

# Evolving Responsibility? The Principle of Common but Differentiated Responsibility in the UNFCCC

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## INTRODUCTION

At their core, the United Nations Framework Convention on Climate Change (UNFCCC) negotiations can be understood as a series of attempts to operationalize the international legal principle of “common but differentiated responsibilities.”<sup>3</sup> The negotiations make clear that a global agreement to address the problem of climate change must necessarily apportion responsibility to act among diverse parties. The principle of common but differentiated responsibilities (CDR) has guided the process of apportionment within the UNFCCC since its inception in 1992.<sup>4</sup> Although the principle has never been susceptible to precise definition,<sup>5</sup> CDR has found expression within the climate change regime through a series of agreements in which parties have divided themselves into different groups in order to take on different responsibilities to act. This shifting landscape of responsibility demonstrates that the principle of CDR has evolved over time. As a result, it has taken on different meanings at different stages in the life of the negotiations.

The goal of this Article is to analyze the results of the Copenhagen negotiations with a focus on the shifts in meaning and interpretation of the principle of CDR that occurred there. We argue that, although the Copenhagen negotiations failed to produce a legally binding agreement, the parties involved

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3. The principle, enshrined within the UNFCCC, was explicitly formulated in the 1992 Rio Declaration on Environment and Development:

In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

United Nations Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 7, U.N. Doc. A/CONF. 151/26 (Aug. 12, 1992); see United Nations Framework Convention on Climate Change, chapeau, arts. 3.1, 4.1, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107 (hereinafter UNFCCC).

4. See UNFCCC, chapeau, arts. 3.1, 4.1.

5. See Christopher D. Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT'L L. 276 (2004).

in the negotiations made important, albeit measured progress toward agreeing on a new instantiation of the principle of CDR. This long elusive progress represents an important step in crafting the post-2012 regime.

We proceed by briefly describing the history of CDR within the UNFCCC, focusing on the lead-up to Copenhagen. We then discuss the outcome of the Copenhagen meeting as it pertains to changes in the principle of CDR. Specifically, we highlight three key aspects of the Copenhagen Accord that have subtly reframed the issue of responsibility within the regime: differentiation of developing country parties; measuring, reporting, and verifying developing country mitigation actions; and financing mitigation and adaptation actions in developing countries. We conclude with a brief discussion of the process problems that plagued the Copenhagen negotiations and the controversies that sprang from attempting to agree on common responsibilities without common participation.

#### RESPONSIBILITY IN THE LEAD UP TO COP15

The principle of CDR has had a number of manifestations throughout the history of the UNFCCC. The Convention itself originally divided parties into three groups: developed countries (Annex I), countries undergoing a transition to a market economy (also Annex I parties, but differentiated within the Annex), and developing countries (non-Annex I). Although the Convention contained no emission targets, a number of its provisions apportioned responsibility between the different groups, thus giving a readily discernible structure to the principle.<sup>6</sup> The next major milestone in the evolution of the principle was the 1997 Kyoto Protocol. The Kyoto Protocol adopted a simple two-tiered system for assigning responsibility, largely in the form of mitigation targets.<sup>7</sup> The Protocol assigned targets to some countries and none for others. Specifically, it defined targets for both countries that were members of the OECD in 1990 and countries that were in transition to a market economy at the time.<sup>8</sup> It established no targets for developing countries.<sup>9</sup> Nevertheless, developing nations could still participate voluntarily in the Clean Development Mechanism (CDM). Under the CDM, specific emission-reducing projects in developing countries generate credits that can be sold into developed countries to offset emissions there.<sup>10</sup>

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6. See, e.g., UNFCCC art. 3.1 (“developed country Parties should take the lead in combating climate change and the adverse effects thereof”); *id.* art. 4.6 (“a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change”); *id.* art. 4.7 (“[t]he extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology”).

7. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997 U.N. Doc. FCCC/CP/1997/L.7/Add.1 [hereinafter *Kyoto Protocol*].

8. See *id.* art. 3.1; Alan Manne & Richard Richels, *US Rejection of the Kyoto Protocol: the impact on compliance costs and CO<sub>2</sub> emissions*, 32 ENERGY POL’Y 447, 448-49 (2004).

9. See generally, *Kyoto Protocol*.

10. *Kyoto Protocol*, art. 12.

Since 1997, however, the rapid rise of major developing-country emitters, such as India and China,<sup>11</sup> coupled with the ossification of scientific consensus over climate change<sup>12</sup> has shifted the way key players view the process of distributing responsibility to act. In light of these changes, negotiations about what will happen after the Protocol's first commitment period ends in 2012 have raised the need for a different model.

In their efforts to answer these questions over the two years of intensive negotiations leading up to Copenhagen, UNFCCC delegates grappled with different ways of conceptualizing responsibility. The frameworks that delegates put forward included such varied conceptions as: historical emissions, contemporary emissions, per capita emissions, and even rights to "atmospheric space."<sup>13</sup> In spite of these disparate positions, the parties made some initial progress on the responsibility question at the 2007 Bali negotiations.

The Bali negotiations laid out the roadmap for the next two years of negotiations leading up to Copenhagen.<sup>14</sup> At that meeting, UNFCCC parties reached an initial agreement about the types of actions that different parties would take.<sup>15</sup> Specifically, the parties agreed to a process to address enhanced action on mitigation. This process included an agreement to consider nationally appropriate mitigation actions (NAMAs) for developing country parties and quantified emission limitation and reduction objectives for developed country parties.<sup>16</sup>

In spite of this progress, significant disagreement on two key points persisted through the two years of pre-Copenhagen negotiations. First, the parties remained split over what constitutes a "developing country."<sup>17</sup> Second, countries remained unresolved on the question of how NAMAs should be supported and monitored.<sup>18</sup> The Copenhagen Accord made important progress on both points.<sup>19</sup>

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11. China has recently become the world's largest greenhouse gas emitter. Its emissions per capita, however, remain significantly lower than most developed countries. See INT'L ENERGY AGENCY, KEY WORLD ENERGY STATISTICS, 48-57 (2009).

12. See, e.g., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007 – THE PHYSICAL SCIENCE BASIS: CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE IPCC 95-127 (Susan Solomon et al. eds., 2007).

13. See, e.g., Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, Draft Proposal by Chair, FCCC/KP/AWG/2010/CRP.2 at 12, 16 (Aug. 6, 2010).

14. See Bali Action Plan, Decision 1/CP.13, U.N. Doc. FCCC/CP/2007/6/Add.1 (Mar. 14, 2008).

15. See *id.* ¶ 1.

16. *Id.* ¶ 1(b). The key difference is that quantified emission limitation and reduction objectives are broad economy-wide emission limitations, while NAMAs are more flexible and may take other forms. For example, a NAMA could take the form of an emissions intensity target, limiting emissions per unit GDP.

17. See Kati Kulovesi & María Gutiérrez, *Climate Change Negotiations Update*, 18 RECIEL 229, 237 (2009) (the recent rapid economic growth in some emerging economies drove this split of opinion over classification).

18. See *id.*; Report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention on its seventh session, FCCC/AWGLCA/2009/14 at 88 (pre-Copenhagen negotiating text).

19. A third related issue was U.S. involvement. The U.S. was reticent to take on commitments, absent commitments from major developing countries. Other major developed countries were, in turn, resistant to making further commitments under the Kyoto Protocol (which the U.S. has not ratified), without a mechanism for the U.S. to make comparable commitments. While this was an important dynamic in Copenhagen, it

## RESPONSIBILITY IN THE COPENHAGEN ACCORD

The primary output of the 2009 Copenhagen conference was the Copenhagen Accord.<sup>20</sup> Although the Accord is not the legally binding agreement many had hoped for, it is nonetheless an important landmark in the history of the regime. Specifically, the Accord represents the next significant step after Bali in reshaping the principle of CDR within the regime.

Before analyzing the contents of the Accord, it is important to note that the document has an unusual and somewhat ambiguous legal status. Due to the opposition of a small number of developing countries, the Conference of the Parties (COP) did not adopt the Accord.<sup>21</sup> Rather, the COP “took note” of the document. Procedurally, taking note of the Accord gives it “some status in the UNFCCC process but not as much as endorsement by the COP.”<sup>22</sup> In place of adopting the Accord, the parties established a process whereby parties could “associate” themselves with the document through a notification to the UNFCCC secretariat of their mitigation targets or, in the case of developing countries, NAMAs.<sup>23</sup> This process is unprecedented in the UNFCCC and somewhat tempers the accomplishments of the Accord given the murky legal nature of the document.<sup>24</sup>

While the Accord surmounted some important political barriers with respect to issues such as articulating a shared vision,<sup>25</sup> the most important responsibility-related movements occurred with regard to: (1) differentiation of developing countries; (2) measurement, reporting, and verification (MRV) of NAMAs; and (3) articulating clear goals for finance. All of these movements represent important shifts in the ongoing responsibility debate. They give an early peek into how responsibility is likely to be conceptualized and operationalized in the next generation of multilateral climate governance.

## DIFFERENTIATION

The manner in which countries are divided into groups to take on different types of commitments is perhaps the most central issue in working out how the principle of common but differentiated responsibilities will be enacted in a post-

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is beyond the scope of this note. For an excellent overview of the issues leading up to Copenhagen, see Kulovesi & Gutiérrez, *supra* note 17.

20. Copenhagen Accord, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009) [hereinafter, *Copenhagen Accord*].

21. See Tomilola Akanle et al., *Summary of the Copenhagen Climate Change Conference*, EARTH NEGOTIATIONS BULL., Dec. 22, 2009, at 28, available at <http://www.iisd.ca/climate/cop15/>.

22. Daniel Bodansky, *The Copenhagen Climate Change Conference: A Post-Mortem*, 104 AM. J. INT'L L. (forthcoming 2010) (unpublished manuscript at 8, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1553167](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1553167)); see also, Elizabeth Burleson, *Climate Change Consensus*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 543, 548 (2010) (likening the process of “taking note” to a letter of intent).

23. See Conference of the Parties to the UNFCCC, Dec. 7-19, 2009, Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, Decision 2/CP.15, U.N. Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010).

24. See *infra*, Conclusion, for a discussion of some of the procedural problems that led to the failure to adopt and the ramifications thereof.

25. Part of that shared vision was setting a goal of limiting global temperature increase to two degrees Celsius. *Copenhagen Accord*, ¶ 2.

2012 regime.<sup>26</sup> In the months leading up to Copenhagen, discussions surrounding a re-differentiation of parties to account for differences among developing countries were increasingly contentious. Some parties, such as the United States, Canada, and Australia were keen to allay economic competitiveness concerns by creating a new category of “advanced developing countries” with heightened responsibility to act.<sup>27</sup> Many of the nations potentially impacted by such a change adamantly opposed the proposed distinction.<sup>28</sup> Ultimately, progress in Copenhagen required concessions by key players on all sides of the debate.

This was especially true with respect to the United States, which staunchly opposed participation in any future agreement that did not include mitigation commitments for key developing countries.<sup>29</sup> The U.S. position softened in Copenhagen however, as evidenced by its acceptance of NAMAs for all developing countries, irrespective of their level of development. This was significantly different from the earlier U.S. insistence on quantitative targets. U.S. acceptance of NAMAs represents an important concession, especially as the country faces significant domestic resistance to making binding commitments without similar requirements for “major emitters” in the developing world.

Key developing countries made concessions as well. Although no new classification of “major emitters” emerged, the Accord included one notable distinction between groups of developing country parties. The Accord stipulated that, while developing countries in general “will implement mitigation actions,” least developed countries (LDCs) and small island developing states (SIDS) “may undertake actions voluntarily and on the basis of support.”<sup>30</sup> The introduction of this distinction represents an unprecedented shift in the way that the principle of common but differentiated responsibilities is operationalized within the regime.<sup>31</sup> Unlike the Kyoto Protocol with its two-tiered, commitment-or-not approach, the Copenhagen Accord sets up a three-tiered system for assigning responsibility to cut emissions. These tiers are: developed countries with quantified targets; developing countries who “will” take some action; and LDCs and SIDS, who “may” take action, contingent upon funding from the international community.<sup>32</sup> Although the actualized emission reductions resulting from these three tiers of responsibility remains uncertain,<sup>33</sup> in the long

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26. If all developing countries remained in the same category, it would be difficult for the regime to differentiate the responsibilities of more advanced developing countries, like China and India, from least developed countries, such as Mali and Bangladesh.

27. See Sikina Jinnah et al., *Tripping Points: Barriers and bargaining chips on the road to Copenhagen*, ENVTL. RES. LETTERS, Aug. 5, 2009, at 3.

28. *Id.*

29. See Tomilola Akanle et al., *Summary of the Bangkok Climate Change Talks*, EARTH NEGOTIATIONS BULL., Oct. 12, 2009, 13, available at <http://www.iisd.ca/climate/ccwg7/> (“The US said the shape of a future deal would entail . . . major advanced developing economies undertaking measurable and quantifiable national actions and meaningful mid-term reductions.”).

30. *Copenhagen Accord*, ¶ 5 (emphasis added).

31. The Group of 77 and China (G77/China), the major developing country negotiating block, has long been opposed to any differentiation at all, likely out of concern that it would both drive a wedge into their negotiating block, and be used as a way to foist quantitative targets onto major developing countries in the future.

32. See *Copenhagen Accord*, ¶ 5.

33. For an up-to-date summary of commitments under the Accord, see [www.usclimateactionnetwork.org](http://www.usclimateactionnetwork.org), *Who's on Board with the Copenhagen Accord?*, <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments> (last visited Nov. 2, 2010).

term the new three-tiered architecture may reveal itself to be one of the most significant political outcomes of the Copenhagen negotiations.

#### MEASURING, REPORTING, AND VERIFYING

The issue of measuring, reporting, and verifying (MRV) mitigation actions is intimately tied up with notions of accountability within the regime. In the lead-up to Copenhagen, strong disagreements about how to structure MRV for NAMAs plagued discussions surrounding MRV of mitigation actions.<sup>34</sup> Central to this debate was the question of whether NAMAs should be subject to international or domestic MRV. Developed countries, interested in independent verification of developing country mitigation actions, were pushing for international MRV.<sup>35</sup> Conversely, many developing countries, citing sovereignty concerns, resisted this position, calling instead for domestic MRV, which could subsequently be shared with the UNFCCC via national communications.<sup>36</sup>

Although the politics of allocating responsibility are not as apparent on the surface of the MRV issue as they are in the case of differentiation discussions, differing understandings of responsibility are also at the core of this debate. Many developing countries have taken the position that the responsibility to address climate change lies with those that caused the bulk of the problem through 19<sup>th</sup> and 20<sup>th</sup> century industrialization. This belief underlies the pre-Copenhagen developing country position that NAMA MRV should be done at the domestic level. For those who share this perspective, NAMAs themselves are a concession because they involve agreement to take action to address a problem that developing countries had little role in creating. International verification of these actions further formalizes this commitment to take action and represents a step down the slippery slope of developing country responsibility to act. In contrast, countries that advocate for differentiation see NAMAs by “emerging economies” as critical to agreement on any future climate agreement and want to ensure that the emissions reductions brought about by these actions are verifiable. Accordingly, these countries seek to more fully incorporate “emerging economy” actions into the climate regime via international MRV.

The Accord contains an important compromise among divergent positions on this topic that should not be overlooked. Specifically, the parties agreed to two tiers of MRV: international MRV for NAMAs that are supported by international finance, and domestic MRV with “international consultations and analysis” for domestically-funded NAMAs.<sup>37</sup> The second of the two was the more contentious, with developed countries pushing for full international MRV for all NAMAs. On the other hand, developing countries, China in particular, refused anything but domestic verification.<sup>38</sup> Domestic MRV with “international consultations and analysis” represented a hard-fought middle ground on this difficult issue.<sup>39</sup>

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34. Parties also agreed to MRV for donor financing commitments in Bali. This aspect of the discussion will not be addressed here.

35. See Kulovesi & Gutiérrez, *supra* note 17, at 237.

36. See *id.*

37. *Copenhagen Accord*, ¶ 5.

38. See Bryan Walsh, *Frustration Mounts in Copenhagen as Talks Stall*, TIME, Dec. 15, 2009, [http://www.time.com/time/specials/packages/article/0,28804,1929071\\_1929070\\_1948020,00.html](http://www.time.com/time/specials/packages/article/0,28804,1929071_1929070_1948020,00.html).

39. See *Copenhagen Accord*, ¶ 5.

This approach to MRV adds another level of complexity to the three-tiered system of differentiation of responsibility established by the Accord. Among the second tier of developing country parties that “will” take mitigation actions, the responsibility for international MRV only accrues for those actions that are supported by international finance. This suggests that the second tier of countries may be internally differentiated as well. Some may fulfill their commitments solely through domestic funding, not submitting to any international MRV at all, while others may fulfill their commitment only after receiving international funding. This funding will subject those countries to higher international scrutiny than their domestically-funded, second-tier counterparts. This differentiation between domestically and internationally funded NAMAs is another important component of emerging character of the principle of CDR in the post-2012 regime.

The compromise requiring MRV for only internationally-aided reduction efforts effectively distances domestically-funded NAMAs from the strictures of the UNFCCC emissions accounting system. This separation is important for at least two reasons. First, it will allow developing countries that wish to fund their own NAMAs to effectively opt out of the regime’s formal emissions accounting system. This will allow these countries to make politically valuable claims about their emission reduction actions without having to verify the accuracy of those claims through the regime’s MRV system.

Second, this compromise results in a system in which the domestically-funded reduction efforts taken by developing countries cannot be directly compared to the reduction efforts taken by developed countries. By avoiding the international MRV system and effectively reporting their own numbers, domestically-funded developing country efforts cannot be neatly put into columns and numerically compared with developed country efforts. This is useful to developing countries precisely because it reinforces their contention that their responsibility to act is fundamentally different from that of developed countries. A framework that drew all NAMA MRV into the same system that evaluates developed country commitments would make developing country actions fungible with developed country actions. This would be a step toward blurring the categories and thus a potential movement toward drawing developing countries into a unitary framework with binding quantitative targets for all. Developing countries’ ability to avoid the international MRV system reinforces that the difference in responsibility between developed and developing countries is not simply one of degree, but one of kind.

This is not to say that developed countries were entirely frustrated by the outcome of the Accord. Developed countries were able to draw internationally funded projects into the international MRV system. Furthermore, although domestically funded NAMAs will not be subject to international MRV, domestic MRV will take place with “international consultation and analysis.”<sup>40</sup> These movements may begin to pressure emerging economies to take quantitative emission targets in the future that will be comparable to those of developed countries.

The above analysis demonstrates that MRV is inescapably bound up with debates about parties’ common but differentiated responsibilities. The effect of MRV on shaping CDR within the regime helps to explain why MRV requirements were among the most contentious matters on the agenda in Copenhagen. Understood in this light, the Copenhagen MRV compromise represents an important step in shaping the principle of CDR in the post-2012 regime.

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40. *See id.*

## FINANCE

The final significant shift in the responsibility debate at Copenhagen came in the realm of finance. Finance to help developing countries mitigate and adapt to the effects of climate change has always been front-and-center in the responsibility debate.<sup>41</sup> Many countries see provisioning of this type of funding as a trust-building process by which developed countries demonstrate their leadership in taking responsibility to act. In Copenhagen, developed countries addressed their agreed responsibility for financing actions in developing countries by articulating clear, quantifiable financial goals and initial proposals for fund management.<sup>42</sup> Specifically, the Accord calls for nearly 30 billion U.S. dollars in “fast start” funding for the 2010-2012 period, building up to 100 billion U.S. dollars per year by 2020 to “address the needs of developing countries.”<sup>43</sup> The Accord also calls for the establishment of various institutions to operationalize this financing, including the creation of the Copenhagen Green Climate Fund to serve as an operating entity under the UNFCCC.<sup>44</sup> The Accord thus replaces *ad hoc* discussions and commitments of finance with a centralized goal that represents a concrete, quantified commitment to pay on the part of developed countries. The challenge now will be to deliver on these aggregate promises.

As of October 2, 2010, aggregate annual pledges for fast start financing from the European Union, Norway, Japan, Australia, Canada, Switzerland and the United States amount to an estimated: \$10.10 billion (2010); \$9.88 billion (2011); and \$8.02 billion (2012).<sup>45</sup> These pledges, if delivered, come close to meeting the aggregate short-term goal laid out in the Accord. While the articulation of aggregate goals is an important step forward, the failure of donor countries to deliver on these promises could have catastrophic implications for the future of international cooperation on climate change. The leadership shown by developed countries by making these pledges and the associated trust those pledges have begun to engender would be severely compromised if developed countries failed to deliver on even the short-term financing. In other words, agreeing to take responsibility is different from actually taking it. The fact that the Copenhagen Accord is not formally a part of the UNFCCC will further complicate the implementation of these financing pledges, as UNFCCC institutions may not be available to administer the funds. Regardless of these complications, new commitments to funding the process represent the third important way that the principle of common but differentiated responsibilities was reshaped and reenacted in Copenhagen.

## CONCLUSION: COMMON RESPONSIBILITY WITHOUT COMMON PARTICIPATION?

The outcome of the Copenhagen conference should not be analyzed in a vacuum. While the Copenhagen negotiations, for better or worse, usurped the

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41. UNFCCC, *supra* note 3, art. 4.7. (“[t]he extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology”).

42. Many participants characterized the financing arrangement as the “most successful part of the Accord.” Akanle et al., *supra* note 21, at 29.

43. *Copenhagen Accord*, ¶ 8.

44. *Id.* ¶¶ 8-10.

45. ATHENA BALLESTEROS ET AL., WORLD RES. INST., SUMMARY OF CLIMATE FINANCE PLEDGES PUT FORWARD BY DEVELOPED COUNTRIES (October 2, 2010), <http://www.wri.org/stories/2010/02/summary-climate-finance-pledges-put-forward-developed-countries>.



world's attention in December 2009, the conference's legal and political outcomes cannot be fairly or adequately evaluated in isolation from the sixteen-year political history of the UNFCCC process. In light of this reality, this Article has attempted to contextualize the outcomes of the Copenhagen conference in relation to the backdrop of the regime's most persistent puzzle: how to allocate responsibility for addressing climate change. Specifically, we have argued that UNFCCC parties took important steps towards operationalizing the murky concept of common but differentiated responsibilities through agreements on differentiation, MRV, and finance.

Regardless of whether one considers Copenhagen a success, a failure, or something in between, one of the most important lessons to be learned from COP15 is that process matters. While multilateralism carries the great weight of global consensus when it succeeds, the process of achieving agreement between 192 different countries is nearly always laborious. Against the backdrop of an urgent global problem, the consensus rule that characterizes UNFCCC decision making creates a tension between the desire for swift and decisive action against climate change, and the desire for an inclusive and legitimate process that achieves the buy-in of every party. This tension was on full display at the Copenhagen negotiations.

The Copenhagen negotiations were laden with political controversy over issues related to both participation and transparency. This controversy ultimately slowed negotiations and derailed the formal adoption of the Copenhagen Accord. Between the much-publicized leak of the "Danish text,"<sup>46</sup> the closed-door negotiations that led to the Accord text itself, and the expulsion of civil society groups from the conference during the final days of the meeting, COP15 was wrought with participation and transparency issues. While such opaque practices are not surprising in other areas of international relations, such as security and trade, global environmental governance has by-and-large been based on a model of inclusivity and transparency ever since the 1992 Rio Earth Summit. Given this tradition, a number of countries outside the core Accord negotiating group felt marginalized by the closed-door negotiating process. These countries attacked the process as non-transparent and undemocratic, and ultimately used these procedural failures as central justifications for blocking COP consensus on formal adoption of the Accord.<sup>47</sup> In the context of common but differentiated responsibilities, these process problems underscore the reality that agreement about common responsibilities requires common participation.

Process problems also extended beyond the plenary halls in Copenhagen. While NGOs and private sector actors are not formally involved in COP decision-making, they have historically been an important presence at the negotiations. Beyond demonstration activities that make front-page photos, non-state actors have played a crucial role in information dissemination, through formal and informal channels, as well as in negotiation support, in particular for developing countries.<sup>48</sup> The exclusion of NGOs from the final crucial days of negotiations may mark a shift towards opacity in the negotiations. This move mirrors the continued drift of climate politics away from the traditionally lower-

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46. The Danish text was a draft agreement, prepared by the office of the Danish Prime Minister and shared with a small number of parties before the meeting. When the text leaked to the press early in the meeting, many parties that had not seen it became upset at what they saw as an attempt to steamroll the process. See John Vidal, *Copenhagen Failure Blamed on the 'Danish Text,'* Guardian, May 31, 2010, <http://www.guardian.co.uk/environment/2010/may/31/climate-change-copenhagen-danish-text>.

47. See Akanle et al., *supra* note 21, at 28-29.

48. See, e.g., The Third World Network (<http://www.twinside.org.sg/>).

profile environmental governance arenas into the “high politics,” or at the very least, “mid-level” areas of international relations.<sup>49</sup>

The juxtaposition of substantive progress, with procedural failure in Copenhagen raises important questions for the future of the climate regime, and indeed for the future role of multilateralism in combating climate change. For example, it remains to be seen what role Bolivia, Venezuela, Kuwait and the other parties that opposed the Accord will allow the Accord to play in future negotiations in the UNFCCC. This promises to be a key issue into the future.

More practically, as the impacts of climate change become increasingly apparent and the effects more painfully felt,<sup>50</sup> the incremental success observed in Copenhagen may test the mettle of multilateral processes to address global environmental problems. Indeed, the growth of national and regional level action in the absence of guiding international frameworks may signal a transition in this regard, albeit one that is equally uncertain for the future of the planet.

Regardless of the problems that emerged in Copenhagen, the UNFCCC is likely to remain the international focal point for humankind’s response to climate change for the foreseeable future. As nations continue to work to address this global problem, the issue of apportioning responsibility will remain a central element of the discussions. Although the discussions of differentiation and the progress made in MRV and finance may not have been the stuff of international newspaper headlines, these points nonetheless represent significant steps in recasting the question of responsibility to act within the regime. While this may be little comfort to the world’s most vulnerable populations, the Copenhagen meeting has no doubt laid important stepping stones for future negotiations as the unwieldy practice of environmental multilateralism lumbers on to Cancun.

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49. As climate politics have evolved over the last two decades, the significant and disparate social, economic, and national security effects associated with climate change have raised the importance of climate politics in international relations. *See, e.g.*, U.S. Dep’t of Def., Quadrennial Defense Review Report 84-88 (2010) (including climate change for the first time in the Defense Department’s major review of defense strategies and priorities); Sikina Jinnah, *Climate Change Bandwagoning: The implications of strategic linkages for regime design, maintenance, and death*, 11 GLOBAL ENVTL. POL. (forthcoming Aug. 2011) (highlighting the increased importance of climate change across a broad range of international issues).

50. *See, e.g.*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007 – IMPACTS, ADAPTATION, AND VULNERABILITY: CONTRIBUTION OF WORKING GROUP II TO THE FOURTH ASSESSMENT REPORT OF THE IPCC (Martin Parry et al. eds., 2007) (detailing the observed changes and likely effects on, *inter alia*, water resources, ecosystem services, agriculture, coastal areas, and human health).