

The Copenhagen Climate Change Accord

By [Daniel Bodansky](#)

Introduction



Since the Kyoto Protocol's entry into force in 2005, attention has focused on the question of what to do after 2012, when the Kyoto Protocol's first commitment period ends. Should the Kyoto Protocol be extended through the adoption of a second commitment period, with a new round of emission reduction targets for developed country parties? And, if so, should a new agreement be adopted under

the United Nations Framework Convention on Climate Change (UNFCCC)^[1], which addresses the emissions of countries that either are not parties to the Kyoto Protocol^[2] (the United States) or do not have Kyoto emissions targets (developing countries)? Or should a single new agreement be adopted that replaces the Kyoto Protocol and is more comprehensive in coverage, addressing both developed and developing country emissions?

The Copenhagen Conference of the Parties (COP), which met from December 7-19, 2009, had been intended as the deadline to resolve these questions about the post-2012 climate regime – a view reflected in the unofficial slogan for the conference, "seal the deal."^[3] The decision by more than one hundred heads of state or government to attend heightened public expectations that the Copenhagen Conference would result in a major breakthrough; and more than 40,000 people registered, making Copenhagen one of the largest environmental meetings in history. But the lack of progress in the negotiations in the months leading up to Copenhagen suggested that hopes for a full-fledged legal agreement were unrealistic. In the end, the Copenhagen conference resulted only in a political agreement, the Copenhagen Accord,^[4] which was negotiated by the leaders of the world's major economies, but was not formally adopted by the conference, leaving its future prospects uncertain.

The Copenhagen Accord

The Copenhagen Accord is a political rather than a legal document, negotiated by a group of about twenty-five heads of state, heads of

[Click here to become an ASIL member](#)

RELATED ASIL INSIGHTS

[Who's Going to Copenhagen?: The Rise of Civil Society in International Treaty-Making](#)

[State of Play: Changing Climate at Copenhagen](#)

[The Bali Climate Change Conference](#)

[U.S. Supreme Court, Greenhouse Gas Regulation and Foreign Policy Considerations](#)

[Eleventh Meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change/First Meeting of the Parties to the Kyoto Protocol](#)

[The Kyoto Protocol Enters into Force](#)

[Insights Archive>>](#)

DOCUMENTS OF NOTE

[The Copenhagen Accord](#)

[The United Nations Framework Convention on Climate Change](#)

[Kyoto Protocol](#)

[Bali Action Plan](#)

[ASIL EISIL>>](#)

ORGANIZATIONS OF NOTE

government, ministers, and other heads of delegations.

Key elements of the Accord include the following:

Long-term vision – The Copenhagen Accord recognizes the need to limit global temperature increase to no more than 2° Celsius. States were unable to agree on other methods of defining the regime's long-term objective, for example, in terms of an upper bound on atmospheric concentrations of greenhouse gases such as 350 or 450 parts per million (ppm), or a long-term goal to reduce global emissions by 50% by 2050 (the so-called "50 by 50" target, which the G-8 has endorsed), or a target date for the peaking of global emissions. In deference to the small island states, which had pushed for a 1.5 degree limit on global temperature change, the Copenhagen Accord provides that the assessment of the Accord by 2015 include consideration of this stronger target.

Developed country mitigation – Over the past year, general consensus has emerged that developed countries should undertake economy-wide emissions reduction targets for the post-2012 period, although countries have differed about the stringency of these emissions reduction targets, the base-year from which reduction targets should be measured, and whether the targets should be defined using international accounting rules (as in Kyoto) or national legislation (as the U.S. has proposed). The Copenhagen Accord establishes a bottom-up process that allows each Annex I party to define its own target level, base year and accounting rules, and to submit its target in a defined format, for compilation by the UNFCCC Secretariat. Under the terms of the Accord, Annex I countries "commit to implement" their targets, individually or jointly, subject to international monitoring, reporting and verification (MRV).

Developing country mitigation – As with developed country emissions targets, the Copenhagen Accord establishes a bottom-up process by which developing countries will submit their mitigation actions in a defined format, for compilation by the UNFCCC Secretariat. It provides that developing countries will submit greenhouse gas inventories every two years, that developing country mitigation actions will be subject to domestic MRV, and that the results of this domestic MRV will be reported in biennial national communications, which will be subject to "international consultations and analysis under clearly defined guidelines." The Copenhagen Accord also establishes a registry for listing nationally appropriate mitigation actions (NAMAs) for which international support is sought, and provides that supported NAMAs will be subject to international MRV in accordance with COP guidelines.

Financial assistance – In Copenhagen, the discussions about financial support revolved around the typical issues: how much money, from what sources, and with what governance arrangements? The Copenhagen Accord addresses only the first of these issues, leaving the other two for future resolution. It creates a "collective commitment" for developed countries to provide "new and additional resources . . . approaching \$30 billion" for the 2010-2012 period, balanced between adaptation and mitigation, and sets a longer-term collective "goal" of mobilizing \$100 billion per year by 2020 from all sources, but links this money to "meaningful mitigation actions and

[United Nations Framework Convention on Climate Change Secretariat](#)

[RealClimate](#)

[Environmental Protection Agency](#)

Copyright 2010 by The American Society of International Law ASIL

The purpose of ASIL Insights is to provide concise and informed background for developments of interest to the international community. The American Society of International Law does not take positions on substantive issues, including the ones discussed in this Insight. Educational and news media copying is permitted with due acknowledgement.

The Insights Editorial Board includes: [Cymie Payne](#), UC Berkeley School of Law; [Amelia Porges](#), Sidley Austin LLP; and [David Kaye](#), UCLA School of Law. Djurdja Lazic serves as the managing editor.

transparency on implementation" (para. 8). It also calls for governance of adaptation funding through equal representation by developing and developed country parties, but does not establish governance arrangement for finance more generally. Finally, it calls for the establishment of a Copenhagen Green Climate Fund (para. 10) as an operating entity of the UNFCCC's financial mechanism, as well as a High Level Panel to consider potential sources of revenue to meet the \$100 billion per year goal.

Forestry – In the run-up to Copenhagen, the potential to reduce emissions from deforestation and forest degradation (known as "REDD-plus") received considerable attention. The principal question has been whether to finance REDD-plus from public funds or by providing carbon credits. The Copenhagen Accord calls for the "immediate establishment" of a mechanism to help mobilize resources for REDD-plus from developed countries and acknowledges the "need to provide positive incentives," without resolving the issue of public vs. private support.

Monitoring, reporting and verification (MRV) – As with the mitigation issue, the MRV discussions have concerned the level of MRV as well as the parallelism/differentiation between developed and developing country MRV. The Copenhagen Accord calls for "rigorous, robust and transparent" MRV of Annex I emissions reductions and financing, "in accordance with existing and any further guidelines adopted by the COP." As noted above, supported NAMAs by developing countries will be subject to international MRV "in accordance with guidelines adopted by the COP," while so-called "autonomous" mitigation actions will be verified nationally and reported in national communications every two years and subject to "international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected."

The Future of the Copenhagen Accord

Despite agreement on the Copenhagen Accord by the heads of state or government of more than twenty-five countries, including all of the major economies, the conference was unable to "adopt" the Accord due to objections by a small group of countries, led by Sudan, Venezuela, Bolivia, and Nicaragua, which refused to join consensus, arguing that the negotiation of the Copenhagen Accord by a smaller group represented a "coup d'état" against the United Nations because it bypassed the formal meetings. After an all-night session, the impasse was ultimately broken through a decision to "take note of" the Copenhagen Accord, giving it some status in the UNFCCC process but not as much as approval by the COP. Those countries that wish to "associate" themselves with the Copenhagen Accord are to notify the UNFCCC Secretariat for inclusion in the list of countries at the beginning of the Accord.

As of February 10, 2010, the UNFCCC Secretariat had received submissions from more than ninety countries, representing more than 80% of global greenhouse gas (GHG) emissions, regarding their plans to reduce their GHG emissions and/or their wish to be "associated" with the Copenhagen Accord. In many cases, countries providing information on their mitigation actions have expressly "associated" themselves with the Copenhagen Accord, but a number of countries - most notably China, India, Brazil, and

South Africa - did not do so expressly.

The Copenhagen Accord asserts that it will be "operational immediately," but fully operationalizing its terms will require further acts – for example, the spelling out of the guidelines for international consultation and analysis of developing country mitigation actions, and the establishment of the various bodies envisioned in the Accord (a High Level Panel to study potential sources of revenue, the Copenhagen Green Climate Fund, and a new Technology Mechanism). Ordinarily, this work would be carried out by the COP. But if some countries continue to block consensus in the COP, as occurred in Copenhagen, then this elaboration of the Copenhagen Accord might need to be done by the "associators" group.

Conclusion

Although the Copenhagen Accord has been criticized by some as inadequate, it represents a potentially significant breakthrough. True, the emission reduction pledges announced thus far do not put the world on a pathway to limiting climate change to 2° C, the ostensible long-term goal of the Accord.^[5] But the participating states did agree to list their national actions internationally and to subject their actions to some form of international scrutiny, even when their actions do not receive any international support. Plus, the Accord articulates a quantified long-term goal for the first time (no more than 2° C temperature increase) and puts significant new funds on the table, both for the short and medium terms.

As a political necessity, the Copenhagen Accord continues to reflect the principle of common but differentiated responsibilities and respective capabilities, but in a very different manner than in Kyoto. Developed countries committed to implement economy-wide emission reduction "targets," subject to international MRV, while developing country "actions" will be subject to international MRV only if they receive international support and to national MRV otherwise. Nevertheless, the Copenhagen Accord reflects an apparent shift by China, India, Brazil, and South Africa, which begins to break the so-called "firewall" between developed and developing countries. For the first time, major developing countries have agreed to reflect their national emission reduction pledges in an international instrument, to report on their GHG inventories and their mitigation actions in biennial national communications, and to subject their actions either to MRV (for internationally supported actions) or "international consultation and analysis under clearly defined guidelines that will ensure that national sovereignty is respected" (for domestically supported actions).

This outcome may seem like a rather modest achievement, but it represents some measure of "internationalization" of developing country actions. In any event, if world leaders could not agree to more through direct negotiations, under an intense international spotlight, it is hard to see why mid-level negotiators will be able to achieve more anytime soon. As a result, the Copenhagen Accord may well represent the high-water mark of the climate change regime for some time to come.

About the Author

Daniel Bodansky, an ASIL member, is the Emily and Ernest Woodruff Professor of International Law at the University of Georgia School of Law.

Endnotes

[1] United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (1992) [hereinafter UNFCCC].

[2] Kyoto Protocol to the United Nations Framework Convention on Climate Change, UNFCCC Conference of the Parties, 3d Sess., UN Doc. FCCC/CP/1997/L.7/Add.1 (Dec. 10, 1997), 37 I.L.M. 22 (1998).

[3] The Copenhagen Conference was a combined meeting of the Fifteenth Conference of the Parties of the UNFCCC (COP-15) and the Fifth Meeting of the Parties of the Kyoto Protocol (CMP-5). For background on the Copenhagen Conference, see Cymie R. Payne, *State of Play: Changing Climate at Copenhagen*, ASIL INSIGHT, Dec. 8, 2009, available at <http://www.asil.org/files/insight091208pdf.pdf>.

[4] The Copenhagen Accord, http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf (advance unedited version).

[5] Kelly Levin & Rob Bradley, *Comparability of Annex I Emission Reduction Pledges* (World Resources Institute, Working Paper, Feb. 2010).