

## THE INTERNATIONAL CLIMATE CHANGE REGIME: THE ROAD FROM COPENHAGEN

BY DANIEL BODANSKY

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The failure of the Copenhagen conference to adopt a new legal agreement on climate change is blamed by some on poor chairing or other transitory factors. But the problems with the UN climate-change negotiations are more fundamental and are unlikely to go away anytime soon. Rather than putting all of our eggs in the UN Framework Convention on Climate Change (UNFCCC) basket or listening to the siren song of a new legal agreement, states should seek to address climate change in additional forums and through additional means.

### What Copenhagen Did and Didn't Achieve

Although the Copenhagen climate-change conference did not result in a new legal agreement to extend, complement, or replace the Kyoto Protocol, as many had hoped, it did produce the Copenhagen Accord, a political agreement negotiated by the leaders of more than twenty-five countries in the closing hours of the meeting, with which more than 120 countries have now associated themselves, including all of the world's major economies. Inelegant and extremely brief, the Copenhagen Accord nevertheless addresses all of the main elements under negotiation, including mitigation, adaptation, finance, technology, forestry, and verification. Among its key elements, it:

- sets a long-term aspirational goal of limiting temperature rise to no more than 2° C;
- establishes a process for recording the mitigation targets and actions of both developed and developing countries;
- puts significant new money on the table for climate-change mitigation and adaptation by developing countries, including “fast start” money for the 2010-2012 period “approaching” \$30 billion and a goal of mobilizing \$100 billion per year by 2020;
- provides for “international consultation and analysis” of developing country actions, plus fuller monitoring, reporting, and verification of actions that receive international support as well as developed country targets and financing.

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At the same, the Copenhagen Accord fell short in important respects:

- It doesn't set a long-term emissions reduction target, such as the 50 percent reduction by 2050 (50-by-50) goal agreed to by the G-8.
- The pledges that have been made thus far do not put us on a realistic pathway towards limiting temperature increase to 2° C<sup>1</sup> (a goal that some think is itself inadequate to avert dangerous climate change).
- The pledges made pursuant to the Copenhagen Accord are not legally-binding.
- Finally, the legal status of the Copenhagen Accord is unclear, particularly given the decision by the Conference of the Parties (COP) merely to "take note of" rather than "adopt" it.

Do these achievements and weaknesses add up to success or failure? The answer depends on our criteria of success. If we ask — Did Copenhagen achieve what's needed to solve the climate-change problem? — the answer is clearly no. But if we ask — Is Copenhagen a reasonable step forward? Did it get as far as politically possible or was a stronger agreement achievable? — the answer depends on our diagnosis as to why Copenhagen was so difficult.

### **Diagnosing Copenhagen's Problems**

Many observers blame the Copenhagen outcome on contingent factors: the Danes did a poor job of preparing for and chairing the meeting; a small group of countries were obstructionist, and so on. But too much is made of these factors. Yes, the Danes had their troubles running the meeting, and yes, some countries were even more obstructionist than usual, blocking repeated efforts to organize smaller meetings and to propose compromise text. But had these factors been different, the fundamental outcome in Copenhagen would have been much the same.

The comparatively weak outcome in Copenhagen reflects two more fundamental factors in the climate-change negotiations. First, the Copenhagen conference was the first meeting whose success depended on addressing developing as well as developed country emissions. Second, the two most important players — the United States and China — do not agree on the fundamental architecture of a future legal regime.

The insistence by developed countries in Copenhagen that the outcome address developing as well as developed country emissions reflects a fundamental shift in the climate-change negotiations. For the first decade of the regime, from 1991 to 2001, the negotiations focused almost exclusively on developed country emissions, with developing countries largely getting a pass. The basic axis during this period in the negotiations was the split between the United States and the European Union (EU). On one side, the EU pushed for strong emissions reduction targets implemented domestically; on the other side, the United States initially resisted a targets-based approach during the UNFCCC negotiations and then embraced it under President Bill Clinton, but insisted on allowing targets to be met through the use of international market mechanisms such as emissions trading. Although developing countries engaged in these debates, the negotiations were really about what developed countries would do.

Since 2001, when the Marrakesh conference adopted the detailed rulebook for operationalizing the Kyoto Protocol, the basic dynamic in the climate negotiations has shifted. The issue of reducing developed country emissions has continued to be central, but developed countries have become increasingly insistent on addressing developing country emissions as well. This has brought to the fore the second main axis in the climate-change negotiations: the split between developed and developing countries.

The new negotiating dynamic began to emerge at the 2002 New Delhi conference, when European countries — fresh from their success in finalizing Kyoto — began pressing for action from developing countries. For most of the next few years, the shift in the negotiating dynamic was overshadowed by the George W. Bush Administration's decision to reject Kyoto. But it moved to center stage at the Bali conference in 2007, where it remained in Copenhagen. In its twenty-year history, the climate-change regime has made very little progress in overcoming the split between developed and developing countries. So it should not have been surprising that the Copenhagen conference would prove so difficult.

The second related factor that made Copenhagen so hard was the fact that the two biggest emitters in the world — the United States and China — have fundamentally different positions on issues of legal architecture. On the one hand, the United States insists that a future agreement be symmetric in the sense that it contain legal commitments by both developed and developing countries (though these commitments may be very different in stringency and content). On the other hand, China is unwilling to accept any legal commitments to limit its emissions, regardless of how they are differentiated. Meanwhile, the countries with Kyoto targets are unwilling to agree to a second round of targets unless the United States and the major emerging economies, including in particular China, agree to do their fair share under a legally-binding global agreement.

Given these political realities, the Copenhagen Accord represents a rather artful compromise that achieved about as much as could reasonably have been expected. By establishing listing processes for both developed country targets and developing country actions, it satisfied the United States demand for symmetry. By establishing only political commitments, it satisfied the Chinese rejection of legally-binding obligations. And by focusing on a political rather than a legal outcome, it sidestepped the need for any decision about whether or not to continue the Kyoto Protocol.

## **The Path Ahead**

Post Copenhagen, what are the options going forward? What are the most promising avenues for reducing global greenhouse-gas emissions?

### **Continuing to Negotiate under the UNFCCC**

Despite the debacle the final night of the Copenhagen conference, when a small group of countries blocked adoption of the Copenhagen Accord, countries are continuing with business as usual. Although they have apparently given up, for the time being, on developing a legally-binding agreement, they are still seeking to negotiate a comprehensive outcome through the UNFCCC process, which they see as the globally legitimate forum. In preparation for the Cancun conference in December 2010, they scheduled two additional negotiating sessions this year, as if the problem in Copenhagen was lack of negotiating time.

But if the foregoing analysis is correct, the current negotiating process is unlikely to make significant progress. Unless something changes in the positions of the United States and China or in the dynamic between developed and developing countries, there is no reason to expect a better outcome in Cancun (or in South Africa in 2011 or Rio de Janeiro in 2012) than in Copenhagen. Instead, the more likely result will be a whittling away of the Copenhagen Accord, a process that has already begun in the most recent rounds of negotiation. Indeed, even if the United States were to enact climate-change legislation — a long shot at best in today's political climate — this might not be enough to achieve a binding international agreement. True, it would be a tremendous step forward for the United States. But it is unclear whether it would be enough to change China's opposition to legally-binding emissions commitments.

Moreover, even if a deal were possible among the "big emitters," the UNFCCC would be a particularly poor forum in which to negotiate it, because the UNFCCC's consensus decision-making rule allows a relatively small group of countries to block agreement, as they did in Copenhagen. At previous meetings, dating back to the May 1992 meeting that adopted the UNFCCC, outcomes were ultimately cobbled together through negotiations in a small "friends of the chair" group, which other countries accepted. But in Copenhagen, this process broke down. First, developing countries resisted every effort by the Danes to organize a smaller "friends of the chair" group, on the ground that such a group would be undemocratic and illegitimate. Then, when world leaders finally met in a small group to produce the Copenhagen Accord, the outcome was not accepted by the broader conference, due to objections by a few states. Now, having escaped the bottle once, it will be difficult to put the genie back in again, and this will make progress in the UNFCCC even more difficult than before. Trying to negotiate a complex issue among 190+ countries is hard enough, without giving opponents an effective veto over any agreement.

### **Operationalizing the Copenhagen Accord**

Given the problems with the UNFCCC process, a second option would be to proceed separately under the auspices of the Copenhagen Accord. The countries that have associated themselves with the Copenhagen Accord represent more than 85 percent of global emissions. So if they were willing to proceed on their own, they could effectively address the climate-change problem.

One objection to this approach is that the Copenhagen Accord is "only" a political agreement, so it does not provide sufficient assurance that countries will take action. But how much difference does it make that the Copenhagen Accord is a political rather than a legal agreement? Obviously, political agreements do not require domestic ratification, so they provide a weaker signal of domestic commitment. But the legal versus non-legal form of an instrument makes less of a difference in other respects, such as judicial enforcement, since even when an agreement is legally-binding, there are relatively few opportunities for adjudication either internationally or domestically. And evidence from other regimes suggests that states often take non-binding agreements quite seriously and make significant efforts to implement them.<sup>2</sup>

Along similar lines, some discount the Copenhagen Accord because it was not "adopted" by the Conference of the Parties. But, as an agreement negotiated by world leaders, the Copenhagen Accord should have a much higher status politically than COP decisions, which generally are negotiated by mid-level civil servants or sub-cabinet officials.

The real problem with proceeding separately under the Copenhagen Accord is that the so-called BASIC countries — China, India, Brazil, and South Africa — whose participation is crucial to the success of any regime, have already signaled that they are unwilling to do so. Proceeding separately might have been possible if the Copenhagen Accord represented a true meeting of the minds. But support for it by some members of the BASIC group is thin. Far from seeing the open-ended, consensus decision-making process under the UNFCCC as a liability, some states appear to view it in positive terms, as a means of relieving pressure on them from developed countries to assume emissions reduction commitments.

Proposals to pursue the climate-change negotiations in the G-20, the Major Economies Forum (MEF), or some other institution with a more limited membership suffer from the same problem. They might provide a promising way forward if the only problem were obstructionist countries such as Saudi Arabia, Sudan, or Venezuela. But, to the extent that there is no meeting of the minds between the United States, China, and the European Union, then moving the negotiations into another forum won't solve that problem.

### **Letting a Thousand Flowers Bloom**

A more promising approach to moving forward would be to split the climate-change problem up into different pieces and address the more tractable pieces in more specialized forums. To some degree this is happening already. The International Maritime Organization (IMO), for example, is considering international shipping, the International Civil Aviation Organization (ICAO) is considering civil aviation, and the Montreal Protocol is considering HFCs. These other forums are not immune from the influence of the UNFCCC — and in particular, the principle of common but differentiated responsibilities, which developing countries interpret to give them a free pass. But more progress may be possible in specialized forums, which have long traditions of cooperation, than in the UNFCCC. This decentralized approach will not be sufficient in itself to solve the climate-change problem. But it offers a useful supplement to the UNFCCC process and will be all the more important if the UNFCCC continues to be stalemated.

In the International Maritime Organization, an existing treaty — the International Convention for the Prevention of Pollution from Ships (MARPOL) — already addresses vessel-source pollution, including air pollution in Annex VI. So including controls on greenhouse-gas emissions could be adopted by amending Annex VI, which requires only a three-quarter majority vote (as compared to the consensus decision-making rule within the UNFCCC). This could occur as early as next year, when the parties consider a proposed amendment specifying ship efficiency standards designed to reduce emissions. The development of market-based measures to reduce emissions is also being considered by an IMO working group. Although the big developing countries object to these new measures, the IMO has greater potential than the UNFCCC to move forward since it can make decisions by qualified majority vote.

ICAO has made less progress in addressing emissions from civil aviation. But a high-level meeting in Fall 2009 agreed to a goal of improving global fuel efficiency by 2 percent per year. It also made some progress on reporting and verification issues and agreed to establish a process focusing on the use of economic instruments to address civil aviation emissions, such as an allowance trading scheme. An important factor helping to spur ICAO action is the impending expansion of the European Union emissions trading scheme to include emissions from flights to and from Europe.

Finally, the Montreal Protocol on ozone-depleting substances has already had a huge impact in mitigating climate change, since ozone-depleting substances are also greenhouse gases. The decision by the Montreal Protocol in 2008 to accelerate the phase-out of HCFCs did more by itself to reduce climate forcings than the Kyoto Protocol. And a number of countries, including the United States and Mexico, are now proposing that HFCs – substitutes for ozone-depleting substances that are also very potent greenhouse gases – be regulated under the Montreal Protocol rather than the UNFCCC regime.

Of course, even if these initiatives in IMO, ICAO, and the Montreal Protocol are successful, they will make only a modest dent in global greenhouse-gas emissions. So we need additional action as well. And since such action is unlikely to be forthcoming anytime soon under the UNFCCC, we need to contemplate a decentralized regime, in which smaller groups of like-minded countries address particular issues such as deforestation, and in which countries and regional groupings take parallel action on their own, as the European Union and some states within the United States are already doing. Recently a Norwegian initiative resulted in an agreement by more than fifty countries on a framework to reduce deforestation. This could potentially serve as a model for other initiatives, for example addressing efficiency standards.

These extra-UNFCCC initiatives raise two issues. First, how should the countries that are taking action deal with each other? And second, how should countries taking action deal with those that aren't? In the former case, the answer could involve some type of integration or linkage between different national and regional trading systems, as many have proposed.<sup>3</sup> In the latter case, the answer is likely to involve some type of trade measures against countries that fail to take meaningful action to combat climate change. For example, countries with policies that establish a price on carbon could impose border tax adjustments on imports of carbon-intensive goods from countries that fail to take action. This would serve two purposes. First, it would internalize the climate externalities associated with the production of these goods. Second, it would prevent countries that fail to take action from gaining a competitive advantage.

## **Conclusion**

Global warming is a classic example of a collective action problem. So unless a technological magic bullet is found, solving the problem will ultimately require a collective agreement among the key contributors, like the Montreal Protocol on Substances that Deplete the Ozone Layer.

But since an agreement among the major emitters is unlikely anytime soon, we should seek progress where we can, through whatever means and in any forums that are available. Indeed, even if the prospects for a global agreement are brighter than this paper suggests, it does not make sense to put all of our eggs in one basket. Better to diversify our portfolio of climate-change policies, including through work on adaptation and geoengineering.

Such an approach lacks the clarity and simplicity of a single comprehensive policy, such as a global emissions trading system or tax. But, still, muddling through is better than simply treading water from one UNFCCC meeting to the next.



## NOTES

<sup>1</sup>Joeri Rogelj et al., “Copenhagen Pledges are Paltry,” *Nature* 464:1126–1128 (Apr. 22, 2010).

<sup>2</sup>Dinah Shelton, ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford Univ. Press., 2003).

<sup>3</sup>For example, see Gilbert E. Metcalf and David Weisbach, “Linking Policies when Tastes Differ: Global Climate Policy in a Heterogeneous World,” Discussion Paper 2010-38, Cambridge Mass.: Harvard Project on International Climate Agreements (July 2010).

## AUTHOR AFFILIATION

**Daniel Bodansky**, *Lincoln Professor of Law, Ethics and Sustainability*, Sandra Day O’Connor College of Law, Arizona State University

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The goal of the Harvard Project on International Climate Agreements is to help identify and advance scientifically sound, economically rational, and politically pragmatic public policy options for addressing global climate change. Drawing upon leading thinkers in Australia, China, Europe, India, Japan, the United States, and other countries, the Project conducts research on policy architecture and key design elements of a post-2012 international climate policy regime. The Harvard Project also provides insight and advice regarding countries’ domestic climate policies, especially as these policies relate to the prospects for meaningful international action. The Project is directed by Robert N. Stavins, Albert Pratt Professor of Business and Government at the Harvard Kennedy School. Major funding for the Harvard Project on International Climate Agreements is provided by a generous grant from the Climate Change Initiative of the Doris Duke Charitable Foundation.

**Project Email:** [climate@harvard.edu](mailto:climate@harvard.edu)

**Project Website:** <http://belfercenter.ksg.harvard.edu/climate>