

Copenhagen 2009

Failure or final wake-up call for our leaders?

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Executive Summary¹

It has been said that summits are either ‘successful’ or ‘very successful’. The time has come to face the facts: this is wrong! That is not to say that Copenhagen was a failure, but merely that it could have done better, but still probably passed the test. The final verdict will depend on what happens next.

Copenhagen and the Accord

The main outcome of the summit, which was held in parallel to the Copenhagen Climate Change Conference and attended by over 110 heads of government and state, was the ‘Copenhagen Accord’. It was drafted in the final 24 hours of the conference by twenty-odd leaders convened by the Danish Prime Minister as ‘Friends of the Chair’. The Accord contains 12 paragraphs in just over two pages. Its key provisions are:

- a recognition of the objective to reduce global emissions in order to hold the increase in global temperature below **2 degrees Celsius**, and a commitment to take action to meet this objective consistent with science and on the **basis of equity**;
- the commitment by **developed countries** – Annex I Parties to the Convention – to implement individually or jointly the quantified economy-wide emissions targets for 2020, to be submitted to the UNFCCC for inclusion in the first of the Appendices by 31 January 2010;
- the fact that **developing countries** – non-Annex I Parties to the Convention – will implement mitigation actions, including those to be submitted to the UNFCCC for inclusion in the second of the Appendices by 31 January 2010;
- collective commitments by developed countries to (i) **provide new and additional quick start resources**, approaching US\$30 billion for the period 2010 –12, and (ii) **jointly mobilise US\$100 billion dollars per annum by 2020**.
- the establishment of (i) a **High Level Panel** to study the contribution of the potential sources of revenue, including alternative sources of finance, towards meeting this goal, (ii) a **Copenhagen Green Climate Fund** as an operating entity of the financial mechanism of the Convention, and (iii) a **Technology Mechanism** to accelerate technology development and transfer.

The drafting of these couple of pages was unorthodox, both on account of the procedure and who was drafting. Leaders rarely engage in drafting text. In fact, they rarely meet even bilaterally – let alone at a UN summit – without the certainty that an agreement has already been produced for them to sign. To return home empty handed is simply unthinkable. This is why there must have been a degree of panic when they arrived towards the end of the Conference, with no sign of an agreed outcome ready for their signatures. The process of trying to avoid the unthinkable was frantic. Time was in very short supply – and unfortunately these constraints did leave their marks.

The text of the accord, for one, is poorly drafted. This is in part explicable by the time pressures and the fact that the key people involved were largely novices in drafting UN decisions. Time constraints also did not allow for establishing a consensus outside the Friends of the Chair group, a fact which ultimately sealed the fate of the Accord: instead of being adopted by the Conference, it was merely ‘taken note of’.

The ‘Accord Process’

After the refusal of the Conference to adopt the Accord, two things began to happen almost instantaneously: a mutual blame game, and attempts at portraying the Accord as the cornerstone of a new improved process outside the UN negotiations.

While it may help to vent frustrations and soothe bruised egos, the blame game that ensued – either between Parties or directed at the UN system in general – is singularly unhelpful, particularly if it is played out at the political level. What would be more fruitful is a modicum of self-critical

¹ This Executive Summary is separately published in the *Oxford Energy Forum*

reflections on what actually brought us to the absurd situation where world leaders found themselves drafting text to avoid a failed summit. Why was there no agreed outcome by the time the leaders arrived?

It is all too tempting to blame negotiators and UN procedures. Yet the single most important reason for the events in Copenhagen is what happened before – namely, the **lack of political will and leadership** during the months leading up to the Conference to engage in real negotiations. The lesson that all attending leaders should take to heart after the Copenhagen Summit is that it is impossible – even for world leaders – to make up for months and months of wasted time in 24 hours, no matter how frantic they may be.

More importantly: the leaders should recognize that in the months to come, they must give **much higher political priority** to the continuing UN negotiations, if the inevitable endgame in December is to have at least a moderate chance of genuine success. The world simply cannot afford another leader drafting exercise.

What of the Accord itself? There is no doubt that it could prove a stimulus to the UN negotiations. However, as mentioned earlier, there have also been fears that it might be used to form a ‘coalition-of-the-willing’ process in order to sideline the official UN negotiations. This would prove disastrous, particularly in light of the constant demands from developing countries for inclusiveness and transparency.

As it happens, the Joint Statement issued recently by the ‘BASIC group’ (Brazil, South Africa, India, China), after their meeting in New Delhi, seems to have put an end to such aspirations. The Statement unequivocally endorses the **primacy of the UN negotiations**, and of the **two-track negotiations under the Bali Action Plan** in particular. The consensus among the BASIC members was clearly reflected in their recent notifications to the UNFCCC Secretariat on their proposals for Nationally Appropriate Mitigation Actions. While **South Africa** emphasized that *the Copenhagen Accord is a political declaration within the UNFCCC process that should provide valuable direction and impetus to the further negotiations under the Convention and its Kyoto Protocol this year*, **Brazil** stressed the Accord’s purpose to *facilitate the conclusion of the on-going two-track negotiations under the AWG-KP and the AWG-LCA with a view to adopt a decision on a second commitment period of the Kyoto Protocol and also in fulfilment of the Bali Action Plan during COP-16 and CMP-6 in Mexico*. The notifications by **China** and **India** stood out not merely because of their brevity, but also because of the fact that – apart from the respective NAMAs – they were almost verbatim the same, and that there was a **conspicuous absence of any reference to the Copenhagen Accord**.

As there is no (mitigation) regime without these four key countries, the idea of an independent ‘Copenhagen Accord process’ has therefore been put to rest, at least as far as mitigation is concerned.

The situation may not be as clear cut in the context of climate finance. The Accord’s commitment to establishing a **Copenhagen Green Climate Fund**, for one, could – and should – be read as a political endorsement of the Climate Fund/Facility envisaged in the UN negotiations.

Yet, there may be the temptation to interpret it as a call for establishing a new fund with an existing financial institution such as the IMF or the World Bank. There are also worries that the **High-level Panel** of the Accord will be used to sideline the UN negotiations, particularly if its remit were to such a new fund under the aegis of one of the traditional ‘existing institutions’. There must be no doubt that any such moves to undermine proposals established in the UN negotiations would lead to a widening of the existing chasm of distrust between developing and developed countries, something which would truly be counterproductive.

The Way Forward

The key to bringing the Copenhagen saga to a happy ending after all is first and foremost for the world’s leaders to **provide the leadership** required to ensure that the UN negotiations proceed at a pace that will make the desired outcome in the December session in Mexico feasible. They need to give their negotiators the political guidance and mandate to actually negotiate, rather than procrastinate.

With respect to mitigation, it would be wise for everybody to follow the BASIC countries in recognizing the **primacy of the UN negotiations**, and **of the clear goalposts already agreed under**

the Bali Action Plan two years ago. Renewed attempts to change these goalposts are not productive. Compromises will have to be made by everybody, but in good faith they should not involve the fundamentals *agreed by consensus* (*sic!*) in Bali, such as the continuation of the *Kyoto Protocol* and the *Bali Action Plan*:

[The] *United Nations Framework Convention on Climate Change (UNFCCC)* has to be the centerpiece of global cooperation on climate issues. The purpose of the *Copenhagen Accord* is to contribute to the negotiations on the *Kyoto Protocol* and on *Long Term Cooperation*. It is not a substitute but a complement to these core international agreements. There is much in the *Copenhagen Accord* that can bring consensus on the two-track negotiating process. For this to happen, this process itself has to recommence in right earnest, perhaps from March this year.²

As concerns finance, it is important to separate the issue of quick-start funding and mid-term finance, particularly with respect to institutional arrangements. Undoubtedly, quick start funding will have to be managed through existing entities. Equally, there can be little doubt that there are more ‘existing entities’ than just the Bretton Woods institutions. To avoid further erosion of trust, it is crucial that a *really significant share* of the quick start funds be channelled through the existing UN climate funds, in particular the *Adaptation Fund* and the *Least Developed Country Fund*.

At the same time, it has to be made crystal clear that the quick-start arrangements are *without prejudice to the outcome of the UN negotiations* which must determine the post-2012 institutional arrangements for climate finance. Indeed, it should be made clear that the call for a Copenhagen Green Climate Fund is nothing more and nothing less than a *high-level declaration of political support* for the idea of a *Climate Fund/Facility* envisaged in the UN draft finance text.

The overarching lesson of what happened in Copenhagen, however, remains the need for real political leadership on the road to Mexico in December. Copenhagen will have redeemed itself if it will have served as the *final wake-up call* for our collective leadership.

Structure of the Analysis

The following analysis of ‘Copenhagen’ – i.e. the UN Climate Change Conference held in Copenhagen, Denmark from 7 to 18 December 2009 – is divided into three parts. The first part considers Copenhagen in terms of its ‘*outcomes*’ and assesses its success by reference to a set of criteria put forward on the UNFCCC website prior to the Conference. The second part focuses on some of the controversial *events* during the Conference and on the relevant procedural issues, with the final part trying to draw some *conclusions* and propose some *lessons* for the way forward.

² Manmohan Singh, Inaugural Address, 10th Delhi Sustainable Development Summit, 5 February 2010.

I. The Copenhagen (Agreed) Outcome

I.1. The Secretariat Criteria

Whether or not Copenhagen was a success depends very much on one's expectations. The fairest way of judging the degree of success or failure would seem to be to use a set of *ex-ante* criteria.

As it happens, the *Frequently Asked Questions* 'about a Copenhagen Deal' posted on the UNFCCC Press website,³ provide precisely such a set of criteria of what was needed for Copenhagen to be considered a success:

The Copenhagen agreed outcome need not resolve all details, but it must provide clarity on four key issues:

- [1] *The first is clarity on the mid-term emission reduction targets that industrialised countries will commit to.*
- [2] *Second, there must be clarity on the actions that developing countries could undertake to limit their greenhouse gas emissions.*
- [3] *Third, it must define stable and predictable financing to help the developing world reduce greenhouse gas emissions and adapt to the inevitable effects of climate.*
- [4] *And finally, it must identify institutions that will allow technology and finance to be deployed in a way that treats the developing countries as equal partners in the decision-making process.*

Copenhagen is to result both in a post-2012 outcome as well as important decisions and start-up finance to immediately kick-start action on climate change in 2010.

The success of Copenhagen, in other words, was defined in terms of what since COP 13 in Bali became known as the '*Copenhagen Agreed Outcome*' (CAO). The first question in judging the success of Copenhagen accordingly has to be: what in the end was the agreed outcome of Copenhagen? It had been clear for some time prior to the conference that the CAO would not be some draft treaty. However, a month before the Summit, hope was still expressed that the conference would come up with what Yvo de Boer referred to as a 'clear package of decisions',ⁱ including a deadline for a legally binding document. What are the Decisions taken by the COP in Copenhagen?

I.2. The COP 15 Decisions

The UNFCCC website lists 13 Decisions taken at COP 15,ⁱⁱ a third of which are not really deciding anything at all. The most outstanding Decisions taken at Copenhagen were, (i) *to extend the mandate of the Ad Hoc Working Group on Long-term Cooperative Action to*

³ http://unfccc.int/press/fact_sheets/items/4997.php

enable it to continue its work with a view to presenting the outcome of its work to the Conference of the Parties for adoption at its sixteenth session; (ii) to include the name ‘Malta’ in Annex I of the Convention, and, of course, (iii) the taking note of the Copenhagen Accord of 18 December 2009.

There is no need for an in-depth analysis of this set of Decisions to draw the conclusion that, with them as CAO, ***Copenhagen was not a success***. However, to be fair one might also wish to consider whether certain other outcomes, had they been agreed, would have turned Copenhagen fate.

1.3. The Copenhagen Accord

The ***Copenhagen Accord*** – henceforth, ‘the Accord’ – was drafted by a group of ***Friends of the Chair*** consisting of around two dozen heads of state and government and other heads of delegations convened by the Prime Minister of the host country during the high-level segment concluding Copenhagen. The Accord was tabled for adoption by the COP in the early hours of the last day of the conference. Ultimately, the COP did not adopt the Accord – for reasons considered below – but merely noted its existence. Would Copenhagen have been a success if the Accord had been adopted (as CAO)?

The Accord consists of 12 paragraphs concerning mitigation, finance, technology transfer and adaptation, with a clear focus on mitigation and finance, as mirrored in the Secretariat criteria (Section 1.1).

Adaptation and Technology Transfer

Adaptation is first mentioned in paragraph 1 acknowledging *the need to establish a comprehensive adaptation programme including international support*. However, the main locus for adaptation in the Accord is paragraph 3 with two key points: (i) a call for *enhanced action and international cooperation on adaptation* with an emphasis on LDCs, SIDS and Africa, and (ii) the agreement that *developed countries shall provide adequate, predictable and sustainable financial resources, technology and capacity-building to support the implementation of adaptation action in developing countries*. Neither of these seems to be controversial. The same cannot be said of the fact that in both locations, ‘adaptation’ appears to be equivocated with ‘impacts of response measures’: paragraph 3, in particular, speaks of ***‘adaptation to the adverse effects of climate change and the potential impacts of response measures’***, something which anyone familiar with the history of the negotiations will immediately recognize as extremely contentious and divisive.

The main locus for technology transfer is paragraph 11, establishing a **Technology Mechanism** to accelerate development and transfer of technologies. All that is said about this mechanism is that it is to be *country-driven*, and *based on national circumstances and priorities*.

Mitigation

In its two opening paragraphs, the Accord recognizes *the scientific view that the increase in global temperature should be below 2 degrees Celsius*, and makes a commitment to enhance long-term cooperative action through *deep cuts in global emissions* to meet this objective **on the basis of equity and in the context of sustainable development**.⁴ By including the reference to an equitable basis in carrying out the necessary mitigation actions, the Accord leaves open the possibility that the global burden to reach this goal will be shared equitably, possibly even taking into account the principle of common but differentiated responsibilities.

In its closing paragraph, the Accord also calls for an assessment, to be concluded by 2015, including what – in allusion to the Convention – could be referred to as an assessment of the **adequacy of commitments**, namely the *consideration of strengthening the long-term goal referencing various matters presented by the science, including in relation to temperature rises of 1.5 degrees Celsius*.⁵

The Accord also invites Annex I Parties to submit their self-selected **economy-wide targets** in terms of a **base year** and an **economy-wide emission cap**⁶ to the UNFCCC Secretariat by 31 January 2010 *for compilation in an INF document* – that is, a document for information only. This is of considerable importance because it could signify the political will to finally deliver on what has been one of the major pieces missing in the negotiations under the Ad-hoc Working Group on Further Commitments of Annex I Parties under the Kyoto Protocol (AWG-KP), the continued work of which being, after all, endorsed by the Accord. Indeed, the failure of Annex I Parties to submit emission reduction targets by the deadline agreed in Bali (COP 13) was the chief reason for the members of the Africa Group to temporarily boycott the AWG-KP during the final negotiating session prior to Copenhagen.

In Bali, the final tumultuous 24 hours of negotiations were dominated by a serious controversy on the relationship between Nationally Appropriate Mitigation Actions

⁴ Emphasis added.

⁵ Emphasis added.

⁶ Note that although the term ‘cap’ is not mentioned, the format given in Appendix I refers to ‘emission reductions’ (relative to the chosen base year), which is not the same as reductions in some mixed parameter, such as ‘emission intensity’ (= emissions per unit of GDP).

(NAMAs) in developing countries and their support with finance, technology and capacity building by developed countries. Unfortunately, the relevant passage of the Accord (paragraph 5) seems to fail to take into account the ultimate Bali outcome.

While giving a relatively detailed account of who is to measure, report, and verify what, the Accord fails to mention the idea that the mitigation ambitions of developing countries are conditional on the available levels of support. On the contrary, the text of paragraph 5 can be read as implying that while all developing countries will (have to) carry out NAMAs, only LDCs and SIDS will be eligible for support.ⁱⁱⁱ Indeed, a recent legal opinion on that point by the Legal Response Initiative concluded that the language in question is *deliberately vague*, allowing for two interpretations: first, is that only LDC and SIDS mitigation actions are eligible for support. *However, we believe that a more likely interpretation is that non-Annex 1 countries (which are not LDCs or SIDS) may be eligible for support on a case-by-case basis as determined by the (yet-to-be-established) Copenhagen Green Climate Fund.*⁷

Finance

The issue of finance is treated in a number of places in the Accord. The key language, however, is in three consecutive paragraphs, creating a ***Copenhagen Green Climate Fund***, a ***High-level Panel*** on potential sources of revenue, and ***'collective' commitments*** to provide fast-start funding of \$10 billion annually for 2010-12, and a 2020 target of \$100 billion annually.

As in the case of the mitigation targets, the lack of any concrete proposals on levels of finance has been a major impediment in the recent climate change negotiations, in this case under the AWG-LCA. Regardless of whether the figures are deemed adequate, the fact that they have been tabled should help to unblock the negotiations, provided that they are followed up with an acceptable concrete scheme of how these funds are to be raised.

This could be facilitated by the envisaged High-level Panel, but unfortunately it could equally be undermined by it, if the procedural lessons from Copenhagen (see below) are not learned. There is a grave danger that the Panel could be (mis-) used as an alternative negotiating forum, undermining the AWG-LCA finance negotiations instead of providing useful input for them.

Another potential problem with the finance text of the Accord with respect to financial

⁷ Advice has been provided by the Legal Response Initiative in response to Query 91. 9 January 2010.

burden-sharing is the fact that, according to the US delegation,⁸ the Copenhagen Green Climate Fund (CGCF) was *inspired by ideas that had been put forward this year by Mexico*. It is well-known that the key element of the Mexican proposal for a Green Fund is a very controversial burden-sharing scheme involving contributions from all Parties (except LDCs).

The proposal of a CGCF raises further important questions. Is it meant to manage the fast-start money? Given the experience of the time it has taken to set up the World Bank Clean Investment Funds (CIFs) and the Kyoto Protocol Adaptation Fund, this would be very curious indeed. If, however, it is meant to manage the mentioned *significant portion* of the medium term funding,^{iv} the question that poses itself is: how does it relate to the ***Climate Fund/Facility*** that is to be established according to the draft AWG-LCA finance decision?^v

Evaluation

How would the Accord have fared as Copenhagen Agreed Outcome according to the Secretariat criteria? Given that Parties would have adopted the decision to submit by 31 January 2010 either quantified economy-wide emissions targets for 2020 (developed country Parties), or nationally appropriate mitigation actions (developing country Parties) – it seems the Accord would have fulfilled the first two of the Secretariat criteria.

On the remaining conditions concerning finance, however, the Accord would not have fully delivered what the Secretariat criteria deemed necessary for a successful Copenhagen Agreed Outcome. While it does specify overall levels of quick-start and medium-term financing, it fails to identify how much is going to be contributed by which source, nor does it provide a sufficiently clear definition of how the funds are to be managed. As a matter of

Box 1 Danish Finance Text

22. Recalling article 4 of the Convention, Parties decide that a Climate Fund be established as an operating entity of the Financial Mechanism of the Convention, which should function under the guidance of and be accountable to the COP as set forth in article 11 of the Convention. The Fund should be operated by a board with balanced representation, which will develop the operational guidelines for the Fund and decide on specific allocation to programmes and projects. The COP will formally elect members of the Fund Board and endorse the operational guidelines and modalities for the Fund. The Fund should complement and maximise global efforts to fight climate change through up-scaled support for climate efforts in the developing countries, including mitigation, adaptation, technology and capacity building. Support from the Fund may be channelled through multilateral institutions or directly to national entities based on agreed criteria. Parties commit to allocate an initial amount of [\$x] to the Fund as part of their international public climate support. Medium term funding should be based on a share of no less than [y%] of the overall international public support. Parties decide to operationalise the work of the Fund following the modalities set forth in annex/decision [Y].

Source: Danish Presidency, Draft for a COP decision 1/CP15 of 11 November 2009

⁸ 19 December 2009, COP resumed 9th Meeting, 06:25.

fact, the Accord would have fared considerably better in this respect had it incorporated the relevant language of the text originally prepared by the Danish Presidency (see Box 1).

To be fair, the Accord was pulled together at the last minute in a fire-fighting exercise to save the conference, or as one delegate⁹ referred to it in the final plenary: a last-minute overnight cramming exercise, attempting to make up for the lack of determination in the preceding months, to pass the next morning's exam. In keeping with this simile, the Accord, marked against the Secretariat criteria, would have passed, but only just.

However, the fact that the Accord can be regarded as a passable – although not agreed – Copenhagen Outcome, does not necessarily imply that it would have made a good COP Decision. Given its ambiguities – deliberate or not – and rather poor drafting¹⁰ it stands to reason that it is probably a blessing for the continuing UNFCCC negotiations that the Accord was not actually adopted as a Decision. It should always have been conceived as a political declaration, with the aim to unblock and accelerate the negotiations under the two Ad hoc Working Groups.

1.4. The AWG-LCA Outcome

In fairness to what did or did not happen in Copenhagen – since we are considering ‘non-decisions’ – we should also look at the outcome of the Ad Hoc Working Groups (AWGs), in particular the AWG on *Long-term Cooperative Action under the Convention* (AWG-LCA, or LCA, for short). The LCA had decided to present the outcome of their work since Bali to COP 15 in the form of 10 draft decisions *for consideration and adoption*.^{vi}

Unfortunately, the text of these draft decisions still contained ‘bracketed’ language, i.e. passages on which there was no consensus in the LCA when its allocated time had run out at the end of the first week of Copenhagen. Since the COP was unable to resolve these issues, these drafts have been consigned to the UNFCCC Limbo of ‘L-documents’, where they are collectively known as ‘FCCC/AWGLCA/2009/L.7’.

⁹ Venezuela, 19 December 2009, COP resumed 9th Meeting, 07:17.

¹⁰ To give an example, the Accord as mentioned commits developed countries in paragraph 8 *to a goal of mobilizing jointly USD 100 billion dollars a year by 2020 to address the needs of developing countries*. The same paragraph continues to state that *new multilateral funding ... will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries*. What is surprising, to say the least, is the context: the latter quotation actually refers to funding *for adaptation*, while the commitment to mobilize \$100 billion per annum is explicitly relativized to the context of *mitigation* actions.

The problem is the difficulty to interpret this in any other way than that the committed mid-term funding would be for mitigation alone. But it is equally difficult to believe that this was the intention of the Friends of the Chair who drafted the paragraph. Accordingly, it should serve as warning against the drafting of Decisions under sleep deprivation, whatever the level of seniority.

In light of the considerable volume of this outcome, let us focus on the key theme of finance. The LCA outcome on finance is divided into a section on *Enhanced action on the provision of financial resources and investment* in the main Draft Decision¹¹ and a homonymous Addendum.¹² To avoid misunderstandings, it must be emphasized that these text is *still under negotiation*, which is why the following ‘unbracketed’ description of what they contain may not be shared by all Parties.

The Addendum elaborates on the two proposed decisions – the establishment of a *Finance Board of the Financial Mechanism* (FB) and of a *Climate Fund/Facility* (CF/F) – and is divided into four sections: The first introduces the FB, the second is about the CF/F, the third deals with *Existing Funds/Entities*, and the fourth looks at the *Provision of Financial Resources*.

The Finance Board of the Financial Mechanism

In order to operationalize further the financial mechanism of the Convention, it is proposed to establish a Finance Board (FB) of the financial mechanism with an *equitable and transparent system of governance* under the *guidance of* and *accountable to* the COP. The FB is meant to have three key purposes, many of which are truly innovative.

- First, the FB is to *ensure that operating entities are actually accountable to the COP*, something that has so far been a significant problem.
- Second, it is to *assess the needs for, and sources and flows of*, international finance to support climate change activities, and to *recommend a balanced allocation of funding across thematic areas* of the operating entities of the financial mechanism.
- Last, but not least, it is to *recommend provisions for unifying modalities to assess the support* provided to developing country Parties.¹³

The Climate Fund/Facility and Existing Entities

According to the draft LCA finance decision, the Parties are to establish a Climate Fund or Facility (CF/F) to be governed by a *Board* with *equitable and balanced representation and* serviced by a Trustee and a Secretariat. It is to support projects, programmes, policies and other activities related to *mitigation, adaptation, capacity-building and technology development and transfer*, and to provide *simplified, improved and effective (direct) access*

¹¹ FCCC/AWGLCA/2009/L.7/Rev.1

¹² FCCC/AWGLCA/2009/L.7/Add.2/Rev.1. 16 December 2009.

¹³ The LCA text in paragraph 4.(d) actually distinguishes between support for mitigation, which is meant to be measured, reported, and verified, and support for adaptation, which is to be monitored, reported, and reviewed. This does seem somewhat curious, because there is not really meant to be a difference in kind between adaptation support and mitigation support. Both themes are meant to be supported by finance, technology transfer. There is, of course, a considerable difference between the themes themselves, and it would not make sense to require measurable and verifiable adaptation activities. But the paragraph is not about the activities but about the support, where the distinction makes no sense.

to financial resources in a timely manner. Specialized *funding windows* may be established by the CF/F Board with the approval of the COP.

Regarding the existing operating entity – the Global Environment Facility – the draft text envisages a review or reform of the arrangements to ensure that it *responds more effectively to the needs of developing countries*.

Provision of Financial Resources

Finally, with respect to the provision of financial resources, the LCA text has Parties agree to provide *scaled up, predictable, new and additional* and *adequate funding* to developing country Parties for enhanced implementation of the Convention. It stipulates that the main source of funding *through the financial mechanism* shall be new and additional financial resources, *provided by developed country Parties*, with *private sector* financing and other *innovative sources* of funding supplementing the provision of public financial resources.

Unresolved Issues

Some of the issues that the LCA Finance Working Group was unable to deal with adequately by the end of the first week are referred to in the said section of the main Draft Decision, in particular the thorny question of *who is to contribute* to this financing effort – only developed country Parties, of all Parties (except LDCs) – and *how much* will be contributed?

Evaluation

How would this text have fared when judged against the Secretariat criteria? Given the focus on finance, it would clearly be inappropriate to apply the criteria concerning mitigation. The question thus is: does the LCA finance text (i) define stable and predictable financing to help the developing countries, (ii) define start-up finance to immediately kick-start action on climate change in 2010, and (iii) identify institutions that will allow finance to be deployed in a way that treats the developing countries as equal partners in the decision-making process?

The answers obviously depend in part on what one means by ‘define’. If it refers merely to a general agreement that there should be stable and predictable finance, then the LCA text would clearly pass, at least with respect to the post-2012 regime. If however a ‘definition’ is meant to include concrete figures, then the text would have been a failure on both accounts. On the identification of institutions, the text could be more detailed, but it would no doubt have to be given at least a ‘pass’ mark.

2. What Happened? What Did Not?

The seeds of the diverse problems that beset the Copenhagen Conference were *sown long before it opened*. The following is an attempt to get some clarity on some of the things that did and did not happen, to gain some insight into lessons to avoid repeating these mistakes.

2.1. The Danish Text and Friends of the Chair

The Danish Text

The Origins.

Having realized that the very slow progress of the UNFCCC negotiations was endangering the ‘Copenhagen Agreed Outcome’ envisaged in the Bali Action Plan, Lars Løkke Rasmussen, Prime Minister of the COP 15 host country Denmark, instructed his office to put together a text to be tabled as a draft from the COP 15 President, in case the UN process failed to produce its draft text in time. What was to become known as the ‘Danish Text’ saw a number of incarnations, beginning with a legal text, which – when it became clear that a legal treaty was out of the question – was replaced with a draft text for a political agreement (‘The Copenhagen Agreement’).

In the months leading up to Copenhagen, Rasmussen had a number of briefings on the text with leaders across the globe, such as in November during the ASEAN meeting in Brunei. In principle it is not uncommon for COP Presidents to table compromise texts when there is deadlock in the negotiations, but such Presidential drafts are not always without problems and need to be handled with extreme care, as the last days of Bali bear witness.¹⁴ Given the general level of distrust between countries – which has, after all, been one of the main reasons for the slowness of progress – it is very difficult to convince Parties that the exercise is carried out in good faith. Distrust, unfortunately, is the default. And that was not helped by the secrecy surrounding the Danish briefings: rumours of the text being handed out in hard copies at the beginning of the briefing, only to be re-collected at the end of it, for example, did not necessarily inspire confidence in the transparency and inclusiveness of the exercise. And, as it happened, this came home to roost in Copenhagen.

At Copenhagen – Tuesday 8 December: The Guardian Leak

On Tuesday of the first week of the Conference, the UK Guardian published a full draft of

¹⁴ Benito Müller, “Bali 2007: On the road again! Impressions from the Thirteenth UN Climate Change Conference,” *Oxford Energy and Environment Comment*, February 2008, available at <http://www.oxfordclimatepolicy.org/publications/mueller.html>

the Danish Text dated 27 November 2009. Strictly speaking, what was published was a draft for a COP decision ('1/CP.15') entitled *Adoption of the Copenhagen Agreement under the United Nations Framework Convention on Climate Change*. An identical copy was meant to become the first of the CMP Decisions. In other words, by the middle of the first week, everyone would have been aware of the existence of a Danish Text. But most people were also keenly aware that this was a living document, without knowing how the text was evolving.

At Copenhagen – Wednesday 16 December: Opening of the High-level Segment

Just after suspending the 5th session of the CMP, which heard the Report of the Chair of the AWG-KP, and handing over the COP Presidency to her Prime Minister, Minister Connie Hedegaard announced that *the Presidency intends to table its proposal for the outcome of the Conference. It consists of two texts that are based substantially on the two texts forwarded by the AWGs. The proposal will be available shortly.*¹⁵

Ten minutes later, the Danish Prime Minister in his new capacity as COP/CMP President opened the Joint COP/CMP High-level Session, only to be faced with a barrage of points of order that took up more than half an hour of the time. Unlike the case of the final plenary (see below), the majority of these points did not come from small countries but from the large developing countries that collectively have become known as the BASIC Group: Brazil, China, India and South Africa.

Brazil started¹⁶ by pointing out that while the scheduled reporting by the Chair of the AWG-LCA¹⁷ had not happened, *yet references were made to new texts that would be presented under the authority of the Presidency*. He noted with concern that new text having been prepared covering LCA and KP issues *creates the clear indication that the negotiated [AWG-LCA and AWG-KP] texts are not the reference for our work*. Twenty minutes later,¹⁸ he reiterated this concern and requested *an assurance that the basis of the negotiations on the issues of the AWG-LCA is the negotiated text. It is not true that the negotiators do not have a text! The negotiators negotiated until early this morning, and there is a text*.

India also made two points of order,¹⁹ recalling that *time and again we have been*

¹⁵ 16 December, 11:51.

¹⁶ 12:01.

¹⁷ The submission of the Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention was scheduled as Agenda Item 4, for the third meeting of the COP plenary at 10am on 16 December 2009.

¹⁸ 12:21pm.

¹⁹ 12:12pm and 12:22pm.

assured by the COP President that this is a process driven by inclusivity, transparency, [that] it has to be Party-driven, it cannot be top-down and emphasizing that the discussions which we earlier had with the COP President about the sanctity of our text are a matter of good faith.

South Africa, represented at Ministerial level, recalled that *the President of COP 15 made an undertaking a few days ago and even promised ... in writing ... that the outcome of this process would be state driven, and we would therefore be worried if a text will emerge outside this process.*²⁰

Yet by far the most poignant points were raised by **China**.²¹ For one, he emphasized the understanding that any outcome in Copenhagen should be the result of the work of the two Ad hoc Working Groups. He mentioned a number of times that the idea of a *parachuted text*, of putting *forward some text from the sky*, displayed **a lack of respect**. In his final point he emphasized the reason for coming to Copenhagen was to ensure, in accordance with the Bali Road Map, *the fully effective implementation of the Convention as well as the Kyoto Protocol. This is our task, this is our mission. We should stick to our mandate and not work on some hidden agenda and try to impose something external upon the distinguished Parties all of us are representing here.*

There were a number of other points of order, all from developing countries,²² and all bar one²³ echoing the points raised by the BASIC countries. At 12:35, the High-level Segment finally began, after the COP President had given assurance that the missing COP plenary session would be held at 13:00.

At Copenhagen – Wednesday 16 December: Report of the Chair of the AWG-LCA

At 21:30 (*sic!*) the missing COP plenary was finally resumed. Michael Zammit Cutajar was given the chance to present his Report on the outcome of the AWG-LCA negotiations. When he finished, the chair read out a statement from the COP President, informing delegates that *he is currently undertaking consultations on how to proceed with the work of the Conference and will inform you with the results of his consultations in the morning.*

This led immediately to a string of interventions by Parties seeking clarification about these consultations: who was the President consulting, and how was he consulting. In

²⁰ 12:22pm.

²¹ 12:12pm, 12:14pm, 12:26pm.

²² Maldives, Sudan on behalf of G77+China, Ecuador, Bolivia,

²³ Maldives [1210]: *Whatever text that has also come out was after consultations with Ministers. I believe that we would want to see the process move forward and a fruitful result from these discussions. I would like to propose that the chair proceed with the text that the chair intends to table.*

hindsight, it is interesting that all the Parties who objected to the adoption of the Accord in the final plenary were seeking clarification on the nature of these consultations. The session was finally suspended just after 22:30.

At Copenhagen – Thursday 17 December: Death of the Danish Text

The session was briefly resumed on the following day for the COP President to declare that *the documentary basis for the work will be the text reported by the AWG-LCA Chair and presented to the plenary last night. No other text will be used.* Following the practice of UN negotiations, two high-level (Ministerial) contact groups were established, chaired by Connie Hedegaard, with *a very clear mandate: to complete work on any unresolved issues. Deadline would be very short as results must be reached in the hours ahead.*

Unfortunately, but not really surprisingly given the very limited time frame, these drafting groups did not make sufficient progress towards a text that could be used as the Copenhagen Agreed Outcome, despite the involvement of the political stakeholders. Realizing the clear and present danger of not being able to give the attending heads of government and state a piece of paper to take home as the outcome of their summit, which was simply unthinkable, the COP President decided to switch to ‘Plan C’: convening some high-level ‘Friends of the Chair’.

The Friends of the Chair

The first meeting of the twenty-odd heads of government and state that became to be known as the ‘Friends of the Chair’ was scheduled to follow immediately after the State Dinner hosted by the Queen of Denmark on Thursday 17 December. However, the story of the Friends actually began at that dinner, as recounted on the Chinese Foreign Office website:

At 20:00 on 17th, Premier Wen attended the dinner hosted by Queen Margrethe II of Denmark. It marked the beginning of the high-level segment of the Copenhagen conference.

Something unexpected however happened during the dinner. A foreign leader mentioned to Premier Wen inadvertently that a certain country would call a small-group leaders' meeting following the dinner to discuss a new text. This caught Premier Wen's attention, because the list of invited countries held by this leader had the name China on it, yet the Chinese side had never received any notification about this meeting. Premier Wen then sought confirmation with some other leaders, who told him that indeed such a meeting was scheduled after the dinner. It was really absurd that the country who called for the meeting never informed China.

Premier Wen concluded that this was no small matter. Since the start of the conference, there had been cases where individual or small group of countries put forward new texts in disregard of the principle of openness and transparency, arousing strong complaints from other participants. He immediately left for the hotel, where he convened a meeting to discuss how to respond.

Upon Premier Wen's instruction, Vice Foreign Minister He rushed to the venue of the small-group meeting and raised serious concerns with the host for arranging such a meeting with hidden motives. He stressed that the principle of openness and transparency must be respected. No one should try to form small circles or force decisions upon others, or they would risk leading the

conference to failure.²⁴

What seems to have happened was that the COP President's "Plan C" was only put into effect during the dinner: invitations to the Friends' meeting were only handed out at the dinner, and Premier Wen may – far from being snubbed – may simply have been a victim of alphabetical distribution.

It is difficult, if not impossible, to assess the process of the Friends – collectively or bilaterally – in drafting the 'Copenhagen Accord', apart from snapshots that have already become part of the Copenhagen mythology, such as the meeting between the leaders of the BASIC countries with US President Obama, which is now widely regarded as having 'clinched the deal'.²⁵ Indeed, the fact that this meeting came about purely by coincidence illustrates the chaotic nature of the last official day in Copenhagen.²⁶

The Friends of the Chair ultimately did manage to agree on the text of what became known as the 'Copenhagen Accord'. However, it is unlikely that they would have realized the prophetic nature of Premier Wen's *caveat* regarding the formation of small circles, and the attempt to force decisions upon others (see above).

2.2. The Final Plenary

The final session of the COP Plenary in a sense began before it was actually opened: on Friday 8 December (22:30), US President Obama held a press conference at the COP venue shortly before he departed to return to Washington. In that press conference, he announced that there had been a *meaningful and unprecedented breakthrough here in Copenhagen. For the first time in history all major economies have come together to accept their*

²⁴ Zhao Cheng, Tian Fan and Wei Dongze, 'VerdantMountains Cannot Stop Water Flowing; Eastward the River Keeps on Going', *Xinhua News Agency*, Beijing, 24 December 2009.

²⁵ *I have remarked to some people that there is something about being a community organizer which gives you the confidence to walk into a room and sit down at a table and engage in a conversation. Except that his [President Obama's] table consisted of four players. His table was President Lula from Brazil, and President Singh from India, and President Zuma from South Africa, and Wen Jiabao who is the Premier of China. That is the table he walked into. And he created an outcome with that community, having first gone through consultations with Gordon Brown from the UK and with Sarkozy from France and a set of our allies, Hatoyama from Japan, and created an outcome that did not exist until he came there!* [Jonathan Pershing, Center for Strategic and International Studies, 13 January 2010, transcribed by author from webcast: at <http://csis.org/event/post-copenhagen-outlook>]

²⁶ *At 18:50, when leaders of the BASIC countries were doing the final review of their common position, they heard a clamor of voices outside. The door was opened and there stood President Obama. Although the scheduled time for the second China-US meeting had passed, Obama's presence at that moment and that place still came as a surprise to the people inside. President Obama must, too, have felt a bit awkward. With one foot inside the door, he smiled and asked Premier Wen whether he was early and whether he should wait outside or come in and join the discussion. Premier Wen stood up and welcomed him courteously.* [Zhao Cheng, Tian Fan and Wei Dongze, 'VerdantMountains Cannot Stop Water Flowing; Eastward the River Keeps on Going', *Xinhua News Agency*, Beijing, 24 December 2009]

*responsibility to take action to confront the threat of climate change.*²⁷ He described some of the key elements²⁸ of the Copenhagen Accord. What proved to be rather unfortunate was that at the time, the vast majority of countries that were not ‘Friends of the Chair’ had not actually received the text of the Accord. They had to wait for another four hours to have a chance to read the ‘breakthrough’ text.

At 03:00 the next day, the Danish Prime Minister, as President of the Conference, resumed the 9th session of the COP plenary and told the Conference that he had *held consultations with leaders and have mobilized support for an accord which has been developed in a representative group of leaders from all regional groups around the world.* After a few additional remarks, and having invited delegates to consult in their regional groups he suspended the 9th COP session after only 3 minutes, to resume the 12th meeting of the CMP. Having asked Parties to consider the Accord proposal in their groups for adoption also as a CMP decision, he requested them to reconvene with their conclusions an hour later, *to take action on the Copenhagen Accord* and suspended the CMP session after just 50 seconds, despite the fact that a point of order was raised. After protest by a number of the Parties, the session was resumed to turn into what one of the delegations referred to as *the worst plenary ever.*

While this is not the place to give a blow by blow account of the events, it is important to try to understand what happened in order to avoid drawing the wrong lessons. Is it possible to get some clarity as to why (in speaking order) Tuvalu, Venezuela, Bolivia, Cuba, Costa Rica, and Nicaragua raised their voice in opposition to the adoption of the Accord as a decision?

It is always tempting to theorize based on one’s own interpretations (see Section 2.3), but it may be wiser to start by simply listening to what the Parties in question say about their reasons for intervening. These reasons can roughly be divided into ***substantive objections*** to the content of the Accord, and objections to the manner in which the Accord was ***drafted*** and ***presented for adoption.***

Substantive Objections

In essence, most of the main substantive objections raised during the initial round of

²⁷ <http://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen>

²⁸ *These three components -- transparency, mitigation and finance -- form the basis of the common approach that the United States and our partners embraced here in Copenhagen. Throughout the day we worked with many countries to establish a new consensus around these three points, a consensus that will serve as a foundation for global action to confront the threat of climate change for years to come.* [Obama press conference, 18 December]

interventions – the session was again suspended after 41 minutes and only reconvened at 05:00 – were already reflected in the very first intervention by Tuvalu:

*We think it is important that we have science-based results that lead us [to] reducing emissions so that we reach **temperature levels well below 1.5 degrees**. Anything above spells the end of Tuvalu. The **connection of adaptation and response measures** is inconsistent with the Convention and is inconsistent with the Bali Action Plan. Mr President, there is **no guarantee that the Kyoto Protocol will continue into the next commitment period in this text**. Mr President, there is a reference to a mechanism within the context of REDD+ and we are not sure what this means. There is no reference to an international insurance mechanism which we had sought so keenly. Mr President, there is a review mechanism established by 2015. This is too late for our future.*²⁹

Procedural Objections

However, the lion's share of the objections were not about content but process, which was seen to be *exclusive* and *disrespectful*. Again, in the words of Tuvalu:

*We work under the umbrella of the UN in this meeting ... Within the UN, we as nations are given respect. Large or small. We have processes to consider matters collectively. This is called the 'Conference of Parties'. Earlier this evening I walked pass a television ... where a prominent leader was suggesting he 'had a deal'. To make this announcement ahead of a proper consideration by the COP is **disrespectful of the UN processes** which we work under. Negotiation by media may be the norm in some countries. Other countries have greater **respect for democratic processes**.*³⁰

To be fair to 'the prominent leader', he did not use the word 'deal' but 'breakthrough' which he acknowledged would have to be approved by the COP.³¹ At the same time, one should not put the initial opposition down to the heat of the moment, even though some of the criticisms were quite heated. The sentiments persisted even after the failure to adopt the Accord, as witnessed in Pakistan's thoughtful intervention seven hours after the first objections were raised:

*Pakistan has joined the consensus on the decision to take note of the [Accord] despite our **reservations about the process** which led to its emergence. Pakistan, in principle, is **opposed to exclusive formats**. It is not possible to be in complete agreement with documents with which we have had no role. One of the fundamental principles of the UN – and which the UN has stood for – is **legitimacy** which is derived from the **transparency of the process** of negotiations and **inclusiveness**. Absence of transparency also militates against the principles of self-sovereign equality of member states. This is not what the UN stands for. This is not what we should accept in the context of the UN. We have time and again underscored that the central objective of our work, and this objective remains, is to **reach an agreed outcome, and not to cut deals**. This is an exceedingly crucial distinction. Only yesterday, Pakistan had urged all Parties to spare no effort in bridging the **galloping trust deficit** that exists between and amongst them. Such processes do not help but only widen the schisms that exist.*³²

The issue of legitimacy of the Friends of the Chair process was indeed raised a number

²⁹ Tuvalu, 03:13.

³⁰ Tuvalu, 03:13.

³¹ *I am leaving before the final vote, but we feel confident that we are moving in the direction of a significant accord.* [Obama press conference, 18 December],

³² Pakistan, 11:55. NOTE TIME STYLE

of times, particularly with respect to a lack of mandates: the mandate of the COP President to convene the Friends of the Chair, the mandate of those participants who were taken to represent others, and indeed their mandate to join the final consensus of the Friends of the Chair. It was in response to these criticisms that Grenada – invited to the FOC in the capacity as AOSIS chair – made the following statement:

*When we entered the room and the talks, we found that we were joined by the following delegations: US, UK, Sweden, Spain, Saudi Arabia, Russia, Norway, Mexico, Maldives, Lesotho, South Africa, Bangladesh, Algeria, Denmark, Germany, France, India, Ethiopia, Colombia, Korea, China, Brazil, and we were also privileged to have the presence of the UN Secretary General. There was absolutely **no indication then or now that this was an illegal process.***³³

It would not be helpful to doubt the sincerity and good faith of the participants of the FOC group, but this does not mean that the process was not fundamentally flawed. The fact that many delegates actually did not know who exactly the FOCs were until this intervention by Grenada – three hours after the text was tabled for adoption – speaks for itself. Pakistan, in the above-mentioned intervention, summarized the situation:

*We do recognize the honest efforts that the Parties involved may have made in reaching to this point. It is fair to say, that those **efforts were made in good faith.** But good faith does not necessarily lead to good results. After all, the **road to hell is paved with good intentions.** Pakistan recognizes that reaching consensus through open, inclusive and transparent processes is tough and time consuming. But the agreements concluded through such processes are **durable as they carry ownership of all Parties and stakeholders.***³⁴

Finally, one should also avoid dismissing the scope of the problem on the grounds that it was only a handful of ‘obstructionist’ countries that raised their voices in protest, and consequently broke the consensus in the COP on adopting the Accord as a decision. Towards the very end of that plenary, Grenada felt the need to issue the following extraordinary statement:

*On behalf of AOSIS, the delegation of Grenada **sincerely apologizes** to any delegation here, any delegate, who would have felt or experienced hurt, betrayal, or any negative impact as a result of the work done, and in particular our participation in the Friends of the Chair group. Let it be clear, this was never the intention of Grenada in its capacity at the national level or as chair of AOSIS. The exact opposite was our intention and we do hope **to learn some lessons concerning greater transparency, concerning more skilled diplomacy and negotiations,** so that no one in this family of nations would be hurt by what we undertake.*³⁵

It is difficult to imagine that this truly astonishing unconditional apology would have been made if it were not for the fact that the misgivings over the process were much more widely spread and deeply felt – particularly in the group chaired by Grenada – than might be

³³ Grenada, 06:10.

³⁴ Pakistan, 11:56.

³⁵ Grenada, 12:28pm.

inferred from the relatively small number of Parties who actually raised their flags to object. One thing that is clear, contrary to what some protagonists might wish us to believe:³⁶ we cannot actually infer that since it was only a small number who openly objected, everyone else was in favour of the accord, or, for that matter, happy with the way in which was produced.

In any case, there can be no doubt that Grenada was right. Lessons must be learned. The question is only: ‘what lessons ’?

2.3. Post Copenhagen

In a way, post-Copenhagen already began during the final session of the COP plenary. Things were said by proponents and opponents of adopting the Accord which were, politely put, extremely unhelpful. The blame game that ensued saw fingers pointed at individual Parties as well as the UN system as a whole. Moreover, the Copenhagen Accord was portrayed as the foundation for a new and better process outside the ‘chaos’ of the UN.

Blame Game I: Parties

The day after the Conference ended, for example, it was reported that the UK Secretary for Energy and Climate Change *accuses China, Sudan, Bolivia and other leftwing Latin American countries of trying to hijack the UN climate summit and ‘hold the world to ransom’ to prevent a deal being reached.*³⁷ Three weeks later, a senior American official told an audience in Washington D.C. that the Accord was not adopted because of a group of Latin American countries who use the climate change negotiations *not so much as a solution to climate change but in fact as a mechanism to redistribute global wealth.*^{vii}

The finger pointing, needless to say, was not restricted to the special trans-Atlantic relations. A couple of days after the Washington lecture, the Indian Minister for Environment and Forests was reported to have said that *actually the pressure is on China to do a much better job on what it is doing — making it transparent. Frankly, it (China’s) is a very opaque system.*³⁸

On 11 January 2010, a senior Chinese official, in turn, published an opinion piece in the

³⁶ *And with 185 countries saying ‘yes’ and 5 saying ‘no’ we were unable to pass through the process demanding consensus to get to an outcome.*[Jonathan Pershing, Center for Strategic and International Studies, 13 January 2010, transcribed by author from webcast: at <http://csis.org/event/post-copenhagen-outlook>]

³⁷ John Vidal, ‘Ed Miliband: China tried to hijack Copenhagen climate deal – Climate secretary accuses China, Sudan, Bolivia and other leftwing Latin American countries of trying to hijack Copenhagen’, guardian.co.uk, Sunday 20 December 2009 20.30 GMT

³⁸ ‘Kyoto is in intensive care’ Q&A: Jairam Ramesh, Minister of State, Environment and Forests, *Business Standard*, New Delhi, 15 January 2010. <http://www.business-standard.com/india/printpage.php?autono=382737&tp=>

China Daily entitled ‘Obstruction of developed nations’ in which he rebuked the claim that Beijing has been hijacking the process and instead points out that *developed countries, especially the EU, have not reflected on their activities that delayed and hampered progress at the global climate talks.*^{viii}

This sort of mutual finger pointing may have been inevitable, but is not helpful, particularly if carried out at Ministerial level. At this stage, it would be best if all Parties involved were to carry out some **self-critical** reflections on what might have gone wrong instead of blaming others.

Blame Game 2: UN Procedures

As reported by the Financial Times: *One immediate target of criticism was the unwieldy United Nations negotiating process, which several nations blamed for Copenhagen’s failure. EU states have asked the European Commission to draw up recommendations to **streamline the process, and to limit obstructionist tactics.***³⁹

In his *Guardian* opinion piece the day after the final Copenhagen plenary, the UK Secretary for Energy and Climate Change castigated the process at Copenhagen as being *dogged by **procedural games**, as a matter of **procedural wrangling** that was, in fact, a cover for points of serious, substantive disagreement.* And for this reason, he also saw the *need to have major reform of the UN body overseeing the negotiations and of the way the negotiations are conducted.*⁴⁰

Apart from voices such as these, calling for a reform of UN procedures, the aftermath of Copenhagen also saw attempts to deal with the allegedly ‘chaotic’ UN procedures by side-stepping or sidelining the UN process.

The Multi-process Approach

Some delegations who were clearly disappointed and disturbed by the events of the final plenary⁴¹ referred to the process that gave rise to the Accord then and there as being a different process than the COP.⁴²

About a month later, the press reported that *America sees a diminished role for the*

³⁹ Joshua Chaffin, ‘EU reflects on climate “disaster”’, *Financial Times*, <http://www.ft.com/cms/s/0/f2a6f37e-ef42-11de-86c4-00144feab49a.html>, emphasis added.

⁴⁰ Ed Miliband ‘The road from Copenhagen: The talks were chaotic, at times farcical. But in the accord there were real gains we can build upon’, guardian.co.uk, Sunday 20 December 2009 20.30 GMT

⁴¹ *It is extremely disappointing and it is extremely disturbing not only for the planet, of course, but also for the ongoing health and existence of this body.*[US, 19 December 2009, COP resumed 9th Meeting, 06:25]

⁴² *And finally, there should be no change to this text. This text was negotiated by leaders, and it is not for us as a set of officials **to change a process that was not undertaken here** and undertaken well above the level of those in this room.*[US, 19 December 2009, COP resumed 9th Meeting, 14:01]

*United Nations in trying to stop global warming after the ‘chaotic’ Copenhagen climate change summit and that the future path for negotiations would be dominated by the world’s largest polluters such as China, the US, India, Brazil and South Africa, who signed up to a deal in the final hours of the summit. That would represent a realignment of the way the international community has dealt with climate change over the last two decades. The role of the UN would be as a forum for countries such as Cuba or the small islands which risk annihilation by climate change to air their grievances.*⁴³

While not as nuanced as the lecture being reported, the article captures an interpretation of what had happened which is consistent with the view of the lecture that after Copenhagen, *we now have **multiple processes: we have the Accord and we have the Convention**, ... and we also still have the Kyoto Protocol.*⁴⁴

Nitin Desai, a member of the Indian Prime Minister's Council on Climate Change, had earlier remarked that *Copenhagen may mark the end of the democratic moment in global diplomacy. Oligarchic formations like the self-appointed G-20 will be the space for securing a consensus among the more powerful countries on environment, trade, technology and finance. Copenhagen also exposed the limitations of universalism and bilateral agreements and small group pacts may become more important than multilateral treaties.*⁴⁵

Yet it was in Mr Desai’s home town, New Delhi, that the spectre of such a multi-process regime may have been averted only a few weeks after he diagnosed the end of democratic global democracy.

The BASIC Joint Statement & Accord Notifications

The second Ministerial meeting of the four BASIC Group countries – Brazil, China, India and South Africa – took place in New Delhi on 24 January 2010. The Joint Statement issued at the end of the meeting re-emphasized the Group’s commitment to *working together with all other countries to ensure an agreed outcome at COP-16 in Mexico later this year.*

In the Statement, the *Ministers underscored the centrality of the UNFCCC process* and the decision of the Parties to **carry forward the negotiations on the two tracks** of AWG-LCA under the Convention and the AWG-KP under the Kyoto Protocol. They also *reiterated that all negotiations must be conducted in an inclusive and transparent manner.*

The Statement underlines *the importance of the Accord as representing a high level*

⁴³ Suzanne Goldenberg and John Vidal, ‘UN should be sidelined in future climate talks, says Obama official’, *The Guardian*, 14 January 2010

⁴⁴ Jonathan Pershing, Center for Strategic and International Studies, 13 January 2010, transcribed by author from webcast: at <http://csis.org/event/post-copenhagen-outlook>

⁴⁵ Nitin Desai, ‘When Two’s Company’, *Times of India*, 4 January 2010

*political understanding among the participants on some of the contentious issues of the climate change negotiations. They expressed the hope that this would **facilitate the two-track process of negotiation under the Bali Roadmap** to lead to a successful conclusion of ongoing negotiations in Mexico.*

Finally, the Statement expressed the Ministers' intention to *communicate information on their voluntary mitigation actions to the UNFCCC by January 31, 2010.*

By that date, 20 developing country Parties⁴⁶ (including the BASIC group), and 37 developed country Parties⁴⁷ (including the EC) had notified the UNFCCC Secretariat of their Quantified economy-wide emissions targets and NAMAs as requested in paragraphs 4 and 5, respectively, of the Accord.⁴⁸

The Chinese and Indian Notifications

Looking at the Chinese and the Indian communications, one is immediately struck by their similarity. Apart from the actual description of the respective NAMAs, they are almost verbatim the same (apart from the use of US and UK spelling).

They emphasize that proposed domestic actions *are voluntary in nature and will be implemented in accordance with the principles and provisions of the UNFCCC, in particular Article 4, paragraph 7* which ties the implementation of Convention commitments by developing countries to *the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology.*^{ix}

They conclude with a reference to certain Articles of the Convention^x that ***unambiguously ties them to implementing the Convention***, and hence into the ***AWG-LCA process***.

Apart from the listed NAMAs, their sole difference is the reference to *autonomous domestic mitigation actions* in the Chinese notification, while the Indian text uses *domestic actions*, additionally qualified as subject to with *the provisions of the relevant national legislations and policies*.

As concerns the multiple process issue, the key message is not given in what is

⁴⁶ Brazil, China, Costa Rica, Ethiopia, Georgia, India, Indonesia, Israel, Jordan, Macedonia, Madagascar, Maldives, Marshall Islands, Moldova, Morocco, Republic of Congo, Republic of Korea, Sierra Leone, Singapore, South Africa.

⁴⁷ Australia, Canada, Croatia, EU and its Member States (Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, United Kingdom), Japan, Kazakhstan, New Zealand, Norway, Russian Federation, United States of America

⁴⁸ See <http://unfccc.int/home/items/5265.php>

included, but in what is omitted: *any reference to the Copenhagen Accord is conspicuously absent* from the communications.

The Brazilian and South African Notifications

The Brazilian and South African notifications are slightly more elaborate in their different formulations, but both also contain the references to the above-mentioned Convention articles. Both make references to the Accord, but clearly not as being part of some form of process outside the UNFCCC.

Brazil, on the one hand, states that they understand the Accord *as an important step in order to facilitate the conclusion of the on-going two-track negotiations under the AWG-KP and the AWG-LCA with a view to adopt a decision on a second commitment period of the Kyoto Protocol and also in fulfilment of the Bali Action Plan during COP-16 and CMP-6 in Mexico.*

South Africa, on the other, acknowledges that the Accord *captures political agreement on some contentious elements among those Parties that participated in its development and those other Parties that may wish to associate themselves with it. As such the Copenhagen Accord is a political declaration within the UNFCCC process that should provide valuable direction and impetus to the further negotiations under the Convention and its Kyoto Protocol this year, with the aim to finalise at COP 16 and CMP 6 an ambitious, fair, effective and binding multilateral agreement, in line with the 2007 Bali Roadmap Mandates.*

South Africa is also explicit in linking *the extent to which [their] action will be implemented depends on the provision of financial resources, the transfer of technology and capacity building by developed countries, which requires the finalisation of an ambitious, fair, effective and binding multilateral agreement under the UNFCCC and its Kyoto Protocol at COP16 and CMP6 in Mexico to enable the delivery of this support.*

3. Conclusions and Lessons

Substance

In Part 1 the Copenhagen Accord and (a component of) the AWG-LCA draft decision were assessed as to whether they would have turned Copenhagen into a fully-fledged success, had they been adopted by the Conference as the ‘Copenhagen Agreed Outcome’. The conclusion was that, severally, none of them would have been sufficient. Moreover, in light of the poor drafting of the Accord, it stands to reason that it was probably better for the process to have neither of them adopted outright.

That said, it was also clear that the two actually complemented each other in many respects, with the LCA text lacking (political) mitigation and financial figures, and the Accord very thin on institutional arrangements.

It was tragic that the elements of the Accord were not put on the table earlier so that they could have been *properly incorporated in the LCA text* before the end of the Conference. Yet, given the decision to continue the work of the two AWGs, there may still be hope for rectifying what happened.

For example, in the case of the LCA finance negotiations, the Accord not merely provides an indication of the scale of financing that is envisaged – something that the LCA negotiations were sorely missing in the run-up to Copenhagen – but it could also resolve one of the key outstanding issues in the LCA draft: the status of the envisaged Climate Fund/Facility. Is it to be an operating entity of the Convention’s financial mechanism, or to be services by one?^{xi}

Given (i) the Accord decision to establish a new fund (‘Copenhagen Green Climate Fund’), *as an operating entity of the financial mechanism of the Convention*, and (ii) the fact that the Accord specifications of that fund^{xii} are fully consistent with the language on the Climate Fund/Facility in the LCA draft, it would seem to be safe to infer that – if the Accord is indeed meant to feed into the UN negotiations – *the Climate Fund/Facility is to be an operating entity* of the financial mechanism.

As mentioned, the real tragedy was that the elements of the Accord were not available for proper inclusion in the AWG draft. Yet that was not a problem of content.

Process

The key lessons to be learned from Copenhagen are indeed not substantive but, loosely speaking, ‘procedural’. The second Part of this Paper did look at some of these procedural

issues, surrounding not only the final plenary of the Conference, but also the workings of the Friends of the Chair, and the issues surrounding the ‘Danish Text’.

The ‘Consensus Problem’

One of the issues that has been raised again and again in the context of what happened in Copenhagen is the fact that under the present rules of procedures, decisions of the COP are taken by consensus. The President of Mexico – host of COP 16 in December 2010 – has, for example, been reported as urging the UN to *re-examine its rule of consensus, which requires every country participating in negotiations to back a treaty or agreement before it can be adopted*. He was quoted as saying that *half dozen accord opponents, which included Bolivia, Cuba and Venezuela, vetoed ‘the will of an overwhelming majority of countries’*.⁴⁹

He is not the first to make this assertion,⁵⁰ and the inference from ‘6 Nays’ to ‘an overwhelming majority of Ayes’ remains invalid, as witnessed by the rather lacklustre uptake of the Accord’s ‘opt-in association’.⁵¹

While there may well be reasons to look into the possibility of turning to some form of voting system, the problem at Copenhagen was not the UN procedures. It was what was seen to be the blatant *disregard for these procedures* and the resulting (strongly felt) *disrespect* that were at the root of the problem. Moreover, in light of the account of the opening of the High-level segment of the Conference in Section 2.1, one should also be careful not to dismiss these concerns and feelings out of hand as the antics of a few disgruntled small obstructionist countries. The fact is: much the same points of order were raised against accepting the Danish Text at the beginning of this High-level segment as were in the now infamous final plenary against the adoption of the Accord. The difference was that in this initial High-level session, it was not (just) ALBA countries – which since have become a convenient scapegoat – who raised the objections, but **Brazil, India**, and most strongly **China**.⁵²

The lesson to be learned is that *proper procedures are extremely important* and not just

⁴⁹ ‘Mexico urges UN to review consensus rule’, *Point Carbon*, 2 February 2010, www.pointcarbon.com/news/1.1397525

⁵⁰ See Section 2.2, Footnote 36.

⁵¹ At the deadline specified in the Accord (31 January), only 17 countries outside the EU actually associated themselves with the Accord. Twelve more – including the BASIC countries – simply submitted their actions without formal association.

⁵² ALBA countries were already at that stage protesting about being excluded from the process. The ALBA countries that expressed concern about the process at the final COP plenary on 16 December were Bolivia, Cuba, Ecuador, Venezuela, representing more than 64 million people, (over 90% of the population of the ALBA group). And one may well ask why it was that they were not represented in the Friends of the Chair?

a matter of polite form. They are there to ensure the ‘global buy-in’ that Jonathan Pershing, US Deputy Special Climate Change Envoy, correctly identified as a prerequisite for any global agreement. He also stated that *there is no other institution other than the UN that can provide that.*^{xiii} However, proper procedures do need a certain amount of time, as pointed out by Pakistan during the final Plenary: *Pakistan recognizes that reaching consensus through open, inclusive and transparent processes is tough and time consuming. But the agreements concluded through such processes are **durable as they carry ownership of all Parties and stakeholders.***

The point here is not that consensus-based decision-making is inherently superior. Indeed, a change to a voting procedure with appropriate minority safeguards could well improve the effectiveness of UN negotiations, provided the procedure is generally acceptable. The point is that it is too simple to use the consensus-based procedures of the UN as a scapegoat for the shortcomings of Copenhagen.

Equally, the problem was not that the UN system is unable to deal with issues as complex as climate change. After all, there have been a number of very complex consensus-based UN climate change treaties and decisions: The Framework Convention, the Kyoto Protocol and, last but not least, the Bali Action Plan, which was meant to lead to a Copenhagen Agreed Outcome. The reason this did not happen was nothing in Copenhagen: it was the lack of progress in the negotiations leading up to it. While there are many reasons for this lack of progress, the responsibility ultimately was not with the UN, but with the Parties and, as such, with their leadership collectively.

The Leadership Problem

The issue of leadership – or rather the lack of it – has become so pervasive in public life that to raise it as key to what happened may appear somewhat mundane. But the point here is more specific. What were there key factors for the slow progress in the negotiations in the months leading up to Copenhagen?

- First, there was the fact that some Parties had decided to **change the goal posts of the Bali Action Plan** by declaring that the Kyoto Protocol should be superseded. This led to the *de facto* standstill of the Protocol negotiations that was strongly condemned in the Africa Group protests in Barcelona, a month before Copenhagen.⁵³

⁵³ *Africa had no choice because of the reality of climate change. The negotiations have been going a long time and have not shown much progress. It's not about money. Climate change is an issue of life or death for us. The developed countries have to shift policies. A bad deal is not good for Africa or vulnerable countries.* [Bruno Sekoli, Chair of the LDC Group, as reported in John Vidal, ‘Rich countries call on African

- Second, there was the lack of progress in submitting the sort of *political numbers* – mitigation objectives and financial commitments – that have now been put forward in the context of the Copenhagen Accord.

Events at Copenhagen demonstrated that the lack of these figures was one of the key factors contributing to the lack of progress in the negotiations:

*Thursday, of the second week, Secretary Clinton arrived, and brought with her a commitment to raise the level of financing in this collective way and that really **began to turn things around**. And that commitment from the US ... with equivalent levels of effort primarily from Europe and also the buy-in of other major donors fundamentally **began to shift the debate**.*

The tragedy was that by Thursday of the second week, it was too late. There was simply not enough time to achieve an agreement by Friday morning, when the leaders took over in the Friends of the Chair negotiations, with the well-known result. For example, in the context of the above quotation, one might well ask oneself why was it not possible to introduce the commitment to raise financing levels six months before Copenhagen? Why did it have to be on the day of arrival? Cynics might refer to the need for a sound bite for the waiting press corps.

Be that as it may, the opening gambit of figures has now been made. The hope is that if our leaders take note of what is happening in the forthcoming negotiations and give the necessary political guidance and mandates to their negotiators to enable them to negotiate a successful outcome, then Copenhagen may well have redeemed itself as the final wake-up call.

Postscript

A recent article in *Science*⁵⁴ suggests that the Mid-Miocene (14 to 10 million years ago) might be a useful interval to understand the effects of a *climate in equilibrium at near current CO₂ concentrations*. Noteworthy is that in the period in question, global surface temperatures were *3 to 6°C warmer* and *sea levels 25 to 40 meters higher* than at present! Is that really the legacy our leaders would like to be remembered for?

bloc to keep climate talks on track: Poor countries forced to make a stand over lack of commitment from rich nations on emissions cuts, claims African delegate', Wednesday 4 November 2009.
<http://www.guardian.co.uk/environment/2009/nov/04/africa-walk-out-climate-talks-barcelona>

⁵⁴ Aradhna K. Tripathi, Christopher D. Roberts, and Robert A. Eagle, 'Coupling of CO₂ and Ice Sheet Stability Over Major Climate Transitions of the Last 20 Million Years', *Science* **326**, 1394 (2009)

Endnotes

ⁱ *De Boer said the Copenhagen talks should produce a “clear package of decisions” on gas targets for developed countries, efforts to be made by developing nations, and a “significant financial package.” “Through a set of decisions in Copenhagen we can get clarity on the key political, financial and substantive issues and that might actually give people a lot more comfort to start working on a treaty,” de Boer said.*[Alex Morales and Ryan Chilcote; *Climate Treaty Talks May Last an Extra Year, UN Says*, Bloomberg, 5 November 2009]

ii COP 15 Decisions

- [1] Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention
- [2] Amendment to Annex I to the Convention
- [3] Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries*
- [4] Work of the Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention
- [5] Fourth review of the financial mechanism
- [6] Additional guidance to the Global Environment Facility*
- [7] Capacity-building under the Convention
- [8] Systematic climate observations*
- [9] Updated training programme for greenhouse gas inventory review experts for the technical review of greenhouse gas inventories from Parties included in Annex I to the Convention*
- [10] Administrative, financial and institutional matters Budget performance for the biennium 2008–2009 Continuing review of the functions and operations of the secretariat
- [11] Programme budget for the biennium 2010–2011
- [12] Date and venue of future sessions of the Conference of the Parties
- [13] Copenhagen Accord

ⁱⁱⁱ *Non-Annex I Parties to the Convention will implement mitigation actions [...]. Least developed countries and small island developing States may undertake actions voluntarily and on the basis of support.*[emphasis added]

^{iv} *A significant portion of such funding should flow through the Copenhagen Green Climate Fund.* [Accord: §8]

^{iv} *We decide that the Copenhagen Green Climate Fund shall be established as an operating entity of the financial mechanism of the Convention.* [Accord: §10]

^v FCCC/AWGLCA/2009/L.7/Add.2/Rev.1

vi AWG LCA Draft COP 15 Decisions

- [1] Outcome of the work of the AWG-LCA
- [2] Enhanced action on adaptation
- [3] Enhanced action on the provision of financial resources and investment
- [4] Enhanced action on technology development and transfer
- [5] Enhanced action on capacity-building
- [6] Nationally appropriate mitigation actions by developing country Parties: mechanism to record nationally appropriate mitigation actions and facilitate provision and recording of support
- [7] Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries

- [8] Enhanced national/international action on mitigation of climate change: economic and social consequences of response measures
- [9] Various approaches, including opportunities for using markets, to enhance the cost/effectiveness of, and to promote, mitigation action
- [10] Cooperative sectoral approaches and sector-specific actions in agriculture

^{vii} [Why was the Accord not adopted?] *Because five countries said 'no'. Not 100 countries saying 'no'. Not 50 big countries saying 'no'. Five countries said 'no', Who are they? Bolivia, Venezuela, Nicaragua, Cuba – these are countries which are part of the ALBA group – a group that sees this process not so much as a solution to climate change but in fact as a mechanism to redistribute global wealth. And they don't like the fact that this did not do that. It didn't do that. And they objected to that fact. Well, surprise, surprise, surprise, the rest of the world does not want to do it that way. But they could not get an agreement because this group, this narrow group was blocking it.*[Jonathan Pershing, Center for Strategic and International Studies, 13 January 2010, transcribed by author from webcast: at <http://csis.org/event/post-copenhagen-outlook>]

^{viii} *After the conference ended, China has taken the brunt of the blame. Western politicians, in an attempt to evade their responsibilities for global warming and point the finger eastward, have wilfully lashed out at China, citing Beijing's hijacking of the conference as the main factor for the failure to achieve results and a legally binding document at the summit.*

Is such an accusation true? ... A multitude of evidence from global climate talks over the past year, especially involving the Copenhagen conference, show that it has been developed countries, instead of China or other developing countries, that have always been the hindrances to progression on global climate change efforts.

It is extremely ridiculous that developed countries, especially the EU, have not reflected on their activities that delayed and hampered progress at the global climate talks and instead, made [un]remitting efforts to denounce China as the main factor for the conference's failures. In so doing, they only want to deflect attention on their part in the so-called unsuccessful climate talks and point the blame at China.

Lu Xuedu, 'Obstruction of developed nations', *China Daily*, 11 January 2010, page 8, http://www.chinadaily.com.cn/opinion/2010-01/11/content_9297092.htm

^{ix} UNFCCC, Art. 4.7. *The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.*

^x **ARTICLE 12: COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION**

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the Secretariat, the following elements of information: (b) A general description of steps taken or envisaged by the Party to implement the Convention;

4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

ARTICLE 10: SUBSIDIARY BODY FOR IMPLEMENTATION

2. Under the guidance of the Conference of the Parties, this body shall: (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;

^{xi} [7. [The Climate [Fund][Facility] shall act as an operating entity of the financial mechanism of the Convention;][The Climate [Fund][Facility] shall have an operating entity that will be appointed by the sixteenth session of the Conference of the Parties;][FCCC/AWGLCA/2009/L.7/Add.2/Rev.1, emphasis added]

^{xii} *8 ... A significant portion of such [scaled up, new and additional, predictable and adequate] funding should flow through the Copenhagen Green Climate Fund.*

10. We decide that the Copenhagen Green Climate Fund shall be established as an operating entity of the financial mechanism of the Convention to support projects, programme[s], policies and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity-building, technology development and transfer. [Copenhagen Accord]

^{xiii} *It is impossible to imagine a global agreement in a place that does not essentially have global buy-in. There are no other institutions besides the UN that have that. It is also impossible to imagine a negotiation of things of enormous complexity where you have a large table of 192 countries involved in all the detail. You need to have processes that do both. You need to have processes that can take smaller technical groups to work on technical issues. You need to bring together coalitions that have common interests and see if those coalitions can expand the level of engagement and support from a larger community to carry it forward. That is in fact the way the UN works.[Jonathan Pershing, Center for Strategic and International Studies, 13 January 2010, transcribed by author from webcast: at <http://csis.org/event/post-copenhagen-outlook>]*