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**U.N. CLIMATE CHANGE CONFERENCE,
COPENHAGEN, DENMARK,
DECEMBER 2009**

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A REPORT
TO THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, January 15, 2010.

DEAR COLLEAGUE: In December 2009, I directed two senior members of my Foreign Relations Committee staff, Mark Helmke and Minority Chief Counsel Michael Mattler, to observe the 15th meeting of the Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) in Copenhagen, Denmark. The Copenhagen conference was originally envisioned as the end point of a two-year negotiating process toward a new international agreement addressing climate change, and was attended by over 100 heads of state. Following the Conference they prepared the attached trip report.

The Foreign Relations Committee role in overseeing international climate change negotiations is longstanding. Beginning in 2007, former Chairman Biden and I directed members of the majority and minority staffs of the committee to attend significant UNFCCC negotiations. Their role was to help inform the committee on the progress of these negotiations, and to help the committee address issues within its jurisdiction—including relating to consideration of treaties and foreign assistance—that might emerge from the negotiations. This arrangement continued in Copenhagen with members of both the majority and the minority staff attending the conference.

I look forward to continuing to work with you on these issues and welcome any comments you may have on this report.

Sincerely,

RICHARD G. LUGAR,
Ranking Minority Member.

**U.N. CLIMATE CHANGE CONFERENCE,
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BACKGROUND

The Copenhagen Climate Change Conference was originally envisioned as the end point of a two-year negotiating process to address climate change in the period beyond 2012. (2012 is the end of the period in which parties to the Kyoto Protocol—which do not include the United States—made commitments for actions to address climate change.) The parties to the U.N. Framework Convention on Climate Change (UNFCCC) agreed in 2007 to launch negotiations to address issues for the post-2012 period including:

- Actions by developed and developing states to mitigate climate change,
- Actions to help states adapt to the effects of climate change,
- Actions to develop and deploy technology to help states mitigate and adapt to climate change, and
- Actions to mobilize financial resources and investment to support actions to mitigate and adapt to climate change.

The negotiating mandate called for an agreed outcome and the adoption of a decision addressing these issues at the Copenhagen Conference.

Negotiators from states parties to the UNFCCC held a series of meetings during 2008 and 2009 designed to produce a legally binding treaty addressing these issues. These discussions made little progress in producing agreement on the most significant issues in the negotiation, including:

- What steps developed and developing countries would commit to take to reduce their emissions of carbon, including what targets they would adopt for medium- and long-term emissions reductions;
- How much money (and from what sources) developed countries would commit to providing developing countries to assist them in mitigating and adapting to climate change;
- What mechanisms would be used to allocate and oversee such financial flows; and
- What mechanisms would be used to monitor and verify that countries were implementing their obligations?

On the eve of the Copenhagen Conference, the main negotiating document addressing these issues was more than 160 pages long and reflected numerous competing proposals. In spite of the pres-

sure created by the planned presence at the conference of over 100 heads of state, it was clear to most observers that there were too many unresolved issues to permit the conclusion of a comprehensive legally binding instrument at Copenhagen as had originally been envisioned. Focus instead turned to the possibility of concluding a more general political agreement addressing broad principles for responding to climate change, but leaving details of implementation to a legally binding agreement to be concluded in the future.

FORMAL NEGOTIATIONS AT THE CONFERENCE

The formal track of negotiations at the conference produced little progress even toward this scaled back goal of a general political agreement. Discussions were characterized by significant acrimony between the so-called G-77 group of developing countries (including China) and the Danish presidency of the Conference. While there were a number of underlying sources of these tensions, they manifested themselves at the conference in heated debate over two procedural issues.

First, the G-77 took a firm line that the Kyoto Protocol should be preserved as the framework for post-2012 actions to address climate change. Many developed countries believed that the Kyoto Protocol was ill suited for this function because the United States is not (and is not likely to become) a party to it and because it contains significant obligations only for developed countries, but not for developing countries, including major emitters such as China and India. As an alternative, many developed countries preferred to pursue a new agreement delinked from the Kyoto structure. The G-77 opposed such efforts, in large part in order to preserve the structure in which developing countries have no mitigation obligations. Accordingly, they insisted that work toward extending the existing Kyoto Protocol by adding new post-2012 commitments for developed countries should be the principal focus of the Conference's efforts.

Second, the G-77 resisted suggestions by the Danish presidency to delegate to small drafting committees the task of developing proposals to bridge the significant differences in the 160 page negotiating text. Because the unresolved issues in the text were large in number and highly detailed, it was difficult to make progress toward solving them in discussions that included all 192 countries present at the conference. The G-77, including China, however, argued that any such smaller group efforts would unfairly exclude countries and would be illegitimate, even if they were composed in representative fashion and if their proposals would remain subject to further discussion, amendment, and approval by the entire conference.

Differences on these procedural issues were likely proxies for larger substantive disputes, including disputes about the relative responsibilities of developed and developing states for taking actions to mitigate climate change and on amounts of money developed states should provide developing states as part of such an agreement. But discussion of these procedural issues dominated the formal negotiating sessions of the conference. Hours were spent debating the form in which substantive discussions should take

place, and comparatively little time was spent on substantive discussions themselves. Because of the limited time for substantive discussions and the G-77's insistence that they be conducted in formal sessions open to all parties, these sessions made little progress and mostly involved repetition of previously articulated positions. At the end of the conference, the formal negotiating sessions had made no significant progress toward addressing the major issues in the conference's mandate.

COPENHAGEN AS CATALYST FOR CLIMATE COMMITMENTS

While the formal track of negotiations made little progress toward a comprehensive international agreement, the conference did serve as a catalyst for a number of states to announce steps they intend to take to address climate change.

In the case of the United States, the Obama administration announced on the eve of the conference that it was prepared to offer a target of a 17 percent reduction in U.S. emissions from 2005 levels by 2020 as part of an overall climate agreement. It also endorsed the goal of mobilizing \$10 billion per year by 2012 to assist developing countries in addressing climate change needs, and said that the United States "will pay its fair share" of such a fund. At the conference itself, Secretary of State Hillary Clinton announced that the United States was prepared to work with other countries toward a longer term goal of jointly mobilizing from a variety of public and private sources \$100 billion per year by 2020 to assist developing countries in addressing their climate change needs.

Other countries also made such pledges:

- China announced in advance of the conference that it would reduce the carbon intensity of its economic output (rather than the absolute volume of its emissions) by 40-45 percent by 2020 compared with 2005 levels.
- India pledged to reduce its carbon intensity by 20–25 percent by 2020 compared with 2005 levels.
- The European Union announced that it would reduce its emissions by between 20 and 30 percent from 1990 levels by 2020, and provide \$10.6 billion over the next three years to finance climate change assistance for developing countries.

These and other similar pledges began to define the parameters of actions major actors were prepared to take to address climate change. In some cases these pledges were contingent on steps other actors were prepared to take in parallel or subject to other conditions. For example, the Obama administration said that its announced mitigation target applied "in the context of an overall deal in Copenhagen that includes robust mitigation contributions from China and the other emerging economies."

THE COPENHAGEN ACCORD

In the absence of progress through the conference's formal negotiating process, the final hours of the conference centered on discussions among heads of state from a handful of major countries, including both developed and developing countries. These discussions ultimately produced a document agreed among the United

States, China, India, Brazil, and South Africa entitled “Copenhagen Accord.” The accord represents a statement of political intentions, but is not legally binding. Key elements of the accord included:

- A general agreement to take action to produce deep cuts in global emissions with a view to holding the increase in global temperature below 2° Celsius.
- An agreement that developed countries will submit and implement quantified economy-wide emissions targets, and that compliance with these targets will be measured, reported and verified according to UNFCCC guidelines. The accord calls for emissions targets to be submitted to the UNFCCC by January 31, 2010.
- An agreement that developing countries will report to the UNFCCC every two years on actions they have taken and intend to take to mitigate climate change. These reports will be subject to international consultations under guidelines to be established by the UNFCCC. The accord calls for initial submissions of intended steps to mitigate climate change to be submitted to the UNFCCC by January 31, 2010.
- A commitment by developed countries to provide new and additional resources approaching \$30 billion for the period 2010–2012 to assist developing countries in mitigating and adapting to climate change.
- A commitment by developed countries to a goal by 2020 of mobilizing jointly \$100 billion per year, from a variety of public, private, bilateral, and multilateral sources, to assist developing countries in mitigating and adapting to climate change.

While the accord was supported by the vast majority of countries, several developing countries, led by Sudan and Venezuela, objected to the Conference endorsing the accord, arguing that they had been excluded from the process of negotiating the text and that the accord was therefore illegitimate. As a result, formal conference action on the accord was limited to a decision to “take note” of the accord. In the absence of formal UNFCCC endorsement of the accord, the Obama administration is encouraging individual states to express their support for the accord through individual national statements or communications.

ANALYSIS OF THE ACCORD

The accord falls far short of the original objectives of the UNFCCC negotiating process. It addresses the key issues in the negotiating mandate—emissions reductions by developed and developing countries, climate change assistance for developing countries, and mechanisms for monitoring and verifying commitments—but only in the most general terms. In particular:

- The accord establishes a general goal of limiting the rise in global temperature below 2° Celsius, but it does not contain commitments regarding specific emissions reductions to be made by individual states. (Specific commitments are to be made by January 31, 2010.) The accord does not address what steps should be taken in the event that mitigation commit-

ments made by individual states prove insufficient to limit the global temperature increase to 2° Celsius.

- While the accord establishes goals for aggregate levels of assistance to developing countries from developed countries, it is silent on the amount of money to be contributed by individual states toward the medium and long-term funding commitments included in the accord. It is also silent on the precise sources of such funding and the conditions for distributing it.
- While the accord establishes the important principle that developing states will be responsible for reporting on the climate mitigation actions they plan to take and have taken, the details of the guidelines for these reports and the process for international review of them remain subject to further negotiation.

Thus, rather than resolving the key questions in the negotiating mandate, the accord is largely limited to establishing broad parameters for future decisions on these issues.

The accord is also vague about the future process for reaching such decisions. At its most specific, it calls for states to make submissions relating to mitigation actions by January 31, 2010. On other operational issues, including financing assistance for developing countries, and the process for reporting, monitoring, and verifying states' climate commitments, the accord makes only general reference to future discussions among, and decisions to be made by, the parties to the UNFCCC. The accord is silent on whether further efforts will be made to conclude a legally binding treaty on future climate change actions, or whether future efforts will be addressed through less formal means.

IMPLICATIONS FOR THE UNITED STATES

The accord contains a number of elements that advance important U.S. negotiating objectives. It also creates significant expectations about future U.S. actions with respect to climate change at a time when important aspects of future U.S. climate policy remain uncertain.

1. Elements of Flexibility for the United States

The accord preserves important flexibility for the United States with respect to U.S. actions to address climate change. While the accord provides for the United States to commit to implement an economy-wide emissions target for 2020, it does not prescribe what that target will be, nor the actions the United States will take to meet it. Accordingly, the United States retains discretion to decide both on its own target and on the policies it will adopt in an effort to meet the target. Similarly, while the accord identifies aggregate goals for assistance from developed countries to developing countries, it does not prescribe how much money each country will contribute toward such goals, or the mechanisms for marshalling such funds. As a result, the United States retains significant discretion to decide how and to what extent it will provide such assistance. Because the accord is not a legally binding agreement, there are no formal legal consequences should the United States fail to carry out even the general undertakings applicable to it under the accord.

2. Commitments for Developing Countries

The accord also contains provisions aimed at expanding the role of developing countries, including major emitters such as China and India, in addressing climate change. Though such countries would not have the same obligations as developed states to commit to implementing economy-wide emissions targets, they would be required to report regularly on the actions they intend to take and have taken to address climate change. The reports will be subject to international review, an element China resisted during the negotiations. While the nature and scope of this review remains to be decided, in principle it should provide the United States the opportunity both to better understand the actions being taken and to identify areas where failure by developing countries to implement their commitments may have an adverse effect on U.S. interests or economic competitiveness.

3. Raised Expectations for Future U.S. Action

The accord also raises significant expectations for U.S. action on climate change in areas that remain under intense debate within the Congress. It is unclear whether future Congressional action on climate change issues will satisfy these expectations.

First, the accord calls for the United States to submit by January 31, 2010 an economy-wide emissions target for 2020. The Obama administration has indicated that it will pledge under the accord that the United States will reduce its emissions by 17 percent from 2005 levels by 2020. The administration has indicated that this position is based, in part, on its assumptions about Congress's willingness to pass climate change legislation mandating such reductions, and is informed by relevant provisions of the Waxman-Markey bill that passed the House in 2009 and the Boxer-Kerry bill that passed the Senate Committee on Environment and Public Works in 2009.

Similarly, the accord establishes goals for financial assistance to developing countries toward which the United States will be expected to contribute. The size of these goals—\$30 billion for the period 2010-2012 and \$100 billion per year by 2020—suggests that the expected U.S. contributions would far exceed current U.S. funding levels. The FY2010 budget contains around \$1.2 billion in climate change related assistance. Based on past practice, the United States may be expected to contribute as much as \$3 billion per year between 2010 and 2012, and as much as \$30 billion per year by 2020. In supporting the aggregate funding goals contained in the accord, the administration appears to be assuming both that Congress will support increased U.S. Government foreign assistance for climate change related goals, and that carbon markets created by passage of a cap and trade bill will help marshal significant private sector resources for such assistance.

The uncertainty about the prospects for Congressional passage of climate change legislation creates similar uncertainty about whether the United States will fulfill the expectations the accord creates on these issues. Congress may ultimately prove unwilling to endorse emissions targets as ambitious as those the Obama administration will pledge, and indeed may be unwilling to adopt any specific economy-wide emissions reduction target for 2020 regardless

of its level. Similarly, Congress may be unwilling to support significantly increased foreign assistance for climate change in the current budget constrained environment, and may not opt for a cap and trade system that would facilitate the creation of large private carbon markets. While the accord's provisions may be expected to inform Congressional debate on climate change policy, they will not be the only factors members will consider in developing climate change legislation, and other factors could lead to Congress to pursue different policies than those envisioned by the accord.

In the event that Congress does not pass legislation consistent with the expectations for U.S. actions created by the accord and the Obama administration's statements, the United States may have a more difficult time urging other countries, in particular China and India, to follow through on their commitments, and overall global efforts to address climate change may be less effective. The United States would also risk diplomatic criticism from European countries and those particularly vulnerable to climate change who are leading advocates for more robust actions.

FURTHER OBSERVATIONS ON THE NEGOTIATION PROCESS

In addition to these issues specific to the outcome at Copenhagen, several other developments at the Conference may be of interest to the Foreign Relations Committee and to the Senate more generally:

- *China's increased assertiveness:* China played a more assertive and visible role at the Copenhagen conference than it traditionally does in similar multilateral fora. China aggressively defended its position that steps to address climate change should not come at the expense of its development objectives for its economy. It also made a number of statements aligning itself with G-77 critiques of the negotiating process. This could reflect an increased willingness on China's part to play an active leadership role in international institutions generally, or could simply suggest that the Chinese attached particular significance to the shape of a future climate change regime.
- *Leading role played by emerging economies:* The final deal at Copenhagen was agreed among the United States, China, India, Brazil, and South Africa. The engagement of these major emerging economies, and their willingness to negotiate based on their own interests, rather than on behalf of the developing world as a whole, was critical to the ability to reach a final deal. The significant role played by these countries, and the less central role played by the European Union, also may suggest and broader shift in power and influence in the international system. Such a shift is consistent with the emergence of the G-20, which encompasses emerging economies, and the corresponding displacement of the narrower G-8 as a forum for coordinating action on major economic issues.
- *Positive reactions to U.S. engagement:* The United States was largely seen as playing a constructive role at the conference, both in making concrete commitments for U.S. actions on climate change, and in trying to broker differences among countries to produce an agreement. The United States shouldered

little if any of the blame for the conference's failure to produce more substantial results. This contrasts with the frequent perception in the post-Kyoto era of the United States as a principal obstacle on climate change, and thus Copenhagen may be seen as a diplomatic victory for the United States. Some of these benefits could prove short lived if future U.S. action on climate change does not fulfill expectations raised by the U.S. positions announced in connection with Copenhagen.

- *Questions about the future of the UNFCCC process:* The inability of the UNFCCC process to deliver more substantial success toward meeting its negotiating mandate raises questions as to its future viability as the principal forum for international climate efforts. Given the difficulty of reaching agreement among 192 countries in an increasingly polarized UNFCCC forum, countries may look to other options for coordinating international efforts on climate change. These could include less formal climate specific institutions like the Major Economies Forum, or broader existing institutions like the G-20.
- *Developing world disaffection:* The G-77's positions placed great emphasis on procedural issues and on the need for all states to participate at every stage of the negotiation in order for it to be legitimate. The resonance of these issues among developing countries suggests a broader dissatisfaction with their role in international institutions more generally. If these arguments continue to characterize G-77 positions in multilateral bodies, they could make it more difficult for such bodies to work effectively and reach practical decisions.