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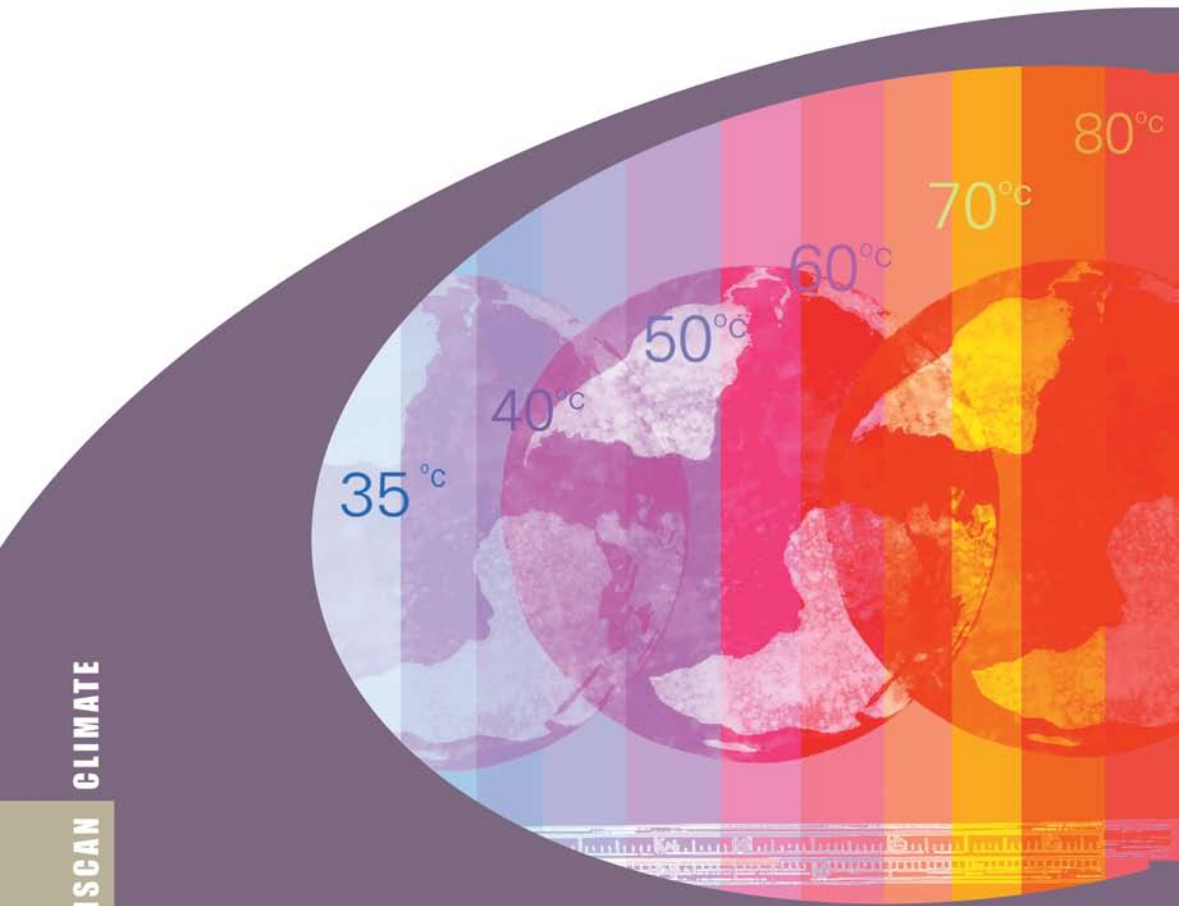
Climate Change Negotiations

A guide to resolving disputes and facilitating multilateral cooperation



Edited by Gunnar Sjöstedt and
Ariel Macaspac Penetrante

EARTHSCAN CLIMATE

Climate Change Negotiations

As the Kyoto Protocol limps along without the participation of the US and Australia, ongoing climate negotiations are plagued by competing national and business interests that are creating stumbling blocks to success. *Climate Change Negotiations* asks how these persistent obstacles can be down-scaled, approaching them from five professional perspectives: a top policy maker, a senior negotiator, a leading scientist, an international lawyer and a sociologist who is observing the process.

The authors identify the major problems, including great power strategies (the EU, the US and Russia), leadership, the role of NGOs, capacity and knowledge-building, airline industry emissions, insurance and risk transfer instruments, problems of cost benefit analysis, the IPCC in the post-Kyoto situation, and verification and institutional design. A new key concept is introduced: strategic facilitation. Strategic facilitation has a long time frame, a forward-looking orientation, and aims to support the overall negotiation process rather than individual actors.

This book is aimed at academics, university students and practitioners who are directly or indirectly engaged in the international climate negotiation as policy makers, diplomats or experts.

Gunnar Sjöstedt is Director of Studies at the Swedish Institute of International Affairs, Associate Professor of Political Science at the University of Stockholm, and a member of the steering committee of the Processes of International Negotiations Program at IIASA. He has published extensively on international negotiation on environmental and economic affairs.

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To Bert Bolin

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Since 1988, the PIN Program, formerly at the International Institute for Applied Systems Analysis (IIASA) in Laxenburg, Austria, and now located at Clingendael, The Hague, Netherlands, has been sponsoring research, publications, and international conferences on the subject of negotiation, analysed as a process. PIN is conducted by an International Steering Committee of scholars and practitioners, meeting three times a year to develop and propagate new knowledge about the analysis and improvement of the processes of negotiation. The Steering Committee conducts one to two workshops every year devoted to a given topic, involving scholars from a wide spectrum of countries, in order to tap a broad range of international expertise. It also offers mini-conferences on international negotiations in order to disseminate and encourage research on the subject. Such "Road Shows" have been held at the Argentine Council for International Relations, Buenos Aires; Beida University, Beijing; the Center for Conflict Resolution, Haifa; the Center for the Study of Contemporary Japanese Culture, Kyoto; the School of International Relations, Tehran; University of World Economy and Diplomacy, Tashkent; The Swedish Institute of International Affairs, Stockholm; the University of Cairo; Pepperdine University, California; The Johns Hopkins University, Washington, DC; Nelson Mandela Metropolitan University, Port Elizabeth; University Hassan II, Casablanca; the University of Helsinki; Bahçesehir University, Istanbul; and the UN University for Peace, Costa Rica. The PIN Network publishes a semi-annual newsletter, PINPoints, and sponsors a network of more than 4,000 researchers and practitioners in negotiation. Past projects and the Program have been supported by the William and Flora Hewlett Foundation, Smith Richardson Foundation, the US Institute of Peace, UNESCO, International Research Development Institute, Carnegie Corporation and Carnegie Commission for the Prevention of Deadly Conflict.

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Acknowledgements

This book is a product of the fruitful interdisciplinary and international collaboration of researchers that has taken place in the Program on International Negotiations (PIN) for more than twenty years. At present, PIN is housed in the Clingendael Institute in the Netherlands. However, when this project was initiated, PIN was part of the International Institute for Applied Systems Analysis (IIASA) situated in Laxenburg outside Vienna, Austria. All the research work for the project was carried out in an IIASA context. IIASA also gave the book project organizational, editorial and other forms of assistance, as a supplement to PIN's own budget. We want to give special thanks to a number of people at IIASA, who were especially important for this project on the UN negotiations on climate warming.

We are grateful for the continuous support of Leen Hordijk who was Director of IIASA when the project started.

We are in great debt to the IIASA editorial team. Iain Steward, Head of IIASA Communications, gave us indispensible support and help with practical matters related to communication with publishing houses and the whole editing process. Special thanks go to Kathryn Platzer (IIASA Communications) who copy edited the original manuscript of this book. Her contribution to the project is simply invaluable. Kathryn did a good job eliminating small errors in chapters written by English speakers from the United Kingdom, the United States and Kenya. Her editing of chapters written by authors from other countries, including the editors of this book, was more far-reaching. Kathryn polished the text and, by means of small interventions, she managed to give the text more flow and elegance.

Support to all our project activities and careful and pleasing attention to every detail of our work was provided by Tanja Huber, our project administrator who served as PIN coordinator at IIASA.

We are grateful for the support from the Austrian Ministry of Environmental Affairs that made it possible for a group of authors of chapters in this book to organize a side event at COP11 in Montreal. We are equally grateful to IIASA which supported a similar side event at COP10 in Buenos Aires.

As always, the PIN group of researchers has represented an extremely stimulating reference group that has given us sensible advice, suggested creative ideas and confronted us with beneficial critique.

The Editors

Foreword

I. William Zartman

The road to the publication of the Climate Project of the Processes of International Negotiation (PIN) Program has been almost as long as the process of negotiating a climate change regime itself. The difference is that this publication has arrived at its conclusion. The road has its gateway in the general interest of the International Institute of Applied Systems Analysis (IIASA), which formerly housed PIN in Laxenburg, Austria, in climate issues and the role of PIN as consultant for the Secretariat of the Rio UNCED Conference in 1992. Later, in 2004 and 2005, a PIN team under the direction of International Steering Committee member Gunnar Sjöstedt, of the Swedish Institute of International Affairs presented side events at the UN Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP10 and COP11/MOP1 in Buenos Aires and Montreal, respectively), supported by the Austrian Ministry of Environmental Affairs. The "mini-roadshow" was enthusiastically received by the practitioners involved in the climate talk review. Soon after, Katherine Calvin was a PIN fellow at IIASA's Young Scientists' Summer Program, with a study of her own for Stanford University on the climate regime.

PIN projects generally follow themes that build collective knowledge on related topics. One of PIN's first projects was a work on *International Environmental Negotiations* (Sage 1993), edited by Gunnar Sjöstedt, followed in the next year by *Negotiating International Regimes: Lessons from UNCED* (Nijhoff), edited by Bertram Spector, Gunnar Sjösted, and I. William Zartman, and *International Multilateral Negotiations: Approaches to the Management of Complexity* (Jossey-Bass), edited by I. William Zartman. Later in the series came *Getting It Done: Post-Agreement Negotiations in International Regimes* (USIP 2003), edited by Bertram Spector and I. William Zartman. Thus, a study of the removal of obstacles and stumbling blocks in the climate change regime, at a time when the 1997 UNFCCC Kyoto Protocol was facing its second commitment period in its Meeting of Parties (MOP), was topically important.

The workshop for the Climate Change Project was held in IIASA in January 2005 under the PIN grant from the Hewlett Foundation, and work continued on it over the following years. However, the MOPs at Copenhagen and Cancun in 2009 and 2010 introduced changes in the regime – although perhaps not as much as desired – that required changes in the book, delaying publication until the present time.

The climate talks are not only enormously important but also extremely complex. Efforts need to be made to facilitate the climate negotiations and remove obstacles to its progress. Academia has a strong responsibility in this regard. There is a large literature on facilitation that, however, is usually thought of as quick fixes in a short time frame. Such facilitation can useful in particular situations but there is also great need to develop approaches to facilitate a long term strategic perspective, manage regime complexity and consummate post-agreement negotiations. This is the mission of this project.

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Part I

Introduction

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Strategic Facilitation of Climate Change Negotiations

An Introduction

Gunnar Sjöstedt and Ariel Macaspac Penetrante

The UN negotiations on climate change remain complex and difficult, as they have been for thirty-odd years. A major inquiry addressed in this book is *if*, *to what degree*, and *how* obstacles confronting negotiators in the climate talks can be reduced, or perhaps even entirely eliminated, with the help of external facilitators. The focus is not only set on how to cope with diverging party interests. Primarily, the project addresses technical negotiation issues such as the framing of issues, capacity building in weak nations, institutional reform or process redesign. The key concept of the book is *strategic facilitation*, as seen in a long time perspective.

Objectives of the study and its design

There are many impediments to effective climate change negotiation; some are simply incidental, in the sense that they are entirely tied to a particular situation and therefore difficult to predict and prevent. One example of this would be the unexpected outcome of a national election in a key country, giving power to a new administration opposing internationally coordinated measures to reduce greenhouse gas (GHG) emissions. Incidental impediments are difficult to foresee for practitioners, and also demanding to cope with in negotiation analysis.

Other negotiation obstacles than such incidental problems are of a quasi-structural nature, although they can be modified or change gradually over time. Moreover, such *stumbling blocks* that will have an important impact on future negotiations may already be discernible in the present. An example would be mounting shortcomings on the part of one of the organizations supporting the climate talks, say, the Intergovernmental Panel on Climate Change (IPCC). In this case, institutional reform could represent a useful facilitation approach, which will have an impact only in the longer term.

The main objective of this book is to suggest and assess useful methods to facilitate the UN negotiations on climate change to consider a strategic and forward-looking perspective. This approach presupposes the discovery of principal obstacles in the climate talks – stumbling blocks – that are meaningful targets for strategic facilitation efforts for a longer period of time.

The center of attention of this study will be long-term facilitation approaches related to a continuous regime-building process, unfolding at the "macro level"

above particular negotiation rounds or sessions that are integrated into the macro process by various "continuities" linking consecutive rounds. One example of such couplings is the preparatory work being carried out for the negotiations in the capitals of states that are parties to the climate negotiating process. Such groundwork for future climate talks may often develop from an evaluation of an earlier negotiation round, joining forward linkages to backward couplings.

Strategic facilitation is very different from troubleshooting in a current situation. This new facilitation concept implies that it is useful to try to plan and structure the future negotiation process in advance in such a way that at least some enduring stumbling blocks can be managed, circumvented, or even eliminated. Technically, strategic facilitation is a form of external intervention in a multilateral negotiation. It is designed by actors who are not direct parties to the climate talks, such as independent consultants, research institutes, universities, and nongovernmental organizations (NGOs), but are still believed to have a potential capacity to make the climate negotiations more effective.[1] Obviously, negotiation parties such as a national government or an international secretariat can do various things to aid a negotiation, but such measures fall outside the definition of strategic facilitation used in this project. Strategic facilitation is "operationalized" as coping with *stumbling blocks* which represent persistent obstacles in the climate talks.

One of the motives for this project is the observation that the concept of strategic facilitation of regime-building through multilateral negotiation is not common in the literature, although it is clearly required in numerous issue areas, for example, the environment and international trade. Another reason is that the exceptionally weighty contribution by the world scientific community to the climate talks is heavily skewed in favor of natural scientists such as physicists and meteorologists. This project assumes that social scientists also are in a position to considerably increase the contribution of the international scientific community to the development of the climate negotiations towards a fruitful outcome.

Social scientists have certainly been involved in the worldwide mobilization of scientific knowledge that has taken place through the IPCC. For example, senior economists have been engaged in developing and refining economic policy measures to cope with climate warming. However, social scientists with a special focus on the processes of international negotiation have to a great extent been overlooked by the IPCC and the organizers of the recursive climate talks. Such process specialists should be given a much larger role in the planning and facilitation of the complex international negotiation on climate change. This is an argument developed and responded to in this book.

While the project is concerned with how the UN negotiations on climate warming will develop in the years to come, its general outlook is both forward- and backward-looking from point zero; here and now. The effects of the facilitation measures that will be discussed pertain to the future. The knowledge basis for the determination of facilitation approaches is founded in the past – in the progress of a regime-building process that began almost a quarter of a century ago.[2] In one respect, this project can be regarded as a historical study essentially covering the period from the Copenhagen Climate Change Conference in December 2009

(COP15) for the purpose of looking forward at likely negotiation obstacles and possible facilitation strategies in future negotiations. The logic we plead is that such a systematic historical case is an instrumental point of departure for educated guesses about negotiation problems and their solutions in the future climate talks. It is better to have this point of reference in a clear near past than in a current more obscure situation.

The Copenhagen Conference has a central function in the design of this project. It is an example of how the climate negotiation unfolds at a particular time and in a particular setting. However the historical case study of the Copenhagen Conference does not only include the events that took place in the Danish capital in late November and early December 2009. The general background to and the preparations for the Copenhagen Conference are also a part of the case as well continuities from Copenhagen to consecutive large negotiation rounds in Cancun (2010) and Durban (2011).

Note that the case of the Copenhagen Conference is here regarded as but one element of a much wider understanding of the overall climate negotiation in the UN, which includes a multitude of other meetings and activities. Other types of cases pertaining to the broad understanding of the climate talks will be addressed in the project. These other cases are of a different character, as they represent important themes pertaining to the climate talk as a whole and to a specific event in this process.

The Copenhagen Climate Conference

The 2009 climate meeting had a number of special traits, some of which were simply due to its location in Denmark. All the 17 major UN conferences addressing the issue of climate change have had a special history and have brought about somewhat different end results. At the same time, the Copenhagen meeting, or any other climate conference, exhibited important similarities with the16 other climate conferences that have taken place. Therefore, it is possible to draw lessons from Copenhagen that can be expected to be relevant for other grand climate conferences in the future.

The road to Copenhagen

From its inception, the climate change negotiation process has included hundreds of meetings of various kinds, for example, ministerial meetings, professional diplomatic encounters, and workshops attended by large numbers of scientists and other experts. However, for the purposes of this project the Climate Conference in Copenhagen that took place during 7–19 December 2009 needs to be especially highlighted, for several reasons:

1. It was the first attempt to achieve a binding agreement on climate change to come into effect after the first commitment period of the Kyoto Protocol to the UNFCCC ends in December 2012.

2. Copenhagen was seen as a point of departure for the future negotiation and regime-building process, which is addressed in this project.
3. Its perceived political importance was high, as indicated by the presence in Copenhagen of more than 100 heads of state or government.
4. It created a broad awareness that the climate negotiations as a whole will need to be of long duration if they are to have a satisfactory braking effect on climate warming.

The history of international negotiation on climate change dates back to the mid-1980s. These meetings were first organized by the international scientific community and attended by policymakers and international civil servants. Informal agenda setting was eventually drawn into the United Nations system and generated the 1992 United Nations Framework Convention on Climate Change (UNFCCC).

The Convention itself contained no legally binding commitments by governments to reduce GHGs. It is a framework convention, intended to serve as a platform for continued negotiation to establish effective international regulations on GHG reductions. After five years of negotiation, regulatory instruments were indeed established under the 1997 Kyoto Protocol to the UNFCCC. By signing the Kyoto Protocol, developed countries committed themselves to decrease their atmospheric GHG emissions according to an agreed schedule of relatively modest emission reductions. The heaviest mitigation burden among industrialized countries was that of the European Union (EU) which pledged an 8 per cent average reduction – well below the 60–80 per cent reductions requested by the international scientific community.[3] While not solving the problem of climate warming, the Kyoto Protocol did indicate a strategy to address it, namely, via the framework/protocol approach driven by recurrent interlinked negotiations.

The Kyoto Protocol was intended to remain in force until 2012 and to be followed and further developed by a new and more ambitious global climate agreement. Thus, shortly after its entry into force in February 2005, post-Kyoto climate talks were signalled. These negotiations began formally at the eleventh Conference of Parties (COP11) to the UNFCCC at the Climate Change Conference in Montreal in 2005, which adopted more than 40 decisions to strengthen global efforts against climate change.[4] The Canadian Environment Minister described the situation as follows: "The Kyoto Protocol has been switched on, a dialogue about the future action has begun, parties have moved forward to work on adaptation and have advanced the implementation of the regular work programme of the Convention and of the Protocol."[5]

The 2006 Climate Conference in Nairobi represented the second major session of the post-Kyoto talks but did not produce a breakthrough in the regime building process. Nevertheless, Nairobi focused on long term matters and action, continued the "multi-track" approach to these issues that had been established at COP11/MOP1 in Montreal, and reflected on the development of a framework for action once the Kyoto Protocol's "first commitment period" would be finished in 2012 (IISD 2006).

More concrete results were attained at COP13 the following year. On 3–14 December 2007, more than 10,000 delegates from 180 nations, governmental and nongovernmental organizations, and global media took part in the United Nations Climate Change Conference in Bali, Indonesia, at which the thirteenth Conference of Parties (COP13) adopted the "Bali Road Map" designed to guide a two-year process toward finalization of a binding agreement in Copenhagen 2009. The Bali Road Map included an Action Plan and set up two new negotiation institutions, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) negotiations and the Ad Hoc Working Group on Long-Term Cooperative Action under the Framework Convention (AWG-LCA).[6]

The first comprehensive round of negotiations framed by the Bali Road Map took place in Bangkok in March 2008. This meeting further specified the work program for post-Kyoto talks, focusing on the five main components of the agenda: adaptation to climate warming, mitigation of emissions of greenhouse gases, technology, finance, and the vision for long-term international cooperative action in the climate area.

In 2008 the fourteenth Conference of Parties (COP14) met at the UN Climate Conference in Poznan, Poland (1–12 December). The COP welcomed the progress made with respect to the Bali Action Plan.[7] Similarly noted was the determination of negotiating parties "to shift into full negotiating mode in 2009" and an invitation was made to all Parties to put forward further proposals regarding the content and form of the desired outcome as early as possible "in order to have them processed and considered in good time before the Copenhagen conference in December 2009."[8]

Some progress was made in various climate meetings following the 2007 Bali Conference (IISD 2007). Forward movement took place on a number of specific issues, including the establishment of an Adaptation Fund, and with regard to technology transfer, the Clean Development Mechanism, capacity building in developing countries, and financial support (IISD 2008).

The fifteenth Conference of Parties in Copenhagen

The fifteenth Conference of Parties (COP15) to the 1992 UNFCCC met on 7–18 December 2009 at the United Nations Climate Change Conference in Copenhagen. One principal aim was to reach an agreement on a new framework for tackling rising GHG emissions that would enter into effect at the end of 2012 after the expiry of the first commitment period of the Kyoto Protocol to the Climate Convention. Binding commitments regarding cuts of GHG emissions were meant to be linked to the would-be Copenhagen framework.

Before Copenhagen, there were various differing but often high expectations as to what should come out of the COP15 meeting. To cite one example among many, the Caribbean Community (CARICOM 2009) expected to come away with an accord that would help the Caribbean's capacity to reduce its vulnerability to the effects of climate change through a framework of support for adaptation

prioritizing the needs of the most vulnerable countries. The Executive Director of the Caribbean Community Climate Change Centre (CCCCC), Dr. Kenneth Leslie, expressed the need to reach an agreement that would provide financial flows of US$ 80 billion per year to developing countries and provide access to new "green" technologies, both for climate change adaptation and mitigation purposes (CARICOM 2009). Other countries and groups of nations had other, but equally specific, demands related to the same general prospects regarding, for example, mitigation, adaptation or financial arrangements.

However, as COP15 approached, expectations were lowered in many quarters. There had been conspicuous lack of progress in pre-Copenhagen talks, notably in Bangkok in September/October and in Barcelona at the beginning of November. Delays by US legislators in passing a climate bill was likewise an ill-boding signal.

The 15 November 2009 Leaders' Statement, issued after the Asia-Pacific Economic Cooperation (APEC), left the impression that only a "political framework" was possible in Copenhagen. Asia Pacific leaders backed away from their original target of halving greenhouse gas emissions by 2050, pledging instead to "substantially" slash them by that date (Ministry of Foreign Affairs of Japan 2009). Many delegations anticipated correctly an arduous future negotiation process and sensed that there was a need for a "two-step" process to reach a final climate treaty "at the earliest" in 2010 (Schuenemann 2009). The Swedish Prime Minister, Fredrik Reinfeldt, who was President of the European Council in the autumn of 2009, hinted that the EU should see COP15 as a starting point and warned that European countries would have to make do with a less ambitious global deal than they were hoping for (Groen and Niemann 2011). With both state and non-state stakeholders now divided about the extent or even the possibility of a deal, in November 2009 around 60 Nobel Prize laureates united to appeal to the governments of the world to reach a sustainable agreement in Copenhagen to confront climate-change-related problems (*Der Spiegel* 2009a).

A main reason for the "failure" of the talks in Copenhagen to reach the goals adopted in the Bali Road Map was the inability (or unwillingness) of the major emitters such as Brazil, China, South Africa and the United States to reach a compromise regarding their opposition to commitments to reduce GHG emissions. However, the "failure" of the talks occurred also in various other respects, for instance, effectiveness of the climate negotiation process.

In the view of both parties and observers, the organization of the Conference by its Danish hosts was "chaotic" and "under overwhelming pressure" (*Die Zeit* 2009), and thus not likely to be conducive to a harmonious accord. The hosts were furthermore reported to have been involved in leaking a secret "Danish text" to the *Guardian*, purportedly drawn up by some of the developed countries, which would see effective control of climate change finance passing to the World Bank. This would effectively make grants of money to help poor countries adapt to climate change dependent on their taking a range of specified mitigation actions (*Guardian* 2009; Whitemann 2009). Such a change remains unsupported by developing countries who try hard to preserve their right to exception from rules regarding reductions of greenhouse gases.

Conflict between developed and developing countries escalated further when the chief negotiator of the Group of 77, Lumumba Di-Aping of Sudan, compared the apparent reluctance of the developed countries to provide assistance to developing countries with the "holocaust" (Wetzel and Lachmann 2009).Governments in developed countries were annoyed by this ideological rhetoric.

The Copenhagen Accord, 2009

The Copenhagen Conference is far and wide considered to be a failure because no binding commitments for the post-2012 future were agreed. However, at the final plenary session on 18 November 2009, the meeting accepted "to take note of" the so-called Copenhagen Accord. This text had been drafted by the heads of state of the United States and the BASIC bloc countries (Brazil, South Africa, India and China). While many delegations were disappointed by the outcome of COP15, there was also hope that the Copenhagen Accord could become a stepping stone in the pursuance of a fair, large-scale, and binding agreement to solve the climate crisis.The main issues covered by the Copenhagen Accord can be summarized as follows:

- Reaffirmation of the ultimate objective of the UNFCCC that greenhouse gas concentrations in the atmosphere should be stabilized at a level that would prevent dangerous anthropogenic interference with the climate system.
- Recognition of the scientific view that the increase in global temperature should be maintained below 2° Celsius on the basis of equity and in the context of sustainable development.
- Call for an assessment of the implementation of the Copenhagen Accord to be completed by 2015, including strengthening the long-term goal in relation to limiting temperature rises to 1.5° Celsius.
- Commitment sought from Annex I Parties to mitigate emissions, by implementing individually or jointly "economy-wide emissions targets for 2020" by 31 January 2010.
- Delivery of reductions and finance by developed countries to be measured, reported, and verified (MRV) in accordance with COP guidelines. However, this strategy is constrained by the lack of binding quantitative commitments with respect to emission reductions in the post-Kyoto period.
- Provision of scaled up, new and additional, predictable and adequate funding to be provided to developing countries to enable and support enhanced action on mitigation, including substantial finance to reduce emissions from deforestation and forest degradation (REDD-plus), adaptation, technology development and transfer and capacity-building, for enhanced implementation of the Convention.
- Short- and long-term financing: US$ 30 billion for the period 2010–2012, and long-term finance of a further US$ 100 billion a year by 2020 to be mobilized from a variety of sources. Four new bodies established to mobilize financial resources: a mechanism on REDD-plus, a High-Level Panel under the COP

to study the implementation of financing provisions, the Copenhagen Green Climate Fund, and a Technology Mechanism.[9]

- Provision for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected.

The Durban conference in 2011 represents still another step forward in the direction of the "soft" deadline of 31 January 2010 which was set under the Accord for countries to submit emissions reduction targets. At this point, 114 countries representing 87 per cent of the global GHG emissions had made pledges regarding the reduction of these releases. In contrast, 8 countries representing some 2 per cent of GHG emissions had declared that they would not engage in the Copenhagen Accord. The pledges related to the Accord are not legally binding and do not commit countries to agree to a binding successor to the Kyoto Protocol (Wynn 2009). However, the Copenhagen Accord and the pledges related to it should be regarded as a considerable development of the Bali Road Map, confirming the long term direction of the climate talks and putting together tentative commitments pertaining to the cutback of greenhouse gases. It is in this light that the two yearly major climate conferences following the Copenhagen meeting in Mexico (Cancun) and South Africa (Durban) should be seen.

In Cancun (2010), 193 countries came together and demonstrated a renewed commitment to the struggle against global warming. The Cancun Agreements are a detailed set of visionary, yet pragmatic, principles that make important strides to begin implementing the accord reached in Copenhagen the year before. The countries gathered in Cancun made progress on emissions reductions, greater transparency, forest preservation, and the creation of the green fund to help mobilize much needed investments throughout the world.[10]

Durban produced a document whose character is similar to that of both the Bali Road Map and the Copenhagen Accord but under a new headline, the Durban platform.[11] This non-binding agreement calls for revitalized negotiations for the new agreement on emission reductions which should not be concluded later than 2015, resulting in a new binding agreement that will take effect from 2020.This framework agreement was top-down, linked to an agreement to a second commitment period of the Kyoto Protocol from 2013.One objective was to preserve what in the climate negotiation jargon has been called the Kyoto architecture, formal rules for managing emissions. The Parties to the Durban Conference declared that the negotiations for a new agreement replacing the Kyoto Protocol should be concluded not later than 2015, and that the commitments in the new agreement should take effect from 2020. This agreement preserved the legal framework of the Kyoto Protocol, while at the same time opening the path to a new more comprehensive and more ambitious global agreement. The Conference formally recognized that existing emissions reduction pledges up to 2020 had to be considerably upgraded if the global goal of limiting average temperature increases to below 2° above pre-industrial levels were to be realized.

Durban also produced institutional/organizational developments which may become important in the longer term; the creation of the Adaptation Committee,

which will provide advice and ensure coherent action on adaptation, and the establishment of a Technology Executive Committee, to facilitate the development of low-carbon technologies.

The meeting in South Africa also tackled the conflict between developed and developing countries in a constructive way. It decided to establish the Green Climate Fund (US$ 100 billion per year or more by 2020) whose principal function would be to support climate policies and activities in developing countries.

In Durban emerged significant shifts in the political landscape of the climate negotiation. China displayed a more positive attitude towards binding regulations of GHG emissions. A large 'coalition of high ambition', including more than 120 countries, emerged for the purpose of supporting a decisive progress towards a global and legally binding agreement on emission cuts. This grouping of states represented a new development in the relationship between developed and developing countries that had been so problematic during the 2009 Climate Conference. The coalition of high ambition was joined by many African and Latin American states, the group of least developed countries, as well as by the Alliance of Small Island States and the EU.

Negotiation problems in the Copenhagen talks: Agenda setting for strategic facilitation

This project wants to propose approaches and methods to facilitate the UN negotiations on climate change. For this reason it is important to establish clear guidelines for an evaluation of progress and failure in the climate regime building process. Ultimately, useful facilitation measures should promote success and help to lessen the risk for failure in the climate talks.

The Copenhagen Conference: event or process stage?

A critical problem illustrated by the Copenhagen Conference, and the negotiations that preceded and followed it, concerns the time perspective in which progress and failure should be seen. Short-term and long-term assessments, respectively, are likely to yield somewhat different if not completely contradictory results.

A common view in the debate about the United Nations negotiation on climate change is that COP15 in Copenhagen clearly represented a fiasco, simply because the Copenhagen Accord following from it is a much weaker document than the agreement with binding commitments regarding cutbacks of GHG emissions that many delegations wanted and had expected. After Copenhagen, the prospect of replacing the Kyoto Protocol with a new treaty after 2012, which would strengthen the UN climate regime, appeared remote.

However, if the Copenhagen Conference is not regarded only as a separate and autonomous event but also as a phase of a long term regime building process, the assessment of it becomes more complicated and also more favorable. The Copenhagen Accord did not produce binding commitments to reduce GHG emissions but neither did it stop a future development of the climate regime in that direction.

This was clearly indicated by developments and achievements associated with the Climate Conferences in Cancun (2010) and Durban (2011).

For example, the period of validity of the Kyoto Protocol has been extended beyond 2012, many countries have upgraded their pledges to reduce GHG emissions, and support for a new binding agreement to replace the Kyoto Protocol has seemingly increased in the last few years.

The point to make here is that strategic facilitation of the climate talks should not only target elements of separate negotiations such as the grand yearly Climate Conferences. The designers of strategic facilitation measures and strategies also need to consider events and circumstances related to continuities between climate conferences. Strategic facilitators should strive to develop and employ concepts pertaining to the regime building process at a macro level which envelops individual meetings and other events occurring in the context of the UN climate talks.

Linked to the negotiations that preceded and followed it, the Copenhagen Conference displays a number of negotiation problems that, first, may have an impact on the long term climate regime building negotiations unfolding at the macro level of the regime building process and, second, are likely to represent suitable targets for strategic facilitation measures.

Extreme magnitude of the climate talks

Like other multilateral negotiations in the UN context, the climate talks have an huge magnitude with regard to both participants and agenda. The number of official participants in Copenhagen was 33,526 persons, including 126 heads of state.[12] The conference was serviced by around 6,000 staff and included 2,500 meetings of different kinds.[13] Including formal, organizational matters, the agenda specified almost eighty items that needed to be addressed during the Conference.

Some of the issues on the agenda were highly complicated from a technical negotiation point of view and required careful studies in participating countries. This issue complexity clearly impeded the search for a constructive and effective negotiation outcome, both at the Climate Conference in Copenhagen but also with regard to the long term regime building process of which COP15 was a part.

Patterns of conflict and cooperation

Conflict and cooperation involving participants in the climate talks (national delegations, inter-governmental organizations, and nongovernmental organizations) are often generated and developed in particular situations and events, for example, as a reaction to a move by one of the players.

There are, however, also more long term patterns of conflict and cooperation recurring in one negotiation round after the other, including at the 2009 Climate Conference in Copenhagen. For example, patterns of conflict among leading actors such as the United States, the EU, China, Japan, Russia, India and Brazil, which were discernable in the pre-Kyoto negotiation, have more or less been

transferred to the current post-Copenhagen stage of the climate regime-building process (Pan 2006). Thus, the EU has continued to be a strong proponent of far-reaching formal international regulations to cut emissions, although its position does seem to have changed somewhat in connection with the Copenhagen meeting, whereas the United States and some other countries persist in opposing this approach.

For a long time, developing countries have refused to accept binding mitigation commitments. Although some change in their position can be noted, they still demand exceptional treatment, economic adaptation assistance, and technology transfer in their favor (Najam *et al.* 2002: 3). At the same time, the negotiation strength of many developing countries is increasing, which makes their conflict with developed nations more complex and unpredictable in the longer term. There is no simple political formula in sight that has a clear potential to easily bridge the differences of interest between leading OECD nations and coalitions of participating developing countries in the climate talks.

Tactical facilitation, for example in the form of mediation, can be attempted in order to cope with a current conflict between two or more parties in a particular situation, such as an ongoing meeting in a negotiation group. Patterns of conflict like those that are discernable in the climate talks can also represent obstacles in the negotiation that are possible to demote by means of facilitation with a more strategic direction. The conflict between developed and developing countries at the Copenhagen Conference is one example. Many developing countries were provoked by the way in which the text to what became the Copenhagen Accord was put together. In order to make negotiations more effective, developing countries were kept outside this process and their response was their walkout from the conference room. In Cancun (2010) and Durban (2011), the organizers of the Climate Conferences were careful to use different procedures than in Copenhagen in order to give developing countries more access to important meetings. As a result, the relationship between developed and developing countries became more harmonious and cooperative as compared with COP15 in Copenhagen.

Knowledge diplomacy: effective use of science

Policymakers and diplomats in many countries find it difficult to fully understand the causes and consequences of climate warming because such complete comprehension needs to be expressed in the language of natural scientists. *Knowledge diplomacy* and the use of scientific information are important elements of the climate negotiation (Sjöstedt 2009). An inflow of scientific knowledge and information into the climate talks has represented a prerequisite for effective negotiation, not least in attempts to reach a costly and binding agreement (notably regarding cuts of GHG emissions).

Science must assist in the various preparatory efforts that are needed to pave the way for success in the UN negotiations on climate warming (Lanchberry and Victor 1995). It is, however, not always obvious how this can be achieved. As issues are processed through the negotiation machinery from one negotiation round to

another, the focus on needed knowledge often shifts. For example, as compared with the pre-Copenhagen talks, there is an increased need for scientific knowledge about adaptation issues in the post-Copenhagen negotiation. Processes and institutions feeding scientific knowledge into the climate talks must be sensitive and flexible enough to be able to respond effectively to such changes of demand. They must furthermore be aware of the often considerable differences among negotiating parties with regard to their capacity to generate scientific knowledge and to pursue effective knowledge diplomacy. One reason is that most governments in the developing world can send only very small delegations, with few or no experts, to climate conferences.

The challenge of new or reframed issues

When issues such as *adaptation* or *forestry and land use and land use change ("sinks")* were upgraded on the agenda of the climate talks, along the lines established in the Bali Road Map, the climate negotiations became more difficult to handle for many countries. In certain ways, the issues of "*sinks" and adaptation* are examples of new negotiation trials, one of which is the need for new scientific knowledge/information. However, the challenge of new or reframed issues in the climate talks has broader implications than that.

In the pre-Kyoto talks, adaptation and sinks had been addressed in a number of climate meetings. But, after Copenhagen, these topics were still "new" in the sense that they had not been prepared for negotiation purposes to the same high degree as mitigation questions (emission reductions). An important negotiation problem is that adaptation needs a quite different approach than mitigation in the climate talks because it cannot equally easily be expressed and measured quantitatively. Like tariffs in trade talks, quantified emission cuts in the climate talks represent an excellently framed stake from a technical negotiation point of view. Notably, exchange of concessions in bargaining for a binding agreement is enormously facilitated.

Adaptation issues cannot be handled in the same simple way at the negotiation table. A different approach needs to be developed. Another challenge is that scientific networks built up to support the pre-Kyoto negotiation on mitigation cannot in the same way elucidate all relevant aspects of adaptation that concern social scientific issues, such as development assistance, poverty, or urbanization. This is not only a matter of analytical quality. Will national governments and intergovernmental organizations accept the advice given by social scientific researchers to the same degree as they listened to natural scientists in the pre-Kyoto talks?

The gap between need and feasibility

Table 0.1 exhibits the pledges twelve countries made in association with the 2009 Copenhagen Accord.[14]

The promises exhibited in Table 0.1 are not easy to compare. For example, the 12 nations use four different reference points; business as usual and actual

Table 0.1 National pledges to reduce GHG emissions associated with 2009 Copenhagen Accord

Compared with 1990	*Compared with 2000*	*Compared with 2005*	*Compared with business as usual*
EU: 20%–30% Japan: 25% Russia: 15%–25% Ukraine: 20%	Australia: 5%–25%	Canada: 17% US: 17%	Brazil: 36.1%–38.9% Indonesia: 26% Mexico: 30% South Africa: 34% South Korea: 30%

emissions in 1990, 2000 and 2005, respectively. The national pledges are not part of a binding treaty so there is no guarantee that they will be realized. Even if they will be, there is still a huge "gap between need and feasibility" to consider as the world scientific community recommends cuts of greenhouse gas emissions in the range of 60–80 per cent (Meehl *et al.* 2007; Grubb *et al.* 1992). It is unlikely that the gap can be closed in a single successful negotiation round. Recall that the emission rates included in the binding Kyoto Protocol were extremely difficult to attain although they were quite modest; 8 per cent for the EU, 7 per cent for the United States, and 6 per cent for Japan (Enzler 2008). A long term perspective and stepwise regime building process through a sequence of negotiation rounds and agreements seems to be required in the post-Copenhagen period.

Institutional support to the climate negotiation: design problems

A general observation from the climate talks, as well as from other environmental negotiations, concerns the great importance of institutional support. The value of such external – contextual – assistance is recalled in observations of the Copenhagen Climate Conference. One example is the importance of the knowledge input provided by the IPCC into the climate negotiation, which has been manifested at every major climate conference.

However, the Copenhagen meeting also demonstrated risks due to malfunctioning institutional support. The employment of procedural rules that led to the half day walkout of developing countries in Copenhagen is one example. Another case in point is the slow process of admitting nongovernmental organizations into the conference building, which caused considerable frustration in the global civil society.

The above observations do not represent a comprehensive analysis of the Copenhagen Climate Conference and its associated pre- and post-negotiations. Neither does Copenhagen give complete picture of the climate talks. Still, the Copenhagen case has an important function in this project. It serves as an empirical platform for the design of the study in three important respects.

First, the Copenhagen case indicates areas in which stumbling blocks and strategic facilitation are important to discuss and assess.

Second, it gives direction to the development of a conceptual framework,

Third, the Copenhagen case indicates guidelines for the selection of concrete elements of the climate negotiation that give a reasonable picture of the great variation of negotiation problems confronting parties to the climate talks.

A conceptual framework

Policy advice based on social science for facilitation of the negotiations on climate change requires prior systematic analysis. The special framework for analysis and consequential prescription that has been constructed for this project consists of three principal parts. The first offers *a long-term macro perspective* on the climate negotiation, the second explains the meaning of *stumbling block* and the third part describes the essence of *strategic facilitation* and how it might generate positive effects in the climate negotiation.

Recurrent climate talks: A macro perspective

A national government and its delegation which wants to influence a session of the climate talks must prepare itself carefully. Policy makers and diplomats have to gain access to the latest scientific knowledge and information pertaining to the various dimensions of the complex climate issues relating to causes, manifestations, and consequences of climate warming. They must be well informed about effective measures to mitigate global warming, the conditions that would foster these, and ways of adapting to the disasters and problems resulting from the warming of the atmosphere. They also need reliable intelligence about the interests, capabilities, and positions of other significant actors in the process. The critical balance between problem solving and conflict resolution varies at different stages of a long-term regime-building process.

In order to maneuver effectively in the regime-building process, governments need to develop detailed climate policies in advance, and diplomats must repeatedly reconsider their positions in the climate talks and determine tactics in the continuous interaction with other players. However, tactical considerations, that typically have a short time frame, are not sufficient. As seen in a historical perspective, the UN climate talks can be looked at as a sequence of major rounds of negotiation largely corresponding to the rounds of multilateral trade negotiation in GATT/WTO.[15] This situation signals a need for a long term, strategic perspective on the climate talks.

A basic concept in this study is *negotiation session*: A general definition is *a major event in a progression of a regime-building process*. In the climate negotiation, a number of particularly important negotiation sessions are discernable; examples of such intensive negotiation sessions are UNCED producing the UNFCCC in Rio de Janeiro 1992, COP3 establishing the Kyoto Protocol in 1997, COP13 drawing up the Bali Road Map, and the Climate Conference in Copenhagen 2009 resulting in the Copenhagen Accord.

In the climate talks, separate negotiation sessions have been interconnected by various kinds of backward and forward linkages. The connection between the

1992 UN Framework Convention on Climate Change and the 1997 Kyoto Protocol can be described as an important forward linkage. New issues on the negotiation table, or issues that are further developed between rounds, represent other types of *forward linkages*.

A *backward link* occurs when negotiators in a negotiation session refer back to the outcome of an earlier session, for example, in order to strengthen their position in the current negotiation.[16]

To date, the UN climate negotiation has included a multitude of negotiation sessions in various settings that, however, in the final analysis were all related to three principal rounds pertaining to the macro-level of the climate talks. Each round can be identified with the help of an important intermediary outcome of the macro-process.

The first of these rounds started with informal consultations in the middle years of the 1980s and ended with the establishment of UNFCCC in 1992. The second round was concluded with the Kyoto Protocol, which was adopted in December 1997 and came into force on 16 February 2005. The current post-Kyoto talks, which include the 2009 Copenhagen Meeting, represent a third major round.[17] A logical future transition to a new round can be expected to begin if the Kyoto Protocol can be replaced by a new binding agreement on emission cuts.

This complex character, stepwise development, and long time frame are not exceptional for the process of the climate talks. For example, the dynamics of the international trade regime in the WTO has similar features.[18] In fact, a continuing recursive process with backward and forward loops can be seen as a general model for complex multilateral negotiations, particularly in the environmental area (Crump and Zartman 2003). In both the climate talks in the UN and the trade negotiations in WTO, each round can be regarded as a separate episode with a beginning and an end. Seen in this perspective, each episode is an autonomous negotiation process starting with *pre-negotiation* then evolving into *agenda setting*, *negotiation for a formula*, *bargaining about detail*, and ending with *agreement* and *post-negotiation*.[19] This is a usual analytical perspective on the climate talks, as well as on other multilateral negotiations.

However, to be fully understood and accurately assessed, each of the separate rounds of the climate talks also have to be seen as stages of continuous developments at "the macro level"; an incessant regime-building process, which incorporates all negotiation episodes, be they rounds or particular sessions.

Unless this macro approach is adopted, mistakes will be made in both analysis and outcome evaluation when the climate talks are assessed. For example, important results from one round of negotiation may not become visible until they materialize in the outcome of a following round. Although UNFCCC (1992) did not contain binding commitments to reduce emissions of greenhouse gases, it was a prerequisite for the 1997 Kyoto Protocol, which did include compulsory schedules for emission cuts for developed countries. Therefore, it would be misleading to say that, in contrast to the Kyoto Protocol, which was a success, UNFCCC was a relative failure because it did not include binding regulations about emission reductions. In reality, binding regulations about emission reductions did represent

one important result of the negotiation creating UNFCCC, although this outcome did not materialize fully until five years later when the Parties to the Framework Convention met in Kyoto in 1997. An assessment of what the 2009 Copenhagen Climate Conference achieved should have the same forward-looking perspective. Some of the Copenhagen achievements, such as regulations concerning emission cuts, may not come into view until a following COP Meeting sometime after the 2011 Durban Conference.

Hence, an important lesson for practice is that long-term strategic planning of the climate negotiation needs not only to be forward-looking in the context of an ongoing negotiation round, such as a particular Conference of the Parties to UNFCCC. Strategists engaged in the climate talks, be they analysts, policymakers or facilitators, should also consider "the macro level"; the negotiated long-term, continuous, regime-building process. Similarly, efforts to facilitate the climate negotiation should not be limited to easing a particular meeting or negotiation round but should also strive to find ways of easing the continuous regime-building process unfolding at the macro level.

Stumbling blocks

In this project, strategic facilitation is understood as measures suggested by external actors trying to help negotiating parties to cope with stumbling blocks in the climate negotiation. A *stumbling block* is here defined as an impediment that, to a certain degree, has a structural character and is hence not tied exclusively to one single event or situation. A particular person not living up to the requirements for good chairmanship in a negotiation committee at a particular meeting does not represent a stumbling block; however, unsatisfactory chairing in a more general sense does, if it tends to recur from session to session. An important consequence of the structural character of stumbling blocks is the possibility of drawing lessons from the present for future negotiations. For example, by noting and understanding a problem such as failing chairing in negotiation groups, it may be possible to cope with it through measures that are planned or taken in the present. In turn, such lessons may become the basis for long-term approaches to easing the climate talks, namely, *strategic facilitation*.

The critical criterion for the detection of stumbling blocks is their negative impact on the climate talks. Essentially, stumbling blocks can generate two main types of obstructing effect. Ultimately, a stumbling block 1) prevents or delays the attainment of satisfactory agreements in the climate talks (*process effects*) or 2) hampers the quality of such accords (*outcome effects)*.

Negotiated agreement may mean different things. A multiparty negotiation like the climate talks can, if it is successful, be regarded as the sequential establishment of different kinds of negotiated agreements concerning, essentially, the initiation of the process, the setting of the agenda, the creation of consensual knowledge, the choice of negotiation approach (formula), the settlement of separate disputed issues, and eventually the acceptance of the whole package of issues addressed in the negotiation (the final negotiated text) (Kremenyuk 2002).

Thus, it is important to bear in mind that outcome effects of stumbling blocks do not only relate to the closing agreement reached in a negotiation round, such as the Kyoto Protocol. The problem is that other agreements are usually more difficult to discern and describe, because they are not made explicit and formalized to the same degree as the final accord of a negotiation. One may also argue that any significant difficulties in reaching intermediary agreements will eventually affect the final accord. However, the distinction between different types of agreement along the process development of a multilateral negotiation is important in the search for a facilitation approach and concrete facilitation methods. Combinations of causative factors can be expected to vary, depending on what kind of outcome is obstructed. For example, the conditions for the signature of a formal final agreement are likely to be different from the prerequisites for agreement on consensual knowledge. Consequently, an external party needs to use other methods to facilitate a formal endgame of than if the purpose is to support the establishment of consensual knowledge.

As seen in a somewhat different perspective, stumbling blocks may also be linked to elements of the negotiation per se, or functions it performs. Generally speaking, a stumbling block may contribute to making the interaction between negotiating parties unnecessarily ineffective, time-consuming and costly in terms of human, technical, financial, or other resources invested into the negotiation (*negotiation effect*).

Stumbling blocks generating a negotiation effect may pertain to various elements of a negotiation. They may, hence, relate directly to the complex problem area of climate change and how it has been framed for negotiation purposes (*issue*). They may have to do with how individual negotiating parties perform (*actors/strategies*). The difficulty many developing countries have in terms of participating actively and effectively in the climate talks because of lack of expertise and other resources is a well-known example. Some ways in which the negotiation has been organized and functions (*process*) as well as certain features of the context (e.g. organization) in which the climate talks take place (*structure*) may similarly represent stumbling blocks.

A major part of this project has been to identify critical stumbling blocks in the climate talks related to each of these elements of the climate talks; the issue, actors/strategies, process and structure (Sjöstedt 1993; Susskind *et al.* 1993; OECD 1999; Victor 2001).

A taxonomy of stumbling blocks

A systematic means of describing the complexity in the climate change negotiations is to use a taxonomy covering its complexity categories: *issue complexity*, *actor complexity*, *structure complexity*, *outcome complexity*, and *process complexity*. The difficulties involved in clearly separating actors, issues, structure, outcome, and process from one another implies that there are interlinkages between them and that the elements interact in a dynamic way, which in itself is a source of complexity. A taxonomic approach makes it possible to clearly identify the issues involved in a conflict, and also to determine *zones of possible agreements* (ZOPAs).

Stumbling blocks related to issues

Issues typically represent stumbling blocks because they epitomize diverging interests in different countries. For example, island states in the Pacific Ocean, whose existence is threatened by a rising sea level, want to limit emissions of CO2 as much as possible. In contrast, some oil producing countries resist binding international regulations prescribing cuts of CO2 emissions. Looking for issue-related stumbling blocks, it is important to take note of other dimensions of negotiated matters than the interests to which they relate.

As Bercovitch *et al.* (2009) argue, parties in conflict differ so widely in terms of their values, beliefs, and goals, that they can also be expected to differ with respect to their perception of the issues underlying the conflict.

Perceptions, in turn, are embedded in various social and societal circumstances. In the climate change negotiations, the issues center on the means of distributing "responsibilities" in terms of greenhouse gas emissions. The delays and even breakdowns in this process could be due to the lack of a normative framework on justice and fairness. The contesting notions of justice and fairness between the developed and developing countries make it almost impossible to find a "just and fair" procedure of the distribution of climate change "burdens." Whereas the "North" follows a "forward-looking" notion of justice and fairness, the South adheres to the "backward-looking" notion of justice and fairness (see Chapter 8). The gap between these perspectives is, to a significant extent, linked to a mindset or cognitive structure that influences decisions and behavior relating to negotiation procedure.

Another way of analyzing issues is to calculate the rewards, or cost, that can accrue to each party from the issues defining the conflict. If the only possible outcome to each party is either victory or defeat, then the conflict is a "zero-sum game" (one party gains what the other party loses) (Bercovitch *et al.* 2009: 6). The understanding of conflict as a source of reward or punishment is necessary for its management, and this is not possible under the current structures of the UNFCCC/Kyoto Protocol.

The issues addressed in the climate change negotiation can be classified in terms of their contents; they include 1) resource issues (e.g. funds or technologies), 2) sovereignty issues (e.g. verification measures), and 3) security issues (e.g. natural disasters). At COP15, states wished to bring different priority issues to the negotiation table. For example, China prioritized resource and sovereignty issues, whereas Bangladesh was primarily concerned with security issues, further adding to the complexity of the climate talks. This variation in perception of issues represents a stumbling block whose importance should not be underestimated.

The diversity of issues discussed above is not just a source of complexity but also causes changes in the influences that bear on issues' nature and scope. The intense public attention focused on the COP15 meeting led to an increase not only in the participation of stakeholders but also of spoilers, some of whom were creative enough to push forward the agenda or increase public awareness of the climate issues, and some (fewer) of whom rioted or destroyed property. Between 40,000

and 100,000 people attended a march in Copenhagen on 12 December calling for a global agreement on climate change (BBC 2009a). Some 968 protesters were detained at the event, including 19 who were arrested for carrying pocket knives and wearing masks during the demonstration. The increased focus on the climate change negotiations led to greater security measures being taken to protect them. At the Copenhagen summit, Per Larsen, the chief of police coordinating the security measures, stated that this was "surely the biggest police action … in Danish history" (Zeller 2009). The transformation of the climate issues from "low politics" to "high politics" adds to the complexity confronting negotiating parties. With more stakeholders wanting to influence the decision-making process, there needs to be greater coordination efforts between national and international agencies.

Inclusion of air transport into the international climate regime highlights the problems of dealing with *new issues* in the regime-building process (Chapter 6). The difficulty of making cost/benefit assessments regarding negotiated climate policy options is likewise linked to the climate issue, particularly the extreme uncertainty problems it evokes (Chapter 12).

Stumbling blocks related to actors

One of the key factors in the analysis of any conflict is the identity of the parties. As a global deal can be reached only by states, these will be the focus of this chapter. As Bercovitch *et al.* (2009) state, "parties to a conflict" may refer to an entire scale of entities ranging from the individual to national and international organizations, with different parties to the conflict and different levels of analysis occurring at different aggregation levels. Indeed, the diversity of actors is in itself a source of complexity.

Each nation has its own means, strategies, approaches, and procedures for dealing with other nations involved in the process. Sovereignty can be an obstacle to a global deal, as states are accountable to their constituents. For example, the coal dependence of Australia is a powerful determinant of its position in the climate talks. Australian leaders have declared that they cannot make commitments in a global agreement to reduce emissions of greenhouse gases unless advanced economies take on comparable commitments and major developing economies begin to substantially curb their emissions (UNFCCC 2009; Rudd *et al.* 2009).

Because of states' differing means and situations, their preferred procedures and approaches for coping with climate warming also differ. The domestic situation of a country, which is important for external action, also varies across nations, making it difficult for other nations to understand and anticipate its performance. Although the administration of US President Barack Obama could have regulated the emissions of greenhouse gases without the approval of the US Senate and the House of Representatives through an endangerment finding on the part of the US Environmental Protection Agency with respect to CO_2 emissions, the President preferred to integrate this decision into the democratic process, which was one reason for the protracted negotiation process at COP15 (*Der Spiegel* 2009b). At a press conference during COP15, Todd Stern, the US Special Envoy for Climate

Change, highlighted the importance of the US climate bill for the decisions that would be taken at the international level.

In many multilateral talks, the positions of many nations remain surprisingly unaltered from one negotiation session to the next. This state of affairs can be seen as a facilitating factor. If governments are familiar with what their opponents and allies prefer and think, this is helpful in a negotiation. In contrast, when nations or groups of states begin to change policies and positions, this development may become a stumbling block.

The requirement of, for instance, Australia, Russia, the European Union and other developed nations, that major developing countries with emerging economies commit themselves to carbon emissions cuts is one indicator of a new development in the international system. Developing countries moved from the periphery to the center of the climate negotiations during the Copenhagen meeting, gaining issue-specific power (for example, "no solution without China"). The walkout of the delegates from African nations over the leaked "Danish text" led to a temporary suspension of talks on the eighth day of COP15, indicating a growing "veto or blocking power," on the part of the developing countries, an ability to delay the process, and ultimately prevent an agreement (see Chapter 8).

Clearly, the diversity of actors and the notion of sovereignty are among the constraints to reaching a global deal. Parties in conflict determine their positions within a social context, in which specific decisions and behavior on the part of others condition one's own strategies, procedures, and approaches (see Chapter 2).

Selected themes in the book directly related to the *actors* of the climate negotiation are great power policies (Chapter 2), leadership (Chapter 3), capacity-building in weak developing countries (Chapter 5), the role of NGOs (Chapter 4) and the private sector (Chapter 6).

Stumbling blocks related to process

An important category of stumbling blocks concerns the progress of the negotiation process. One process dimension pertains to the planned time frame of a particular meeting, something which became problematic during the Copenhagen Conference. The inherent inflexibility in the way the conference organizers managed the negotiation proved to be a major stumbling block. Their fixed plan that a final agreement would be in place by the last Saturday of the meeting forced the formal negotiation leaders (notably the chair of the plenary) to manage the process badly. For example, to save time, there were insufficient consultations with states outside the inner circle of the leading nations. This poor process management appears to be one of the reasons for the developing countries walkout on 14 December (Johnson 2009).

The "time frame paradox" with which negotiators were confronted in Copenhagen represents another temporal problem. Negotiators tend to address the climate change issue within a short-term time frame because of domestic constraints such as national elections. Negotiations also focus on the costs of mitigation that

start to accrue in the short term. However, climate negotiators need to have a long-term perspective, because mitigation measures taken today will produce effects only in the long term. The essence of the "time frame paradox" is that the long-term consequences of climate warming require short-term policy action. According to the IPCC Fourth Assessment Report: Climate Change 2007, many long term impacts of climate warming be reduced, delayed or avoided by mitigation if only appropriate measures are undertaken in the shorter term. Delayed emission reductions significantly constrain the opportunities to achieve lower stabilization levels and increase the risk of more severe climate change impacts (IPCC 2007).

Another dimension of process complexity refers to the problem of "sectoral arrangements," that is, the subdivision of complicated climate issues in order to simplify the negotiation. However, as Copenhagen recalled, issue interlinkages are generally so dense in the climate negotiations that separate sectoral agreements would be almost impossible to attain and implement. This is not necessarily a bad thing, as sectoral agreements can sometimes impede overall "package deals" being made among the parties.

The linkages between negotiation sessions and rounds represent another aspect of process complexity. The COP15 summit should not be evaluated as a single event, but rather as a step in the process that began in earnest with COP11 in Montreal. The failure to reach a binding agreement on mitigation measures at COP15 shows there is a need to develop a framework for bargaining on emission reductions, and particularly the procedures regarding the participation of developing countries in the climate talks. Work leading in this direction was carried out at the Climate Conferences in Cancun and Durban. Although COP15 failed to produce a binding agreement, it represented a necessary step forward in the regime-building process.

The "exceptional procedure" through which the Copenhagen Accord was developed represented an inadequate effectiveness model. This approach made it possible for a small group of leading countries to work out an agreement which will probably have positive effects on the post-Copenhagen talks. However, this so-called achievement came at a substantial cost, because it contributed to undermining the multilateral character of the UN negotiation on climate change. Copenhagen highlighted the urgent need to better integrate developing countries in the multilateral negotiation process, as developing countries are in general more vulnerable than developed countries to climate warming. Moreover, developed countries have an interest in increasing the active participation and influence of developing countries at all stages of the climate talks, from agenda setting to bargaining on detail in a final agreement, in order to encourage developing countries to begin reducing their emissions of CO_2 and other greenhouse gases. A negotiated agreement is the only way to a binding commitment.

The building and management of scientific knowledge in the negotiation (Chapter 7) and land use/forestry (sinks) (Chapter 11) represent critical *process-related* themes.

Stumbling blocks related to structure

The structure of a negotiation is a configuration of enduring circumstances influencing actors and process. This pattern of structural components may differ between negotiations, depending on, for example, issues and participants. In the case of the climate talks, conceivable elements of the structure of the negotiation are, for example, the distribution in the world of oil and coal extraction, of emissions of greenhouse gases, and of industrial production. The distribution of power in the world conditioning the climate talks is an important part of the negotiation structure.

Support institutions represent elements of the negotiation structure, which are particularly close to the negotiation process. The main institutions which formally service the climate negotiation are related to the UNFCCC. This is a complex system of committees and secretariat units (notably the UNFCCC Secretariat in Bonn), as well as special bodies like the IPCC (see Chapter 7).

The effectiveness of the negotiation on climate change depends on the well-functioning of its support organizations. Therefore, if problems with the support bodies become too large, they may come to represent stumbling blocks that are impeding the climate talks. Deficiencies in the support organizations can be expected to have different characteristics. They may, for example, concern the competence and relevance of particular organizational bodies, or they may have to with a capacity to adapt to new situations and demands. Coordination capabilities within the whole network of support organizations are likewise a critical factor (see Chapters 5, 8, 9).

Stumbling blocks related to outcomes

It is clear that COP15 should be regarded as but a single step in a long regime-building process but it is far from obvious what this movement achieved. A string of questions come to mind. How binding is "soft law," that is, non-compulsory political guidelines as represented in the Copenhagen Accord? How significant was the Copenhagen conference if it is regarded only as a point of departure for a continued regime-building process rather than as an end point? To what extent did the Copenhagen Accord reinforce or develop the aims and plans represented in the Bali Road Map?

Negotiation is an instrument intended to move parties to a specific state of affairs that is estimated to be better than the status quo. However, in the climate change context, negotiation itself has in certain ways become the "end" to the process. One example is the gaps in the procedure regarding notions of justice and fairness as applied to the climate talks. Particularly diffuse in the climate change context is the approach being used to reach an outcome. While, at the COP15 summit, the European Union pursued a multilateral approach, the United States uses bilateralism as an instrument of diplomacy, negotiating bilaterally with China, India, Brazil, and South Africa to find a compromise and, according to them, a "meaningful" agreement (BBC 2009b). Several stakeholders blamed the United States

for the failure of the conference to achieve a binding deal because, by negotiating with only a select group of nations, most states were excluded from the critical decision-making process. For instance, the Bolivian delegate called the way the Copenhagen Accord was reached "anti-democratic, anti-transparent and unacceptable" (BBC 2009c). Bolivia and other developing countries believed it to be an "unfair procedure" which also included an element of blackmail, because access to the funds for climate measures that were to be provided by developed countries was contingent on signing the agreement that had been worked out by the leading nations.

The bottom line is that bilateral negotiations at Copenhagen, which took place within a UN climate negotiation system designed to have a genuinely multilateral character, represented a noteworthy departure from the norm. In fact, it was argued that "the future of the UN's role in international climate change negotiations is in doubt" (BBC 2009c; Hamilton 2009). It is questionable if the United Nations can still deliver substantial measures to confront climate change. Bilateralism and multilateralism are two contesting approaches, and the introduction of bilateralism risks destabilizing the climate negotiation system. In the eyes of many governments, particularly in the developing world, the system lost some of its legitimacy at Copenhagen. It remains to be seen what the enduring effects of the repair work carried out in Cancun and Durban will be.

In a multilateral negotiation, an obvious problem related to the outcome is how to attain it. Other outcome-related difficulties are associated with the final agreement once it has been achieved. To a great extent these have to do with implementation, including verification of agreements, which is one of the themes addressed in this project (Chapter 10).

The outline here does not offer a comprehensive inventory of stumbling blocks confronting parties to the climate talks. One aim of the review has been to demonstrate the great variability of the basic character of stumbling blocks. Another objective is to categorize stumbling blocks in terms of a conceptual framework, which link them to basic elements of a multilateral negotiation. These connections give guidance to the development of facilitation approaches and methods.

Strategic facilitation

Facilitation is external – third-party – intervention in the climate negotiation for the purpose of making it easier for the states and organizations involved as parties in the process to reach a satisfactory agreement, or to move the talks in a satisfactory direction. A *facilitator* is a kind of external consultant at the service of the entire negotiation process. Her or his task is not to help an individual government realize its separate interests, unless this is in line with the common interests of all negotiation parties. The facilitator serves the common interests of negotiating parties as defined in the UNFCCC and the final texts of the COP meetings that have occurred since 1992, and particularly the 1997 Kyoto Protocol. The task of strategic facilitators is to use social scientific knowledge to propose or design measures that are likely to help negotiating parties reach these collective goals. In some