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THE COPENHAGEN CLIMATE TALKS: THE END OF THE ROAD FOR THE UNFCCC OR A STEP FORWARD IN THE EVOLUTION OF THE REGIME?

*Meinhard Doelle**

Introduction

In December, 2009, the most anticipated climate change negotiations in a decade took place in Copenhagen, Denmark.¹ For two weeks, climate change took center stage in Copenhagen and around the globe with high expectations for a comprehensive global agreement on how to tackle climate change, one of the most complex challenges facing the human race. Over 130 of the 193 parties attending the negotiations were represented by their head of state or government, making Copenhagen the largest gathering of heads of state outside New York. Instead of making headlines with a comprehensive climate deal, Copenhagen made headlines with demonstrations, procedural battles inside the conference center, and the gradual exclusion of civil society from the negotiating process.²

Substantive Outcomes

The main substantive outcomes of the Copenhagen climate talks are the Copenhagen Accord and modest progress in the negotiations under the LCA and KP AWGs.³ The work of the two AWGs was far from completed. The Copenhagen Accord was limited to a few key issues and was not universally accepted and, therefore, not formally adopted by the COP. In short, the direct substantive outcomes from Copenhagen were limited, to say the least. For anyone looking for progress out of Copenhagen, the main hope is that the results in Copenhagen will lead to more substantial agreement at COP 16 in Mexico.

The following are some of the key elements of the Copenhagen Accord:

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¹ See UNFCCC <http://unfccc.int/2860.php> (last accessed January 2010) for general information about the Copenhagen climate talks.

² During the second week of the negotiations, NGOs were gradually restricted from entering the venue of the negotiations. By the end, only a few selected individuals were permitted inside the facilities. Many accredited long time observers were completely excluded from the negotiations.

³ See UNFCCC website at <http://unfccc.int/2860.php> (website last accessed January 2010) for official UNFCCC documents from the various negotiating processes underway in Copenhagen. For the results of the LCA AWG, see FCCC/AWGLCA/2009/L.7/Rev.1 and Add.1, Add.2/Rev.1, Add.3.7, Add.8/Rev.1 and Add.9. For the results of the KP AWG, see FCCC/KP/AWG/2009/L.15.

- Endorsement of the continuation of the two AWGs to conclude a more comprehensive agreement at COP 16 on the range of issues currently before the two AWGs.
- Endorsement of the goal of limiting global average temperature increases to below 2 degrees Celsius and the need to make deep cuts in emissions to achieve this goal.
- Annex I Parties are asked to submit by January 31, 2010, and subsequently implement, quantified economy-wide emission targets by 2020. Efforts to implement these targets will be subject to international monitoring, reporting and verification (MRV). The agreement does not include a collective target for Annex I Parties.
- Non-Annex I Parties are similarly asked to submit a list (also by January 31, 2010) of mitigation actions they intend to implement (supported and unsupported NAMAs). Any involvement of LDCs and SIDS is strictly voluntary. The implementation of these actions is to be communicated through National Communications every two years. The level and nature of the monitoring, reporting and review (MRV) will depend on whether the actions are supported by Annex I Parties. For unsupported actions, the focus will be on domestic MRV, but with some international transparency. For supported actions, there will be international MRV. As with Annex I parties, the agreement does not include a collective target for Non-Annex I parties.
- A collective commitment from developed countries to contribute \$US 30 billion from 2010 to 2012 for adaptation and mitigation in developing countries.
- A collective commitment from developed countries to increase the funding to \$US 100 billion a year by 2020 from a variety of unspecified sources.
- A review by 2015 to assess the implementation of the Accord and its adequacy, including, in particular, the need to consider the 1.5 degree global average temperature limit based on the available science at that time.⁴

How does the Copenhagen Accord stack up against expectations? To start with, the Accord is short on detail on a shared vision consistent with the goal of the UNFCCC. The statement on shared vision lacks many of the elements introduced in the Bali Mandate and the subsequent negotiations on what would be required globally to keep global average temperature increases

⁴ The Copenhagen Accord was at the time of writing available as part of document FCCC/CP/2009/L.7, available on the UNFCCC website at <http://unfccc.int/2860.php> (website last accessed January 2010).

below 2 degrees. There is no mention of the maximum concentration of GHG emissions that would ensure the 2 degree target can be met, nor is there agreement on peak emissions or global emission reductions either in the medium or long term. Furthermore, the Accord does not address the much more difficult and controversial issue of how the global emission reductions needed to achieve the 2 degree target would be shared among the parties to the UNFCCC. In short, the Accord sidesteps the tough issues on adequacy and fairness. It does, however, set the overall adequacy target that could lead parties to fill in the missing detail at COP 16.

The Accord is also weak on mitigation. If the commitments introduced by key Parties in the lead up to Copenhagen are any indication, mitigation commitments by both A1 and NA1 parties will fall well short of the 25-40% for A1 and the 15% below BAU for NA1 suggested by the IPCC to be needed to have a reasonable chance of meeting the 2 degree target. The Accord does nothing to motivate or require parties to increase their mitigation commitments even though it is clear that current commitment are inadequate to achieve the 2 degree target. There is furthermore no indication that the mitigation commitments will become binding in any legal sense. If there is progress on mitigation, it is that developing countries have agreed to put mitigation actions forward and have agreed to some level of international transparency and oversight.

Finance is the most successful part of the Copenhagen meetings. The long-term finance may still fall short of what is needed to adequately support mitigation, adaptation, technology and capacity building in developing countries, but the commitment appears to be in the right order of magnitude.⁵ Unresolved issues include sources of funding, compliance, and the details on how funds are to be allocated and disbursed. With respect to adaptation, the main contribution of the Copenhagen Accord is the agreement on finance.

In spite of its many limitations, the Copenhagen Accord has the potential to have a positive impact on the development of the climate change regime. Most immediately, it should result in a quick start to finance. It can also, if accepted by the UNFCCC parties negotiating the LCA and KP texts, resolve some key issues, and, thereby, provide much needed momentum to the ongoing negotiations under the two AWGs. The acceptance of the agreement reached in the Accord by the two AWGs is, however, far from certain. There is a significant risk that these issues will be reopened when the LCA and KP AWGs pick up their work in 2010.

⁵ For a perspective on the level of finance required, see Andrew Pendleton, Simon Retallack, *Fairness in Global Climate Change Finance* (London: Institute for Public Policy Research, 2009) available online at <http://www.boell.de> (website last accessed January 2010)

Regardless of what happens to the issues resolved in the Copenhagen Accord, the many outstanding issues will have to be taken up by the LCA & KP AWGs in 2010. An interesting question in assessing the impact of the Copenhagen Accord will be whether it can create momentum in these negotiations, particularly as a result of the agreement on the scale of long-term finance, the level of mitigation efforts by key parties, and the transparency and reporting and review commitments. Unfortunately, while the substance of the Accord has the potential to provide some momentum to the negotiations in these key areas, the way the Accord was negotiated by a limited number of nations while excluding a number of developing nations has the potential to undermine the trust and atmosphere of cooperation needed to resolve the many outstanding issues.

The Accord has the potential to affect the enactment of domestic climate change legislation in the US. On the one hand, the mitigation actions committed by key developing countries and the acceptance of some level of international oversight over mitigation actions in developing nations should assist in efforts to pass domestic legislation in the US. On the other hand, the financial commitment to developing nations may hinder those efforts. To minimize the downside risk, one might expect the US to target its funding in areas most acceptable to the US population, such as adaptation and LDCs, while avoiding funding mitigation efforts in emerging economic powers. If the Accord has a positive impact on getting strong domestic legislation in place in the US in the first half of 2010, this might be the most important contribution it can make toward the development of the future regime.

In the end, the Copenhagen Accord reflects the level of common ground that was possible among some of the most powerful nations willing to focus on areas where agreement was possible. The outcomes of the LCA and KP AWGs, at the other end of the spectrum, represent the diversity of views, divisions and expectations of all 193 Parties, including a number of developing country Parties who arrived in Copenhagen with the firm position that nothing short of a legally binding agreement that met their expectation in terms of adequacy and distribution of burdens and benefits would do. Key among these positions was that 2 degrees is inadequate to protect the most vulnerable nations from the worst effects from climate change, and that 1.5 degrees is a more appropriate target. Flowing from this view on adequacy were expectations that developed countries would have to take on mitigation commitments in the range of 40% below 1990 levels and that finance would have to be significantly higher than the \$US 100 billion offered under the Copenhagen Accord.⁶

⁶ See, for example, ALLIANCE OF SMALL ISLAND STATES (AOSIS) DECLARATION ON CLIMATE CHANGE 2009, available on AOSIS website at: <http://www.sidsnet.org/aosis/index.html> (website last accessed January 2010).

The Path Forward

The path forward from Copenhagen will not be an easy one. A key first step will be the acceptance of the Accord and the submission of mitigation efforts by Parties by February 1, 2010. These submissions will send important signals about the level of agreement on the key elements of the Accord and the level of ambition on mitigation. Another key stepping stone will be the enactment of legislation in the US.

Without close to universal acceptance of the Accord and adequate domestic legislation in the US by the summer or early fall of 2010, the UNFCCC process is clearly in trouble. Even with favourable outcomes in these two areas, the path forward will be difficult. Somehow, parties need to find the political will to shift from the lowest to the highest common denominator on mitigation, so that the collective effort has some hope of avoiding the tipping points scientists are increasingly alarmed about.⁷ In most countries, this requires a shift in policy at the government level. In some, such as the US, it may still require a shift in public opinion, something that is difficult to foresee taking place in the months to come.

If the adequacy of mitigation efforts in developed and key developing countries can be resolved, and adequate sources of funding can be confirmed, the resolution of the remaining issues would appear a realistic goal for COP 16 in Mexico. For a reasonable chance of success in Mexico, it will be important for Parties to agree on the overall scale of mitigation as early as possible in 2010 to leave enough time to work out important details on issues such as LULUCF, surplus credits from the first commitment period, the future of the CDM and JI, and MRV & compliance. It is important to note that a strong agreement on the scale of mitigation and finance in Mexico without effective rules on these critical issues can undermine the effectiveness as much as an inadequate scale of mitigation.⁸

Another obstacle to be overcome is the reluctance of the US to accept international oversight and compliance. This hurdle might be overcome through the concept of equivalency, but this has not been raised in the negotiations to date. The basic idea behind equivalency would be to establish

⁷ See, for example, *The Copenhagen Diagnosis, 2009: Updating the World on the Latest Climate Science*. I. Allison, N.L. Bindoff, R.A. Bindshadler, P.M. Cox, N. de Noblet, M.H. England, J.E. Francis, N. Gruber, A.M. Haywood, D.J. Karoly, G. Kaser, C. Le Quéré, T.M. Lenton, M.E. Mann, B.I. McNeil, A.J. Pitman, S. Rahmstorf, E. Rignot, H.J. Schellnhuber, S.H. Schneider, S.C. Sherwood, R.C.J. Somerville, K. Steffen, E.J. Steig, M. Visbeck, A.J. Weaver. The University of New South Wales Climate Change Research Centre (CCRC), Sydney, Australia.

⁸ For example, if surplus credits from the current commitment period are made available in future commitment periods, this will reduce the actual emission reductions required in the future. Similarly, if rules for land use and land use change and the clean development mechanism credit business as usual, actual emission reductions required will be less than would appear from the targets set.

criteria under which domestic monitoring, reporting, verification and compliance can replace international oversight and compliance. Any party that meets the criteria would be exempt from international oversight and compliance. The criteria would have to be carefully designed to ensure they are sufficiently stringent and consistent with international rules that the choice is one of form and process, not one of substance.⁹

A similar though necessarily separate effort could be made with respect to the monitoring, reporting and verification of mitigation actions in developing countries.¹⁰ For developing countries that meet specific criteria in terms of monitoring, reporting and transparency through domestic measures, international oversight could be minimal, such as the bi-annual report currently envisaged in the Copenhagen Accord. For countries that do not meet those criteria, additional international reporting and verification requirements could be considered.

It is too early to predict whether the positive or negative aspects of the Copenhagen Accord will dominate developments in 2010. There is still hope that the agreement on long term finance, the commitment from key developing countries to take on mitigation action and their willingness to consider international transparency will help achieve the breakthrough that is so desperately needed. There is little doubt that this is the last chance for the UNFCCC regime in its current form, without a breakthrough by the end of 2010, it is difficult to see much of a future for it.¹¹

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⁹ Conditions might include that there would have to be domestic legislation in place that covered X% of emissions, rigorous domestic monitoring, reporting and review generally consistent with methodologies developed under the UNFCCC, a strong domestic compliance regime that include strong economic incentives for domestic actors to comply, and offsets limited to those recognized under the UNFCCC.

¹⁰ Separate because developing countries will not accept being subject to the same review and compliance system as developed parties, in part based on their position regarding historical responsibility, and in part because it is developed countries that have failed to live up to voluntary commitments under the UNFCCC, not developing countries.

¹¹ Even under the most optimistic scenarios, including strong domestic legislation in the US, and a strong commitment to the adequacy target of 2 degrees, overcoming the deep divisions by COP 16 in Mexico will be incredibly challenging. For an optimistic perspective on Copenhagen, see the Natural Resources Defense Council in the US at: http://switchboard.nrdc.org/blogs/ddoniger/the_copenhagen_accord_a_big_st.html.