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IMPLICATIONS OF THE COPENHAGEN ACCORD FOR GLOBAL CLIMATE GOVERNANCE

by David Hunter*

INTRODUCTION

Rarely has as much anticipation accompanied an international meeting than swirled around the 15th Conference of the Parties of the United Nations Framework Convention on Climate Change (“UNFCCC”), also known as the Copenhagen Summit in honor of the city where it was held in December, 2009. The announcements in early November that President Barack Obama and Premier Wen Jiabao would attend the conference turned an important climate negotiation into an enormous summit featuring most of the world’s leaders. Along with these leaders, upwards of 40,000 participants from civil society, the private sector, and governments sought to shoehorn their way into the conference center.

Rarely, too, has so much fanfare accompanied so little substance. Although many in the United States heralded the outcome as a diplomatic success that freed the climate issue from the chains of an unworkable UN process, by almost any measure the Copenhagen summit has to be viewed as a disappointment. Rather than a detailed, binding framework for furthering global climate cooperation, the parties left Copenhagen with a general political statement that privileges the voluntary actions of states and devalues the role of international law and global climate governance.

The result was not a negotiation over targets or actions, but a series of unilateral press releases, with each country announcing what it is willing to do to mitigate climate change. The potential give-and-take that, in theory at least, is one of the hallmarks of international negotiations was relevant only to the modalities of climate finance, adaptation, technology transfer, reporting, and verification. Even with these issues, precious little compromise or leadership was apparent, and little was ultimately accomplished.

There is plenty of blame to go around. Rather than marking the United States’ triumphant return to international climate negotiations with strong leadership in unifying the world around shared bold action, the Obama Administration offered only modest targets and never moved from them throughout the two weeks. Nor did any other major emitting country strengthen its mitigation actions during the negotiations. Instead of participating in a discussion over what mitigation targets industrialized countries should take, the United States drew its line in the sand around the extent to which large developing countries would allow their mitigation actions to be monitored, reviewed or verified (“MRV’d”). While maintaining a central focus on this issue, the United States essentially refused to budge on most

other issues (with the arguable exception of financing, which is discussed below).

Ultimately, the Copenhagen Accord seems as much a capitulation as a compromise. The Accord reflects the United States’ preferred “pledge and review” approach; each country that associates with the Accord is expected to make some commitment to mitigate climate change. This was not a negotiating victory except in the sense that the United States was not forced to take on any legally binding obligations in the absence of similar developing country commitments. Although developing countries had to drop their desire for a Kyoto-like agreement that would hold only industrialized countries to binding targets, the net result was that no one would be subject to binding targets. The United States, China, and India could all claim success, but the environment was the clear loser. India and China did agree to more reporting requirements but virtually no international monitoring or verification of their commitments. Also lost was any schedule for negotiating a binding legal agreement.

Only twelve paragraphs long, the Copenhagen Accord could nonetheless mark a substantial realignment of global climate governance. To be sure, the long-term ramifications of the Copenhagen Accord are not yet certain, but some initial, tentative conclusions can be reached about the direction that the Copenhagen Accord seems to lead us in global climate governance. After describing what exactly the Copenhagen Accord does and does not do, this article will lay out some initial implications for international climate law and governance.

THE ROAD TO COPENHAGEN

The Copenhagen negotiations were formally convened as the Fifteenth Conference of the Parties (“CoP”) to the UNFCCC¹ and the Fifth Session of the Meeting of the Parties to the Kyoto Protocol.² The UNFCCC, signed in 1992, sets forth the broad framework for international climate governance, including the overall objective, principles, and institutional structure for international cooperation with respect to climate change.³ The United States, as well as almost every other country of the world, is a party to the UNFCCC, which is widely understood to set no binding targets or timetables for reduction of greenhouse gas emissions. The Kyoto Protocol, negotiated in 1997, on the other

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hand provides for clear targets and timetables for industrialized countries that are parties. President Clinton signed the Protocol, but it was subsequently repudiated by President Bush in 2001. The Protocol entered into force without U.S. participation in 2005.⁴ Under the Kyoto Protocol, the European Union and other industrialized countries agreed to reduce their greenhouse gas (“GHG”) emissions an average of five percent below 1990 levels.⁵ These reductions are to be achieved during the years 2008-2012, known as the first reporting period.⁶ The Protocol also established an elaborate “cap-and-trade” system to reduce the costs of compliance through the creation of a market for GHG emission reductions—the so-called carbon market.

THE BALI WORK PLAN

Recognizing that the first reporting period under the Kyoto Protocol would end in 2012, the global community worked for several years to set forth a negotiating plan that would build on the Kyoto Protocol, bring the United States back into the UN process for addressing climate change, and outline the future obligations, if any, of developing countries. These efforts culminated in 2007 when the parties to the Framework Convention agreed to the so-called Bali Road Map—a roadmap to Copenhagen.⁷ The Bali Road Map is comprised of several forward-looking decisions, including (1) a timetable with a 2009 deadline for negotiating further commitments of those parties that have adopted an emissions cap under the Kyoto Protocol (called “Annex I Parties”),⁸ (2) a decision operationalizing the Adaptation Fund that had been created under the Kyoto Protocol and was critical for developing country participation,⁹ (3) a compromise on what to include in the review of the adequacy of the Kyoto Protocol as required under Article 9,¹⁰ and (4) the Bali Action Plan.¹¹ The Bali Action Plan set out an ambitious framework for negotiating a post-Kyoto agreement with binding commitments on all parties. The parties, including the United States and most other major countries in the world, agreed to launch a “comprehensive process” for achieving a “shared vision for long-term cooperative action, including a long-term global goal for emission reductions.”¹² That process was intended to culminate in an agreement at Copenhagen.

The Bali Action Plan further enumerated a number of topics for “consideration” during the negotiations, including: (i)

“measurable, reportable and verifiable” commitments, including quantified emissions limitations, by all developed countries; and (ii) nationally appropriate mitigation actions (“NAMAs”) by developing country Parties, “supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner.”¹³ Thus, in the Bali Action Plan, all developed countries (including the United States) agreed to negotiate commitments that would include further binding caps on emissions. For their part, all developing countries (including China and India) agreed to negotiate NAMAs to reduce the threat of climate change. The developing countries did not commit to negotiating caps on emissions, but did commit to negotiations over taking actions of some indeterminate nature. Other provisions in the Bali Action Plan committed the parties to

negotiate positive incentives for reducing emissions from deforestation and forest degradation (“REDD”) in developing countries,¹⁴ enhanced actions for adaptation,¹⁵ technology development and transfer,¹⁶ and international financial support for responding to climate change.¹⁷

The Bali Action Plan committed both the United States and developing countries to negotiating a post-Kyoto agreement with some form of binding—or at least measurable, reportable, and verifiable—commitments. Under the terms of the Bali Action Plan, the agreement was to be negotiated by the Fifteenth CoP of the UNFCCC in December, 2009 in Copenhagen. The Bali Action Plan set forth the priorities for the Copenhagen negotiators and all of the elements are reflected to some extent in the Copenhagen Accord.

The track from Bali to Copenhagen was a roller coaster ride of expectations. The inauguration of the Obama Administration, for example, gave new hope that an era of U.S. exceptionalism and isolation with respect to climate change had ended, yielding to greater U.S. willingness to accept binding international targets for GHG reductions. Indeed, the Obama Administration placed climate change on the top of its domestic legislative agenda with the hopes that economy-wide emission targets passed by the U.S. Congress could form the basis for international commitments at Copenhagen.¹⁸ Even before his inauguration, Obama signaled to the international community his intention to engage in meaningful climate negotiations by publicly endorsing federal cap-and-trade legislation with targets for reducing current emissions to 1990 levels by

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2020, and eighty percent reductions from 1990 levels by 2050.¹⁹ In the end, the Obama Administration's international position would remain tethered—some would say held hostage—to the prospects of climate legislation in the U.S. Congress.

As the prospects were turning positive in the United States, other countries began to announce their positions with respect to the Copenhagen negotiations. Europe agreed to reduce emissions by 30% from 1990 levels if there was an agreement reached by all major countries, but would otherwise reduce emissions only 20%. At the December 2008 negotiations in Poznan, developing countries, too, proposed a wide range of commitments that were generally seen as signaling their willingness to take serious mitigation steps. Among these 2008 proposals: China promised to reduce its energy intensity by twenty percent by 2020; Brazil committed to cut its deforestation rate by seventy percent by 2017 (resulting in a thirty to forty-five percent reduction in the country's GHG emissions); Mexico pledged to cut its emissions by fifty percent by 2050; South Africa committed to capping its GHG emissions by 2025 and working toward a decline thereafter; and Kazakhstan announced a decision to join Annex I of the Kyoto Protocol and reduce emissions to 1992 levels by 2012.²⁰ These developing country pledges were premised on access to expanded financing and technology from the industrialized countries.

More problematic was the form of any international agreement. Most observers initially assumed that the Copenhagen negotiations would result in an amended or revised Kyoto Protocol. The United States is not a party to the Kyoto Protocol, however, and consistently opposed any suggestion that it would agree to anything that even looked like the Protocol. Many climate advocates nonetheless hoped for a new binding "Copenhagen Protocol" that imported most, but not all, parts of the Kyoto Protocol, giving the United States some political cover while maintaining the basic components of the Kyoto carbon market. This offered a relatively clean solution, but it would become clear in Copenhagen that the Obama Administration, emphasizing a lack of support in the U.S. Senate, would not seriously consider such an option. Moreover, such an approach left open the question of how to incorporate "measurable, reportable and verifiable" commitments from developing countries, which resisted making such commitments in a legally binding instrument.

The leading alternative option to a binding Protocol was to implement the Copenhagen agreements through a series of decisions by the Conference of the Parties ("CoP") to the UNFCCC. This would not require ratification by any of the parties, but the legal status of CoP decisions was open to question. Such decisions do not fit into the traditional sources of international law and they may not be viewed as binding in many national jurisdictions. A U.S. appeals court, for example, has found that CoP decisions made under the Montreal Protocol are not part of domestic law and do not have to be implemented by the U.S. Environmental Protection Agency.²¹

One variation was Australia's pledge-and-review proposal. Patterned loosely after the way tariff schedules are created under the World Trade Organization, each country would

be asked to make some kind of commitment based on factors such as their economic status and their historical contribution to climate change. In this way, industrialized countries would be expected to accept mandatory emissions caps, while developing countries might choose from a wide range of policy options, including energy intensity targets, sectoral targets, or promises to create certain policies.²² Unclear in these proposals was how or whether the pledges would be mutually binding and how the transfer of Northern financial and technological support would be aligned with the diversity of Southern commitments. Developing countries were unlikely to make any significant commitments without the binding promise of Northern financial support, and the North was unlikely to make financial commitments without knowing what the pledges would be.

The long-awaited proposal by the United States released in early May 2009 was deliberately ambiguous, referring vaguely to an "implementing agreement" that would "allow for legally-binding approaches."²³ This language essentially left open the form and binding nature of any Copenhagen agreement, to be decided at a later time. With only six months left until Copenhagen, wide divisions still remained over the basic form of the negotiations—and time was running short.

President Obama's Administration seemed to be working hard for an agreement, holding bilateral summits with both China and India.²⁴ The broad agenda for both summits placed climate change cooperation high on the list. Subsequently, when President Obama announced that he would attend the Copenhagen Summit (followed closely by similar announcements from the leaders of both China and India), many observers believed an agreement had already been reached among these key countries. Why else would these leaders risk their political capital in showing up at Copenhagen? World leaders typically show up for photo opportunities at international summits, not for negotiations.

As Copenhagen approached, countries began to position themselves more clearly for the upcoming negotiations—but the public signals remained largely mixed. The United States announced they would accept targets of 17% reductions from 2005 levels by 2050 and 80% reductions by 2050.²⁵ This matched the reductions set forth in the proposed legislation working its way through the U.S. Senate. Europe reaffirmed its commitments to cut 30% from 1990 levels by 2020 if a universal agreement could be reached.²⁶ Most importantly, major developing countries, including eventually Brazil, China, and India all agreed to at least some specific mitigation actions.

Despite these encouraging announcements, as Copenhagen neared, no agreement among key countries had emerged over the form and status of the agreement. In fact, hopes for a legally binding agreement dimmed considerably when countries participating in the November, 2009 Asia Pacific Economic Cooperation meeting announced that Copenhagen should result in a "political" deal only. As Copenhagen opened, many observers believed that such a political agreement—with a firm deadline for negotiating a future legally binding agreement—was the best that could be hoped for.

AT COPENHAGEN

The first week of the Copenhagen negotiations proved to be contentious with little progress made even on the basic issue of what form the agreement(s) should take. The nation of Tuvalu demanded discussion on a single, legally binding agreement. China and other developing countries adamantly opposed the proposal, wanting to pursue the “two-track” approach: additional binding commitments for developed countries under the Kyoto Protocol and nonbinding actions for developing countries pursuant to Decisions of the parties or by other means. The United States opposed both Tuvalu and China’s positions because both would require U.S. participation in an agreement essentially patterned after the Kyoto Protocol. In the meantime, a leak of a draft “Danish Agreement,” intended as the negotiating text for a non-binding, political agreement was met with widespread acrimony, particularly from developing countries. A new coalition of Brazil, South Africa, India, and China (quickly dubbed the “BASIC” countries) called for continuation of the Kyoto Protocol with stronger commitments and a binding U.S. mitigation target, coupled with financial and technical support for voluntary developing country mitigation actions. With no clear consensus on even the most basic structure of the agreement, negotiators appeared to be waiting for the Heads of State to arrive in the second week.

The Heads of State arrived, but with few answers or solutions. After all of the speeches were completed, no agreement was evident. It was clear the United States would be taking a hard line and offering little compromise. President Obama’s well-publicized intervention into the meeting of the BASIC countries would ultimately lead to the agreement on the Copenhagen Accord, but his haste to control the public messaging for a domestic audience by announcing the agreement in a press conference meant that the Accord would be met with anger and frustration from many negotiators. Although some agreement was arguably better than none, the Accord left many issues unanswered.

THE COPENHAGEN ACCORD

The Copenhagen Accord is a non-binding political agreement. It is not a treaty nor did the parties intend in any way to be legally bound to the commitments in the Accord. As a political declaration with widespread acceptance, it can rightly be labeled a form of soft law—but that label adds little to the discussion of the impact of the Accord. Its impact will have less to do with whether it is legally binding (it is not), and more to do with whether it is politically accepted as a viable framework for organizing international climate cooperation moving forward.²⁷ If successful, the Accord could pave the way for more universal commitments that in the future could form the shape of a more legally binding set of commitments. This section looks more closely at the terms of the Copenhagen Accord.

SHARED VISION FOR LONG-TERM COOPERATIVE ACTION

As part of the Bali Action Plan, the parties, including the United States and most other major countries in the world,

agreed to launch a “comprehensive process” for achieving a “shared vision for long-term cooperative action, including a long-term global goal for emission reductions.”²⁸ Much of the discussion up to and during Copenhagen anticipated reaching a global consensus regarding clear timetables for when global emissions and atmospheric concentrations of GHGs would peak.

Unfortunately, the Accord provides little specificity surrounding future global targets and failed to advance the discussion much beyond what had been achieved seventeen years before in the UNFCCC. Under the UNFCCC, the objective of international climate cooperation has been to “stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”²⁹ That level has long been assumed to require holding the increase in global temperature below 2 degrees Celsius. Given recent developments in climate science, however, small island states and others were pushing for a consensus commitment to limit long-term changes to less than 1.5 degrees. In the Copenhagen Accord, the countries agreed to “enhance [their] long-term cooperative action to combat climate change,” “recognizing the scientific view that the increase in global temperature should be below 2 degrees Celsius.”³⁰ They also agreed that deep cuts in global emissions “are required according to science . . . with a view to reduce global emissions so as to hold the increase in global temperature below 2 degrees Celsius, and take action to meet this objective consistent with science and on the basis of equity.”³¹ In a compromise with those who sought a stronger goal, the countries called for an assessment of the Accord by 2015, which would include “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.”³² In this way, the parties could be seen as not turning their back completely on science-based calls for stronger emission reductions.

THE GENERAL FRAMEWORK FOR MITIGATION

Countries that decide to join the Copenhagen Accord are required to commit themselves to a climate mitigation strategy that they identify and report publicly to the international community. Countries are divided into two categories. First, Annex I countries (i.e. industrialized countries that were listed on Annex I of the UNFCCC) commit to implement “quantified economy-wide emissions targets for 2020.”³³ These commitments are expected to “further strengthen the emissions reductions initiated by the Kyoto Protocol.”³⁴ Second, non-Annex I countries (i.e. developing countries) will submit “mitigation actions,” which are not further defined except that they should be in the context of sustainable development.³⁵ Least developed countries and small island developing states “may undertake actions voluntarily and on the basis of support.”³⁶ In addition and critically, developing countries agreed for the first time to provide national reports of their greenhouse gas inventories every two years consistent with Article 12.1(b) of the UNFCCC.³⁷ Biannual reporting was considered a major concession by developing countries.

Both Annex I and Non-Annex I countries that choose to associate with the Copenhagen Accord were supposed to announce their commitments by January 31, 2010. Those commitments are reported to the UNFCCC secretariat and reported on their website.³⁸ As of March 2010, approximately 75 countries have made commitments under the Copenhagen Accord, including 41 Annex I and 34 non-Annex I countries. As expected, the commitments vary considerably, even within each category of countries. Many of the Annex I commitments are conditioned on a more ambitious agreement in the future, or in the case of the United States, on passage of national legislation. Developing countries also took varied approaches. Some, for example South Africa, identified significant cuts from current “business as usual” estimates of emission trajectories (thus allowing their emissions to increase but less than expected). Others, such as India and China, committed to reducing their energy intensity (i.e. to improving their emissions per unit output) but placing no overall cap on emissions. Still others, like the Congo or Brazil, listed numerous sector-specific actions or goals they would meet. Some representative examples of country pledges are listed below on page 9-10.

The pledges under the Copenhagen Accord have been met with mixed response. On the one hand, some value must be attached to getting so many countries to commit publicly to addressing climate change—and many of these commitments are specific and significant. Overall, however, the aggregation of commitments does not appear to get the world close to the levels necessary to limit temperature increases to the 2 degree Celsius goal identified in the Accord. According to the World Resources Institute:

Existing pledges by developed countries, when added together, could represent a substantial effort for reducing Annex I emissions by 2020—a 12 to 19% reduction of emissions below 1990 levels depending on the assumptions made about the details of the pledges. But they still fall far short of the range of emission reductions—25 to 40%—that the [Intergovernmental Panel on Climate Change] notes would be necessary for stabilizing concentrations of CO₂[equivalent] at 450 [parts per million], a level associated with a 26 to 78% risk of overshooting a 2°C goal.⁴⁰

Of course, the Copenhagen Accord is designed at least to some extent to allow for changing commitments to be added over time.⁴¹ Nonetheless, current reduction commitments were

disappointing to most observers and prompted repeated protests in Copenhagen from, among others, 350.org, which seeks commitments at a level that will reduce long-term atmospheric GHG concentrations to 350 parts per million.⁴²

MONITORING, REPORTING AND VERIFICATION

Ever since the Bali negotiations finished and the world’s attention shifted to Copenhagen, requirements for monitoring, reporting, and verification (“MRV”) loomed among the most controversial and difficult issues. It was clear that developing countries would agree to a wide range of voluntary commitments, but they were resistant to any international oversight—

i.e. any MRV requirements—attaching to those voluntary commitments. On the other hand, developing countries wanted MRV requirements to apply not only to industrialized country mitigation commitments, but more controversially to their commitments of financial and technology assistance. Ensuring some MRV requirements applied to the developing country NAMAs was a high priority for industrialized countries, particularly for any actions that would be supported through international financial or technology assistance.

In the end, developing country mitigation actions were divided into two categories: those receiving support from developed countries and those that would be unsupported. Unsupported mitigation actions taken by developing countries will be subject only to “domestic measurement, reporting and verification the result of which will be reported through their national communications every two years.”⁴³ Developing countries are also to provide “for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected.”⁴⁴ If a developing country chooses to seek international financing to support their mitigation action, they must subject their activity “to international measurement, reporting and verification.”⁴⁵ For developed countries, commitments both to reduce emissions and provide financing will be measured, reported, and verified.⁴⁶ In each of these cases, detailed guidelines for MRV must still be determined in future negotiations under the Conference of the Parties, a potentially difficult task.

FORESTS AND REDD-PLUS

One area that enjoyed perhaps the greatest consensus in Copenhagen was the framework for reducing emission from deforestation and forest degradation (“REDD”). Developing countries saw this as an opportunity to generate significant amounts of foreign assistance and investment to improve the

The result was not a negotiation over targets or actions, but a series of unilateral press releases, with each country announcing what it is willing to do to mitigate climate change.

Appendix I - Quantified Economy-wide Emissions Targets for 2020

Annex I Party	Quantified Economy-wide Emissions Targets for 2020	Base Year
Australia	-5% up to -15% or -25%. Australia will reduce its greenhouse gas emissions by 25% on 2000 levels by 2020 if the world agrees to an ambitious global deal capable of stabilizing levels of greenhouse gases in the atmosphere at 450 ppm CO ₂ -eq or lower. Australia will unconditionally reduce our emissions by 5% below 2000 levels by 2020, and by up to 15% by 2020 if there is a global agreement which falls short of securing atmospheric stabilization at 450 ppm CO ₂ -eq and under which major developing economies commit to substantially restrain emissions and advanced economies take on commitments comparable to Australia's.	2000
Canada	17%, to be aligned with the final economy-wide emissions target of the United States in enacted legislation.	2005
EU and its 27 Member States (Currently, not all EU Member States are Annex I Parties)	20%/30%. As part of a global and comprehensive agreement for the period beyond 2012, the EU reiterates its conditional offer to move to a 30% reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and that developing countries contribute adequately according to their responsibilities and respective capabilities.	1990
Japan	25% reduction, which is premised on the establishment of a fair and effective international framework in which all major economies participate and on agreement by those economies on ambitious targets.	1990
Kazakhstan	15%	1992
New Zealand	10%/20% New Zealand is prepared to take on a responsibility target for greenhouse gas emissions reductions of between 10% and 20% below 1990 levels by 2020, if there is a comprehensive global agreement. This means: the global agreement sets the world on a pathway to limit temperature rise to not more than 2° C; developed countries make comparable efforts to those of New Zealand; advanced and major emitting developing countries take action fully commensurate with their respective capabilities; there is an effective set of rules for land use, land-use change and forestry (LULUCF); and there is full recourse to a broad and efficient international carbon market.	1990
Norway	30-40%. As part of a global and comprehensive agreement for the period beyond 2012 where major emitting Parties agree on emissions reductions in line with the 2° C target, Norway will move to a level of 40% reduction for 2020.	1990
Russian Federation	15-25%	1990
United States of America	In the range of 17%, in conformity with anticipated U.S. energy and climate legislation, recognizing that the final target will be reported to the Secretariat in light of enacted legislation. (The pathway set forth in pending legislation would entail a 30% reduction in 2025 and a 42% reduction in 2030, in line with the goal to reduce emissions 83% by 2050.)	2005

Appendix II - Nationally Appropriate Mitigation Actions of Developing Country Parties (selected Parties)³⁹

Non-Annex I Party	Nationally Appropriate Mitigation Actions
Brazil	<ul style="list-style-type: none"> • Reduction in Amazon deforestation (range of estimated reduction: 564 million tons of CO₂eq in 2020); • Reduction in “Cerrado” deforestation (range of estimated reduction: 104 million tons of CO₂eq in 2020); • Restoration of grazing land (range of estimated reduction: 83 to 104 million tons of CO₂eq in 2020); • Integrated crop-livestock system (range of estimated reduction: 18 to 22 million tons of CO₂eq in 2020); • No-till farming (range of estimated reduction: 16 to 20 million tons of CO₂eq in 2020); • Biological N₂ fixation (range of estimated reduction: 16 to 20 million tons of CO₂eq in 2020); • Energy efficiency (range of estimated reduction: 12 to 15 million tons of CO₂eq in 2020); • Increase the use of biofuels (range of estimated reduction: 48 to 60 million tons of CO₂eq in 2020); • Increase in energy supply by hydroelectric power plants (range of estimated reduction: 79 to 99 million tons of CO₂eq in 2020); • Alternative energy sources (range of estimated reduction: 26 to 33 million tons of CO₂eq in 2020); • Iron & steel (replace coal from deforestation with coal from planted forests) (range of estimated reduction: 8 to 10 million tons of CO₂eq in 2020); <p>These actions are expected to lead to reductions of 36.1% to 38.9% from projected business-as-usual.</p>
China	China will endeavor to lower its carbon dioxide emissions per unit of GDP by 40-45% by 2020 compared to the 2005 level; increase the share of non-fossil fuels in primary energy consumption to around 15% by 2020; and increase forest coverage by 40 million hectares and forest stock volume by 1.3 billion cubic meters by 2020 from 2005 levels.
Congo	Listed 33 specific actions, including training and education for forest conservation.
India	India will endeavor to reduce the emissions intensity of its GDP by 20-25% by 2020 in comparison to the 2005 level.
Israel	Israel “will do its utmost” to reduce its CO ₂ emissions by 20% from a business-as-usual projection primarily by calling for a 10% share of renewable energy generation and 20% reduction in electricity consumption.
Marshall Islands	40% reduction of CO ₂ emissions below 2009 levels by 2020.
Mexico	Mexico aims at reducing its GHG emissions up to 30% from projected business-as-usual emissions by 2020, provided the provision of adequate financial and technological support from developed countries as part of a global agreement.
South Africa	34% reduction in projected business-as-usual emissions by 2020. 42% reduction in projected emissions by 2025. Implementation depends on financial resources, the transfer of technology and capacity building support from developed countries.

sustainable management of their forest resources and land-use practices. Developed countries recognized avoided deforestation as offering relatively inexpensive mitigation that could generate cheap offsets for meeting their international reduction commitments. Aably chaired by Tony La Vina, the REDD negotiations had progressed in Copenhagen to a relatively detailed proposal being forwarded for approval by the parties, but the draft (like many other draft decisions) was never formally adopted, and was instead preempted by the Copenhagen Accord.⁴⁷

The Copenhagen Accord endorsed REDD and called for “the immediate establishment of a mechanism including REDD-plus, to enable the mobilization of financial resources from developed countries.”⁴⁸ The parties also agreed to provide additional financial assistance in both the short- and long-term for establishing REDD activities. Such a mechanism will likely be established during the Mexico negotiations planned for November 2010, and the existing draft text will hopefully form the basis for those REDD negotiations.

FINANCING AND TECHNOLOGY

As in all environmental negotiations, the terms and extent of financial support from developed countries was critical.⁴⁹ Secretary of State Hillary Clinton made a high-profile announcement that the industrialized countries would collectively provide \$10 billion in annual support over the near term (2010-2012) and financial resources up to \$100 billion per year by 2020.⁵⁰ These numbers would be enshrined in the Copenhagen Accord, but several critical questions surrounding finance remain: (1) what revenue sources will provide the promised financial support for addressing climate change; (2) what institutions would be used to distribute it; and (3) for what purposes can the support be used.

First, with respect to the sources of funding, the Copenhagen Accord contemplates that the additional financial resources committed to climate change “will come from a wide variety of sources, public and private, bilateral and multilateral.”⁵¹ Following Copenhagen, many donor countries have clarified their specific financial commitments for the period 2010-2012, with commitments as of March 2010 nearing \$25 billion towards the \$30 billion goal.⁵² Less clear at this point is where the resources will come from to meet the \$100 billion per year commitment by the period 2020. To this end, the Copenhagen Accord announced a “High Level Panel” to be established under the Conference of the Parties to study various potential sources of revenue to meet this goal.⁵³ The High Level Panel was subsequently created under the auspices of the UNFCCC and is expected to provide its recommendations by the time of the next meeting of the Conferences of the Party in November, 2010.⁵⁴ The Panel may consider both public and private sources of climate financing; civil society is hoping that the Panel will consider and recommend innovative sources, including for example: taxes on international financial transfers (also known as a Tobin Tax); the use of Special Drawing Rights under the International Monetary Fund; a tax on bunker fuels from international aviation and maritime shipping; and shifting money that currently funds fossil fuel

subsidies towards climate mitigation. Each of these four potential revenue sources are generally of a magnitude that could contribute significantly to meeting the committed target, but each of them also face political hurdles and additional challenges.

The institutional structure for delivering the promised climate finance is also yet to be determined. The United States strongly supports using the World Bank and other existing institutions as the primary delivery vehicle for climate finance. The United States argues that the Bank is an efficient and knowledgeable institution in delivering multilateral assistance, but perhaps the more important reason for U.S. support is that the United States enjoys dominant decision making power in the World Bank (holding seventeen percent of the voting share). Not surprisingly, developing countries oppose the Bank and seek a new funding mechanism with more representative decision making structures.⁵⁵

The Accord does not clearly decide what role the World Bank or other existing institutions will play, but it did announce that a new “Copenhagen Green Climate Fund” (“CGCF”) will be established as “an operating entity of the financial mechanism of the Convention.”⁵⁶ The Fund cannot be formally established until the next meeting of the Conference of the Parties. The operational and governance modalities will also need to be negotiated. The expectation is that the governance structure of the CGCF will have equal representation of developed and developing countries. At least this appears to be the implication from the Accord’s reference to adaptation funding: “New multilateral funding for adaptation will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries. A significant portion of such funding should flow through the Copenhagen Green Climate Fund.”⁵⁷

In addition to the High Level Panel and the CGCF, the Accord announced one further new institution at least indirectly related to financial support: a Technology Mechanism “to accelerate technology development and transfer in support of action on adaptation and mitigation.”⁵⁸ The mission, operating guidelines, structure, and composition of the Mechanism have not yet been clarified.

Finally, details will still have to be negotiated regarding what activities will be eligible for international climate financial support. For the most part, the Copenhagen Accord was all inclusive: the Parties agreed to provide “[s]caled up, new and additional, predictable and adequate funding . . . to enable and support enhanced action on mitigation, including substantial finance to reduce emissions from deforestation and forest degradation (REDD-plus), adaptation, technology development and transfer and capacity-building, for enhanced implementation of the Convention.”⁵⁹ The Accord also promises a “balanced allocation between adaptation and mitigation,” with priorities for adaptation funding to go to “the most vulnerable developing countries, such as the least developed countries, small island developing States and Africa.”⁶⁰ The CGCF’s mission as spelled out in the Accord will be to “support projects, programmes, policies and other activities in developing countries related to

mitigation including REDD-plus, adaptation, capacity-building, technology development and transfer.”⁶¹ The net result is that the Accord contemplates financial support for a wide range of climate-related activities, but more detailed conditions on the use of the funds must still be negotiated in the next few years. Indeed, financing is now expected to be a major focus of the 2010 negotiations in Cancun, Mexico.

IMPLICATIONS FOR GLOBAL CLIMATE GOVERNANCE

It is undoubtedly too soon to understand fully what the long-term implications of the Copenhagen Accord may be. The Accord is only one step in what is a decades-long effort to fashion a comprehensive and effective global approach to climate change. Although the Accord arguably signals a major shift away from the global cap-and-trade approach of the UNFCCC and the Kyoto Protocol, we may find in ten years that the Accord simply shaped a process that still led to a system fundamentally shaped by the Protocol’s cap-and-trade system. We must, therefore, recognize that the implications of the Accord will depend as much on what happens in the next few years of negotiations as what happened at Copenhagen. This is all the more true, given the relative general nature of the Accord, the lack of clarity in how the Accord relates to the UNFCCC, and the lack of a clear consensus for a way forward. Indeed, the lack of consensus on next steps was particularly striking at Copenhagen; the Summit ended with no clear work plan for ensuing CoP negotiations or for the Secretariat, resulting in an unprecedented lack of clarity over the direction of future climate negotiations. Although some of the uncertainty has been addressed in the months following Copenhagen, the long-term direction of the post-Copenhagen climate regime is still unclear. With these caveats firmly in mind, this article ventures some potential implications of the Copenhagen negotiations for the future of global climate governance.

THE THREAT TO A NEGOTIATED, SCIENCE-BASED APPROACH

The UNFCCC and Kyoto Protocol embody a clear top-down global approach to addressing climate change, in which (1) scientists through, for example, the Intergovernmental Panel on Climate Change (“IPCC”) inform the negotiators of what cap on global emissions is necessary to avoid the most significant negative climate impacts; (2) the negotiators agree to a system of targets and timetables that will achieve the science-based cap on emissions; (3) a global market-based system will assist in re-allocating the cap, through such mechanisms as cap-and-trade and the offset market; and (4) compliance with targets and timetables will be monitored internationally and sanctions for non-compliance may be imposed by the other parties. The Copenhagen Accord essentially has rejected such a science-driven, universally negotiated and enforced system of targets and timetables. In its place, the Accord allows each country or group of countries to make a separate and potentially unrelated pledge regarding its efforts to reduce climate change. Nothing in this process of pledges suggests that the GHG reductions in aggregate will be tied to a scientifically based analysis of what is necessary to avoid significant climate impacts. Indeed, as noted

above, even if every country fulfills its pledges under the Copenhagen Accord, reductions will still fall short of what is necessary to avoid significant climate disruption. Also lost in the Copenhagen Accord’s “pledge-and-review” approach is that the individual country’s pledges are not openly negotiated among the parties. As a result, little possibility exists to increase commitments through the give-and-take of negotiations or by publicly isolating a country that is doing too little. The net result is that overall commitments are likely to be less than we could expect through a negotiated process.

EMPHASIZING THE NATIONAL LEVEL

Associated with the “pledge-and-review” approach of the Accord is a shift in the emphasis of global climate policy from the international to the national level. Rather than an internationally agreed set of caps, the focus is entirely on what national governments are willing to pledge publicly to support. The attention is thus shifted to national level decision making. This makes explicit what many observers have recognized all along—that what happens at the international climate negotiations may be less important to addressing global climate change than what happens in the capitals of key countries. Indeed, although the Accord provides for significantly less monitoring and oversight than would be expected in a Kyoto-like system of mutually negotiated and internationally accepted targets and timetables, even compliance with a Kyoto-like system ultimately depends on domestic action for compliance.

Perhaps the Accord’s more explicit focus on the national level will provide for more resources being shifted from international negotiations to building capacity for national implementation. Given that developing countries have voluntarily self-identified their mitigation actions, we could expect greater commitment to implementation and failure to meet these individually-tailored actions may be more embarrassing than failure to meet internationally negotiated targets. The result could be that both donors and recipient governments may be more inclined to invest in implementation of the mitigation commitments. If such a focus on the national level can be transferred into a long-term focus on the difficult work of building national capacity, global efforts to address climate may benefit. But long-term capacity building does not provide the promise of a quick headline or the excitement of international negotiations. Funders, governments, and civil society must resist the allure of international negotiations and shift at least some of their work to the less romantic drudgery of long-term training, capacity building, and movement building at the national level. If nothing else, anything that shifts resources from talking to action should be welcomed in global climate policy.

THE EMERGENCE OF A PLURALISTIC APPROACH TO CLIMATE GOVERNANCE

Both the substance of the Accord’s pledge-and-review approach and the process by which it was negotiated arguably undermine the importance of the United Nations, particularly the UNFCCC Secretariat, in future climate governance. The Accord was ultimately negotiated outside of the formal UNFCCC

process, behind closed doors, with only a handful of countries present. For the most critical part of the negotiations, only the United States and the BASIC countries (Brazil, South Africa, India, and China) were in the room—and those five countries had not been authorized by any others to negotiate the Accord.⁶²

This process was heavily criticized by many other countries and left the parties wondering how the Accord fit with the UNFCCC or Kyoto Protocol. This tension manifested itself in the debate on the floor at Copenhagen over whether and how the parties to the UNFCCC should recognize this document labeled the Copenhagen Accord. Ultimately, the UNFCCC parties neither adopted nor endorsed the Accord, instead simply “taking note” of it. This meant the UNFCCC Parties as a whole recognized that the document existed, but gave it no formal status. This decision threatened the legitimacy and importance of the Accord and revealed the relatively weak consensus that surrounded it.

The debate over the formal status of the Accord revealed deeper tensions over the appropriate forum for negotiating climate governance. The Accord was seen as a new path separate from, and potentially dominant over, the UNFCCC process. It also revealed the weakness of the UN process, in which under the current rules of decision even a handful of oil-dependent states, for example, can continue to disrupt overall progress. To some observers the UN process is too unwieldy and too easily held hostage by a small number of states to allow for effective negotiations. On the other hand, the heavy-handed approach by just a few states in negotiating and announcing the Accord also arguably undermines progress toward reaching broad global consensus for long-term cooperative action.

The potential for splitting off a new negotiating process under the Accord raises the specter of a more pluralistic approach to climate governance, with significantly more institutions involved in climate policy. The Accord itself creates three new institutions—the High Level Panel on Financing, the CGCF, and the technology mechanism—without fully clarifying their relationship with existing institutions. Moreover, the willingness to negotiate the Accord outside of the UNFCCC processes suggests that in the future the most critical climate negotiations may take place in meetings of the G-20, the Major Economies Forum (“MEF”), or in bilateral or regional forums. The increase in forums is not necessarily negative, but it does raise additional challenges for ensuring policy coherence and integration. These alternative forums do not have the broad participation of the UN process, potentially missing, for example, the moral voice brought to the negotiations by the countries hardest hit from climate change (the small island states and the least developed countries). Excluding these countries from the negotiations may make the negotiations more comfortable, but climate policy will likely suffer. The alternative forums will also likely be less transparent and accessible to the public. An elaborate system for civil society participation has developed around the climate negotiations that has until now been largely lacking in the G-20, MEF or similar forums.

The emergence from Copenhagen of a pluralistic approach is also evident in specific areas of climate governance. For example, Copenhagen appeared to do little to further the interests of a global carbon market, and in fact the failure to make progress on a second reporting period under Kyoto suggests that a global carbon market is not likely in the near future. This does not mean that we have seen the end of carbon markets, however. On the contrary, the carbon markets do not require a global cap-and-trade system to flourish. The carbon marketers were not visibly upset with the outcome of Copenhagen because they know that the most important decisions for a carbon market will be made at the national and bilateral level. For example, the carbon market’s future depends mostly on whether the United States establishes a national cap on emissions and a framework for integrating its market with the European emissions trading system. In addition, Europe and the United States can adopt, through their respective legislation, the necessary rules for creating an offset market with opportunities for developing country participation. Thus, for example, the United States may adopt legislation that allows U.S. companies to purchase offsets from pre-approved sectors of specific developing countries (for example, forest credits from Brazil). In this way the carbon market is established and maintained not by a global set of standards negotiated under the UNFCCC, but by a series of bilateral and regional agreements, creating an interconnecting market for emissions trading and the purchase and sale of reduction credits.

The situation is similar with respect to climate finance architecture. As noted above, the Copenhagen Accord reflected significant new commitments in financial transfers from the North to the South, but it left open significant questions regarding the future institutional architecture for managing these funds. Climate financial architecture is controversial. Among the recurring issues are: (1) the extent to which decision making will be controlled by the donor countries; (2) what conditions, including environmental and social safeguards, will be placed on financing; (3) how the financing commitments will be monitored to ensure that funds earmarked for climate financing are “new and additional;” and (4) the extent to which the UNFCCC will set policy and coordinate financing.⁶³ Complicating this further is the multiplicity of institutions that already address climate finance. The World Bank itself administers the Climate Investment Funds (“CIF”), the Forest Carbon Partnership Facility, and approximately a dozen other climate-related funds, not to mention the general climate and energy-related lending it does under its normal operations.⁶⁴ Added to the World Bank’s climate-related activities are the Adaptation Fund, the Global Environment Facility, the Clean Development Mechanism, and a variety of national and regional climate-related funds. For obvious reasons, ensuring coordination among these institutions and between these organizations and the UNFCCC secretariat was a high priority.

Unfortunately, the Copenhagen Accord, itself, did little to enhance coordination, consolidate climate finance architecture, or answer any of the related questions. In fact, in announcing the new Copenhagen Green Climate Fund, the parties added a

new institution with little operational clarity. The expectation is that decision making at the CGCF will be made by equal representation of developed and developing countries—still unknown is whether the CGCF will be independent or operate under the World Bank, what safeguard policies will attach to its operations, or what will be the composition of the CGCF decision making structure.

The parties to the Accord also established the High Level Panel for climate financing, but in so doing they apparently missed an opportunity to provide for greater institutional coordination. The High Level Panel has a relatively limited mandate to investigate new sources of revenue. During the Copenhagen negotiations, a consensus had been emerging for the need of such a high level panel to coordinate the myriad of financing institutions and to ensure that the goals of the UNFCCC were being efficiently advanced. This greater coordinating role was not (or at least not yet) included in the High Level Panel's mission.

IMPLICATIONS FOR INTERNATIONAL LAW

Much of the debate, both before and after Copenhagen, centered around whether the parties would continue the pursuit of legally binding targets and timetables. In the end, the choice to accept a non-binding option reflected a lack of political consensus—not over whether there should be a binding agreement, but what the requirements should be and to whom they should apply. Indeed, virtually every country has endorsed (and continues to endorse after Copenhagen) the pursuit of a binding agreement, but of course this did not lead to any binding decision at Copenhagen. Moreover, the parties excised (with the insistence of China and India) any language in the Accord that would have set a schedule for negotiating a binding agreement in the near future. In short, Copenhagen can only be viewed as a major set-back for anyone seeking a hard, binding agreement.

To some extent, however, the concerns over the relative “hardness” of the climate regime may be too formalistic an inquiry. We should not lose sight that the end goal of global climate policy is to take action to reduce the risk of significant climate disruption — it is not to have a binding agreement. In that respect, it is helpful to abandon the arcane discussion of whether the Copenhagen Accord is or is not binding (it clearly is not), in favor of a discussion of whether the Accord nonetheless promotes commitments and actions that can be effectively

monitored and enforced. As Jake Werksman of the World Resources Institute notes, more important than the formality is the functionality of binding international law.⁶⁵ According to Werksman, the salient questions in the context of the Accord would be: (1) are norms being developed under the Accord specific and clear enough to monitor and determine compliance, (2) is there a viable institutional framework available for monitoring and determining compliance, and (3) are there sanctions available for non-compliance.

Looking first at the normative framework, the Accord offers some modest steps forward. The Accord's “pledge-and-review” system means that both the United States and most developing countries for the first time have agreed to take some specific actions for mitigating climate change. As can be seen from the few examples excerpted above, many (although not all) of the commitments made under the Accord could, in theory, be measured and verified. Thus, for example, economy-wide reductions, improvements in energy-intensity, or sector-specific actions can all be monitored effectively, assuming the country has established appropriate baselines, developed methodologies for measuring results, and committed the resources to monitoring over time. Developing countries also agreed for the first time to submit national reports, including GHG inventories, biannually. This is an important com-

mitment that can easily be monitored for compliance. In general, then, the Accord does offer some standards of behavior that are sufficiently clear and detailed to allow for holding the signatory responsible.

On the other hand, the institutional framework for monitoring, reporting, and verifying country actions under the Accord does have significant deficiencies. The MRV requirements were one of the most hotly contested issues in Copenhagen and indeed to some extent the entire negotiations pivoted on the extent to which parties could reach consensus on the international MRV requirements that would be applied to their various commitments. This is not surprising given that the MRV requirements in many ways are critical to whether an agreement is or is not functionally binding.

In the end, a variety of MRV requirements were suggested by the Copenhagen Accord, but most of the details have been left for future negotiations. Developed country mitigation commitments are expected to be subject to MRV requirements similar to those currently existing under the Kyoto Protocol. The

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financial commitments of developed countries are also to be subject to MRV, but under guidelines yet to be adopted. The most controversial issue relating to MRV—the extent to which developing country NAMAs would be subject to international oversight—resulted in a two-tiered outcome. For developing countries that take steps without international support, MRV will be conducted at the national level according to national MRV requirements and included as part of the biannual national reports submitted to the UNFCCC. These actions will also be subject to “international consultation and analysis,” which was left undefined but recognized to be considerably less than international MRV requirements would normally entail. Developing countries that accept international financial support to implement their NAMAs will be subject to more robust international MRV oversight requirements, according to detailed guidelines to be negotiated in the future. Overall, the MRV requirements in Copenhagen were disappointing to those who wanted to see progress on a system with strong and comprehensive international oversight. India, China and the emerging economies considered the relative lack of MRV requirements to be a major victory that preserved their national sovereignty.

Even more disappointing for those who want muscular international oversight is the lack of any sanctions for non-compliance in the Accord. This is a difficult area generally in international environmental law, with the primary sanction being one of “naming and shaming” those in non-compliance. This is the only sanction implicitly available under the Accord, although there is no mechanism for parties to formally condemn

each other for non-compliance. By contrast, non-compliant parties to the Kyoto Protocol could face more significant mitigation commitments in future reporting periods (assuming there are subsequent reporting periods).⁶⁶ The Protocol would also lend itself readily to sanctioning non-compliance by reducing certain regime benefits (for example, withdrawing eligibility for receiving funding under the regime or for participating in the offset markets). The Accord thus far contemplates no such sanctions.

CONCLUSION

It may be too soon to understand the ultimate impact of the Copenhagen Summit; it is after all only one step in a long-term process of global cooperation to address climate change. In this regard, agreement to even the anemic Copenhagen Accord is arguably better than if the negotiations had failed to reach any agreement at all. Most of the world has now, or soon will have, associated with the Accord and announced either an economy-wide target (in the case of developed countries) or one or more mitigation actions (in the case of developing countries). These commitments, along with progress relating to financing, REDD, and technology transfer may subsequently be viewed as critical building blocks in an effective, comprehensive climate regime. For now, however, both the process and outcome of Copenhagen do not offer significant reason to hope that the world’s leaders can put aside short-term political expedience to make the long-term, shared, equitable steps needed to avert substantial climate disruption.



Endnotes: Implications of the Copenhagen Accord for Global Climate Governance

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⁵ Kyoto Protocol, *supra* note 2, art. 3, ¶ 1. See generally MICHAEL GRUBB ET AL., *THE KYOTO PROTOCOL: A GUIDE AND ASSESSMENT* (Royal Institute of International Affairs 1999) (providing a general overview of the Kyoto Protocol).

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⁷ See Rachmat Witoelar, President, U.N. Climate Change Conference, Address to Closing Plenary at Closing of the Joint High-Level Segment: The Bali Road Map (Dec. 15, 2007), available at http://unfccc.int/files/meetings/cop_13/application/pdf/close_stat_cop13_president.pdf.

⁸ See Ad Hoc Working Group on Further Commitment for Annex I Parties under the Kyoto Protocol, Fourth Session, Bali, Indon., Dec. 3-15, 2007, *Report of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol*, ¶ 22, U.N. Doc. FCCC/KP/AWG/2007/5 (Feb. 5, 2008).

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¹¹ See United Nations Framework Convention on Climate Change, Bali, Indon., Dec. 3-15 2007, *Bali Action Plan*, dec. 1/CP.13, U.N. Doc. FCCC/CP/2007/6/Add.1 (Dec. 2007) [hereinafter Bali Action Plan], available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3>.

¹² *Id.* dec. 1/CP.13.1(a).

¹³ *Id.* dec. 1/CP.13.1(b)(i)–(ii).

¹⁴ *Id.* dec. 1/CP.13.1(b)(iii).

¹⁵ *Id.* dec. 1/CP.13.1(c).

¹⁶ *Id.* dec. 1/CP.13.1(d).

¹⁷ *Id.* dec. 1/CP.13.1(e).

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¹⁹ Barack Obama, President-Elect, Address to the Global Climate Summit: A New Chapter on Climate Change (Nov. 17, 2008) [hereinafter Obama Climate Speech], available at <http://www.youtube.com/watch?v=hvG2XptIEJk>.

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³⁰ UNFCCC, *Copenhagen Accord*, ¶ 1, available at http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf.

³¹ *Id.*, ¶ 2.

³² *Id.* ¶ 12.

³³ *Id.* ¶ 4.

³⁴ *Id.*

³⁵ *Id.* ¶ 5.

³⁶ *Id.*

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³⁸ For a full list of country commitments and other information submitted under the Copenhagen Accord, see <http://unfccc.int/home/items/5262.php>. The Climate Action Network is also maintaining information about country commitments to the Accord, see <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments>.

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⁴¹ See, e.g., Copenhagen Accord, *supra* note 29, ¶ 5 (“Those mitigation actions [identified by non-Annex I countries] in national communications or otherwise communicated to the Secretariat will be added to the list in appendix II”).

⁴² 350.org, <http://www.350.org> (last visited Mar. 17, 2010).

⁴³ Copenhagen Accord, *supra* note 29, ¶ 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 4.

⁴⁷ 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, Draft Decision -/CP.15, FCCC/AWG/LCA/2009/L.7/Add.6, available at <http://unfccc.int/resource/docs/2009/awglca8/eng/107a06.pdf>.

⁴⁸ Copenhagen Accord, *supra* note 29, ¶ 6.

⁴⁹ For a thorough treatment of the many issues surrounding climate finance in the lead-up to Copenhagen, see Athena Ballesteros, Smita Nakhooda & Jacob Werksman, *Power, Responsibility, and Accountability: Re-Thinking the Legitimacy of Institutions for Climate Finance*, (World Resources Inst. Working Paper).

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⁵³ Copenhagen Accord, *supra* note 29, ¶ 9.

⁵⁴ *Ban unveils new high-level advisory group to spur action on climate change*, UN NEWS CENTRE, Feb. 12, 2010, available at <http://www.un.org/apps/news/story.asp?NewsID=33748>.

⁵⁵ See, e.g., Ballesteros, et al, *supra* note 49, at 10-11 (summarizing various proposals leading up to Copenhagen).

⁵⁶ Copenhagen Accord, *supra* note 29, ¶ 10.

⁵⁷ *Id.* ¶ 8.

⁵⁸ *Id.* ¶ 11.

⁵⁹ *Id.* ¶ 8.

⁶⁰ *Id.*

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⁶² See generally Juliet Eilperin & Anthony Faiola, *Climate Deal Falls Short of Key Goals*, WASH. POST, Dec. 18, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/18/AR2009121800637.html> (describing the last minute negotiations of the Accord).

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⁶⁴ See generally www.worldbank.org/climatechange.

⁶⁵ For a more thorough analysis of the implications of the Copenhagen Accord, see Jakob Werksman, Program Dir., Inst. and Governance Program, World Resources Inst., Address at the American University Washington College of Law Environmental Law Society Symposium: Climate Change in a Changing Economic Environment (Mar. 4, 2010).

⁶⁶ Kyoto Protocol, *supra* note 2.