

# Copenhagen: Climate of Mistrust

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Two weeks of wrangling and grandstanding at the United Nations climate change conference ended with the “Copenhagen Accord”, which was a paper-thin cover-up of what was a near complete failure, though it does enable the process to move forward.

These reflections on the climate negotiations first provide a brief encapsulation of events, followed by a discussion of the key negotiation issues that took centre stage. It then provides a political interpretation of the Copenhagen Accord and its future prospects. The reflections locate the process in the context of the larger, and unresolved tensions between the North and the South. The article concludes with an outline of what the Copenhagen experience suggests is needed in the Indian climate debate.

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The recently concluded Copenhagen talks under the United Nations Framework Convention on Climate Change (UNFCCC) came at the end of an intense two-year negotiation process, dotted with additional high-level meetings, and blessed by the presence of more than 130 heads of state. Despite this, the final “Copenhagen Accord” only barely papered over what was an almost complete collapse of negotiations. The outcome calls into question whether the community of nations can, in fact, craft an effective response to climate change.

Part of the problem is that, at least on the subject of climate change, the word “community” is singularly inappropriate to capture relations between countries. At the root, there is a structural tension around whether and how, the global climate regime should reflect the fact that different countries carry different levels of responsibility for causing the problem. Developing countries construct the problem as one of equitable sharing of development space. Industrialised countries frame it as a techno-managerial problem to be solved with the aid of markets. The festering of this tension has, over time, led to deep mistrust between the “North” and the “South”. Making matters more interesting at Copenhagen was the emergence of a new bloc, comprising China, India, South Africa and Brazil (BASIC), which collectively pushed back against industrialised countries.

In these reflections on the Copenhagen climate negotiations, I locate the Copenhagen process in the context of these larger and unresolved tensions between the North and the South. I first provide a brief encapsulation of events, followed by a discussion of the key negotiation issues that took centre stage. I then provide a political interpretation of the Copenhagen Accord and its future prospects. The article concludes with reflections on what the Copenhagen experience suggests is needed in the Indian climate debate.

## From ‘Hopenhagen’ to ‘Brokenhagen’ to ‘Tokenhagen’<sup>1</sup>

The Copenhagen negotiations were supposed to deliver an “agreed outcome” to address climate change, following a negotiation mandate issued at Bali in December 2007. The two years of negotiations have been fraught, with much of the available meeting time taken up by procedural issues. By early November of this year, it became clear that a legally binding outcome was near impossible to achieve in Copenhagen, and discussion shifted to alternative formulations and to ways of avoiding the blame for a failure.

The procedurally intense approach continued through the early days of Copenhagen. Rumours were rife about various texts being prepared, particularly by the Danish hosts, to be foisted on developing countries at the last moment. While many in industrialised countries expressed frustration with perceived stonewalling, particularly by African nations and small island developing states, this view failed to appreciate the importance of procedural safeguards as weapons of the weak in international negotiations. Indeed, the assertiveness of both groups of countries, sometimes in contradiction to the large developing country leaders of the G-77, was a political development of note.

By the time the heads of state arrived for the last few days, there was, in essence, no consensus text available for them to sign. There followed an extraordinary 24 hours, when heads of state plunged into direct negotiation and even, according to some reports, direct drafting of text. A small group of 26 or so countries was pulled into a “circle of commitment” to resolve contentious issues. However, some of the final hard decisions were reportedly made at a meeting between the United States president and the leaders of the BASIC countries who decided to meet the president together.

The resulting 2.5-page Copenhagen Accord, extraordinarily slim by UN standards, was presented to the Conference of Parties (COP), with the expectation that it would be adopted as part of the consensus outcome from the meeting. However, another fiery night-long session ensued. Some Latin American countries, such as Venezuela, Cuba, Nicaragua and Bolivia expressed their strong displeasure at being excluded from

the process and renounced the agreement on substantive and procedural grounds. Others, such as the small island nation of Tuvalu, rejected the Accord as failing to meet the climate challenge. Yet, others, notably the African Union, the European Union (EU), and other small island nations such as the Maldives, seemingly reluctantly went along with the Accord as a necessary first step, albeit a highly inadequate one.

Given the consensus-based nature of the process, the vociferous objections of the few holdouts seemed to doom adoption of the Accord. It was only salvaged by a last-minute compromise that the COP would “take note of” the Accord rather than formally adopting it, with an appended list of approving Parties. The legal implications of this compromise are still being figured out, but it appears to enable forward movement of negotiations, albeit without the full weight of the Parties behind the compromise formulation. By any accounts, the result was a paper-thin cover-up of what was a near complete failure, but it does enable the process to move forward.

### Copenhagen ‘Crunch’

The concrete negotiation issues that led to this impasse, or “crunch” issues in the parlance of the talks – mitigation commitments, financing, and measurement, reporting and verification (MRV) – reflect the underlying tension over differential treatment of industrialised and developing countries.<sup>2</sup>

Central to Annex 1 countries’ stance is the principle of “common but differentiated responsibilities and respective capabilities”. “Differentiated responsibilities” places the burden of mitigation primarily on industrialised countries that are responsible for the majority (75%) of current stocks of greenhouse gas emissions in the atmosphere. Many developing countries point to low per capita emissions, which in India’s case is about a tenth that of the US, as evidence of limited capabilities. The result is a principle-based negotiation stance around the decision rules for sharing climate or development “space” in an equitable way.

The issue is constructed quite differently in the industrialised world. As the lead US negotiator, Todd Stern, put it in the midst of the Copenhagen talks:

...for most of the 200 years since the Industrial Revolution, people were blissfully ignorant of the fact that emissions cause the greenhouse

effect... It’s the wrong way to look at this. We absolutely recognise our historical role in putting emissions in the atmosphere that are there now. But the sense of guilt or culpability or reparations, I categorically reject that.<sup>3</sup>

Instead, industrialised countries construct the problem around what they see as pragmatic politics aimed at changing future emission trends rather than around principles to redress past wrongs. This fundamental inconsistency continues to dog the negotiations and was only incompletely addressed at Copenhagen.

**One Track, Two Track, Train Wreck?** Developing countries fought hard to enshrine in the Bali Action Plan a “two track” process maintaining strict differentiation: a legally binding Kyoto Protocol track for Annex 1 countries, and a “Long-Term Cooperative Action” (LCA) process for non-Annex 1 countries. Combining tracks, argue developing countries, would be pulling on a string that would unravel the entire architecture of the UNFCCC built around differentiation between the North and the South.

But preservation of differentiation in its pure form runs against another principle of significant practical political (if not legal) importance – comparability of action. Ever since its rejection of the Kyoto Protocol, the US legislative process has constructed “comparability” between the mitigation actions of industrialised and developing countries as a precondition for its own domestic climate legislation. This stance poses the rest of the world with an unfair choice between sacrificing differentiation, and hence equity, or providing the world’s largest emitter an excuse to stay out of the regime. In addition, other Annex 1 countries quite reasonably demand comparability between their actions and those of the US. Both pressures for comparability erode differentiation, either through harmonising both tracks upward to the Kyoto Protocol or downward.

To reconcile this issue in their favour, industrialised countries sought to merge the tracks through what became known as the Australian “schedules approach” which allowed each country to inscribe its national actions in a schedule, with provision for only a soft form of differentiation by action – economy-wide commitments versus a range of national actions – between Annex 1 and non-Annex 1 countries. Developing

countries pressed hard, including through use of procedural obstacles and walkouts, to demand a second commitment period for the Kyoto Protocol.

The 11th hour resolution of the Copenhagen Accord left both options open, but somewhat tipped the balance towards the first. The Accord allows for two schedules, one which will contain economy-wide emission targets by Annex 1 countries, and the other which will document mitigation actions by non-Annex 1 countries. Negotiation on both tracks – Kyoto Protocol and LCA – is to continue, leaving open the possibility of a second commitment period for the Kyoto Protocol. However, the dual schedule approach of the Accord suggests that a single, if somewhat separated track is likely in the future. Developing countries have sought to re-inject differentiation by linking their schedule to Article 4.1 of the Convention, which provides for far less stringent action than Article 4.2, which covers actions by non-Annex 1 countries. In brief, in response to the challenge of reconciling differentiation and comparability, the Copenhagen Accord somewhat blurs differentiation through the schedule approach, and allows for comparability by harmonising downward and making less legally stringent necessary actions by all countries.

### What Price Low-Carbon Development?

The second crunch issue for Copenhagen, financing, also has its roots in differentiation. The principle that industrialised countries should pay for the “agreed full incremental cost” of developing countries measures is enshrined in the UNFCCC. The problem was, and remains, that notwithstanding the word “agreed” there is no clarity on the basis on which incremental costs are to be defined. The result, in practice, has been a bargaining process.

Building on analysis by Nicholas Stern, earlier this year the UK government floated the figure of \$100 billion per year by 2020 as the cost of support for developing country adaptation and mitigation. Many developing countries and analysts place the required figure much higher.<sup>4</sup> The Indian government has consistently demanded that industrialised countries contribute 0.5 to 1% of their GDP for climate mitigation and adaptation. Interestingly, in the course of the two weeks, both India and China indicated

that they did not anticipate benefiting greatly from these funds, but insisted on them as a matter of principle, particularly on behalf of smaller developing countries.

The debate revolves around not only the amount of money, but also on questions of additionality, predictability and governance. Developing countries are correctly concerned that climate funds should be additional to aid, since these are payments by polluters for past emissions. But at the same time, as industrialised countries argue, if addressing climate change requires rethinking development practices, aid patterns over time should also reflect climate considerations. Developing countries stress that climate funds should be predictable, and not subject to the vagaries of the market. Here, Mexico and Norway have suggested a useful mechanism of “assessed contributions” by all on the basis of a basket of criteria.<sup>5</sup> However, citing differentiated responsibility, developing countries are strongly opposed to contributing funds, even if it is less than they receive. Finally, developing countries strongly argue that climate funds should not be construed as aid, but as a response to historical responsibility for past emissions, and therefore should be governed in substantial part by recipient countries. Of particular contention is that the World Bank, controlled by donors, not be allowed to control these funds. Dispute over all three issues are closely tied to the principle of differentiation.

The Copenhagen Accord fails to address adequately any of these conceptual issues. It does, however, place money on the table in a more substantial manner than before, triggered by a last minute and highly strategic announcement by the us. In the Accord, developed countries pledge additional annual amounts “approaching \$30 billion” a year for 2010-2020, and \$100 billion a year by 2020. The latter is not explicitly additional and is tied to “meaningful mitigation actions and transparency on implementation”.

### Measurement, Reporting, Verification

One of the more arcane but also critical issues pertained to whether and how developing country actions *unsupported* by financial aid would be subject to MRV. The Bali Action Plan links developing countries’ “nationally appropriate mitigation actions”

to provision of finance, technology and capacity support from industrialised countries, but the exact legal drafting leaves open to dispute (based on the interpretation of a strategically placed comma!) whether and how these actions are to be subject to MRV. India’s position, as also that of China, was that while actions supported by international finance would be subject to international MRV, unsupported actions undertaken as part of a development strategy would only be subject to domestic scrutiny.

This issue rapidly became one of the potential Copenhagen deal-breakers. Driven by its domestic politics, the us insisted that developing countries (but particularly China) also subject their actions to international scrutiny. Under the final compromise, non-Annex 1 countries would report upon their mitigation actions, with “provisions for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected”.

This formulation allows the issue to be set aside, but also leaves much scope for future conflict over exactly how to reconcile differentiation with comparability. More critically, it is not clear the compromise will pass muster in domestic politics. For example, the detailed rules need to allow India to claim it has retained control over its carbon destiny, while also allowing the us to claim it now has the right to hold India to account, a difficult trick to pull off.

### Interpreting the Accord

As the discussion of these crunch issues suggests, political leaders were able to hold the process together and ensure its continuation, but only by postponing, papering over, or deflecting areas of disagreement. Could continuation of the process under these terms nonetheless be useful to an outcome?

There are multiple ways of asking whether Copenhagen was a meaningful step. From a strictly emissions perspective, the Copenhagen process did culminate in a variety of country pledges to emission cuts. Annex 1 country pledges are estimated to aggregate to 6-14% below 1990 levels by 2020, substantially short of the IPCC call for a 25-40% reduction.<sup>6</sup> Non-Annex 1 countries do better, with the aggregate of their pledges approaching the higher end of their suggested range of a 15-30% deviation from business as usual,<sup>7</sup> with the caveat

that defining business-as-usual trajectories is a highly uncertain exercise. Collectively, however, these pledges are estimated to set us on a track well above 2 degrees celsius warming, and perhaps as high as 550 ppm concentrations and 3 degrees celsius, according to an internal secretariat document leaked during the negotiations, a range consistent with independent projections.<sup>8</sup>

A different and more optimistic view is that Copenhagen should be judged less by whether it locked in emission reductions, and more by whether it unlocked the door to a future and productive deal by addressing key sticking points. From this perspective, articulated by the UN Secretary General among others, that major emitting countries all agreed to place their pledges on the same record, that agreement was reached on a financing number, and that agreement was struck on the key sticking point of international verification will now allow the process to move forward.<sup>9</sup> Those who see the climate problem through the lens of us domestic politics are particularly enthused.<sup>10</sup> That the road to passage of us domestic legislation is substantially cleared even while large developing countries, notably China and India, can declare at least a partial victory, is seen as testament to the skilful formulation of a compromise.

However, even if we accept that process is important for its own sake, the failure to deal with deeper disagreement over principles, particularly around differentiation, suggests that deeply ingrained oppositional stances may well reassert themselves once negotiations resume. An extreme version of this perspective is that Copenhagen represents the worst possible outcome – the overlay of a thin veneer of success over what is a deeply flawed outcome, perpetuating a process that is unable to overcome entrenched differences. From this perspective, a naked failure, followed by a thorough rethink, would have been a preferred outcome.

Whether induced through abject failure or near failure (as with the Copenhagen Accord) any rethink will have to be generated from national politics around climate change, particularly in the large industrialised and developing countries. In many ways, then, the implications of Copenhagen and its impact on the global climate regime now rest with the domestic response that will unfold in national politics. What

sorts of discussion and engagement should the Copenhagen Accord and the process that led to it, provoke in India?

### Copenhagen Accord and India

Minister of State for Environment and Forests, Jairam Ramesh, has offered the conclusion that the Copenhagen Accord is a “good deal” for India. This perspective seems to be based on the claim that India’s “redlines” of no cuts, no nationally specific peaking year, and no international verification had been met. And indeed, from the early news reports and from a debate in the Rajya Sabha on the Copenhagen meeting, it is on these redlines, and on the question of international verification, in particular, that the national debate is engaged.<sup>11</sup>

Inter-country equity and a consequent need for differentiation in commitments are indeed important objectives, and need to be maintained and discussed at the highest level. But given India’s extreme vulnerability to climate change, a point strongly emphasised by the minister and other politicians in the Lok Sabha and in the media, surely it is equally important to discuss whether and how the Copenhagen Accord will make a meaningful contribution to addressing the threat of climate change and India’s role in achieving this objective going forward. Indeed, there has been a growing demand from civil society within India to broaden the climate debate to take seriously not only concerns of inter-country equity, but also the environmental threat of climate change, as well as concerns of intra-country equity.<sup>12</sup> As these statements emphasise, the poorest and most vulnerable in India will be the worst hurt from the impacts of climate change; equity and environmental effectiveness are closely linked.

However, consistent with the hitherto dominant political emphasis on inter-country equity, India’s negotiation strategy so far has had a single overriding objective of ensuring the climate regime evolves in a manner tightly consistent with the principle of differentiated responsibility. The strategy has, so far, largely delivered the objective sought: India has limited international commitments, the architecture of the climate process remains two track (although we came perilously close to losing the battle for the Kyoto Protocol at Copenhagen) and we managed to avoid

being tagged as deal-breakers, in part thanks to the alliance with other BASIC countries and cover from the African group who fought strongly for the Kyoto Protocol.

At the same time, a clear lesson emerging from Copenhagen is that, without a broader political shift, the structural tension around differentiation versus comparability that dominates the climate negotiations will lead inexorably to a watered down and environmentally weak outcome. And India’s poor and vulnerable will be prominent and numerous amongst the losers. This is a compelling reason for the national political debate leading forward from Copenhagen to consider not only preservation of differentiation, but also whether and how India can play a role in turning what is now a vicious circle of environmentally weak measures towards a virtuous circle that rewards strong national environmental actions. To do so will be to seek creative ways past the structural tension described here that currently inhibits forward movement in international climate negotiations.

This is by no means to succumb to naïvete, and argue for unilateral measures that will win other countries over only by force of example or moral suasion. Quite the contrary. Copenhagen has reinforced the perception that, other than the US and China, no single country can shape the course of the climate negotiations. Constructing a negotiating strategy around the dual objectives of equity and environmental effectiveness will be far more challenging and will require greater strategic skill than building one around a single objective, not least because there may well be trade-offs between the two negotiation objectives.

For example, to preserve the principle of differentiation, a strategic alliance with China and other BASIC countries as a way of maintaining pressure for action and preserving the Kyoto Protocol proved to be extremely useful, and was the right thing to do. However, if environmental effectiveness is also an objective, then in the near future, the high and growing level of emissions from China will also become a concern.<sup>13</sup> Based on current pledges for action,<sup>14</sup> by 2020, China’s emissions will be 2.4 times that of the US, and its per capita emissions will be 55-60% as much as US levels but 15-30% higher than EU per capita emissions and well above the expected

world average.<sup>15</sup> Engaging this problem will require developing a more sophisticated and nuanced notion of differentiation, even while preserving India’s interests.

As this example suggests, there are no easy answers in formulating India’s climate policy. That is no reason, however, to duck asking the challenging questions. One important question that emerges from Copenhagen is whether and how India can forge a climate position, in terms of both national plans and international strategy that not only preserves differentiation in the interests of equity, but also promotes an environmentally effective global process that protects the vulnerable in India and elsewhere. There may not be a good answer to this question, but so far, it has not received the focus it deserves in India’s national climate debate.

### NOTES

- 1 These were among the creative labels put out by the crowds of high energy and deeply committed civil society groups swarming the conference.
- 2 See Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford: Oxford University Press), 2006, pp 138-44.
- 3 Quoted in Darren Samuelsohn, “No ‘Pass’ for Developing Countries in Next Treaty – Stern”, *Greenwire*, 12 September 2009.
- 4 See, for example, Table 6.2 in World Bank, *Development and Climate Change*, World Development Report 2010 (Washington DC: World Bank), p 260.
- 5 All Parties would contribute, but that developing countries would be net recipients.
- 6 <http://www.climateactiontracker.org/developed.php>
- 7 See, for example, the UNFCCC Executive Secretary’s press conference at [http://www.wio.cop15.meta-fusion.com/kongresse/cop15/templ/play.php?id\\_kongressmain=1&theme=unfccc&id\\_kongresssession=2759](http://www.wio.cop15.meta-fusion.com/kongresse/cop15/templ/play.php?id_kongressmain=1&theme=unfccc&id_kongresssession=2759)
- 8 Climate Action Tracker places the likely range of temperature rise at 2.8 to 4.5 degrees C. <http://www.climateactiontracker.org/>
- 9 See UN Secretary General, “Outcome of the United Nations Climate Change Conference”, 21 December 2009, Press release. UNIC/PRESS RELEASE/162-2009.
- 10 See, for example, [http://switchboard.nrdc.org/blogs/ddoniger/the\\_copenhagen\\_accord\\_a\\_big\\_st.html](http://switchboard.nrdc.org/blogs/ddoniger/the_copenhagen_accord_a_big_st.html)
- 11 The actual extent of the compromise will only emerge when the details are drafted. The salient question is whether enough gain was made for the offer of “consultation and analysis” on unsupported actions.
- 12 See, for example, “Memorandum to the Government of India on the UNFCCC’s 15th Conference of the Parties at Copenhagen” of December 8, 2009 signed by over 120 groups, and a Statement of TISS/AIPSN Workshop on “Breaking the Deadlock in Climate Change Negotiations”, Mumbai, 31 July–1 August 2009 (Note: I was involved, with others, in drafting this second statement.)
- 13 The tension between keeping the pressure on the US and being aware of China’s growing emissions is increasingly discussed in the media. See Surya Sethi, “Succumbing to Pressure”, *Times of India*, 21 December 2009.
- 14 Using Waxman Markey Projections for the US, 20% cuts from 1990 for EU and 40-45% reductions in intensity for China.
- 15 Prayas, “Comparing Climate Announcements”, [www.prayasune.org](http://www.prayasune.org).