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## Beyond Copenhagen: next steps

NAVROZ K. DUBASH<sup>1\*</sup>, LAVANYA RAJAMANI<sup>1</sup>

<sup>1</sup> Centre for Policy Research, Dharma Marg, Chanakyapuri, New Delhi 110021, India

Although not for the reason most climate watchers anticipated, the 15th Conference of Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) and the fifth Meeting of the Parties (CMP-5) to the Kyoto Protocol at Copenhagen marked an important moment in the history of the climate negotiations. Despite considerable political pressure, a much-anticipated legally binding instrument did not emerge from Copenhagen. But Copenhagen was remarkable nevertheless. Never before had an international negotiation attracted 125 heads of state and government, and expended as much political capital, yet failed to deliver in quite so spectacular a fashion. And never before had outcomes been this dramatically misaligned with popular expectations. There are many lessons to be learned from the Copenhagen experience, both substantively and in terms of process.

The Guest Editors have argued elsewhere that the Copenhagen Accord's uncertain legal status, the resulting challenges in its operationalization, and the Accord's disguise of political dissonance are crippling problems (Dubash, 2009; Rajamani, 2010). Others have taken a more positive view, suggesting that the outcome was the best possible under the circumstances. It included a long-term environmental goal, articulation of a number for climate finance, and hinted at the emergence of a middle ground on measurement, reporting and verification, all of which are useful starting points on which future discussions could be built (Doniger, 2009; Bodansky, 2010). Yet others have argued that the 'diplomatic disaster' of Copenhagen usefully exposed fundamental political fault-lines that a post-Copenhagen future must bridge (Grubb, 2010). In the midst of differences in opinion on how much of the Copenhagen outcome is valuable and durable, it is important for policy-makers, negotiators and scholars alike to begin looking beyond Copenhagen. This Special Issue provides a set of ideas to assist with this task.

The articles in this Special Issue combine attention to legal questions (Werksman), the politics underlying climate discussions (Saran), problems facing the multilateral process (Winkler and Beaumont), differing views on the architecture of an agreement (Hare et al. and Rayner), the way forward on adaptation (Denton), and a conceptual reflection on ways in which global regimes can bring about national change (Dai). While admittedly incomplete, these comprise an important subset of topics that require further reflection. Drawing on these articles, this Editorial focuses on three areas particularly ripe for exploration: substantive fault-lines in the negotiations; the importance of appropriate processes and procedures; and the larger political context for climate negotiations.

Substantively, if there was a single overarching dispute in the lead up to Copenhagen, it was over the architecture of the climate regime. Underlying this dissonance were differing views on the relative roles of international and domestic climate regulation and governance. These, in

■ \*Corresponding author. *E-mail:* ndubash@gmail.com

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turn, were shaped by the perceived feasibility, or lack thereof, of extensive international regulation, with US domestic political constraints at the forefront of the discussion. Politically, these debates translated into a question of retaining or jettisoning the Kyoto Protocol and, perhaps more critically, the broader approach that the Kyoto Protocol represents.

In addition to these intractable substantive issues, COP-15 was perceived to be constrained by the lumbering UNFCCC process that was limiting, rather than enabling climate action in a timely and responsive manner and, less importantly, by a well-meaning but inept Presidency. Process problems were compounded by the concern that procedural rules, such as voting by consensus, effectively empowered even 'marginal' actors with blocking power. Some viewed this as an unacceptable veto power by a few; others as indispensable weapons of the weak.

Finally, Copenhagen marked a significant geopolitical moment, highlighting the rise of China and the emergence of large developing countries – the BASIC (Brazil, South Africa, India and China group of countries, also known as the G4) – as a distinct bloc. Little will be accomplished in the future without appropriate recognition of this changed geopolitical terrain. Each of these themes is considered below in light of the ideas generated by the articles in this issue.

### **Climate architecture: exploring the middle ground**

What legal architecture is most suitable for a climate change regime? In the process leading to Copenhagen, this discussion became increasingly polarized around a 'top-down' formulation, understood as the Kyoto Protocol model, and a 'bottom-up' model, most closely identified with the Australian schedules approach (Australia, 2009), which bears a close resemblance to framework convention era discussions of 'pledge and review' approaches. Much discussion has focused on these two approaches as distinct options, each with different legal, political and substantive implications.

By contrast, there is considerable potential in an approach that moves beyond 'either/or' formulations of climate architecture. As Xinyuan Dai notes, these approaches are, at best, imprecisely defined, and each implicitly bundles together various attributes. Thus, the top-down approach is often associated with quantitative output (versus input) targets, backed by strong enforcement measures, all packaged within a legal formulation. In practice, these three elements need not be coterminous. Jake Werksman suggests that the legal form of the agreement need not determine its content, and indeed many advocates of the bottom-up approach seek to situate such an architecture in a legally binding instrument.

Moreover, the articles on top-down and bottom-up approaches in this issue suggest that, on occasion, advocacy of one approach can be accompanied by a somewhat caricatured view of the other. A more useful approach would be to expose the hidden assumptions in each approach.

For example, in his otherwise elegantly framed argument for a bottom-up approach, Steve Rayner suggests that under a top-down approach, 1.5 billion people lacking access to electricity will remain in the dark. Implicit in this suggestion is the view that top-down approaches necessarily imply that climate objectives will trump other policy goals. However, this need not be the case if developing countries receive adequate side-payments for cleaner development – this is the assumption underlying the Clean Development Mechanism (CDM). Or, more comprehensively, if a top-down regime is organized around a burden-sharing arrangement that preserves 'development space', as the efforts at equitable allocations of carbon budgets and the Greenhouse Development Rights approach aim to do (Baer et al., 2008; WBGU, 2009; Kanitkar et al., 2010). Clearly, the relative political attractiveness of the top-down approach to different Parties turns on its burden-sharing formulation.

Similarly, in their otherwise careful argument in favour of a top-down approach, William Hare, Claire Stockwell and Christian Flachsland suggest that a bottom-up approach implies a lack of legal accountability, along with weak accounting and reporting rules, while a top-down approach is synonymous with strong environmental outcomes. However, the outcome effects of a top-down approach are predicated on strong and effective international compliance and enforcement procedures, and a bottom-up approach could, in principle, be constructed with strong rules within a legal framework. The key questions revolve around the political likelihood of either of these outcomes.

Unbundling the attributes of each approach could therefore open up a constructive middle ground that can be exploited for political and substantive gain. And identifying both the most compelling arguments behind each approach, as well as the most trenchant obstacles to their furtherance, may be a useful starting point.

The core of the top-down approach advocated by Hare et al. (with an emphasis on collective target setting) is that addressing climate change – a collective action problem – requires collective bargaining and ways of deterring free-riders. There is also a certain analytical elegance to the top-down approach in that it allows design to address both scientific uncertainties over future climate impacts, as well as formula-based allocations to address the equity dimensions of the climate challenge. These two have come together in a compelling set of recent proposals for developing and allocating carbon budgets (WBGU, 2009; Kanitkar et al., 2010). However, the very transparency of this family of approaches, which exposes both scientific judgements and political trade-offs, has proved to be the biggest stumbling block to agreement. It is doubtful whether an ideal top-down climate regime with adequate commitments and strong compliance procedures can be negotiated in the time-scale required to meaningfully address climate change.

The intellectual core of the bottom-up perspective argued by Rayner (de-emphasizing global coordination *ex ante*) is that climate change is most likely to be solved when effective change is driven by local action driven by achievement of domestic goals. While this approach is often interpreted as a second-best exit route necessitated by political failure, its champions view it as first-best. The kernel of the approach is intuitively appealing: change on the ground is most effectively achieved by working with local-level institutions such as municipalities to introduce low-carbon economic development. By contrast, constructing and superimposing a new set of climate institutions starting at the global level, and driven by a universal and difficult-to-construct framework of climate governance, presents much harder conceptual and political challenges. The principal weaknesses of this approach are that it does not provide a solution to the free-rider problem, a basis for consideration of the adequacy of actions, or a framework for the discussion of climate equity. A pure bottom-up approach founded on the basis that ‘development is inevitably uneven’ is particularly vulnerable on the last count.

In summary, a top-down approach takes as its starting point the science around climate change and consequent constructions of concentration thresholds and emission targets, while a bottom-up approach privileges economic and institutional issues around implementation. Exploring the middle ground requires serious attention to both aspects.

This Special Issue contains some useful insights on the middle ground. Werksman argues that the ‘force of international law does not derive from the threat of enforcement ... but from ... a government’s express intent to comply.’ What, in turn, constitutes a government’s ‘intent to comply’? Dai suggests that an important part of the answer lies in exploring the linkages between domestic action and international regimes. Her key insight is that domestic action itself can be a ratchet mechanism when enabled by a suitably designed international regime.

Two examples illustrate this point. First, an international regime could create a system requiring national governments to compile information. Such a system could play a catalytic role in stimulating national policy action by forcing bureaucracies to generate information and place it in the public domain. Second, even weak international regimes empower beneficiaries of compliance (such as renewable energy industries) and victims of non-compliance (such as populations in low-lying coastal areas) to exert pressure on their national governments. The impact of these constituencies, however, will inevitably be mediated by national, political, social and geographical configurations. Notably, in both these examples the capacity for change derives from domestic action, but is enabled and amplified by a suitable international regime. From this perspective, it is at least as important to strengthen the ratchet mechanism of domestic action enabled by an international regime, as it is to focus on the starting point of commitments or pledges.

For a national-action-focused approach to be credible and effective, however, requires consistent metrics and explicit benchmarks against which national actions can be measured. To ensure consistency with the science, emission benchmarks based on the trajectories needed to meet a stabilization target are necessary. Focusing on 'direction of travel', as Rayner does, rather than the exact time or point of arrival, lacks scientific moorings and the basis for domestic groups to exercise political leverage. Much of the developing world is only likely to perceive such a regime as legitimate if national actions are benchmarked against principle-based criteria that operationalize notions of equity. For all the strengths of the national-action-focused approach, without suitable benchmarking against both environmental and equity criteria, there is considerable risk of a slide back to the weak formulation of the Copenhagen Accord. By contrast, combining national actions with internationally formulated benchmarks provides a useful way for bottom-up and top-down approaches to be mutually enhancing.

Would the quest for environmental and equity benchmarks risk simply miring negotiations in the political quagmire that has stalled progress so far? Possibly. However, the sleight of hand here is that it may be easier to gain agreement on principles, and benchmarks that derive from them, that will guide the evolution of the regime in the future, than on hard commitments or allocations *ex ante*. This is because doing so allows greater flexibility to countries to react to new information about costs and benefits.

In addition to ways of combining top-down and bottom-up approaches, another approach to the middle ground, not discussed in the articles here, is to seek a portfolio approach to a climate regime. This approach might be based on the continuation and enhancement of the Kyoto Protocol by existing Parties, combined with a hybrid approach, as described above, for other Parties, and perhaps a pure 'bottom-up' approach based only on national actions for the least developed countries (Rajamani, 2009; Grubb, 2010). Whether through a portfolio approach, or a pledge approach backed by the ratchet of principle-based benchmarks, the case for exploring the middle ground rests on recognizing that beyond the binary choices presented in the conventional debate lies the potential for creative combinations.

Finally, the case for mining the middle ground is buttressed by the current bleak prospects for climate negotiations. The cold political reality is that versions of both approaches currently on the table – top-down and bottom-up – are weak and inadequate to meet the climate challenge. For example, the targets and actions that countries have inscribed in the Appendices of the Copenhagen Accord fall well short of the measures considered necessary to achieve stabilization at 2°C (Rogelj et al., 2010), and the Accord contains no indications of the complementary international benchmarks discussed above. At the same time, environmentally robust and equity-compatible top-down targets backed by compliance provisions do not appear within reach. In this context, the imperative should be to find ways to strengthen the regime, whether the starting point is the top or the bottom.

## Process, procedure and other animals

The inability of the UNFCCC and Kyoto Protocol processes to arrive at an agreed outcome, and in particular the failure to adopt the Copenhagen Accord, which – limited as it is – represents ‘enhanced *status quo*’ (Winkler and Beaumont), led many analysts to argue that these processes, characterized by universal representation and consensus-based decision-making, are fundamentally flawed. In addition, other less representative but more responsive fora such as the G8/G20 or the Major Economies Forum (MEF) are more likely to generate an appropriate resolution to the climate change problematic (Ladislaw, 2010). Here too, as with the architectural question, there is considerable scope for harnessing the middle ground.

As Harald Winkler and Judy Beaumont argue, dialogue in alternate fora such as the MEF can lead to common understandings, but the understandings so reached need to be translated into a formal agreement. The UNFCCC and Kyoto Protocol processes (together forming an evolving legal regime that has the weight of over two decades of intergovernmental negotiations behind it) offer that gravitas and formality. Understandings reached in alternate fora can send appropriate signals to the UNFCCC and Kyoto Protocol processes, but these fora cannot, and must not, supplant the multilateral UN processes. The UNFCCC and Kyoto Protocol processes are the only ones that are structured to accord due importance, as Winkler and Beaumont note, to adaptation. They are the only fora in which developing countries are in the clear majority, and every country has an equal voice and vote, ensuring thereby that weak and vulnerable states are duly represented. Furthermore, it is only in such truly multilateral fora that competitiveness concerns can be addressed. In a world of sovereign equal states, addressing a problem as distinctive as climate change, these will ensure the continuing importance of the UNFCCC process.

In the aftermath of Copenhagen, the UNFCCC and Kyoto Protocol’s consensus-based decision-making procedure drew considerable criticism. Admittedly, less cumbersome voting procedures exist and merit exploration. However, the bad press on this rule deflected attention from the underlying problem – the process irregularities that emboldened some countries to use this rule to perform a blocking function. If negotiations within the UNFCCC, including in smaller configurations (such as in the ‘Friends of the Chair’ format) are to be perceived as legitimate, then they must be designed to be inclusive and representative. Winkler and Beaumont dwell on this point in their article. Indeed every milestone in the history of the climate negotiations has been achieved through the judicious use of small-group negotiations, the results of which are presented to a COP plenary armed with the consensus-based decision-making procedure. Taken together, these arguments suggest – not that it is time to invest in other processes and fora – that it is precisely because investments were dispersed in the lead-up to Copenhagen that the UNFCCC process suffered.

Through two decades of climate negotiations, Parties have created an extensive institutional and normative architecture for climate governance. Until the many intractable substantive disagreements can be resolved, as Werksman argues, Parties can usefully invest in strengthening the institutional and procedural complex ‘to ensure quality of data, harmonize standards and policies, coordinate carbon markets, and review Parties’ performance’. Fatima Denton highlights the institutional progress that has been wrought within the climate regime on adaptation finance. More broadly, the UNFCCC’s non-reciprocity-based template, Shyam Saran argues, holds powerful intuitive and obvious appeal for developing countries. While developing countries may not be able to advance their preferred vision of differential treatment, they do, Saran suggests, have the political heft to ensure that the UNFCCC retains its primacy.

## Climate change and the geopolitical chess-board

Perhaps the enduring lesson of Copenhagen is that climate change policy is not the province of climate change experts, if it ever was. Today, no useful discussion of a way forward for climate change can fail to engage with the larger geopolitical context within which global climate discussions are being conducted.

Climate politics have long had a strong North–South axis. As Saran convincingly explains, these politics are embedded within a larger shift from what he characterizes as ‘non-reciprocity-based’ relationships (that recognize the distinct challenges of developing countries and therefore the space to implement policies to stimulate development) to ‘reciprocity-based’ regimes (based on the metaphor of the level playing field, that do not distinguish between countries based on their level of development). The UNFCCC, born of the earlier period, sits uneasily in today’s world of level playing fields. The developing world is undoubtedly far better placed – economically and politically – than in 1992, and it is disingenuous to pretend otherwise. But it is equally problematic to deny that there remain vast disparities between developing countries, and heavy burdens of underdevelopment within many developing countries, both of which buttress the salience of differentiation as a concept.

The rise of the BASIC bloc exemplifies this two-sided story, with new-found geopolitical confidence co-existing uneasily with poverty burdens and governance shortfalls. While there may come a time when it is not so, most developing countries – BASIC included – are currently ill-equipped in conceptual and diplomatic terms to change their form of engagement with global processes – from defensive rule takers to proactive rule makers. In this context, differentiation and symmetry between North and South are fated to remain contested but balanced concepts, as both Saran and Werksman point out. There is little scope for an agreement that is cleanly organized around only one or the other principle; geopolitical realities clearly delimit the agreement space to one that accommodates both these concepts.

By far the single biggest change since 1992, and a substantial reason for shifting North–South politics, is the rise of China. Indeed, some observers view Copenhagen as the moment when China ‘made its debut as a superpower’ giving rise to a G2 along with the USA (Desai, 2010). The danger is that, through a series of concatenating conditions on emission reductions, this new duopoly will drag the process to its lowest common denominator, as appears to have happened at Copenhagen. Alternatively, the rest of the world will have to accept the ‘USA–China reality check’ at Copenhagen (Grubb, 2010) and construct a fragmented regime that may include differentiated legal thresholds. A third possibility is new forms of creative alliances, of which BASIC is one early instance, which seeks to shift and balance power, opening up new options (Desai, 2010).

The rise of China raises an additional point. In a collective action problem, significant countries can extract concessions for their participation (Hare et al.). So far, the USA has occupied the role of the dominant player, giving it an effective veto over significant elements of the climate regime. Over time, as China’s emissions grow, a potential Chinese veto will compel accommodation even more than an American veto has done, and it will probably be backed by growing economic power and political reach. Given the risk of two, rather than one, veto-wielding powers, it is certainly in the collective interest to agree, at least, on the principles that guide the evolution of the climate regime, sooner rather than later. In this context, much of the developed world’s hitherto largely dismissive stance towards equity considerations as politically unrealistic may require revision. Political realism is a function of power, and with power shifts towards China backed by BASIC, the equity agenda cannot be dismissed quite so easily. Formulations that include

accommodation for past emissions, whether phrased as ‘historical responsibility’ or in other more politically palatable forms, and articulation of principles to guide future emissions, will become harder – not easier – to avoid.

## Conclusions

As this brief discussion suggests, and the articles in this collection reinforce, the lessons of Copenhagen are not for the faint-hearted. Geopolitical uncertainty further complicates a problem rooted in scientific, economic and institutional uncertainties. In this context, the UNFCCC-led process would be well advised, in the forthcoming Mexico and South Africa conferences, to diligently pursue the middle ground, notably on climate architecture through the consideration of hybrid solutions, which may fruitfully include a renewed Kyoto Protocol. The process could also focus on ways of articulating and operationalizing benchmarks for environmental and equity outcomes to guide the future evolution of the regime, and thereby address geopolitical uncertainties. The UNFCCC-led process could be supported by creative external fora and stimuli. While incrementalism may not be an inspiring rallying cry for a problem laden with the urgency of climate change, it is incumbent on all of us to ensure that the incremental measures are robust and maximize the chances of adequately and fairly addressing the challenge of climate change.

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