

Copenhagen and After

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A. Introduction

The Copenhagen Climate Conference was a disaster not because there was no final full agreement, not even because there was no “legally binding” political declaration on which a future agreement can be built, but because the Presidency of the conference and Western political leaders tried to hijack the legitimate multilateral process of negotiations that had been taking place before Copenhagen and at Copenhagen itself.

The hijack attempt failed and a weak Copenhagen Accord that the small group managed to come up with from their enclave during the conference was unable to get through the Conference of Parties, made up of the 193 members of the UN Framework Convention on Climate Change.

It was the intention of the Conference chairman, the Danish Prime Minister Lars Rasmussen, to first get a small group of leaders to reach an agreement and then to ram it through the Conference of Parties, giving the full membership little time to consider the document. However, decisions at the COP are made by consensus and objections from several developing countries first to the undemocratic process and second to the content of the

Accord meant that the COP only “took note” of the document, and did not “adopt” it.

In UN terms, taking note of a document gives it a low status. It means that the meeting did not approve or pass it, and did not view it either positively or negatively.

The non-adoption of a three page document from a secretive small meeting of some 26 leaders that should not even have taken place should not have spelt a disaster. Unfortunately in the immediate aftermath of the conference, it is being projected in the Western media by Western leaders and many commentators that a good deal had been blocked by some developing countries, with some blaming China for its stand in the small meeting and others blaming the countries, like Venezuela, Bolivia and Sudan, that spoke up against the process in the COP.

The reality is that almost everyone knew that a full agreement, or even the core of an agreement, could not be reached in Copenhagen, simply because there were still many fundamental points of disagreement that could not be bridged in time. The climate talks have been going on in two tracks, on the continuation of the commitments under the Kyoto Protocol for four years, and on the Bali Action Plan on long-term cooperative action for two years.

Those involved in or following the process knew that Copenhagen could not conclude the negotiations in both of the working groups dealing with the issues, and that the talks would have to continue next year.

It is thus no cause for recrimination that the deadline set for end-2009 proved unrealistic, and that the talks should proceed along the same open, inclusive multilat-

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COP 15 closing plenary

eral lines for another year. Copenhagen should have been designed as a stepping stone, and not as a final conclusion. Unfortunately, the host country Denmark and the UN leadership had the highest ambitions, and called on heads of states and governments to come to “seal the deal”, and 110 top leaders duly came. The Danish Presidency selected 26 among them and asked them to come up with an accord.

B. The Real Outcome of Copenhagen - Negotiating Texts from the AWG-LCA and AWG-KP

The proper procedure would have been to make use of the two weeks in Copenhagen to close as many of the gaps as possible and then to bring forward the most up-to-date documents arising from the two working groups (with the differing positions on unsettled issues as options or in square brackets) for extended work in the two working groups and set a new deadline for completion of the work for either June or December 2010.

For most of the two weeks at Copenhagen in December 2009, the work of the two groups on KP (Kyoto Protocol), and on LCA (long-term cooperative action) had been proceeding under the multilateral process, in an inclusive manner with all Parties able to submit proposals and language for the drafts, and to participate in drafting and in decisions. The meetings were conducted in a broadly transparent way, being mostly open-ended (open to all members) and when they were in small groups the full membership normally chose their representatives to attend, and the process was quite open. Most of the thousands of delegates from governments were diligently working on the many texts on the issues of the Bali Action Plan (involving mitigation, adaptation, finance, technology and a shared vision) on the Kyoto Protocol's continuation.

Of course, being so participatory, the discussions tended to take a longer time. And since the issues are so important and complex, involving not just the science of climate change but the political economy of sharing the burden of curbing emissions and paying for costs of this and of adapting to climate change. As the issues involve massive transformation of national economies and growth strategies, the climate talks became the most complex global negotiations ever, more so than those at the WTO.

The G77 and China and its component countries continuously voiced their opinion that the working groups and their documents, so painfully put together through the bottom-up process that recognised the rights of members states big or small, should continue to be the basis of the negotiations. They continuously sought assurances from the Danish Presidency that the work in the working groups would not be hijacked by a small group. The Chairs of the working groups produced up-to-date reports containing draft Decisions

that contained texts that in their view represented the latest state of play. These reports, which went through hours of discussion by thousands of the delegates representing all the members (in meetings throughout the two weeks of Copenhagen, that often went way past midnight) were prepared for adoption by the Convention's COP and by the Kyoto Protocol's meeting of the Parties. They were eventually adopted, because they had gone through the democratic process, and the members had ownership of it.

The reports that were adopted will form major reference points when the negotiations resume next year, probably in February. The adoption of these two reports, together with two brief Decisions extending the mandate of the two working groups and setting the new deadlines on conclusion of the work would have been sufficient. The Danish Prime Minister in a closing speech could have declared that the issues were complicated, that consensus had been found in some areas, and significant progress had been made in other areas in the last two years and more time is needed for a full agreement and he could have exhorted everyone to do their utmost to complete the work within half a year or a full year. No one should have blamed him for this reflection of reality.

If on top of this business outcome the Danish Presidency wanted a brief political statement to take into account the presence of the political leaders, it could have logically asked the Chairs of the working group to consult with the delegates and extract the core elements that now enjoy consensus in the approved documents and make it the basis of a separate political statement. The statement could also have reaffirmed the main principles underlying the negotiations, and laid out the main challenges ahead, such as listing the major issues of contention that require urgent attention, setting the new deadlines, and reaffirming the highest political commitment to finishing the work.

Such a declaration, based on the results of and reflecting the reality of the bottom-up negotiating process, could have given a political impetus based on a spirit of goodwill and international cooperation to the climate talks when they resume.

Most of the work in the two-week stay in Copenhagen was carried out in the two working groups, on long-term action and on the Kyoto Protocol. There was some progress made in the long-term action group while the Kyoto Protocol group has hardly made any progress.

The two working groups will resume work next year and the hope is that they will finish their work by June or December 2010.

C. Collision of Two Processes

Instead, the organisers of the conference chose to convene the small group of leaders, perhaps hoping that they would produce a consensus on the key contentious issues where the negotiators could not. But it was a major gam-

ble, as such an exclusive meeting would always justifiably be open to criticism that the meeting and the process of holding it was not legitimate, and that the outcome document does not enjoy consensus and is biased. That the meeting itself was taking place in the last two days of the Conference was not announced, nor who had been invited, or what they were going to produce.

At some stage, the secretive process of the small exclusive meeting, and the open process of the multilateral Convention members would have to meet. It met or rather collided, with explosive results, at the final official plenary convened at 3 a.m. on 19 December, after the conference was supposed to have ended on 18 December.

When Rasmussen placed the Copenhagen Accord to the Conference of Parties, he was severely criticised for embarking on an exclusive and illegitimate process that violated the UN Charter, principles and practices. A battle then ensued between those Parties that rejected the Accord both for the flawed process and its inadequate contents and those Parties (mainly Western) that insisted that the Accord be adopted even if it did not enjoy consensus. The Danish Prime Minister did not distinguish himself for consistency nor fairness, first making one ruling and then making a contradictory one, and repeating these overturning of decisions continuously as the night turned into morning. Eventually when it was clear that the rules of procedure made it impossible to convert a non-adoption into an adoption of the Accord, a compromise was reached for the Copenhagen Accord to be merely “noted” and not adopted by the Conference.

The attempt by the Danish Presidency to impose an over-riding track of a small leaders' meeting with its own Accord onto the only legitimate multilateral two tracks of the KP and LCA with their own reports, was the reason why Copenhagen will be considered a disaster. Since a 26 leaders' enclave had been created, a few of the high-profile leaders were fixed on getting an agreement of their own out of Copenhagen, which they now considered to be their own symbol and criterion of success.

This raised at least two problems. Firstly the Western high-profile leaders like Obama of the US, Brown of the UK, Merkel of Germany and Sarkozy of France had now for domestic political reasons to come home with what they could claim a success, and that meant a “deal”, even if this had to be imposed on the other countries. Secondly, for every top leader invited, there were three or four others that were not. Rasmussen claimed that a

“representative group of leaders” had been invited to the small party. But there would always be doubts how “representative” would a group be whose members are selected by the host country and not by the membership of the Convention.

These few leaders (notably Obama and Brown) then announced to the media that they had succeeded by coming up with a Copenhagen Accord. These media interviews themselves, viewed by delegates in the Conference centre even before they had seen the document and many hours before the plenary introducing the document had started, contributed to the deep sense of grievance of the delegates that they had been taken for granted and that their role in the script of the Presidency and the Western leaders was merely to rubber stamp the illegitimate meeting and its offspring.

The majority of countries were not invited, were kept in the dark and many were slighted. The Venezuelan President Hugo Chavez, who was not asked to be in the small group, in his plenary speech denounced the “top secret” document being negotiated by the exclusive meeting and declared his country would not accept what came out of it.

When it was clear at the concluding plenary that the Accord was not going to be adopted, some of the Western delegations could barely control their wanting to link the funds they were offering to the developing countries' acceptance of the Accord, or what a developing country delegate called a “bribe.” Ed Miliband, the UK's Climate Minister, was blunt about this linkage. Those which support the Accord have to register this support. The concerns he raised must be duly noted “otherwise we won't operationalise the funds.” The United States said it wanted an arrangement through which Parties can associate with the Accord. It said there are funds in the Accord, and “it is open to any Party that is interested.”

This implies that Parties that do not register their endorsement of the Accord would not be eligible for funding. This attempted linkage of finance to the acceptance of the Accord is of course not in line with the rules of the Climate Convention, in which the developed countries have committed themselves to provide developing countries with the funds needed for them to take climate related actions. Funding the actions of developing countries does not require that a new agreement or an Accord be established.



D. Understanding the Copenhagen Accord

The actual Copenhagen Accord itself is only three pages in length. What is left out is probably more important than what it contains.

The Accord does not mention any figures of the emission reduction that the developed countries are to undertake after 2012, either as an aggregate target or as individual country targets. This failure at attaining reduction commitments is the biggest failure of the document and of the whole Conference.

It marks the failure of leadership of the developed countries, which are responsible for most of the Greenhouse Gases retained in the atmosphere, to commit to an ambitious emissions target. While the developing countries have demanded that the aggregate target should be over 40% reduction by 2020 compared to 1990 levels, the national pledges to date by developed countries amount to only 13-19 per cent in aggregate.

Perhaps this very low ambition level is the reason that the Accord remains silent on this issue, except to state to give a deadline of 31 January 2010 for countries to provide their targets. It is hard to believe that this deadline will be met, since there has been so much foot-dragging on this in the three four years.

Another omission was the lack of assurance that the Kyoto Protocol would continue, with developed countries taking on emission reduction commitments in a second period starting 2013. The continuation of Kyoto was a top priority demand of the G77 and China, while the developed countries have announced their intention to set up a new agreement altogether, which the developing countries fear will not have the strict disciplines of Kyoto.

The Accord recognizes the broad scientific view that global temperature increase should be below 2 degrees Celsius, and agrees to enhance cooperative action, on the basis of equity.

This echoes the view recently affirmed by India that accepting a target of temperature limit, whether it be 2 or 1.5 degrees, has to come with a burden-sharing framework, with equity as its basis.

The Accord states the collective commitment of developed countries to provide new and additional funds of US\$30 billion in 2010-2012 through international institutions. It is unclear how new the funds will be,

since the developed countries have already committed to contribute billions of dollars to the World Bank's climate investment funds.

It also states the developed countries will jointly mobilize US\$100 billion a year by 2020 for developing countries. This is weak as the commitment is for "mobilising" funds and not a guarantee or pledge of actual funds.

The actual quantum is also doubtful since the Accord also says that the sources of the funds will include public and private sectors, bilateral and multilateral and alternative sources. The US\$100 billion is not said to be "new and additional", so it may include existing funds or already planned funds.

The Accord also contains a lengthy paragraph on the mitigation actions by developing countries, and how these should be measured, reported on and verified (MRV). This was reportedly a heated topic at the small heads-of-state meeting, with US President Obama pressing the developing countries, particularly China, to undertake more MRV obligations.

The Accord is a thin document, containing hardly any new commitments by developed countries, with a weak global goal, and attempts to get developing countries to do more.

It is a sad reflection of the Copenhagen Conference that this thin document is being held up as its main achievement, and even then it was only "noted" and not adopted by the UNFCCC's membership.

In the immediate days following the Conference, some developed countries, particularly the UK, seem to be targeting China for the failure of Copenhagen. They accuse China of leading a blockage of certain items from being included in the Accord, especially a target of a global emissions cut of 50% by 2020 compared to 1990, and a target of 80% emissions cut by developed countries in the same period. In fact, these targets, especially taken together, have been highly contentious during the two years of discussion in the LCA working group, and for good reasons. Together, they imply that developing countries would have to commit to cut their emissions overall by about 20% in absolute terms and at least 60% in per capita terms. The acceptance of the 50% global cut and 80% developed countries' cut would also have locked in a most unfair sharing of the remaining global carbon budget as it would have allowed the developed countries to get off free from their historical responsibility and their carbon debt. They would have been allocated the rights to a large amount of "carbon space" without being given the responsibility to undertake adequate emission cuts nor to make financial and technology transfers to developing countries to enable and support them in their mitigation and adaptation actions.

As these targets are absent from the Accord, the UNFCCC members remain able to consider what is a fair and equitable way to share the costs and burdens of adjustment to a climate-friendly world, when the negotiations resume next year.



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