

Pace Environmental Law Review

Volume 27
Issue 2 Spring 2010
*International Climate Change Mitigation and
Adaptation Post-Copenhagen*

Article 1

April 2010

Introduction: Copenhagen Climate Change Conference--Success or Failure?

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Recommended Citation

Richard L. Ottinger, *Introduction: Copenhagen Climate Change Conference--Success or Failure?*, 27 Pace Env'tl. L. Rev. 411 (2010)

DOI: <https://doi.org/10.58948/0738-6206.1635>

Available at: <https://digitalcommons.pace.edu/pelr/vol27/iss2/1>

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PACE ENVIRONMENTAL LAW REVIEW

Volume 27

2010

Number 2

INTRODUCTION

Copenhagen Climate Conference—
Success or Failure?

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The Copenhagen Climate Conference and its Copenhagen Accord have generally been regarded by the press as a failure.¹ I think this is a very unfortunate mischaracterization. The conference was a failure only in not achieving binding

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1. See Darren Samuelsohn, *Obama Negotiates 'Copenhagen Accord' With Senate Climate Fight in Mind*, N.Y. TIMES, Dec. 21, 2009; Juliet Eilperin & Anthony Faiola, *Climate Deal Falls Short of Key Goals*, WASH. POST, Dec. 19, 2009, at A01; Joss Garman, *Copenhagen—Historic Failure That Will Live in Infamy*, THE INDEP., Dec. 20, 2009.

commitments² to reduce global greenhouse gas emission levels sufficient to meet the requirements identified by the some 3,000 leading global scientists of the United Nations Intergovernmental Panel on Climate Change (IPCC) to avoid disastrous consequences such as sea level rise leading to massive population displacement, food disruption, water shortages, tropical disease migration, and destruction of biodiversity.³ The conference organizers could not have foreseen that their summit would occur in the midst of a global recession that would cause countries to focus their energies on preventing economic collapse instead of on mitigating climate change and curtailing greenhouse gas emissions. Even against such a tumultuous backdrop, a great deal was accomplished at the conference, and leading emitters have established a good foundation for a future agreement.⁴ The years of hard work by many international, national, municipal, industrial, and academic experts resulted in some very significant results.

First, the fact that 193 nations sent delegations to Copenhagen to address the global climate challenge was truly unprecedented.⁵ The participation by the key emerging countries of China, India, Brazil and South Africa who, along with the United States (U.S.), negotiated the final Accord and the agreement by Mexico to host the next climate conference were very important. This is because of particular importance as these countries had earlier declined to make greenhouse gas emission reduction commitments for the Kyoto Protocol.⁶ The near universal recognition of the seriousness of the climate change

2. Frank E. Loy & Michael A. Levi, *The Road From Copenhagen*, N.Y. TIMES, Dec. 24, 2009.

3. See generally IAN ALLISON ET AL., THE UNIV. OF NEW S. WALES CLIMATE CHANGE RESEARCH CTR., THE COPENHAGEN DIAGNOSIS (2009), http://www.cerc.unsw.edu.au/Copenhagen/Copenhagen_Diagnosis_LOW.pdf.

4. See Andrew C. Revkin & John M. Broder, *A Grudging Accord in Climate Talks*, N.Y. TIMES, Dec. 20, 2009, at A1.

5. See Loy & Levi, *supra* note 2. See also John M. Broder, *Many Goals Remain Unmet in Five Nations' Climate Deal*, N.Y. TIMES, Dec. 19, 2009, at A1; David A. Fahrenthold, *Copenhagen Climate Talks, by the Numbers*, WASH. POST, Dec. 19, 2009, at A06.

6. Patrick Kampert, *U.S. Takes Heat; Why is Bush's Stand on Global-warming Treaty Upsetting Nations Around the World*, CHICAGO TRIBUNE, Apr. 17, 2001, at C3.

challenge for the future of the world⁷ and support for a binding international agreement to address it⁸ were vitally important. Indeed, there would have been a clearly binding agreement to lock in the commitments made at the conference if the Danish Prime Minister had not taken over the chairmanship from the very able Danish Climate & Energy Minister, Connie Hedegaard.⁹ The Prime Minister misinterpreted the need for adoption of the Accord by “consensus” as a requirement for unanimity.¹⁰ Therefore, the objections of just five countries—Bolivia, Cuba, Nicaragua, Sudan and Venezuela—were allowed to derail the desires expressed in speech after speech by virtually all other countries in support of such an agreement, including the U.S. and China.¹¹ There is even an active debate among legal scholars¹² about whether the Accord can be considered “soft law”¹³ for which countries making emission reduction and financial commitments can be held accountable.

The fact that 119 heads of state both attended the conference and overwhelmingly voiced strong support for an international climate commitment¹⁴ was also unprecedented and clearly demonstrates the importance the world attaches to addressing this issue. In addition, the civil society generated an incredible outpouring of support for a strong agreement. Concerned citizens

7. *See generally* Revkin & Broder, *supra* note 4.

8. *Id.*

9. John M. Broder, *Poor and Emerging States Stall Climate Negotiations*, N.Y. TIMES, Dec. 17, 2009, at A16.

10. *See generally* Robert Stavins, *Another Copenhagen Outcome: Serious Questions about the Best Institutional Path Forward*, BELFER CTR. FOR SCI. & INT’L AFFAIRS, Jan. 5, 2010, <http://belfercenter.ksg.harvard.edu/analysis/stavins/?p=496#> (last visited Jan. 23, 2010).

11. Alden Myer, Director of Strategy & Policy, Union of Concerned Scientists, Statement: The Copenhagen Accord: Not Everything We Wanted, But Something to Build On (Dec. 23, 2009), *available at* http://www.ucsusa.org/global_warming/solutions/big_picture_solutions/the-copenhagen-accord.html. *See* Loy & Levi, *supra* note 2; *see also* Louise Gray, *Copenhagen Accord: Questions and Answers*, TELEGRAPH, Dec. 19, 2009, *available at* <http://www.telegraph.co.uk/earth/copenhagen-climate-change-confe/6846033/Copenhagen-Accord-Questions-and-Answers.html>.

12. *See* Posting of James Harrison, to International Law Observer, <http://internationallawobserver.eu/2009/12/22/after-copenhagen/> (Dec. 22, 2009).

13. *See* Alan E. Boyle, *Some Reflections on the Relationship of Treaties and Soft Law*, 48 INT’L & COMP. L.Q. 901 (1999).

14. *See* Fahrenthold, *supra* note 5.

and many non-governmental organizations (NGOs) from around the world comprised the 45,000 conference attendees, and maintained enthusiastic support even though the Center could accommodate only 15,000 of them.¹⁵ The NGOs, governments, international and scientific organizations, industrial groups, and others held approximately 1,000 “side events” and conducted panels on every aspect of climate change and its solutions.¹⁶ The United Nations Foundation, Climate Action Network, Environmental Grantmakers’ Association and others held public briefings with many of the top experts and negotiators on climate issues and the status of the conference.¹⁷ All of this reflected an incomparable energy and enthusiasm.

Another of the conference’s very important accomplishments was the uniting of the Alliance of Small Island States (AOSIS) and the Group of Least Developed Countries (LDCs) organization.¹⁸ Pace Law School and the Yale School of Forestry and Environmental Studies, under the leadership of Professors Roy Lee and Robert Van Lierop, had collaborated with these organizations in devising a strategy to use their leverage to strengthen the agreement and to assure that their members’ dire need for climate change adaptation help were met, which was largely ignored at the prior climate conferences. While drastic, their acts of shutting down the plenary for more than a week and at one point in walking out of the conference with the African countries was very effective in making negotiators address these needs.¹⁹ As one member nation after another pointed out, the island states and many of those most vulnerable stand to lose their countries, homes and livelihoods if greenhouse gas emissions are not effectively and sufficiently limited.²⁰ AOSIS

15. Elisabeth Rosenthal & Tom Zeller Jr., *Left Out in the Cold at the Climate Talks*, N.Y. TIMES, Dec. 15, 2009, at A17.

16. See U.N. Framework Convention on Climate Change, Side Events List, http://regserver.unfccc.int/seors/reports/events_list.html?session_id=COP15 (last visited Jan. 23, 2010).

17. *Id.*

18. See AOSIS: Alliance of Small Island States, <http://www.sidsnet.org/aosis/> (last visited Jan. 23, 2010).

19. See Broder, *supra* note 9.

20. The statement is based on the author’s own observations during the Copenhagen Climate Conference. For additional support, see generally Elisabeth Rosenthal, *In a Busy Conference Center, an Alphabet Soup of Causes and Clauses*, N.Y. TIMES, Dec. 19, 2009, at A10; see also Broder, *supra* note 9.

and the LDCs, therefore, had little choice but to take these drastic actions, and they succeeded in obtaining an agreement to immediately establish a \$10 billion short-term adaptation fund.²¹ This fund will grow to \$30 billion in 2010-2012, for which full funding was committed.²² Additionally, \$100 billion a year by 2020 was committed;²³ though the donors to the \$100 billion fund were not identified, Secretary Clinton did commit the U.S. to paying its fair share.²⁴ They also obtained a commitment in the Accord requiring consideration of establishing emission reductions to limit temperature increases to 1.5°C (350 ppm) in the first reviewing period in 2015.²⁵

The conference adopted the goal set by the IPCC scientists for holding temperature increases to 2°C (450 ppm),²⁶ which would require a 10-40% global emission reduction below 1990 levels by 2020.²⁷ The press paid little attention to the quite substantial greenhouse gas (GHG) emission reductions commitments designed to reach this goal. The European Union (E.U.) and Japan made the largest commitments—20%²⁸ and 25%²⁹ respectively below 1990 levels. Negotiators for the twenty-seven, member bloc were very aggravated over the fact that other large emitters made much smaller reduction commitments and

21. Broder, *supra* note 9.

22. U.N. Framework Convention on Climate Change, Conference of Parties, Fifteenth Session, Dec. 7-18, 2009, *Copenhagen Accord*, ¶ 8, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009) [hereinafter *Copenhagen Accord*].

23. See John M. Broder & Elisabeth Rosenthal, *Obama Has Goal to Wrest a Deal in Climate Talks*, N.Y. TIMES, Dec. 18, 2009, at A1; Juliet Eilperin & Anthony Faiola, *U.S. Pledges Aid, Urges Developing Nations to Cut Emissions*, WASH. POST, Dec. 18, 2009, at A01.

24. Broder & Rosenthal, *supra* note 23; Eilperin & Faiola, *supra* note 23.

25. *Copenhagen Accord*, *supra* note 22, ¶ 12.

26. *Id.* ¶ 2.

27. IPCC FOURTH ASSESSMENT REPORT (AR4): CONTRIBUTION OF WORKING GROUP III TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 748 (B. Metz et al. eds., 2007).

28. European Union, Climate Action, http://ec.europa.eu/environment/climat/climate_action.htm (last visited Jan. 23, 2010).

29. Embassy of Japan in Germany, *Note Verbale*, U.N. Doc. JB 15/2010 (Jan. 26, 2010), available at http://unfccc.int/files/meetings/application/pdf/japaneph_accord_app1.pdf.

that no binding agreement was reached.³⁰ The E.U. industry is also very concerned that the cost requirements of meeting their much higher emission reduction goals will cause job losses and put them at a competitive disadvantage.³¹ The U.S. committed to a 17% emissions reduction, but only below 2005 levels,³² which equates to just 3% below 1990 levels. President Barack Obama was under great constraint because he did not want to undermine the passage of a climate bill if he agreed to more stringent reductions than those contained in the pending Senate legislation; this dilemma was generally recognized by the international community, and the U.S. did make a very substantial \$3.6 billion commitment towards the short term developing country adaptation fund.³³ Furthermore, China and India made emission reduction commitments for the first time of 40-45% and 20-25% below 2005 levels, respectively.³⁴ However, these reductions are only of emissions intensity, not emission levels.³⁵ Brazil committed to reductions of 36.1 to 38.9% by 2020,³⁶ Mexico to 50% below 2002 levels,³⁷ South Africa to 34%

30. See Paul Taylor, *Snubbed in Copenhagen, EU Weighs Climate Options*, REUTERS, Jan. 13, 2010, available at <http://www.reuters.com/article/idUSTRE60C3HB20100113>.

31. The statement is based on the author's own observations during the Copenhagen Climate Conference. For additional support, see Jonathan Stearns, *EU Nations Spar Over Climate Policy After UN Summit Deadlock*, BLOOMBERG, Jan. 17, 2010, available at <http://www.businessweek.com/news/2010-01-17/eu-nations-spar-over-climate-policy-after-un-summit-deadlock.html>.

32. John M. Broder, *Obama to Go to Copenhagen With Emissions Target*, N.Y. TIMES, Nov. 26, 2009, at A1.

33. Selina Williams & Alessandro Torello, *Proposed Climate Deal: US Pledges \$3.6 Billion Climate Finance 2010-12*, DOW JONES NEWSWIRES, Dec. 18, 2009, available at <http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=200912181816dowjonesdjonline000666&title=proposed-climate-deal-us-pledges-36-billion-climate-finance-2010-12>.

34. Jonathan Watts, *China Sets First Targets to Curb World's Largest Carbon Footprint*, THE GUARDIAN, Nov. 26, 2009, available at <http://www.guardian.co.uk/environment/2009/nov/26/china-targets-cut-carbon-footprint>; see also Nitin Sethi, *India Vows 20-25% Carbon Intensity Cuts*, TIMES OF INDIA, Dec. 4, 2009, <http://timesofindia.indiatimes.com/india/India-vows-20-25-carbon-intensity-cuts/articleshow/5298030.cms>.

35. Watts, *supra* note 34; Sethi, *supra* note 34.

36. See *Brazil's Lula Signs Law Cutting CO2 Emissions*, AGENCE FRANCE-PRESSE, Dec. 29, 2009, available at <http://www.google.com/hostednews/afp/article/ALeqM5iez9sn2BkTTmjMO-JxaGawmSrdw>.

37. See David Adam, *Mexico Leads the Way with Carbon Reduction Pledge*, THE GUARDIAN, Dec. 11, 2008, available at <http://www.guardian.co.uk/environment>.

reduction by 2020 and 42% by 2025,³⁸ South Korea to 4% below 2005 levels, and a 30% reduction by 2020.³⁹ Agreement for these commitments was incorporated into an Appendix to the Accord along with a provision for the inclusion of greater and additional commitments by January 31, 2010.⁴⁰ Very significantly, the International Institute for Applied Systems Analysis (IIASA) found that these commitments would reduce 2020 emissions by 11 to 22% and that the costs of achieving these goals would be only 0.15% of gross domestic product.⁴¹

One of the most important accomplishments of the conference was an agreement on the architecture and funding for the Reducing Emissions from Deforestation and Degradation, or REDD program (short for), which included measures for monitoring, reporting and verification.⁴² In addition, developed countries agreed to pay a total of \$30 billion to initiate quickly the forest preservation process.⁴³

The Accord contained verification formulae agreed upon by both the U.S. and China,⁴⁴ commitments for technology development and transfer to developing countries,⁴⁵ a black carbon reduction program to be undertaken by the U.S.,⁴⁶ the

ment/2008/dec/11/poznan-climate-change-mexico-carbon-pledge; see *Mexico to Pledge Halving Emissions by 2050*, AGENCE FRANCE-PRESSE, Dec. 1, 2009, available at http://www.energy-daily.com/reports/Mexico_to_pledge_halving_emissions_by_2050_999.html.

38. Simon Mundy, *SA Surprises with Pledge of 42% Emissions Slowdown*, BUSINESS DAY, Dec. 8, 2009, <http://www.businessday.co.za/Articles/Content.aspx?id=88994>; Posting of Christian Teriete to WWF Climate Blog, *Good Move: South Africa Surprises Copenhagen with Peak Pledge*, <http://blogs.panda.org/climate/2009/12/07/good-move-south-africa-surprises-copenhagen-with-peak-pledge/> (Dec. 7, 2009).

39. Christian Oliver et al., *South Korea Pledges Emissions Cut*, FIN. TIMES, Nov. 17, 2009, available at <http://www.ft.com/cms/s/0/49e3bc1a-d3a7-11de-8caf-00144feabdc0.html?ftcamp=rss>.

40. See *Copenhagen Accord*, *supra* note 22, ¶¶ 4-5.

41. Jeff Tollefson, *World Looks Ahead Post-Copenhagen: A Weak International Climate Agreement Leaves Room for Science to Shape the Next Round of Negotiations*, 462 NATURE 966, 967 (2009).

42. See *Copenhagen Accord*, *supra* note 22, ¶¶ 6, 8, 10.

43. *Id.* ¶ 8.

44. *Id.* ¶ 5.

45. *Id.* ¶¶ 3, 8, 10-11.

46. Press Release, U.S. Dep't of State, Bureau of Oceans & Int'l Envtl. & Scientific Affairs, Strategy to Reduce Black Carbon Emissions Affecting the Arctic (Dec. 17, 2009), available at <http://cop15.state.gov/pressroom/133771.htm>.

continuation of the negotiations by the IPCC Long Term Cooperative Action Working Group and Kyoto Protocol Working Group,⁴⁷ and guidance on reforming the Clean Development Mechanism (CDM) and Joint Implementation (JI) programs.⁴⁸ There was no agreement to include carbon capture and storage as a CDM measure, and the Accord instead called for more research on leakage and permanence of sequestration.⁴⁹ The International Union for the Conservation of Nature (IUCN) also made important contributions to the Accord, which included the consideration of gender, the needs of indigenous peoples, the role of marine issues, and the need for environmentally based adaptation measures.⁵⁰

Finally, President Obama and Premier Wen Jiabao of China emerged as the key leaders in saving the Accord.⁵¹ Although there were some very unfortunate conflicts between the U.S. and China along the way, both countries eventually agreed on the urgency of a strong climate agreement.⁵² President Obama perfectly underscored both the successes of the Copenhagen Conference and the need for more action when he stated:

47. See *Copenhagen Accord*, *supra* note 22, at pmb1.

48. See U.N. Framework Convention on Climate Change, Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol, Dec. 7-18, 2009, *Further Guidance Relating to the Clean Development Mechanism*, U.N. Doc. FCCC/KP/CMP/2009/L.10 (Dec. 18, 2009); see also U.N. Framework Convention on Climate Change, Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol, Dec. 7-18, 2009, *Guidance on the Implementation of Article 6 of the Kyoto Protocol* (Dec. 18, 2009).

49. See generally *Copenhagen Accord*, *supra* note 22.

50. See Lorena Aguilar, *At Last a Turning Point for Women and Climate Change?*, INT'L UNION FOR CONSERVATION OF NATURE, Nov. 30, 2009, <http://cms.iucn.org/unfccc/events/copenhagen/?uNewsID=4256>; Annelie Fincke & Gonzalo Oviedo, *Indigenous Women: Most Vulnerable to Climate Change but Key Agents of Change*, IUCN NEWS, June 22, 2009, http://cms.iucn.org/about/work/programmes/social_policy/news/?uNewsID=3403; Press Release, Int'l Union for Conservation of Nature, Copenhagen Climate Summit: Copenhagen Accord a Step in Right Direction, but Insufficient (Dec. 19, 2009), <http://cms.iucn.org/media/materials/releases/?4417/Copenhagen-Climate-Summ-it-Copenhagen-Accord-a-step-in-right-direction-but-insufficient>.

51. See Revkin & Broder, *supra* note 4.

52. *Id.*

For the first time in history all major economies have come together to accept their responsibility to take action to confront the threat of climate change . . . we're going to have to build on the momentum that we've established here in Copenhagen to ensure that international action to significantly reduce emissions is sustained and sufficient over time. We've come a long way, but we have much further to go.⁵³

As President Obama described, sustained international action on emissions reduction will be a key part of any agreement in Mexico City. Furthermore, as the threats and damage associated with sea level rise and changing weather patterns grow stronger, there will have to be a greater focus in each country on climate change adaptation and mitigation.

Thus, while the conference did not achieve a clearly binding agreement or emission reductions satisfying the IPCC requirements to avoid catastrophic global temperature increases, it will serve as the foundation for such an agreement during the November 2010 Conference of the Parties meeting in Mexico City.⁵⁴ There is little point to being depressed about the outcome of Copenhagen because, as Chair Connie Hedegaard stated, "what we need to do is to secure the step that we took and turn it into a result."⁵⁵

53. Press Release, The White House, Office of the Press Sec'y, Remarks by the President During Press Availability in Copenhagen (Dec. 18, 2009), <http://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen>.

54. Lisa Friedman, *Path from Climate Summit Unclear for Many*, N.Y. TIMES, Jan. 4, 2010, available at <http://www.nytimes.com/cwire/2010/01/04/04climatewire-path-from-climate-summit-unclear-for-many-3832.html>

55. Justyna Pawlak, *EU Calls for More U.S. Involvement in Climate Works*, REUTERS, Dec. 22, 2009, available at <http://www.reuters.com/article/idUSTRE5BL21F20091222>.