

## **Climate: Talks end by only "noting" an Accord after much wrangling**

*Martin Khor, Dec 21 2009, Copenhagen*

The Copenhagen Climate Conference ended in disarray because a secretive meeting of leaders of 26 countries held within the conference centre and convened by the Danish Presidency of the conference was seen as undemocratic by many developing countries, and the Copenhagen Accord arising from that meeting was thus only "noted" and not adopted.

The decision of the conference to take note of the Accord saved the conference from complete failure. In the media, there was ambiguity over what had happened, with initial statements from US President Barack Obama and UK Premier Gordon Brown being reported as if a successful conference deal had been adopted. Such statements even before the text of the Accord had been shown to the members of the Conference of Parties of the Convention infuriated many delegates, and became the subject of criticism during the meeting.

Even after the "takes note" decision was adopted, the UN Secretary General in a statement to the plenary meeting he stated "you sealed the deal, now you must turn words into deeds" and at a press conference he also repeated that a deal had been sealed. This added to the general confusion.

Most confusing of all was the way Danish Premier Lars Rasmussen handled the Conference as a whole and its final plenary, which he chaired. There were many twists and turns and contradictions in the rulings that he made, especially his repeated overturning of decisions and conclusions that he had conducted over or made himself. In the end, the conference participants did not adopt the Accord that arose from the "super green room" but made a decision to merely "take note" of it. In the language of the UN, "taking note" gives a low or neutral status to the document being referred to. It means that the document is not approved by the meeting (in which case the word "adopts" would be used). "Taking note" also does not connote whether the document is seen in a positive light (in which case the word "welcomes" would be used) or negatively (in which case "rejects" or "disapproves of" would be used).

Thus there is no obligation, legal or political, for a member of the Convention as such to implement the Accord.

Many other questions, however arise, such as the extent to which the participants of the 26-country meeting are bound by the Accord. Some delegates pointed out, outside the conference room, that their agreement on the Accord was on the assumption that it would eventually be adopted by all Convention members. Following the adoption of the decision to simply "take note" of the document, more hours were spent on how to interpret the "takes note" decision, with many of the developed countries trying to stretch its meaning. The intention of some of them seemed to be to convert the Accord into some kind of plurilateral agreement, which countries can sign on to, and with developing countries that take on the commitments being able eligible to get funding. The entire situation, legally and politically, remained murky and became more so during the conference and immediately following the end of the conference. Even the question of which forum adopted the "takes note" decision is an issue, because the decision was taken in the meeting of parties of the Kyoto Protocol, of which the US is not a member), whereas the Decision states that the Conference of Parties (COP) took note of the Accord. Moreover the Kyoto Protocol has no jurisdiction over most of the key points in the Accord, which falls under the mandate of the Convention and its COP.

The events of the dramatic last two days of the Conference will be debated for years to come, and what is already the subject of interpretation by diplomats and policy makers and politicians will soon be the rich subject of lawyers' interpretations. Some delegates of developing countries were also already

looking ahead and considering the task of picking up the pieces and get the global talks going again next year, as there is much at stake. Little noticed in the final sessions was the passage of the reports of the Chairs of the two ad hoc working groups, on Kyoto Protocol (AWG-KP) and long-term cooperative action (AWG-LCA). These are the working groups within which the UNFCCC members have been discussing and negotiating the range of climate change issues, for two years in the case of the AWG-LCA and four years in the case of the AWG-KP.

At Copenhagen itself, most of the delegations were involved in intense negotiations, often well past midnight, in drafting groups on such issues as mitigation, adaptation, finance, technology, shared vision (in the AWG-LCA) and on the numbers for emission reduction, rules for accounting for LULUCF (land use and forest), and market-based mechanisms (in the AWG-KP). They were attempting to come to as much consensus as possible on texts on these issues, which together would form the basis of Decisions covering the Bali Action Plan (in the case of the AWG-LCA) and amendments to the Kyoto Protocol (in the AWG-KP).

The delegates in this bottom-up approach were seriously concerned that their work, in the multilateral, inclusive and open-ended fora, would be undermined by the most important of their topics being discussed in an exclusive group of political leaders, working on a text provided by the Danish Presidency, which only a few would have access to.

Even as the Danish Presidency assured the Conference of Parties and delegates several times that there would be no Danish text and no secret meetings, the ground was prepared for the group of 26 leaders to meet. News of their meeting was scarce, and by the last day (18 December) various versions of drafts coming out of the "room upstairs" were leaked out, with NGOs sharing the texts with delegates and vice versa, and utter confusion as to which drafts were early or later versions.

Throughout the leaders' meeting that started on 17 December and went on to the evening of 18 December, there was non-confirmation that it was taking place, let alone which countries had been invited and what text they were discussing. It was only later, and through media reports, that the delegates found out that the 26-leaders' talks had been on the verge of breaking down altogether, and that President Obama had barged into a room where the leaders of China, India, Brazil and South Africa were meeting, and over an intense period that they had thrashed out the wording for the text on contentious issues, particularly whether and how the "verification" of developing countries' mitigation actions would be undertaken.

It was somehow assumed by some of the leading members of the 26-country group that once they had reached agreement among themselves that the Conference of Parties with its over 190 members would endorse it. After all, the small group comprised the top leaders of the most powerful countries, including the US, Russia, Japan, Germany, the UK, France, China, India, Brazil, South Africa, and others such as Ethiopia, Grenada, Saudi Arabia. Up till today, the Danish government has not released the list of participants.

So confident was Obama, or so ignorant of UN procedures, that he gave a press conference to US journalists (which was broadcast to the conference centre) that a deal had been done, and how he viewed it. This incensed some of the developing countries' delegates who had not been officially told about the 26-leaders' meeting nor shown any text of the "Copenhagen Accord." Indeed, even some of the 26 leaders had not seen the final draft of the text, according to a developing country official who participated in the meeting.

When the full membership of the Conference of Parties was summoned to the closing plenary session to hear about the Accord for the first time (and they were kept waiting five hours until 3 a.m. on the

morning of Saturday 19 December), the top-down 26-leaders "non-meeting" finally blended with the bottom-up membership of the Conference of Parties, with explosive results. And this is where the Conference foundered in its last hours on the issue of international democracy and global governance. The question was: Can a "deal" patched up by leaders of 26 countries in a secretive meeting that was not supposed to be happening be simply presented to 193 countries to adopt without changes in the dying hours of what is claimed to be the most important international conference ever held? The answer came in the early hours of Saturday morning, after many hours of high drama in the Conference hall, and it was No.

When Danish Prime Minister Lars Rasmussen, who presided over the Conference's final days, convened the final plenary session at 3 a.m. on 19 December, he for the first time officially announced that a meeting had been taking place of leaders of 26 countries (whose names he did not give) and that a Copenhagen Accord had been drawn up for the Conference to adopt. As he tried to leave the podium after suspending the meeting for an hour, an attempt was made by a delegate to open the discussion on a point of order. When told of this by the Conference secretariat, Rasmussen was heard through the microphone to say "No point of order." But before he could stride off the stage, he was stopped by Venezuelan delegate Claudia Caldera who used her plastic card to loudly bang on the table, for almost a minute. "After keeping us waiting for hours, after several leaders from developed countries have told the media an agreement has been reached when we haven't even been given a text, you throw the paper on the table and try to leave the room," she said.

This behaviour is against United Nations practice and the UN Charter itself, she said. "Until you tell us where the text has come from, and we hold consultations on it, we should not suspend this session. Even if we have to cut our hand and draw blood to make you allow us to speak, we will do so," she added, referring to how she had banged on the table in her effort to get the attention of Rasmussen before he left the podium.

Ian Fry, representing Tuvalu, a small island state that will be among the first islands to disappear as a result of climate change, told Rasmussen he had pressed the button on a point of order before the Prime Minister gavelled. "We are working under the UN, and it is good to see Mr Ban Ki Moon in the podium. We are given respect under the UN, whether big or small countries, and matters are decided collectively in the Conference of Parties.

"But I saw on TV that a leader of a developed country said he had a deal. This is disrespectful of the UN." He said negotiations by media may be a norm in some countries but we want a process for the consideration of the document and that time is given for this. Fry said a cursory review showed many problems with the Accord, mentioning several points. Noting that some money had also been mentioned in the document, he said: "We are offered 30 pieces of silver to betray our people and our future. Our future is not for sale. Tuvalu cannot accept this document."

Bolivia said it was offended by the methodology which is disrespectful, that a document is imposed on a majority of countries that have not had the chance to study it. "You put it that representative leaders of the world were consulted. But countries not consulted are not represented. Why have we not discussed this document before and why are we given 60 minutes to look at this document now which will decide the lives of our people.

"This document does not respect two years of work (discussions that have produced draft texts in working groups) and our people's rights are not respected, so we cannot endorse this document which is by a small group that think they can take the opportunity to impose on us." Costa Rica said that reasons we have heard, this document cannot be considered the work of the AWG-LCA and cannot be considered for adoption. It can only be an information document (known as INF). Nicaragua,

represented by Presidential Advisor Paul Oquist, declared that the UN's democratic system had seen a deterioration here, with a President convening a meeting of 26 countries while neglecting the G192 (referring to the 192 members of the UN). He said a number of countries had just now written to the UN Secretary General expressing deep sorrow that the Copenhagen Conference has not followed the UN's principles of transparency, inclusiveness and equality among states, by the Presidency holding a meeting limited to a small number of chosen parties. "We cannot respect an agreement made by a few countries. The only agreements we respect are those made through an open process and adopted by consensus." He proposed that the Conference be suspended, that the mandates of the working groups be extended, and that talks resume next year for a final conclusion in June. He also read out the text of two formal proposals from ALBA countries for having resumed sessions of the COP and the Kyoto Protocol's meeting of Parties in June.

Rasmussen then referred to Costa Rica's proposal to make the Copenhagen Accord an INF document that would indicate the proponent Parties and asked if Nicaragua would accept this and change its proposal to suspend this session. Nicaragua responded that the Accord could be a MISC document as a submission of certain Parties. It would then withdraw its proposed Decisions and would accept the other two Decisions by the President to extend the work of the two working groups under the same mandate to finish their work at the next COP and Meeting of Parties of the KP. (See separate article on the Decisions taken). Following this, the Chair then said the working groups would extend their mandates, the Copenhagen Accord would be a MISC document and we don't suspend the conference. India said that with regard to the proposal to re-issue the Accord as a submission by countries, the Chair should first get the assent of the countries before issuing the document on their behalf. Rasmussen said this was not a problem and India was correct. Could Nicaragua withdraw its proposal (with these conditions)? Nicaragua then stated its group could agree to withdraw its proposal.

Sudan, represented by Ambassador Lumumba Di-Aping, said the document was one of the most disturbing developments in the history of UNFCCC. It threatens the lives and livelihoods of millions of Africans. He said the Chair has advanced with a "circle of commitment" to agree to accept a solution based on 2 degrees that would condemn Africa into a furnace as it would result in a 3 or 5 degree temperature rise in Africa, citing IPCC reports. The pact would be a suicide pact to maintain the economic dominance of a few countries, is devoid of morality and based on values that got 6 million in Europe into furnaces. It is immoral for such a document to be issued by a UN related body and the promise of funds should not bribe us to destroy the continent. He asked for the document to be withdrawn. He criticized Rasmussen for conducting his duties as President in a biased way, violating the all rules of transparency.

Several countries, including Canada, Sweden, UK and Norway expressed strong disapproval and in some cases disgust of what they considered to be Sudan's reference to the holocaust. Some developing countries also disapproved of the strong language used by Sudan. Several developed countries spoke up to defend the work that had been done by the political leaders in the small group, which should be respected instead of vilified, and urged that the Copenhagen Accord be adopted. This was also the position of several developing countries, including the Maldives and Ethiopia. Notably, China and India - - the developing countries that were the most active in the small meeting -- did not speak to urge others to adopt the Accord.

When it became clear there was no consensus to adopt the document, some developed countries, led by the United Kingdom and Slovenia, proposed a vote be taken, or else that it be adopted with the names of dissenting countries placed in a footnote. These "adoption by non-consensus" views were rejected by others who pointed out that it was against the rules of procedure. Eventually a compromise was reached to take note of the Accord.

During the debate, the President of Maldives commended the Danish Prime Minister and said science suggests we have a 7 year window to act before reaching tipping points. The talks were not taking us to conclusions in two years. If these talks went on we would have lost the opportunity. The President selected a group to come up with a document, which is a beginning and allows us to continue the negotiations in 2010. He appealed to not let the talks collapse and to back the document. Egypt said that to accept it as a MISC document, the countries that had been consulted and are morally bound by it had to be inserted.

Some developed countries, such as Spain, Australia and France said they were astonished or even "wounded" by how delegates at this meeting were portraying and belittling those who took part in the 26-country meeting. The efforts were to help those who are vulnerable to climate change. The people who need help will be frustrated again. Sweden supported Maldives and said the Accord is a compromise for the way forward. Norway said there was no progress in the talks for one week and then the leaders came and made an unprecedented effort. Russia said the document should be adopted.

Ethiopia speaking for the African Union said the document is a compromise and it supported the document. Senegal supported Ethiopia but regret certain points in the document, saying it did not want to see the funeral of the Kyoto Protocol and we need a 1.5 degree target. Gabon endorsed the view that the document was made in good faith and it was not good to make insulting remarks. The Philippines also endorsed the document.

Grenada, speaking for AOSIS, and whose Prime Minister attended the small meeting, said it stands for the document and the process although it respected the credible opposition and those who have differences with the process but it was against an offensive portrayal of the work of its government, and asked for emotions to be controlled. UK Climate Minister Ed Miliband said this institution faces a profound crisis, and has a choice of supporting a document produced in good faith with fast start funds and a \$100 billion funding (in 2020) and ensuring responsibilities on mitigation, or to refer to the holocaust and wrecking the conference. He said passing the document as information is inadequate and urged it to be adopted.

Rasmussen then asked who is against adopting the document, remarking that only four countries are opposing it. Venezuela stated that the procedures do not allow for a vote, and that it won't accept a document from a process that violates UN principles. Rasmussen then apologized for counting the people against the document and urged every single country to sign up to it. Cuba told the President he was confusing the procedure. There is no consensus to adopt this document. There had been hypocritical statements, with European countries offering money here to get this document. This is shameful and we should not go for a path with no solution. Rasmussen then said Cuba was absolutely right, there is no consensus and we cannot adopt this draft.

Slovenia then suggested the paper be adopted with a footnote listing the countries against it. Todd Stern of the US said that it was disappointing to see the work by the leaders not recognized. Listing the elements of the Accord such as targets to be taken by developed countries, listing of mitigation actions by developing countries, a compromise on transparency, contributions to the fund, decision on technology mechanism, all of this we will walk away from, and it is disturbing for the existence of this body. He supported the UK proposal to adopt the document. Bolivia made criticisms of the Accord, including the non commitment to emission reduction, the 2 degree target and the inadequate funds. It said Bolivia had its own strong positions but did not come up with a document without consulting the members, and this is the issue. There had been a non democratic process. It urged members to respect the work in the working groups and get back to the groups to move forward. Venezuela said only 25 of 192 members took part in the meeting and only 14 developing countries were involved, and

the Parties did not give a mandate to the Presidency (to hold the small meeting). The Accord does not give any figures for Annex I emission cuts.

Sudan traced the developments of the past two weeks and said that when delegates in the AWG-KP and AWG-LCA tried to make progress on its work, many issues were taken out of our hands. The finance proposals in the Accord are proposals of the developed countries, and do not reflect the concrete proposals of the G77 and China especially on governance. It denies historical responsibility and shifts the burden to developing countries. The negotiations were taken out of our hands and we only have the proposals of developed countries. It proposed a renewal of the AWG-LCA mandate and continue the work there in a party-driven manner.

Saudi Arabia said this was the worst plenary where nothing went right. It was part of the small group and associated with the Accord but it was against suggestions such as voting and asking Parties to sign on to documents, which break the rules on how we do things. The simple reality is there is no consensus on the document and this is a body that decides on consensus. The UK reiterated its request to adopt the document and note those that are against it.

Rasmussen then asked for reactions to this UK proposal. Nicaragua replied that the least we can hope for is for the Presidency to be consistent and to carry forward the working groups as already agreed. "We don't agree to change the agreement reached tonight."

Saudi Arabia said we operate by rules and under these rules you cannot put up a proposal for consensus and then put reservations in it. This is not how this body operates and we are not going to change it now. Bolivia said that a few hours ago a compromise was reached, that allows the work to continue. No delegation opposed it then. The ALBA countries agreed to withdraw their proposed Decisions while the Accord becomes a MISC document. It recalled the conclusions that Rasmussen read out and on that basis we withdrew our proposed Decisions. We have a commitment you made, let us not overturn this decision. After the above wrangling, lasting hours, a break was called for consultations during which a compromise was reached, in which a Decision was adopted in which the Conference of Parties "takes note of the Copenhagen Accord of 18 December 2009." The Accord, with the names of countries that took part in the small meeting, would be attached to the Decision. In the language of the UN, "taking note" gives a low or neutral status to the document being referred to. It means that the document is not approved by the meeting and it does not imply whether the document is seen in a positive or negative light.

Following the adoption of the decision to simply "take note" of the document, more hours were spent on how to interpret the "takes note" decision, with the developed countries trying to stretch its meaning. The United States, supported by a number of other developed countries tried to interpret the decision as allowing for a "opt in" type of arrangement, with countries notifying their intention to join. They tried to garner support for expanding the "takes note" decision into a system that seems styled after a plurilateral agreement, and linked it to the finance issue in an attempt to get support from developing countries.

Ed Miliband, the UK's Climate Minister, was blunt about linking the funding of developing countries with accepting the Accord. Those which support the Accord have to register this support. The concerns he raised must be duly noted "otherwise we won't operationalise the funds."

The US wanted an arrangement through which Parties can associate with the Accord. It said there are funds in the Accord, and "it is open to any Party that is interested." This implies that Parties that do not register their endorsement of the Accord would not be eligible for funding. This attempted linkage of finance to the acceptance of the Accord is of course not in line with the rules of the Climate

Convention, in which the which the developed countries have committed themselves to provide developing countries with the funds needed for them to take climate related actions. Funding the actions of developing countries does not require that a new agreement or an Accord be established.

The actual Copenhagen Accord itself is only three pages in length. What is left out is probably more important than what it contains. The Accord does not mention any figures of the emission reduction that the developed countries are to undertake after 2012, either as an aggregate target or as individual country targets. This failure at attaining reduction commitments is the biggest failure of the document and of the whole Conference.

It marks the failure of leadership of the developed countries, which are responsible for most of the Greenhouse Gases retained in the atmosphere, to commit to an ambitious emissions target. While the developing countries have demanded that the aggregate target should be over 40% reduction by 2020 compared to 1990 levels, the national pledges to date by developed countries amount to only 13-19 per cent in aggregate. Perhaps this very low ambition level is the reason that the Accord remains silent on this issue, except to state to give a deadline of 31 January 2010 for countries to provide their targets. It is hard to believe that this deadline will be met, since there has been so much foot-dragging on this in the three four years.

Another omission was the lack of assurance that the Kyoto Protocol would continue, with developed countries taking on emission reduction commitments in a second period starting 2013. The continuation of Kyoto was a top priority demand of the G77 and China, while the developed countries have announced their intention to set up a new agreement altogether, which the developing countries fear will not have the strict disciplines of Kyoto.

The Accord recognizes the broad scientific view that global temperature increase should be below 2 degrees Celsius, and agrees to enhance cooperative action, on the basis of equity. This echoes the view recently affirmed by India that accepting a target of temperature limit, whether it be 2 or 1.5 degrees, has to come with a burden-sharing framework, with equity as its basis. The Accord states the collective commitment of developed countries to provide new and additional funds of US\$30 billion in 2010-2012 through international institutions. It is unclear how new the funds will be, since the developed countries have already committed to contribute billions of dollars to the World Bank's climate investment funds.

It also states the developed countries will jointly mobilize US\$100 billion a year by 2020 for developing countries. This is weak as the commitment is for "mobilising" funds and not a guarantee or pledge of actual funds. The actual quantum is also doubtful since the Accord also says that the sources of the funds will include public and private sectors, bilateral and multilateral and alternative sources. The US\$100 billion is not said to be "new and additional", so it may include existing funds or already planned funds.

The Accord also contains a lengthy paragraph on the mitigation actions by developing countries, and how these should be measured, reported on and verified (MRV). This was reportedly a heated topic at the small heads-of-state meeting, with US President Obama pressing the developing countries, particularly China, to undertake more MRV obligations. The Accord is a thin document, containing hardly any new commitments by developed countries, with a weak global goal, and attempts to get developing countries to do more.

It is a sad reflection of the Copenhagen Conference that this thin document is being held up as its main achievement. Even then it was only "noted" and not adopted by the UNFCCC's membership.

But in fact most of the work in the two-week stay in Copenhagen was carried out in the two working groups, on long-term action and on the Kyoto Protocol. There was some progress made in the long-term action group while the Kyoto Protocol group has hardly made any progress.

The two working groups will resume work next year and the hope is that they will finish their work by June or December 2010. + Climate: Attempts to make Copenhagen Accord a plurilateral agreement

Copenhagen, 21 Dec (Meena Raman) -- At the final hours of the Copenhagen climate conference, after taking the decision to "take note" of the Copenhagen Accord, high drama and intense exchanges continued among Parties as developed countries attempted to stretch the meaning of "taking note" into forming some kind of a plurilateral agreement among Parties who had agreed to the Accord. The President of the Conference of Parties read out the decision on the Accord. He said that the "COP at its 15th session takes note of the Copenhagen Accord of 18 Dec 2009." The names of the Parties having agreed to the Accord is to be stated in the Accord.

This decision was mired in controversy as developed countries wanted the COP to facilitate the Accord's implementation under Article 7.2( c) of the Convention. Confusion ran high as to which forum had adopted the decision (i.e. whether it was in the setting of the COP under the Convention or the meeting of Parties under the Kyoto Protocol [CMP]). The decision to "take-note of" was made at the CMP when the decision was read as having been adopted at the COP.

This "administrative error" had to be subsequently corrected. As to whether the Accord was to be noted in the two tracks of the COP and the CMP was also unclear, with the secretariat expressing one view and Parties raising concerns on the other. The whole way in which the decision was handled and adopted by the COP President clearly reflected a mishandling of established procedures. In pushing for the Accord, US's special climate envoy Todd Stern said that interested Parties and members will be informed about the Accord they can associate themselves with it. He said that it was important for Parties to have an opportunity to associate with the Accord. At this point, South Africa wanted a clarification as to where the decision about the Accord was made and wanted to confirm that the setting where the decision was taken was a COP setting. The Secretariat clarified that while the proposal (regarding the Accord) was read during the meeting of the CMP (and not the COP), the text of the decision (on "taking note") refers to the COP. It said that its understanding is that the decision would apply to both the tracks under the Convention and the Kyoto Protocol. Bolivia stressed that the COP had taken note of the Accord and that it had not been adopted. The countries that want to associate with it will have a process, as the US has suggested. The list of the Parties in a chapeau is the chapeau of the Accord, not the chapeau of the COP decision, said Bolivia, indicating that the Accord was outside the COP process.

Saudi Arabia said that while it was part of the 26 countries that met regarding the Accord, since there is no consensus among Parties, the Accord is already outside the process of the COP. The COP did not decide to adopt the Accord. Saudi Arabia did not want to start a precedent here. "We cannot have countries to open a list (for signing). Whatever is done should not be part of our formal process. We need to respect the process. We should not go beyond what was done outside the UNFCCC. This is not acceptable even though we were part of that small drafting group. So we should take it as it is and we are strongly opposed to any further step to make it more formal than it is. We just took note of it (the Accord)," said Saudi Arabia.

Pakistan said that it has joined the consensus to take note of the Accord, although it had concerns about the process. It said that it had no role in the process. One of the principles derived from the UN is transparency. There has been an absence of transparency. This is not what the UN stands for and is not what we are here for, said Pakistan. Parties are here to reach an agreed outcome and not to cut

deals. Such processes do not help but widen the chasms. Efforts were made in good faith but that does not necessarily mean good results. It said that the Accord should not be used as a precedent in future discussions, as there were several questions regarding it and there was no time for regional discussions.

China, referring to the clarification by the Secretariat, said that in reading out the decision (regarding the Accord), there was reference to the CMP. The Secretariat had clarified that the note (regarding the "take note" of the Accord) would apply in the two tracks (of the COP and the CMP). China said that it was hesitant to take that view. China said that it was not sure about "taking note" of the same Accord twice. "If the CMP is to take note of the Accord, we will take note of that when we come to it (the CMP meeting)," it said.

The two appendices (in the Accord which refer to quantified economy-wide emission targets for 2020 and nationally appropriate mitigation actions of developing countries separately) will cause problems especially in the CMP as it would be a way to bring new commitments and obligations under the Kyoto Protocol. (The KP does not impose mitigation obligations on developing countries). China stressed the need to be aware of the connotations and implications of this. China also expressed its concern about the follow-up procedure in relation to the Accord. The Accord was something that was "taken-note" of. It is not a treaty to be signed or agreed to.

Venezuela stressed that Parties had agreed to take note of the Accord, notwithstanding the fact that the document did not enjoy consensus. That was an expression of extreme flexibility on its part, it said. It urged Parties to respect what was agreed to (in taking note of the Accord) and not use further ploys to soil the decision agreed to.

The United States said that five countries out of 192 were in favour of the Accord. It was a decision of the COP (to take note of the Accord). This kind of understanding is explicitly provided for under Article 7.2 ( c) of the Convention. (The US referred to Article 7.2 ( c) to suggest that the COP can facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention).

The US said that all Parties can associate with the Accord and expected many Parties to do so and was open to any COP Party. It hoped to have a "robust group". Australia, Norway, Sweden (for the EU), Japan and Canada echoed the suggestion by the US to request the COP to facilitate measures to implement the Copenhagen Accord.

Saudi Arabia once again said that although it took part in the Accord, it would not want the Accord to be a precedent as Parties must work on the basis of unanimity which must be approved by all. If there is a single expression of disagreement, it will not be possible to arrive at an agreement under the COP. To take note of does not mean that the document is part of a decision of the COP. The Accord is not binding on Parties. A Party is free to decide what it wishes to do with it.

Grenada, speaking for AOSIS, said that rightly or wrongly, Parties went ahead with the Accord. Its expectation was for the Accord to deliver and looked to its rapid implementation of the Accord. Senegal wanted to accede to the Accord and said that there should be a mechanism on modalities for accession. It asked the Secretariat to clarify matters. Indonesia also asked for clarification on the 26 countries who were part of the Accord. Bangladesh also asked for the Accord to be facilitated by the secretariat.

South Africa said that there had been a procedural and administrative mistake. A COP decision was

adopted in a wrong setting (at the CMP). There is need to correct the record on what was adopted formally. It elaborated on what was needed. South Africa said that there was confusion around language adopted as read from the podium and gave rise to different interpretations. There was need to view the record to provide the exact language. It said there was need for a correction with a footnote as a legal opinion on what a decision means as there was extreme confusion, as if it was some sort of binding treaty. It was a decision to note the Accord. It was a process outside the UNFCCC process and does not mean that in noting (of the Accord) there is any binding nature, said South Africa. On the US question as to how Parties are to associate with the Accord, South Africa said that it could be done under the report of the COP. Parties can submit their intent to be associated.

The Secretariat once again read out what the decision was, i.e. that "the COP takes note of the Copenhagen Accord of 18 December 2009." To this decision, would be attached the Accord. In this Accord, the chapeau would be modified to include the list of Parties who associate with the Accord, said the Secretariat. On how Parties can associate with the Accord, the Secretariat said that there were two suggestions: (1) as a communication from the Presidency, and (2) a recording in a list of the Parties. It said that the onus was on the Parties to communicate the association to the Accord. On the suggestion by several Parties regarding Article 7.2 ( c) of the Convention for the COP to coordinate measures among Parties, the Secretariat said that proposals had to be made more formally in writing. On the forum where the decision to take note of the Accord was adopted, the Secretariat said that the record would be corrected so that the decision in the CMP earlier is deemed to have been adopted under the COP, as the wording of the decision did indicate that it was the COP that was taking note of the Accord. South Africa also said that there were Parties who had participated in the discussions in developing the Accord, while there may be a separate list for Parties who may wish to associate with it. The Secretariat said that it was not in receipt officially of Parties who participated in the Accord and suggested that the process be one of self-designation.

Cuba underlined that the Accord was not a protocol and is not legally binding. It was more like a declaration like the MDGs or the Paris Declaration. It does not say that those who wish to associate with it can follow a procedure. Tanzania said that it was not very clear as to what was adopted. It sought clarification on the link of the Accord to the extended mandate of the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA). It asked if the Accord could merge with what is in the AWG-LCA.

China said that there was need to be clear on a number of issues. It was not sure of the legal implications of something which was negotiated but not adopted, and which was just proposed by the President of the COP. Parties can express their views and can have follow up activities. If they wish to associate themselves with the Accord, it was up to each Party. There was no need for a formal procedure. It would be up to each Party to communicate to the Secretariat or by other means that they have participated in discussions. The Accord has not been endorsed as it was developed by a small group of Parties. On the idea of a footnote, it said that it should not be part of the decision to take note but rather as a report of the COP. In reference to Article 7.2( c), China did not think that it could apply to the Accord. Australia did not agree with China and said that the article could be used.

Bolivia said that since the Accord was outside the UNFCCC process, it had no formal identity and Article 7.2( c) should not apply. It did not see how the implementation of the Accord could be supported. Saudi Arabia said that if Parties wanted Article 7.2( c) to be applied, this must be initiated by Parties and there must be an agenda item for it to be discussed. It said that many Parties who were part of the drafting of the Accord may now wish to join the Accord as there is no consensus. The Accord should have no further life, it said. Iran said that to the best of its recollection, to "take note of" has no negative or positive implication.

India said that the listing of Parties of the Accord was not part of the COP decision. Russia said that "take note" means we recognize the existence of the Accord without taking an opinion on it. It said maybe it could be put on the UNFCCC website. The US said that the Accord was codified and it was surprised by comments by Parties, as the Accord says "Parties have agreed". It will associate with the Accord which is in the context of political agreement. It is happy to have a list of the Parties who are associated with it. Ethiopia, speaking for the African Union, said that it supported the Accord. The Solomon Islands said that it did not have any opportunity to study the Accord and its implications. "We have put our lives into the hands of 26 countries," it said. The issue was not just about finance but about survival. It said that there is need to talk about environmental refugees and their relocation. Papua New Guinea said that the Accord is not perfect but it is a quick start and begins to build architecture. + Climate: Working groups to continue work and present results next year Copenhagen, 21 Dec (Meena Raman) -- Parties at the Copenhagen climate meetings have requested the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) and the Ad Hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol (AWG-KP) to continue their work and present results by the next meeting of the Conference of Parties (COP) and meeting of Parties under the Kyoto Protocol (CMP) in 2010. The sixteenth meeting of the COP and the sixth meeting of the CMP is scheduled for 29 November to 10 December 2010, and is to be held in Mexico.

The Copenhagen COP adopted the decision to extend the mandate of the AWG-LCA to enable it to continue its work with a view to presenting the outcome of its work to the Conference of the Parties for adoption at its sixteenth session. It also requested the AWG-LCA to continue its work drawing on the report of the AWG-LCA presented to the COP at its fifteenth session, as well as work undertaken by the COP on the basis of that report.

As regards the AWG-KP, in order to ensure that there is no gap between the first and second commitment periods of the Kyoto Protocol and recognizing that Annex I Parties should continue to take the lead in combating climate change, the CMP requested the AWG-KP's work on Further Commitments for Annex I Parties under the Kyoto Protocol to deliver the results of its work for adoption by the CMP at its sixth session. It also requested the AWG-KP to continue its work drawing on the draft text forwarded as part of its report during the Copenhagen meeting of the CMP.

Trade: Panel set over Chinese measures on export of raw materials Geneva, 21 Dec (Kanaga Raja) -- The WTO Dispute Settlement Body (DSB) on Monday agreed to establish a single panel to rule on measures imposed by China related to the exportation of various raw materials. Three panel requests were made in respect of this dispute, namely, from the United States, the European Communities and Mexico.

This was a second-time request and panel establishment was automatic. Argentina, Colombia, Korea, Canada, Brazil, Ecuador, Japan, Turkey, India, Chile, Norway and Chinese Taipei reserved their third-party rights to the dispute; so did the US, Mexico, and the European Union in the disputes raised by the other two.

The dispute is with respect to China's restraints on the exportation from China of various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorus, and zinc (referred to as the "materials" in the complaint).

The complaints argued that China subjects the exportation of bauxite, coke, fluorspar, silicon carbide, and zinc to quantitative restrictions such as quotas. They also said that China subjects the materials to export duties. In addition to the export quotas and export duties, China imposes other restraints on the exportation of the materials, administers its measures in a manner that is not uniform, impartial, and

reasonable, imposes excessive fees and formalities on exportation, and does not publish certain measures pertaining to requirements, restrictions, or prohibitions on exports, said the complainants.

In a statement at the DSB, the US reiterated that it is concerned about Chinese measures that restrain the exportation of certain raw materials that are critical to US manufacturing industries. These restraints not only limit the availability of these raw materials, but also increase the cost of these raw materials to the US and other producers outside of China, while providing an artificial cost advantage to downstream industries within China.

The European Union said that the Chinese export restraints on raw materials are by no means a recent phenomenon. The restraints were a problem at the time of China's accession to the WTO and they remain so today. In expressing disappointment at the requests for panel establishment, China said that such action is not conducive to the solution of this matter. It voiced certain concerns with the way in which the three complainants have framed their panel requests. It said that it will seek a preliminary ruling on the consistency of the requests with Article 6.2. In other actions, under the surveillance agenda item in relation to the regime for the importation, sale and distribution of bananas, second recourse to Article 21.5 of the DSU by Ecuador, the European Union in its status report said that it was glad to report that it has reached a historical agreement with Latin American banana suppliers last week.

It said that these agreements provide for final settlement of all current disputes regarding the EU import regime for bananas upon certification of a new EU tariff schedule on bananas. It added that it has now started internal procedures for the authorization of the signature and provisional application of the agreement, pending the conclusion of ratification procedures.

The Chair of the DSB said that this item will be kept on the agenda and will be dealt with at the next meeting of the DSB.

Meanwhile, under other business, Brazil informed the DSB that, on the basis of complete data related to fiscal year 2008 and calendar year 2008, obtained from the United States and other sources indicated by the Arbitrator, the total amount of counter-measures authorized to Brazil would be \$829.3 million. On the basis of the same period, the threshold above which Brazil is entitled to take counter-measures in other sectors and agreements outside trade in goods would be \$561 million.