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After Copenhagen, the Way Forward

By Martin Khor

The global negotiating framework for climate change is in a state of flux because of the confusing manner in which the Copenhagen Conference ended last December. The way forward is to quickly resume the negotiations in the multilateral arena of the UNFCCC and its two working groups.

The UNFCCC Copenhagen Conference in December 2009 ended in some disarray and confusion because of a clash between two processes taking place.

On one hand there was the open, transparent and multilateral process of the UNFCCC and its two working groups on long-term cooperative action (LCA) and further action in the Kyoto Protocol (KP). They worked for the past two years to follow up on the mandate of the Bali Conference of December 2007, continued their work (including through late nights) for two weeks in Copenhagen and produced two reports with draft texts for further negotiations that were adopted by the Copenhagen Conference.

This was the real work formally taking place and built the foundation for another year of work after Copenhagen. The reports give a fair view of the state of play of the extremely complex negotiations. Everyone knew that Copenhagen could not produce a final detailed outcome, and the two reports should have been (and still could be) the stepping stone to the 2010 process.

On the other hand there was the two-day meeting, on the sideline, and held in secrecy, of 26 or 29 (no public information is available) political leaders convened by the Danish Presidency of the Conference without the knowledge of the other member states or the other almost hundred political leaders who were present but not invited.

According to various reports, it was a messy and often stormy meeting, and headed for total failure until a last-minute understanding was reached by the leaders of the US and four developing countries (China, India, Brazil, South Africa). This process produced a Copenhagen Accord which was presented to the plenary which “took note” of it but did not adopt or endorse it.

The inclusive and well-ordered multilateral process and the exclusive and messy “group of 29” process (each going on without reference to each other) eventually had to meet. It did, in the final plenary, and the results were tumultuous. The consequences are messy and confusing.

Two months after, the reverberations of this confusing clash in Copenhagen are still being felt. Climate change is too serious an issue to get lost in the confusion. Thus, the process for 2010 should get sorted out so that the negotiations can resume.

But on what basis? The existence of the Accord and how this may or may not fit into the multilateral process is being hotly debated. Some Western countries even proposed that the UN process be sidelined and a new process involving only the 29 leaders be created to make decisions more quickly. Or else to get an exclusive body like the G20 or the Major Economies Forum to take over the climate negotiations.

A press report (Guardian 14 January) said the US had doubts about yielding primary control of climate negotiations to the UN and quoted its top climate negotiator Todd Stern as wanting to design a regime different from the present one where it is “frustrating” to “debate whether a particular idea is consistent or not consistent with such-and-such an article of a previous agreement.” He proposed setting up a “structure and a regime” that can solve this problem.

This sounds like the US does not want to negotiate within the UNFCCC with due respect for the legal tenets and provisions of this treaty, and would like to set up a new legal regime with different principles and provisions.

In this scenario, the basis for the negotiations would be the Copenhagen Accord, which would thus overthrow the two UNFCCC working group reports. The UNFCCC process itself would be slowed down or stopped. The Convention and its Kyoto Protocol themselves seem to be under threat.

The Danish Prime Minister and the UN Secretary-General seemed to opt for expanding the legally and substantially thin Accord into a full blown regime. In a 30 December joint letter to the 28 or 29 leaders who attended the exclusive Copenhagen meeting, they stated: “The Copenhagen Accord represents the essential first step in a process leading to a robust international climate change treaty.... We must now work very quickly and diligently to get all the other Parties to sign onto the Accord.”

According to media reports from Delhi, the Indian Prime Minister took exception to this letter and replied that it was India’s understanding that the Accord was not a legal document and was not intended to lead to a treaty.

When the Executive Secretary of the UNFCCC sent out a notice to member states requesting them to write to him about their intentions whether to associate with the Accord, there were replies from some developing countries questioning his role in the Accord and his use of the phrase “In the light of the legal character of the Accord.”

On 25 January, Mr. Yvo de Boer clarified on the UNFCCC website that the Accord does not have any legal standing within the UNFCCC process. He stated: “Since the Conference of Parties neither adopted nor endorsed the Accord, but merely took note of it, its provisions do not have any legal standing within the UNFCCC process even if some Parties decide to associate with the Accord.”

Meanwhile, many developing countries indicated that for them the UNFCCC remains the only legitimate venue for the climate negotiations and called for the two working groups to resume their work, with an initial meeting to be held as soon as possible.

The Ministers of BASIC countries (Brazil, South Africa, India and China) at their Delhi meeting on 24 January underscored the centrality of the UNFCCC process and the decision of the Parties to carry forward the negotiations on the two tracks of the LCA and KP working groups.

They wanted all negotiations to be “conducted in an inclusive and transparent manner”, an indication for their preference for the multilateral UNFCCC process instead of an exclusive 29-country process or the G20 or MEF.

And they called for meetings of the two working groups to be convened in March 2010 and ensure they meet at least 5 times before the Mexico Conference in December. They said these meetings are essential and funding, logistics and other procedural issues should not be a constraint to convene these meetings.

It is also significant that when China and India sent in letters to the UNFCCC secretariat providing information on their mitigation actions, they referred to several Convention provisions under which they were giving the information, and did not refer to the Accord at all.

The Association of Small Island States in a Press Statement on 3 February also reiterated its commitment to the UNFCCC as the primary forum for negotiations, and called for the two working groups to resume their work “as a matter of urgency” as well as negotiations to be conducted in a transparent and inclusive manner.

It is clear that the developing countries (including those whose leaders took part in the small-group meeting) do not want to abandon the UNFCCC process nor the Kyoto Protocol, in favour of a new process centered on the Accord. On the contrary, they want the UNFCCC and its working groups to be the basis for this year’s climate talks which should start as soon as possible.

UNFCCC and the Way Forward

This is the right approach for the Way Forward. It would be a mistake to abandon or sideline the UNFCCC multilateral process because the needed climate action requires all countries to take part.

The LCA group has already made significant progress in clarifying the issues, placing them into structures, delineating the areas of agreement and providing options in text form in areas where there are disagreements. The foundation has been laid for progress this year and hopefully a conclusion.

It is not true that there has been no or little progress in the UNFCCC and that it would be impossible to reach an outcome in this venue. Those who argue for a more exclusive venue want to have an advantage in another format in which they have a better chance to get their views accepted, instead of having to go through the democratic multilateral route that has been so well charted out already.

The experience in WTO also shows that having an exclusive 'Green Room' process that is de-linked from the whole membership does not work and in the end wastes rather than saves time.

The Way Forward thus requires a quick resumption of the UNFCCC process, with the two working groups meeting again as soon as possible, and planning for a series of meetings leading to COP16 in December.

Proponents of the Accord can make use of its points to input into the UNFCCC process.

The reports of the two working groups adopted in Copenhagen can be used as reference documents for the resumed negotiations. Parties can be allowed to still advocate their submitted proposals.

The areas already agreed to can be consolidated and the options in areas where there is not yet consensus can be seriously negotiated.

For developing countries, the key issues of finance and technology as well as adaptation can be expected to remain key priorities. The institutional aspects (a Fund under the authority of the COP, a technology policy and implementation mechanism under the COP) should be agreed on quickly, and the substantive issues as identified in the LCA Chair's Report should be further negotiated (such as the quantum, sources, channels and uses of funding; and the assessment, financing, access to affordable technology, the approach to innovation and IPR issues).

On mitigation, the Kyoto Protocol track should be pursued for ambitious targets for Annex I parties of the KP. The aggregate target should be in line with what science requires. The individual national targets should be comparable, so as to have fair effort sharing.

For the US, which is not a KP member, the solution envisaged in Bali should be pursued, i.e. a Decision of the COP that contains the country's agreed reduction figure that is comparable with the commitments of the other developed countries.

The mitigation negotiations will also address developing countries' mitigation actions and the MRV (measurement, reporting and verification) treatment of actions that are supported by finance and technology (which themselves require a MRV system). Land and forest issues would also be treated specially in their present tracks.

On adaptation, there are issues of structure, financing and priorities that have also been identified, that can be further negotiated.

On shared vision, major questions include the integrated nature of all the issues, the long-term global mitigation goal and the equitable framework within which these goals are to be reached.

The main lesson of Copenhagen is that hiving off some countries into a separate track with a separate document is not the right way to conduct global climate negotiations. The way forward is to return to the multilateral forum, where the complex issues have to be sorted out into a final conclusion.

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