

Adaptation under the Copenhagen Accord

Briefing Note
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Overview

The most discussed outcome of the December 2009 Copenhagen climate change conference is a decision by the Parties to the United Nations Framework Convention on Climate Change (UNFCCC or Convention) to 'take note' of a twelve-paragraph political declaration. The process of negotiating this political declaration, called the Copenhagen Accord (Accord), was conducted primarily by Heads of State and their Ministers, working in parallel with negotiations going on in the Ad hoc Working Group on Long-term Cooperative Action (AWG-LCA) and the Ad hoc Working Group on further commitments for Annex I Parties under the Kyoto Protocol (AWG-KP). The final version of the Accord is attributed to the work of five countries late on the last official day of the conference (Friday, 18 December). The five countries were Brazil, South Africa, India and China (a newly visible coalition called the BASIC countries) and the United States.

When this draft was presented to Parties in the final plenary session objections were raised by a number of Parties including Bolivia, Cuba, Nicaragua, Sudan, Tuvalu and Venezuela. After many hours of further discussion, all Parties could agree to do was 'take note' of the Accord; and in a notification to Parties, the Executive Secretary of the Convention clarified that

...since the Parties...merely took note of [the Accord], its provisions do not have any legal standing within the UNFCCC process even if some Parties decide to associate themselves with it.¹

The Executive Secretary went on to say that 'the Accord is a political agreement, rather than a treaty instrument...'. For purposes of the COP 15 report, Parties that stated their wish to be associated with the Accord by a 31 January 2010 cut-off date will be listed in the chapeau of the Accord, but Parties are also free to associate themselves with the Accord at any time they wish.

The Accord asks Annex I and non-Annex I Parties to provide planned emissions reduction targets (Annex I) or mitigation actions (non-Annex I) to complete a set of blank appendices. The deadline provided in the Accord for submitting these actions

¹ UNFCCC, Executive Secretary, Notification to Parties: Clarification relating to the Notification of 18 January 2010 (25 January 2010), *available at* unfccc.int.

is 31 January 2010.² The Accord states that Least Developed Countries (LDCs) and Small Island Developing States (SIDS) may fulfil this requirement voluntarily on the basis of support, but it is not clear what the nature of this support might be or if LDCs and SIDS will be held to two-year reporting requirements set out in paragraph 5 of the Accord. The UNFCCC Secretariat will maintain an updated record of Party communications related to the Accord (submitted before and after 31 January) on the UNFCCC website.

Re-forging the link between adaptation and response measures

To date, much of the focus of commentary on the Accord has been on its mitigation provisions, which appear to reflect a new willingness on behalf of developing countries with emerging economies to have their mitigation actions measured internationally. From an adaptation standpoint, however, the Copenhagen Accord rolls back the clock by re-forging the link between adaptation to the adverse effects of climate change and the potential impacts of response measures. This occurs in the first operative paragraph of the Accord, where stress is placed on the need to establish a comprehensive adaptation programme, which includes both 'the critical impacts of climate change and the potential impacts of response measures'. Paragraph 3 of the Accord, dealing specifically with adaptation, reinforces this linkage – saying in effect that adaptation actions consist of both addressing the physical adverse effects of climate change and the potential economic impacts of response measures.

Article 4.8 of the Convention first forged this link by requiring full consideration of the actions necessary to meet the specific needs and concerns of developing country Parties '*arising from the adverse effects of climate change and / or the impact of the implementation of response measures*', including actions relating to funding, insurance and the transfer of technology. The adverse effects of climate change and the impacts of response measures (measures taken to mitigate GHG emissions) have different causes, natures, and timing; and the groups affected have different vulnerabilities and interests. As a result, their linkage in the same article under the Convention has proven challenging when negotiating separately on ways to address adaptation to the adverse effects of climate change, especially in regard to the levels of funding required. Led by the Alliance of Small Island States (AOSIS), a number of developing countries fought successfully at the 2007 Bali conference to de-link these two concepts in the Bali Action Plan (BAP).

While the BAP continues to address both issues, response measures are addressed in the subparagraph on mitigation,³ and adaptation to the adverse effects of climate change is addressed in a separate subparagraph.⁴ In the run up to Copenhagen, attempts by certain Parties to re-insert response measures into legal text on adaptation have been resisted by many Annex I and non-Annex I Parties, and language on response measures is currently bracketed in the AWG-LCA draft decision on adaptation. While the provisions of the Copenhagen Accord are not legally binding, as a political 'statement of intent', and possible 'tie breaker' in future negotiating processes, the re-unification of adaptation and response measures is cause for concern.

² 'The decision to submit such information is for individual Parties to make and they are at liberty to provide any clarification of their inputs they deem appropriate.' UNFCCC, Executive Secretary, Notification to Parties: Communication of information relating to the Copenhagen Accord (18 January 2010), *available at* unfccc.int.

³ UNFCCC, Bali Action Plan, section 1(b)(vi), decision 1/CP.13 (2007), *available at* unfccc.int.

⁴ *Ibid.*, section 1(c).

Defining vulnerability

The 'adaptation paragraph' of the Accord (paragraph 3) begins by stating that 'adaptation to the adverse effects of climate change and the potential impacts of response measures is a challenge faced by all countries'. In addition to perpetuating the link to response measures, this statement ignores the principle of 'common but differentiated responsibilities and respective capabilities' underpinning the Convention. The risks and burdens of adapting to climate change will fall on those Parties least responsible for the impacts and with the most limited capacity to cope.

The Convention obliges developed country Parties to assist developing country Parties which are particularly vulnerable to the adverse effects of climate change to meet the cost of adapting to those adverse effects. Nevertheless, the Convention does not explicitly indicate who these particularly vulnerable countries are. The BAP helps to clarify this issue, specifying that international cooperation to support urgent implementation of adaptation actions must take

...into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, especially the least developed countries and small island developing States, and further taking into account the needs of countries in Africa affected by drought, desertification and floods.⁵

In the negotiations leading up to the Copenhagen conference, the definition of particularly vulnerable developing countries became a contentious issue. There is concern amongst certain developing country Parties that this BAP language not only prioritises the needs of some developing countries over others but will limit their ability to access funding and other support for their own adaptation needs. These countries have advocated the use of the following characterisation of vulnerability found in the Convention's preamble:

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change...⁶

The vulnerability issue has become one of the 'stickiest' in the LCA negotiations on adaptation, and the language of the Accord provides little additional clarity. Paragraph 3 of the Accord preserves the terminology of the BAP, referring to the need for urgent action in particularly vulnerable developing countries, especially LDCs and SIDS. Then, rather awkwardly, includes the African continent in the list of particularly vulnerable developing countries, instead of countries in Africa affected by drought, desertification and floods as per the BAP. Although this departure from BAP language may be a drafting error, it is repeated again in paragraph 8 of the Accord.

Unfortunately, paragraph 8 of the Accord, which addresses funding, is not consistent in its characterisation of vulnerability. It prioritises adaptation funding for the 'most vulnerable developing countries, such as LDCs, SIDS and Africa'. The term 'most vulnerable developing countries' is a new formulation that does not appear in either the Convention or the BAP. In addition, the words 'such as' convey the notion that

⁵ Ibid., section 1(c)(i).

⁶ Paragraph 19, preamble, UNFCCC, available at unfccc.int.

LDCs and SIDS (and Africa) are part of a much longer list of 'most vulnerable countries'. The internally inconsistent treatment of vulnerability in the Accord reduces its value as a means of resolving this difficult issue when negotiations on adaptation continue under the AWG-LCA.

Means of support for adaptation actions

While paragraph 8 does prioritise adaptation funding for vulnerable developing countries, this will do little good where the funds do not exist – a chronic problem with adaptation funding under the Convention. The Accord does not provide a dedicated source of funds for adaptation. Short-term funding pledges 'approaching' USD 30 billion for the period 2010 – 2012 call for a 'balanced' allocation between adaptation and mitigation', but balanced does not mean equal, and it is not clear how this balance will be determined. Over the long-term, it is not at all clear that funding for adaptation is included in the USD 100 billion annual pledge by 2020. This long-term funding figure is tied to 'the context of meaningful mitigation actions and transparency on implementation'.

New multilateral funding for adaptation is discussed subsequently in a separate sentence in the paragraph. In the best case, where funding for adaptation is deemed to be included in the Accord's long-term funding goal, there is no mechanism for determining the public / private funding mix, nor how and where this money will be delivered. Negotiations under the finance building block of the BAP have been some of the most polarised, and the Accord provides no direction to the AWG-LCA on a way forward here. In addition, calls from SIDS and other developing country Parties for burden-sharing and compensation mechanisms to deal with loss and damage arising from the impacts of climate change are not touched upon at all in the Accord.

The Accord envisions that the bulk of funding being pledged by the developed country Parties will flow through a Copenhagen Green Climate Fund, meant to be an operating entity of the Convention's financial mechanism (currently the Global Environment Facility or GEF). The GEF has been criticised regularly for slowing down the funding process and for discriminating against smaller developing countries, which often have limited capacity to apply for and absorb sizable amounts of funding – not to mention difficulties complying with co-funding requirements. Developing countries have called for a reform of the financial mechanism with an architecture similar to the Kyoto Protocol's Adaptation Fund. In other words, one that brings the governance of financial resources under more direct control of the Parties, including the ability to access funds directly instead of through an intermediary international implementing agency. Arriving at robust financial arrangements for funding current and future adaptation needs will require a significant amount of additional work by the Parties.

Infrastructure arrangements

For a number of years, developing country Parties have called for concrete infrastructure under the Convention to guide the implementation of adaptation action. The Accord makes no provision for this infrastructure; however, it does provide for the creation of both REDD+ and technology mechanisms. A REDD+ mechanism would be aimed at efforts to mitigate greenhouse gas emissions; and while the technology mechanism is meant to support action on adaptation and mitigation, past experience with the UNFCCC's Expert Group on Technology Transfer (EGTT) shows that the development of mitigation technologies has been emphasised over that of adaptation technologies. For adaptation issues to receive the level of attention

required under the Convention, Parties must agree to an approach that includes a mechanism capable of assisting vulnerable Parties with identifying needs, effectively accessing support and coping with unavoidable loss and damage. The Accord stresses the need to establish a comprehensive adaptation programme which includes international support, but falls short of identifying an appropriate mechanism for doing this.

The Accord: a hindrance or a help to progress on adaptation?

Enhanced action on adaptation under the Convention is one of the most important outcomes for LDCs and SIDS. These are the Parties which will be most severely impacted by the adverse effects of climate change, have limited capacity to deal with these effects and did little to create them in the first place. The Accord places greater emphasis on mitigation actions and support, which reflects the priorities of the final group of Parties involved in drafting it. While it is still unclear how influential the language of the Accord will be in the further work of the AWG-LCA and AWG-KP, the linkage of adaptation and response measures threatens to undo the delicate but clear separation of these two issues achieved under the Bali Action Plan.

The decisions extending the mandates of the LCA and KP processes request that the working groups continue their work on the basis of the draft texts negotiated in parallel to the Copenhagen Accord. The fact that the Accord was not adopted in Copenhagen and a mechanism for implementing its provisions is not in place, may provide some comfort that the more detailed negotiating texts will survive. Nevertheless, the political nature of the Accord and its non-binding status under the UNFCCC process could provide the impetus for moving global climate change decisions outside the UNFCCC forum, e.g. to the G8, G20 or the MEF (Major Economies Forum). The emergence of the BASIC group of developing countries and their plan for regularly scheduled meetings may be an indication of their willingness to move in this direction. Particularly vulnerable developing country Parties, which rarely have a direct voice in these more exclusive international country groupings, would be most harmed by such developments. To ensure the fairness and transparency of the process for the particularly vulnerable, it is critical that international climate change decision-making remains under the aegis of a UN body like the UNFCCC.

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