mediation process in the Philippines which are caused by the country's inherent structural weaknesses. The identification of gaps and loopholes, which to some extent undermine the efficiency of mediation, can be useful for identifying policies that may eventually ensure the sustainability and resilience of the agreements reached.

The Katarungang (Justice) Barangay System – "Please Mind the Gap"

The barangay justice system is an innovation of the Philippine justice system and provides for the resolution of disputes at community level through mediation, conciliation or arbitration by an unpaid committee, which is chaired by the barangay captain and is similar to traditional village justice systems in West Africa and Central Asia (Zartman 1997). The barangay justice system symbolizes recognition of indigenous peoples' conflict resolution practices, which are based on the role and power of the council of elders.

The Philippines: Background Information

Location: Southeastern Asia, archipelago between the Philippine Sea and the South China Sea; the Philippine archipelago consists of 7,107 islands
Population: 97,976,603
Area: 300,000 sq. km
GDP per capita: $3,300 (2009 est.)
Government Type: republic
Legal System: based on Spanish and Anglo-American law
Executive Branch: Chief of State/ Head of Government: President Gloria Macapagal-Arroyo
Legislative Branch: bicameral Congress consisting of the Senate (Senado) (24 seats) and the House of Representatives (Kapulungan Ng Nga Kinatawan) (269 seats at present, including 218 members representing districts and 51 sectoral party-list members representing special minorities).
Judicial Branch: Supreme Court (15 justices appointed by the president on the recommendation of the Judicial and Bar Council); Court of Appeals; Sandigan-bayan (special court for hearing corruption cases of government officials).
A barangay is the smallest government unit in the Philippines and means village, district or ward. The Philippines has nearly 42,000 barangays. The **Barangay Justice System** or the *Katarungang Pambarangay* (KP) was institutionalized by Presidential Decree 1508 of 1978 and the Local Government Code of 1991 to improve the justice system and to make it more responsive to the needs of communities. "The Local Government Code of 1991 Section 324 mandates the barangay with three most basic functions. a) as a *basic political unit*; b) as a *primary planning and implementing unit*; and c) as a *forum*. In relation to the first and last basic functions, the barangay provides *a venue for the amicable settlement of disputes*."

Source: Aquino, R. S. (2008) Five Municipal Case Studies on the Philippine Barangay (Village) Mediation System, paper presented at the 4th Asia-Pacific Mediation Forum held in Kuala Lumpur, Malaysia, on 16–18 June 2008. The conference theme was 'Mediation in the Asia-Pacific: Constraints and Challenges (http://www.apmec.unisa.edu.au/apmf/2008/papers/28-RACHEL%20S.AQUINO.pdf)

The barangay, the smallest administrative division in the Philippines, is a pre-colonial community system headed by a datu (elder).

At present, 42,021 barangay captains are elected for a three-year term (NSCB 2009). Elections at community level are usually hotly contested, especially in rural areas, which are controlled by "political warlords" with private armies. Mediation at community level is, to a significant degree, de facto non-neutral, non-efficient and non-autonomous; decisions are imposed by barangay captains rather than agreed between conflicting parties. Furthermore, the barangay justice system is yet another "political machine" unable to provide objective and sustainable agreements. The barangay captain is an "executive" who carries out "judicative" functions. The barangay system is reduced to a power instrument of an elected official. The lack of public information and education campaigns on how the barangay justice system works not only on the part of the public, but in particular on the part of the committee members and barangay captains, who are to a large extent not even aware of their role, duties, and responsibilities (Martinez 2001), undermines its effectiveness and public acceptance. Furthermore, no training scheme has been established for barangay captains to learn about the theories and skills of mediation to ensure its quality.

The institutionalization of the barangay justice system should have included the training of barangay captains and committee members in mediation. Another important question is how to ensure its quality when participation in the community justice system is not voluntary, considering that it is a precondition for a court trial, and not an alternative. Gottwald (2003, 10-11) discussed the dilemma between requiring mediation and the principle of voluntary participation in mediation. He claims that this procedure does not undermine the principle of autonomy and voluntary participation as long as only participation is required and not the reaching of an agreement. However, based on the author's personal experience with the barangay system, coercion is an undeniable element of intervention, because the mediator holds executive powers.

The courts have institutionalized and integrated community mediation without making any provision to ensure accountability of the quality of community mediation. The courts have declined to institutionalize any standard systems. Nevertheless, more research on the conflicting parties' "feeling of procedural justice" (Gottwald nd) should be conducted, especially when many of them had no prospects of turning to local courts in the first place due to lack of financial resources.

The author of this essay was able to observe more than 50 barangay-level mediations, both as a committee member and as a conflicting party. In several cases, the barangay captain simply imposed his or her decision, playing more the role of a judge rather than a neutral and impartial mediator. For instance, after learning that

Source: Afren de Guzman | Maitum Information Office

Vice-Governor Steve Chiongbian Solon consults residents of barangay Ticulab following their return to the village after fleeing a raid by armed men.

the conflict was about a tenant who had failed to pay rent for six months, the barangay captain immediately decided to grant the tenant three additional months of free lodging to enable her to find a new home. However, after three months, she still had not moved out because she lacked the funds to pay the deposits for a new home. In the end, she lived in the original house for over a year without paying rent, to the dismay of the claimant. Martinez (2001) asserts that some barangay officials have shown partiality toward certain litigants who are related to them either by consanguinity or affinity ("compadre" culture).

Conclusion: Recommendations for Bridging the Gaps

The institutionalization of the barangay justice system and its de facto integration in the Philippine judicial system has created gaps and loopholes. Instead of promoting societal self-help in resolving conflicts (Schreiber 2004), the system has suffered from the absence of training, accountability, and good governance, which has prevented the achievement of the technocratic (lowering costs and easing the burden of courts) and people-related (autonomy and self-help) goals of mediation. The institutionalization of the barangay justice system and its de facto integration in the justice system has transformed it into the judicial system's "first instance", with untrained and politically motivated officials from the "executive" branch, who have been given additional power instruments for use in their communities.

The clear separation of the barangay justice system from the conventional judicial system, the revision of the policy that requires disputes to be submitted to barangay mediation before being taken to court, and the training of barangay captains in the field of mediation, combined with a more extensive public information campaign about the barangay justice system are required to establish a properly working system. Although college education is not a precondition for respect, impartiality and competence in mediation, a clear description of mediators' roles, duties and responsibilities would increase the barangay captains' awareness of the opportunities provided by the barangay justice system and subsequently its legitimacy. A clear separation of the barangay system from the judicial system makes it a viable option.

Ariel Macaspac Penetrante

References

Gottwald, Walther (nd): §17 'Gerichtsnahe Mediation, in Hafz', in von Schlieffen: Handbuch Mediation.

Gottwald, Walther (2003): 'Gerichtsnahe Mediation in Australien – Antworten von "Down Under" auf deutsche Fragen', in Zeitschrift für Konfliktmanagement 1/2003.

Martinez, Antonio (2001): Community Involvement in the Courts. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

Philippine National Statistical Coordination Board (NSCB) (2009): Creation of Three Municipalities and Thirteen Barangays in the 3rd Quarter of 2009, accessed on 07 January 2009, http://www.nscb.gov.ph/pressreleases/2009/PR-200911-PP2-PSGCSep.asp.

Schreiber, Frank (2004): 'Wie "gerichtsnah" kann Mediation funktionieren? Die Rollen von Richtern und Mediatoren müssen deutlich getrennt werden', in Betrifft JUSTIZ No. 77, March.

Zartman, I William, ed. (1997). Traditional Cures for Modern Conflicts: African Conflict "Medicine", Lynne Rienner.

Source: Rita Festin | wordpress.com

Mayor Linda P. Gonzales (standing) of Ligao City discussing the success of the InfRES (Infrastructure for Rural Productivity Enhancement Sector) Project with barangay and ADB officials, following destruction caused by typhoons in late 2006.

PIN·*Points*

The Processes of International Negotiation Program *Network Newsletter 34/2010*

Copyright © 2010
International Institute for
Applied Systems Analysis
A-2361 Laxenburg, Austria
Telephone: +43 2236 807 575
Telefax: +43 2236 71313
E-mail: pin@iiasa.ac.at
http://www.iiasa.ac.at/Research/PIN/

Issue Editor: I. William Zartman

IIASA is a nongovernmental, international research institution sponsored by scientific organizations from 17 countries.

IIASA has member organizations in Austria, China, Egypt, Finland, Germany, India, Japan, Netherlands, Norway, Pakistan, Poland (observer), Republic of Korea, Russian Federation, South Africa, Sweden, Ukraine, United States of America.

Registration number: ZVR 524808900

Forthcoming Book on Climate Change Negotiations

Climate Change Negotiations – A Guide to Resolving Disputes and Facilitating Multilateral Cooperation

Editors: Gunnar Sjöstedt and Ariel Macaspac Penetrante

Foreword
Detlof von Winterfeldt (United States)

Preface
Gunnar Sjöstedt (Sweden)/Ariel Macaspac Penetrante (Philippines/Germany)

Chapter 0: Catching Jumping Rabbits – The Road After COP15
Ariel Macaspac Penetrante
Gunnar Sjöstedt (Sweden)

Introduction
Ariel Macaspac Penetrante
Gunnar Sjöstedt (Sweden)

I. Professional Perspectives

A. Introduction

B. Perspectives of Professionals From Inside the Process

The Perspective of a Politician – How Are Decisions Made?
Finance Minister Josef Proell (Austria)
Helmut Hojesky (Austria)
Werner Wutscher (Austria)

The New Diplomacy From the Perspective of a Diplomat
Bo Kjellén (Sweden)

Costs and Uncertainties in Climate Change Negotiations – A Scientist's Perspective
Bert Bolin (Sweden)

C. Perspectives of Professionals From Outside the Process

The Observing International Lawyer
Franz Cede (Austria)
Gerhard Loibl (Austria)

Climate Talks - The Observing Sociologist
Guy Olivier Faure (France)

D. Integrative Summary

II. Stumbling Blocks and Facilitation

A. Introduction

B. Actors

Chapter 1

Defining a Politically Feasible Path for Future Climate Negotiations – Lessons from the EU-USA Divide Over the Kyoto Protocol
Urs Steiner Brandt (Denmark)

Chapter 2

Between Two Giants: Learning From the Russian Climate Policy on the Kyoto Protocol
Vassili Sokolov (Russia)

Chapter 3

Leadership and Climate Talks – Historical Lessons
Steinar Andresen (Norway)

Chapter 4

NGO Participation in the Global Climate Change Decisionmaking Process – A Key for Facilitating Climate Talks
Kanie Norichika (Japan)

C. Structure

Chapter 5

Institutional Capacity-Building for Facilitating Climate Change Negotiations – The Need for New Thinking
Angela Kallhauge (Sweden)
Lisa van Well (Sweden)

Chapter 6

Stumbling Blocks in a Sectoral Approach – Addressing the Global Warming Effect of the Airline Industry
Lucas Bobes (Spain)

Chapter 7

Overcoming Stumbling Blocks: Can the IPCC Deliver an Adaptation?
Tora Skodvin (Norway)

Chapter 8

Common but Differentiated Responsibilities – The North-South Divide in Climate Change Negotiations
Ariel Macaspac Penetrante (Philippines/Germany)

Chapter 9

Regime Management – Institutional Options to Remove Stumbling Blocks in Climate Negotiations
Dirk Hanschel (Germany)

Chapter 10

Verification as a Precondition for Binding Commitments – Facilitation Through Trust
Larry MacFaul (United Kingdom)

D. Process

Chapter 11

Land Use Change and Forestry (LULUCF) as a Major Area of Contestation
Claudio Forner (Germany)

Chapter 12

Difficulties of Benefit-Cost Analysis in Climate Negotiations: Stumbling Blocks for Reaching an Agreement
Charles Pearson (USA)

Chapter 13

Proposal for Insurance for Facilitation of Adaptation
Joanne Linnerooth-Bayer (USA)
M.J.Mace (USA)
Reinhard Mechler (Germany)

III. Conclusion

Addressing Stumbling Blocks
Gunnar Sjöstedt (Sweden)
Ariel Macaspac Penetrante (Philippines/Germany)

IV. ANNEX

The Evolution of COP – A Historical Review
Tanja Huber (Austria)

Netherlands Negotiation Network

The purpose of the second yearly seminar of the Netherlands Negotiation Network (NNN) was to increase collaboration and knowledge exchange on negotiation research and training programs in the Netherlands and surrounding regions. This network provides a platform for Dutch research on negotiation, bringing together Dutch researchers and practitioners from networks such as the Group Decision and Negotiation (GDN) and the Processes of International Negotiation (PIN) Program. The theme of the 2009 seminar was "d

Differences between public and private negotiation". This year's symposium is a joint initiative of the Netherlands Institute of International Relations 'Clingendael', the employers association AWVN, the Delft University of Technology, Tilburg University and the UNESCO Institute for Water Education. In a forum with Alexander Rinnooy Kan (the man who introduced the ideas of the Harvard Project on Negotiation to the Netherlands some thirty years ago), Arjen Verhoeff, Jan Ulijn and Paul Meerts explored views on the difference between public and private negotiation. After this kick-off, two case studies were discussed in order to analyze the differences between public and private sector negotiation processes.

The first case study focused on the negotiations involving the merger of KLM and Air France. The speakers included Cees van Woudenberg (former Board Member KLM, former member of the Strategic Management Committee AIR FRANCE/KLM), Marc Salesina (University of Nancy), Niels Noorderhaven (Tilburg University), Jean-Marie Fèvre (University of Metz) and Arjen Verhoeff (AWVN). This merger was unique in its strategy to keep two strong brands, but at the same time to integrate a large part of the back office. Key management teams were carefully composed of people from both parties. What was distinctive of the private negotiations was that early in the process, an attitude of "let's make this work" was set. Furthermore, the management ran a quarterly survey to monitor employee perceptions of the merger process, and advocated a 'fairness' policy in which this principle was used loosely, but was a strong argument in decision making, which in turn was highly successful. Cultural and organizational differences were found in the use of strikes as a pressure instrument, as well as in management styles.

In the second case, the Scheldt Estuary negotiations between Belgium and the Netherlands were discussed. The speakers were Jill Slinger (Delft University of Technology), Jeroen Werner (Wageningen University & Twente University) and Pieter v.d. Zaag (UNESCO IHE). What was characteristic of these negotiations was the large number of different stakeholders involved in this case, consisting of interest groups and civil servants, albeit the people living in the area (farmers, fishermen) were not included in the negotiations. Cultural differences were found in the blunt, naïve negotiation style of the Dutch in contrast to backroom, indirect Flemish style of negotiation, as well as in the difference in attitude and their relation to the sea and the Scheldt, also in terms of the historic perspective.

In the discussion on the comparison of the two cases, numerous varying perceptions were identified. Differences were especially evident in the stakeholders' attitude and their style of leadership; in the KLM-Air France case study, stakeholders were generally cooperative and leadership was strong, while in the Scheldt case, ne-

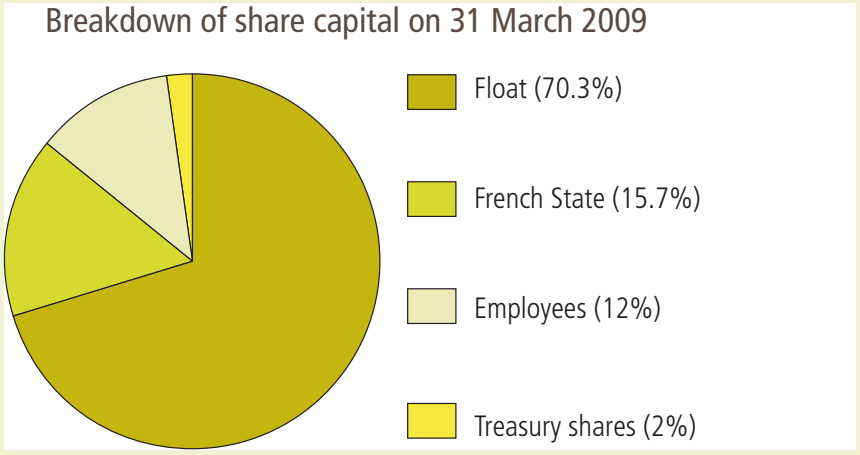
AIRFRANCE KLM

Air France-KLM is one of the most profitable airline companies in Europe, transporting approximately 74.5 million passengers annually. In the fiscal year ending 31 March 2008, the total operating revenues of Air France-KLM amounted to €24.114 billion. Air France-KLM was created by a mutually-agreed merger between the two airlines on 5 May 2004.

According to Air France-KLM, the merger has brought many new customer benefits, including an extensive network linking Europe to the world with many frequencies and possibilities of combining fares, and a shuttle service between Paris and Amsterdam, which considerably increases connecting opportunities.

Key figures:

110,878 Employees
74.5 million passengers
634 aircraft in operation (on 30/09/2009)
249 destinations (winter 2009)
24 billion euros in turnover for 08-09



Sources: Logo – Wikipedia; Statistics – Air France Press Office

Source: Wikipedia

The City of Antwerp at the Scheldt estuary

gotiations started out from a conflict perspective. This might have to do with the past: The Netherlands have bashed Belgium several times since the 17th century, blocking the estuary of Antwerp in order for Amsterdam to flourish. Therefore, the Belgians / Flemish viewed the negotiation as being yet another dispute with their Northern neighbor. At the same time, the Dutch approached the question in their (in) famous 'polder modeling', i.e., collaborative style. History and culture aggravated the clash of interests. In the KLM-Air France case, on the other hand, no traumas from the past distorted the negotiation process.

Next year's December seminar will address the Dutch negotiation culture and its consequences for negotiation effectiveness. The meeting will be accompanied by a special issue of the 'Internationale Spectator', the only Dutch monthly on international affairs. Participants of the 2009 meeting and others will contribute articles on the Dutch negotiation style and its positive and negative inclinations. The Netherlands Negotiation Network is based on and geared toward negotiation practitioners, researchers, trainers, and other interested professionals such as experts on intercultural issues and non-verbal behavior. Participation in the seminar will be free of charge.

Gwendolyn Kolfschoten, Paul Meerts, Per van der Wijst, NNN Troika

Background Information on the Scheldt Estuary

Location: The Scheldt estuary is the downstream part of the Scheldt river basin and is located in north-western Flanders (Belgium) and the southwest of the Netherlands.

Area: The total basin area amounts to 21,863 km2 and covers parts of France, Belgium and the Netherlands.

Length: The river has a length of 355 km.

Course of the Scheldt river: The Scheldt's source is in Gouy, northern France, from where the river continues to flow north through Cambrai and Valenciennes. It enters Belgium near Tournai. In Ghent, where it receives the Lys, its main tributary, the Scheldt turns east. Near Antwerp, the largest city on its banks, the Scheldt flows west into the Netherlands toward the North Sea.

Source: Wikipedia, http://en.wikipedia.org/wiki/Scheldt

Conflict and Negotiation – A Give and Take

The Scheldt estuary plays a significant economic role as a major shipping artery. The Dutch section of the estuary, the Western Scheldt, provides maritime access to the Port of Antwerp, the second largest port in Europe. The Scheldt also provides access to the Port of Rotterdam via the Rhine-Scheldt canal. The free navigation of the Scheldt and the maintenance and improvement of the navigation channel have been a bone of contention between Belgium and the Netherlands since the Belgian Revolution and independence in 1839. Since then, the international Scheldt Statute has guaranteed the freedom of navigation on the Scheldt.

Before 1967, negotiations between the Netherlands and Belgium on the Scheldt primarily focused on the management of the navigation channel in the Western Scheldt. In 1967, the Belgian Government proposed two projects to improve maritime access to Antwerp, which the Dutch were willing to negotiate on, provided that two other issues were addressed, namely, the water quality of the Meuse and Scheldt, and the water quantity of the Meuse. Three draft conventions were drafted in 1975, but never signed owing to internal disagreement in Belgium.

In 1983, the Belgian Government proposed a new issue for negotiation: The deepening of the navigation channel in the Western Scheldt. The Dutch linked this new issue to others and two years later, in 1985, the Belgian and Dutch Ministers of Foreign Affairs signed a declaration of intent to seek joint solutions on the Scheldt estuary.

The main issue of contention was water quality policy for the Scheldt and when the Belgian delegation proposed less ambitious water quality objectives, the Dutch suspended the negotiations.

In 1992-93, the Belgian regions (the Flemish, Walloon, and the Brussels capital region) were granted treaty-making competencies and bilateral negotiations between the Netherlands and Flanders were initiated on the deepening of the navigation channel in the Western Scheldt. Though an agreement was quickly reached, the Dutch Government refused to sign the Convention on the deepening of the Western Scheldt unless another contentious issue was agreed on, namely, a new high-speed train from Antwerp to Amsterdam. Likewise, the Flemish representatives refused to sign a Convention on the flow of the river Meuse, unless the Dutch signed the Convention on the deepening. This stalemate was resolved at the prime ministerial level, and on 17 January 1995, both Conventions were signed. Within the scope of the Convention on the deepening of the Western Scheldt, an International Commission on the Protection of the Scheldt (ICPS) was established, involving France, Walloon, Flanders, the Brussels capital region and the Netherlands. The Commission's objective is to cooperate in a spirit of good neighborliness and to maintain and improve the water quality. The ICPS meets at least once a year and decisions are made by unanimity. It consists of a working group on emissions, coordination with policies developed in other international fora and one on external communication.

A new Scheldt Convention was signed in 2002, amending the 1995 Convention. In 2005, Flanders and the Netherlands agreed on a series of new treaties on the international management of the Scheldt Estuary, providing for a further deepening of the navigation channel.

Source: Scheldt River Dispute & Scheldt River Dispute (Part II): Hedwig Polder, Peace Palace Library, Case Study: International Co-operation in the Scheldt and Meuse River Basins, Erik Mostert, Toolbox Integrated Water Resources Management, Case Study No. 28.

Forthcoming Books on Terrorism

Engaging Extremists: States and Terrorists Negotiating Ends and Means

(US Institute of Peace 2010)

Edited by I. William Zartman and Guy Olivier Faure

Introduction: Why and Why Not Engage? I. William Zartman & Guy Olivier Faure

I When to Engage

Introduction: I. William Zartman & Guy Olivier Faure

1. I. William Zartman & Maha Khan, School of Advanced International Studies, Johns Hopkins University (SAIS-JHU), "Negotiation in Terrorism's Life Cycle I: Growing Up in Groups"
2. William Donohue, Michigan State University (MSU), "Negotiation in Terrorism's Life Cycle II: Growing Down in Organizations"
3. Robert Lambert, University of Exeter, "Community Intervention as an Engagement Strategy – al-Qaeda in London"
4. Maria Groeneveld-Savisaar and Sinisa Vukovic, Leiden, "Terror, Muscle and Mediation: Failure of Multiparty Mediation in Sri Lanka"
5. Stacie Pettyjohn, University of Virginia, "Making Policy Toward Terrorist Organizations: Isolate or Engage?"

II How to Engage

Introduction: Guy Olivier Faure & I. William Zartman

6. Camille Pecastaing, School of Advanced International Studies, Johns Hopkins University (SAIS-JHU), "Reaching the Terrorist"
7. Carolin Goerzig, London School of Economics (LSE), "Change Through Debate: Gama'a Islamiya"
8. Kristine Höglund, Uppsala, "Tactics in Negotiations Between States and Extremists"
8. Aldo Civico, Columbia University, "Eluding Peace: Engaging the ELN"

III Conclusion

10. I. William Zartman & Guy Olivier Faure, "When and How to Engage?"

Bibliography

Negotiating with Terrorists: Strategy, Tactics and Politics

(Routledge 2010)

Edited by Guy Olivier Faure & I. William Zartman

Introduction: Negotiating with Terrorists – Who Holds Whom Hostage?
Guy Olivier Faure & I. William Zartman

I How to Negotiate: Kidnapping the Kidnappers

Introduction

1. Laurent Combalbert, GEOS, "Guidelines for Negotiating with Terrorists"
2. Alex Schmid and P. Flemming, St Andrews, "Quantitative and Qualitative Aspects of Kidnapping and Hostage Negotiation"
3. David Pinder, Bradford, "Supping to the Devil"

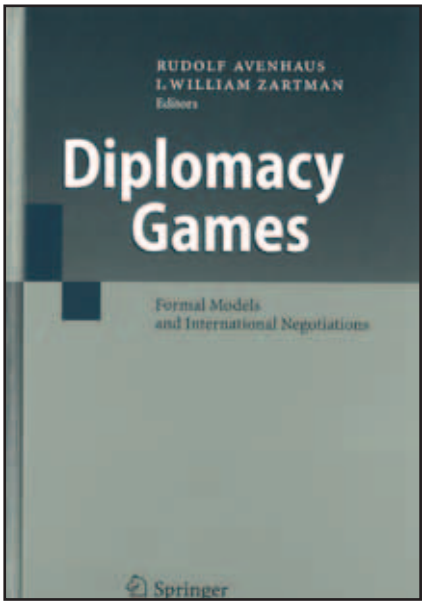
II Practical/Tactical: Freeing the Hostages

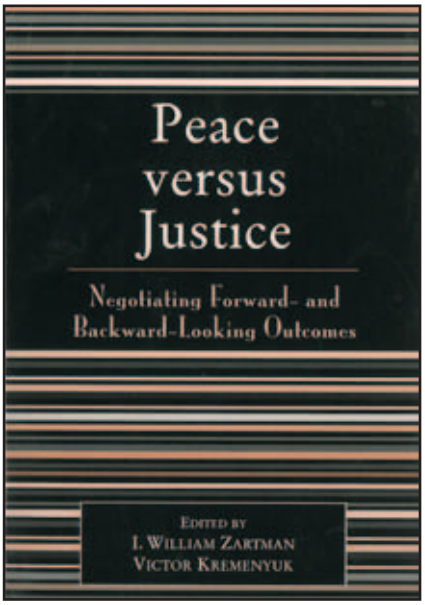
Introduction

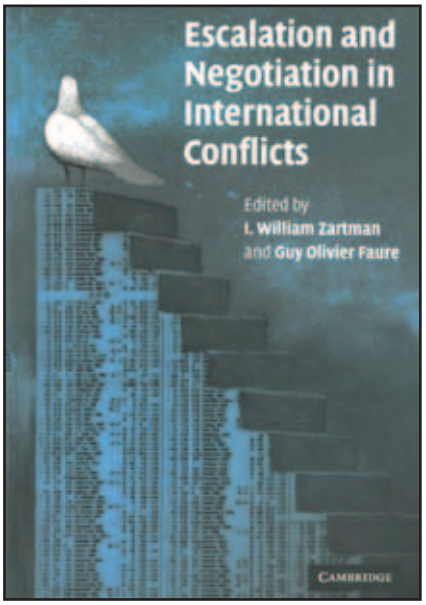
4. Karen Feste, Denver, "Terrorist Negotiating Strategy in Lebanon"
5. Adam Dolnik, University of Wollongong, "Negotiating in Beslan and Beyond"
6. Victor Kremenyuk, Iskan, Russian Academy, "Negotiating Visible and Hidden Agendas"
7. P. Sahadevan, Jawharlal Nehru, "Negotiating The Grand Swap in Khandahar"

Conclusions Guy Olivier Faure & I. William Zartman, "Lessons for Action"

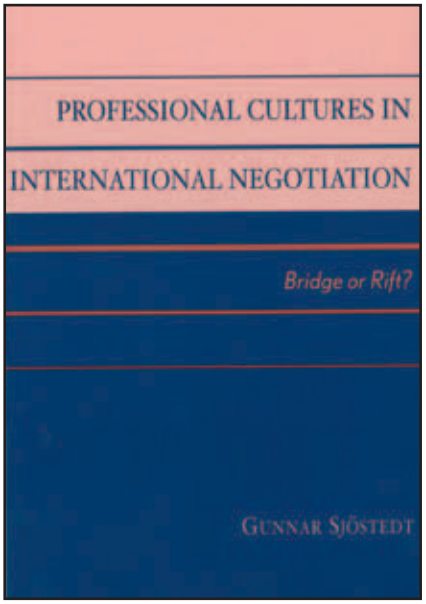
Bibliography

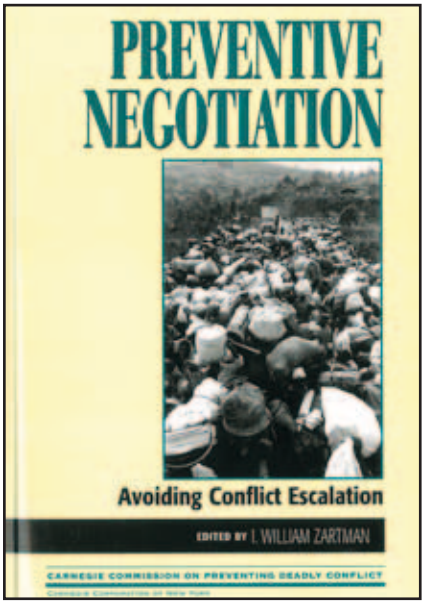

RUDOLF AVENHAUS
I. WILLIAM ZARTMAN
Editors
Diplomacy Games
Formal Models and International Negotiations
Springer


Peace versus Justice
Negotiating Forward- and Backward-Looking Outcomes
Edited by
I. William Zartman
Victor Kremenyuk

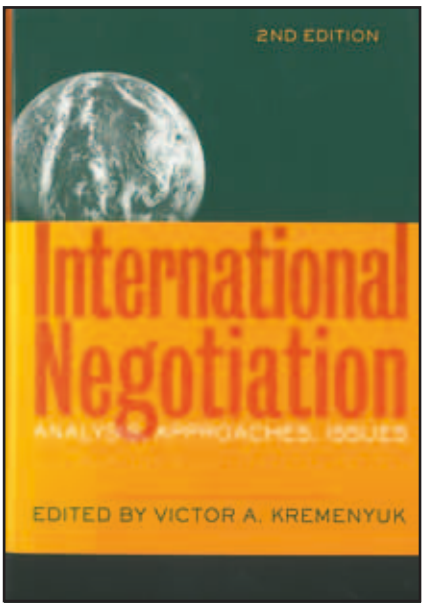

Escalation and Negotiation in International Conflicts
Edited by
I. William Zartman
and Guy Olivier Faure
CAMBRIDGE

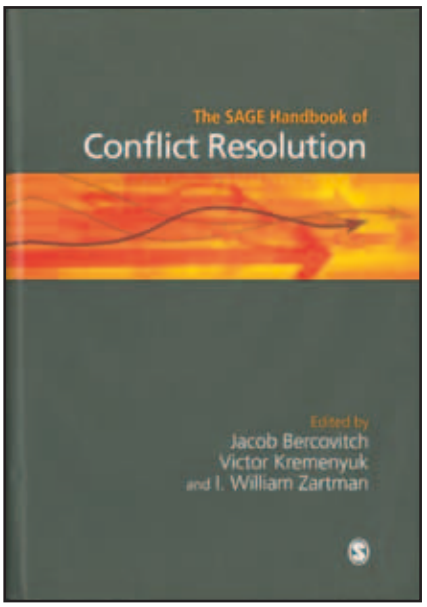
CULTURE AND NEGOTIATION
edited by
Guy Olivier Faure
Jeffrey Z. Rubin


PROFESSIONAL CULTURES IN INTERNATIONAL NEGOTIATION
Bridge or Rift?
GUNNAR SJÖSTEDT


PREVENTIVE NEGOTIATION
Avoiding Conflict Escalation
EDITED BY I. WILLIAM ZARTMAN
CARNEGIE COMMISSION ON PREVENTING DEADLY CONFLICT

Negotiating European Union


2ND EDITION
International Negotiation
EDITED BY VICTOR A. KREMENYUK


The SAGE Handbook of
Conflict Resolution
Edited by
Jacob Bercovitch
Victor Kremenyuk
and I. William Zartman