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08/09 DECEMBER 2009

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What happened?

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What is next?

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The Copenhagen Accord: What happened? Is it a good deal? Who wins and who loses? What is next?

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What happened?

The two weeks of negotiations have been full of twists and turns. There has been two main distinct phases: before and after Heads of State arrived in Copenhagen.

The outcome of the first phase, when heads of delegations and Ministers had the leadership, is a set of draft decisions, heavily bracketed, and not recognized by all Parties – especially the US – as a basis for negotiations. It proves the difficulty – if not the impossibility – of making progress towards an agreement through the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol (KP) process. The lack of clarity of the Bali Roadmap – setting a two-track process, one under the UNFCCC and one under the KP, but leaving open the form and legal nature of the final outcome – and the lack of skill of the Danish Presidency, did not help.

The outcome of the second phase, when a small group – around 30 – heads of State took the lead, is a minimalist agreement, disappointing in substance, and hectic in process. It proves that the pileup of countries redlines did not leave room for an ambitious agreement: the agreement found is somehow the lowest

common denominator. This is not the deal we hoped, but given the context, and especially given the perception that States had of their own national interests, this was probably the best possible deal.

Before arrival of the Heads of State

The negotiations here in Copenhagen unfolded as follow. There were two negotiating tracks: one under the UNFCCC, and one under KP. Under each of these tracks, the work was subdivided into different building blocks:

KP	Numbers
	Mechanisms
	Land Use, Land-Use Change and Forestry (LULUCF)
LCA	Shared vision
	Mitigation developed
	Mitigation developing
	Mitigation other issues
	Adaptation
	Finance
	Technology

The KP track has remained stuck during the whole negotiations. Developing countries stressed the need for KP Parties to commit to a second commitment period of the KP. And KP

Parties underlined the need to reach a single legally binding agreement. But the negotiations under the LCA track have been full of twists and turns:

Friday 11

During a contact group meeting of the AWG-LCA, the Chair, Michael Zammit Cutajar, presents its package of draft decisions. All of them are bracketed, and contain several options. The package consists of a core decision (the 1/CP15) and a bunch of satellite decisions. These satellite decisions cover issues such as: adaptation, a mechanism to register and facilitate the matching of nationally appropriate mitigation actions (NAMAs) and support, REDD-plus, a mechanism for technology development and transfer, and the governance of the financial architecture. All of these satellite decisions contain options, sometimes numerous, as in the case for adaptation or technology, sometimes limited, as far as registry and finance are concerned.

The satellite decisions are accepted as a basis for negotiation. But the core decision is vividly discussed. It is accepted by all, except Japan, as a possible basis for negotiations. Japan says it cannot accept the option chosen in the mitigation for developed countries section: an unconditional second commitment period for KP Parties. Other KP Parties have similar concerns, but say they are ready to accept the text as a basis for negotiation. The US says that the overall structure of the mitigation section is not right, because it uses KP rules and procedures as a reference for all developed countries commitments – even though it leaves the US outside the KP – and also because it lacks symmetry between developed and developing countries. But it also says it is ready to accept the text as a whole as a basis for negotiation. The developing countries are generally happy with the text, even though they have some specific remarks.

Saturday 12

During informal meeting of the AWG-LCA in the morning, the Chair organizes some discussions on the mitigation section of the draft core decision. The turn of events probably surprises and disturbs the US. Parties make comments paragraph by paragraph,

de facto endorsing the structure of the mitigation section, which is not suitable for the US. The US then gets frightened.

During an informal Ministerial organised by the Danish Presidency in the afternoon, the US complains about the Chair's proposed text and asks Connie Hedegaard, Danish Minister of Energy and Climate, and President of the COP15, for immediate political action.

Sunday 13

During an informal meeting organised by the Danish Presidency and gathering 48 Ministers, it is decided that the Presidency should extract the main political elements of the Chair's proposed text and organize Ministerial consultations on these points. The list of issues is the following:

- Aspects of developed country mitigation
 - How to increase aggregate and individual targets
 - How to ensure comparability of efforts among developed countries
- Aspects of developing country mitigation
 - How to register planned actions
 - How to measure report and verify implemented mitigation actions
- Aspects of finance
 - How to set a long term quantified goal on climate finance
 - How to create new sources for climate finance
 - How to measure report and verify climate finance
- Other issues
 - Bunkers
 - Trade

Monday 14

Ministerial consultations co Chaired by two Ministers, one of a developed country, one of a developing country, on each of the issues (UK and Ghana on finance etc...) are organised throughout the day. However, these informal do not provide the change of gears hoped, mainly because even if they are co Chaired by Ministers, the usual group of negotiators is intervening from the floor. It is of particular concern for some Parties that consultations are not launched on 1b1 but are launched on KP, finance and NAMAs, raising questions about the – favourable – treatment of the US.

Tuesday 15

During the closing plenary of the AWG-LCA, developing countries, driven by the big emerging countries (China, India, Brazil and South Africa) ask for the FULL Chair's proposed text to be included in the report of the Chair to the COP, not the text MINUS the main political elements. It is a long night, with the US trying to introduce brackets everywhere in the mitigation section. It is not sufficient for the US to put some brackets at the beginning and at the end of each section. It is willing to underline areas of particular concern. This exercise eventually stops at 6.30 AM on Wednesday morning leaving everybody exhausted.

Wednesday 16

During a COP/MOP plenary, Connie Hedegaard announces that the Presidency will put two negotiating texts on the table, one under the LCA and one under the KP. She does so even before the Chair of the AWG-LCA has a chance to report its final proposed text during the COP plenary. She probably does that because she considers that the Chair proposed text is not suitable for the US.

This move provokes very strong reactions by a very large group of countries, especially all developing countries. Connie Hedegaard then quits the Presidency as planned, and leaves the Presidency to Lars Rasmussen, her Prime Minister. Lars Rasmussen finds himself in a very difficult position during the high level segment that comes next. He has to face seven consecutive angry points of order by the representatives of the four big emerging countries (China, India, Brazil and South Africa) that do not accept that the Presidency ignores the negotiating texts produced by both working groups, the AWG-KP and LCA, and introduces some Presidency texts instead, probably because it estimates that the LCA proposed text is not adequate for the US, and will therefore prevent from reaching an agreement. The process is stuck. It will remain stuck until the Heads of State arrive on Thursday.

After arrival of the Heads of State

Thursday 17

Heads of State met as a small group at 11PM to try to unblock the situation. Unfortunately, the first two attempts at finding a compro-

mise failed. Heads of State attempted to reach agreement on a substantial political declaration that would lead to decisions on four essential points: the future of the Kyoto Protocol, means of engagement by the U.S., verification of action by developing countries, and long term financing. If Heads of State had come to terms on these overriding issues, the negotiations would have succeeded. But no consensus emerged. The Sherpas were thus back in play in the early morning, trying to find a way to move ahead.

Friday 18

Heads of State returned late morning to present their speeches at the plenary session. Despite a conciliatory tone, there were indications that the outcome might not be satisfactory.

Wen Jiabao, the Chinese Prime Minister, indicated some slight opening. Remaining firm on questions of verification, he seemed to think that some compromise was possible, provided that certain limits were respected. He also specified that China's position was unconditional, meaning that whatever happened in Copenhagen, China would fulfill its commitment, irrespective of financial or technical support.

The commitment of Luiz Ignacio Lula da Silva, the Brazilian President, was evident. He forcefully reaffirmed his desire to reach agreement, not just any agreement but agreement of a substantial nature, ruling out a mere political declaration to save face. He also widened the discussion and surprisingly announced that Brazil was ready to provide financial and technological support to poor countries. He also stressed that Brazil's commitment was absolute.

Barack Obama, the American President, could go only so far. His speech was more addressed to his domestic audience than to other countries. He is closely watched by his Congress, and is thus faced with considerable constraints. The first part of his speech was reminiscent of the political process under way in the US. The second was more directly linked to the negotiations. Barack Obama recalled the US' two main requirements: set emission reduction targets by large emitters and internationally verifiable actions. At no point did he indicate even slight concession, notably on the issue of differentiation, which could help move toward a compromise solution. On finance, he spoke of Hilary Clinton's proposal the previous day: that de-

veloped countries mobilize 100 billion dollars annually up to 2020 to support mitigation and adaptation action by developing countries. Manmohan Singh, the Indian President, seemed pessimistic. He declared that we might well be disappointed by the outcome at Copenhagen, but that this venue should be seen as a stepping stone towards an agreement in 2010. Thus he intended to limit his efforts at Copenhagen. Heads of State meet once again in a small group. They continue working on the political declaration. The US and emerging countries are in the centre of the negotiating process, even if the EU tries to keep them on track for an ambitious deal. The group produces different versions of the text. A small number of issues are subject to negotiations, and go back and forth in the consecutive versions:

Issue	End game
Translation of this political declaration into a legally binding instrument next year	Disappears
50% reduction of global emissions in 2050 and date of the peak	Disappears
International verification of developing countries actions	Stays

This table of pros and cons is based on a top down analysis. It uses as a benchmark, not a utopian deal, but the necessary deal to reach the 2°C target, which is the target set by the political declaration. Based on that, the deal is a minimalist agreement, disappointing in substance. But this is not the only way to look at things. One should also look at the context. The pileup of countries redlines did not leave room for an ambitious agreement: the agreement found is somehow the lowest common denominator:

- The US did not give up anything. The timing for the US was very bad, as its domestic legislation is not yet passed.
- Emerging countries made a concession on the verification of their actions. The formula used “international consultations and analysis” might sound like nothing. But it means that they get hooked into the international regime, which is a big step forward. This concession allows them to show that they act and that they will report in a transparent manner.
- The EU tried to put pressure on the US and emerging countries for a higher level of ambition, although quite unsuccessfully.

This is not the deal we hoped, but given the context, and especially given the perception that States had of their own national interests, this was probably the best possible deal. This is a deal that makes the best of a terrible situation in which we were, but which should be aggressively and urgently strengthened.

This table represents winners and losers based on the substance of the agreement. But some of the players that we put here as losers have endorsed the declaration, notably the EU and the African group. Why? Because such an agreement is not only about substance but also, and perhaps mainly in this case, about process. States are rational players. And the rationale here is twofold: interests and power.

- Some European leaders – Sarkozy, Merkel, Brown – backed by Lars Rasmussen took the initiative of a political declaration, way before Copenhagen. Plus, the EU pictures itself as a climate leader, so it is difficult to be out of the deal. Some might argue that no deal would have been better than a bad deal. But the deal is first and foremost a deal between the US and big emerging countries. And the US has sold the deal as the deal of the modernity, a deal which launches a new process. So it was difficult for the “old Europe” to be excluded from this motion.
- The African countries endorsed the declaration probably due to the prospect of receiving money for adaptation.

What is next?

The status of the Copenhagen Accord is highly uncertain from both a political and legal perspective.

From a political perspective, it must be pointed out that the Copenhagen Accord was reached within a very diverse group of around 30 Heads of States and Governments, representatives from all UN regional groups, Least Developed Countries and the alliance of Small Island States, with a majority from developing countries, whereas the UNFCCC applies to its 193 Contracting Parties. Although these 30 countries represent more than 80 % of the global CO₂ emissions (keeping in mind that Kyoto Parties cover only 30 % of emissions),

Is it a good deal?

+	-
<p>2°C target</p> <p>Quantified and economy wide emission targets for all developed countries</p> <p>Increased frequency and improved methodology for the communication of developing countries mitigation actions</p> <p>Verification of developing countries mitigation actions through international consultations and analysis</p> <p>Fast start finance amounting to 30 billion dollars for the period 2010 – 2012</p> <p>Developed countries set a goal of mobilizing jointly 100 billion dollars a year by 2020 to address the needs of developing countries</p> <p>Creation of a High Level Panel to study how to tap alternatives sources of finance</p>	<p>No reference to a future legally binding instrument at any point in time</p> <p>Bottom up approach to setting targets resulting in a great inconsistency between the long term goal and short term targets</p> <p>Not translated into a 50% reduction of global emission in 2050</p> <p>Weak section on adaptation, where response measures are put on an equal foot with the impacts of climate change</p> <p>No figures for developed country targets before the 1st of February 2010</p> <p>No decision taken on the future of the Kyoto Protocol</p> <p>No comparability between the US and KP Parties</p> <p>No quantified goal for the reduction of emissions from deforestation and forest degradation</p> <p>Only 25.2 billion dollars have been pledged, with an unfair burden sharing (US contribution = 1/3 of Europe's), and no guarantee on the fact that these are new and additional resources</p> <p>No alternative sources of finance tapped</p>

the legitimacy of the Copenhagen Accord for paving the way to the adoption of a comprehensive post 2012 global regime on climate change depends on the context through which countries can be all represented to endorse its content.

From a legal perspective, Decision CP.1/15 only “takes note” of the Copenhagen Accord, it does neither decide upon nor agree with its content. As a matter of international law, the Copenhagen Accord does not bind the Contracting Parties to the UNFCCC. In effect, the Contracting Parties are only bound by the decisions they make within the COP pursuant to the rules of procedure (applying on a provisional basis) in accordance with Article 8 of the UNFCCC. Be-

Who wins and who loses?

Winners	Losers
<p style="text-align: center;">US</p> <p>The declaration sets no additional obligations to the US compared to what it plans to do domestically; its international target for reducing emissions will be the mere mirror of its domestic legislation</p> <p>It obtains the verification of developing countries actions, esp. those of China, through international consultations and analysis</p> <p>It contributes much less (1/3) than other developed countries (esp. EU and Japan) to fast start finance</p> <p style="text-align: center;">Big emerging countries, esp. China</p> <p>They are not named and shamed as the ones who are responsible for the failure of Copenhagen. They had to make a concession on the verification of their actions. But it allows them to show that they act and that they will report in a transparent manner.</p>	<p style="text-align: center;">KP Parties, esp. the EU</p> <p>The declaration makes no reference to a future legally binding instrument at any point in time.</p> <p>It does not take a decision on the future of the Kyoto Protocol. So hypothetically KP Parties find themselves stuck within the KP whereas the US is not there and there will not be any other legally binding instrument. And there are no provisions to ensure the comparability between the US and KP Parties.</p> <p>It contributes much more than the US to fast start finance</p> <p style="text-align: center;">Small Island States</p> <p>The declaration makes no reference to a future legally binding instrument at any point in time.</p> <p>The bottom up approach to setting targets results in a great inconsistency between the long term goal and short term targets. There are no figures yet in the declaration, but the addition of current pledges is likely to lead towards a 3 or even 3.5°C increase, putting there mere existence at a very high risk. The Maldives nevertheless endorsed the declaration</p>
<p style="text-align: center;">African countries</p> <p>African countries, like small island states, would suffer enormously from a 3 or 3.5°C increase that translates into a more than 5°C increase for Africa. Nevertheless, almost all African countries endorsed the declaration, probably due to the prospect of receiving money for adaptation.</p>	

cause it was informally reached in the margins of the COP to the UNFCCC, the Copenhagen Accord can be just regarded as a political declaration which only expresses an intention to act from a number of well identified countries (who are listed before the preamble part of the Accord) with respect to the way they believe the UNFCCC should be implemented in order to achieve its ultimate objective. Following the compromise found in the COP Plenary on tak-

ing note of the Accord, many questions were raised on what this Accord actually means with regard to the work under the UNFCCC and the Kyoto Protocol. Actually, “taking note of” should be understood as giving the possibility to Contracting Parties to the UNFCCC to refer to the content of the Copenhagen Accord, but within the work programme that has been effectively decided by consensus among all 193 Contracting Parties at the COP 15 and COP/MOP5. In that respect, it must be noted that Contracting Parties have agreed in Copenhagen to extend both the mandate of the Convention Track (AWG LCA) and of the Kyoto Track (AWG KP) to COP16 that will take place in Mexico City, in November 2010.

Therefore, the question is to know if and how the Copenhagen Accord can help reach a consensus in both LCA and KP tracks in the coming months, on the road to Mexico.

Because the Copenhagen Accord does not bind Contracting Parties for the work to be continued under the AWGs, some Parties may oppose to the establishment of a number of institutions that are foreseen in the Accord, such as the Copenhagen Green Climate Fund. The establishment of any such body would require a formal decision under the COP if it is to be agreed upon within the UNFCCC. Some Parties may also argue that elements being discussed under the Bali Road Map constitute a negotiation package from which elements should not be picked and chosen for the purpose of an immediate implementation, all the more since if it is outside the UNFCCC context. However, the continuation of the two negotiating tracks means that the main controversial question of the continuation of the Kyoto Protocol and the legally binding nature of the outcome under the Convention track remains unresolved.

Conversely, the implementation of the Copenhagen Accord will depend upon the willingness of its signatory countries to make it happen. Interestingly, the Copenhagen Accord have endorsed Decision 1/CP.15 on the Ad hoc Working Group on Long-term Cooperative Action and decision 1/CMP.5 that requests the Ad hoc Working Group on Further Commitments of Annex I Parties under the Kyoto Protocol to continue its work. However, at the same time, the same countries have expressively agreed that the Copenhagen Accord shall be operational immediately. One may consider that the

immediate implementation of the Copenhagen Accord is a mean to facilitate an agreement in Mexico, in both LCA and KP tracks, notwithstanding the possibility to merge the two in the end. Others may regard the immediate implementation as a way to start now thinking whether it can become a nucleus of a new international climate policy initiative, which may be used as an argument to promote the creation of a World Environment Organization, or a UN Climate Change Security Council.

In any case, how could the Copenhagen Accord be immediately applicable? Firstly, February 1, 2010 is a key date in the Accord, as it is the deadline for countries to inscribe their targets, policies and measures into the Appendix of the Accord. If all 193 countries that are Parties to the UNFCCC would be ready to do so, the Copenhagen Accord could become the nucleus. It could trigger further support from the many developing countries that were favourable to its adoption within the UNFCCC, and one could start thinking of how to set up the Copenhagen Green Climate Fund. If this is not the case, one may think that those pledges that will be made by a limited number of countries could well fit with the provisions of Article 7(2)(c) of the UNFCCC, which allow the COP to facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects. If that would be the case, it may derail the UNFCCC process in as far as the “facilitation of coordination” of measures among a limited number of countries would lead to acknowledge the progressive fragmentation of the climate regime.

Indeed, one may think twice before killing the Copenhagen Accord, because this would facilitate the game of some radical countries who play games within the UNFCCC, and who have all means to continue such games until and after Mexico. Most importantly is to know whether the Copenhagen Accord can facilitate the discussions in the US towards the adoption of an ambitious domestic legislation. Indeed, the further developments of the US legislative process will be also key to the developments at the international level. Such development remains highly uncertain all if one listens to the comments made by Congressmen in the US press right after the end of the Copenhagen Conference. The problem is also that the legal form and nature of Copenhagen Accord does not

provide the assurance to the USA that the future international climate regime will be based on a bottom up approach where industrialized countries only inscribe targets adopted at domestic level. However, the continuation of the Major Economies Forum needs to be reflected on. Particular, if it would not be possible to set something meaningful up under the Copenhagen Accord, the MEF could play an important role in the necessary international reflection process over the coming months with the USA on board within the UNFCCC or, the latter details, within another international forum.

In the end, the Copenhagen Accord provided for an open space to be filled in. It can be either under the UNFCCC or another for a. The main stumbling block to make it under the UNFCCC is the fact that Parties have decided to continue working under the two track approach with no change of working practices. Under these circumstances, it will give an strong argument to some countries that the Copenhagen Accord should be further specified and operationalized in a new context. Then comes the final question: was it done on purpose to get out of the UNFCCC? ■

The Copenhagen Accord:

What happened? Is it a good deal? Who wins and who loses? What is next?

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