



**New York Bar Association  
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**Address by Yvo de Boer, Executive Secretary  
United Nations Framework Convention on Climate Change**

Ladies and gentlemen,

Thank you for this timely invitation to address you and to be here for the launch of your climate change initiative.

Two years ago, the world was abuzz with the latest findings of climate change science, compiled into a comprehensive assessment report by the Intergovernmental Panel on Climate Change. The message was loud and clear: the climate is changing dangerously due to greenhouse gas emissions from human activity, but solutions exist that can be made more cost-effective through concerted global action.

In response to this, negotiations were launched in 2007 on strengthened global climate change action under the United Nations Framework Convention on Climate Change. At the launch in 2007, countries agreed that the negotiating process would conclude in a deal on climate change in Copenhagen in December this year.

Two years on, new scientific findings on the acceleration of climate change make almost daily headline news. A climate change deal has become an unequivocal requirement to stop climate change from slipping out of control. No doubt, you will be aware of the Climate Change Summit of Heads of State, which took place here in New York yesterday. The summit concluded with a clarion call for a strong climate change deal to be sealed in Copenhagen in December.

***Political momentum is clearly building towards the Copenhagen conference.***

- Climate change is a major item on the agendas of most summits between now and Copenhagen;
- From the United States to China and India, the private sector has been calling for ambitious climate change policies to kick-start green economic growth, to create myriad new economic opportunities and to guide low-emissions investments;
- Non-governmental organisations are rallying millions of people across the United States and the world in support of success at Copenhagen;

- The world is watching the international climate change negotiations with bated breath, expecting a strong climate change deal that includes the United States in a prominent way.

***But the growing political momentum has not yet trickled down into the negotiating process***

The intergovernmental climate change negotiations have made some progress towards Copenhagen. At the same time, negotiations are characterized by a high degree of substantive and political complexity.

Substantively, countries' proposals for an outcome at Copenhagen have been captured in draft negotiating texts that currently total some 280 pages. These texts need to be consolidated and whittled down in record time. In terms of real negotiating time, there are a mere 16 days left before the Copenhagen conference begins, and negotiations need to speed up.

Politically, there is a high degree of mistrust between developed and developing countries. Yet climate change cannot be tackled with a lack of trust. Much of this mistrust stems from the fact that industrialized countries are calling on the major developing countries with advanced economies to take on commitments, while they themselves have *not* met their mitigation, financial and technology transfer commitments in the past. Industrialized countries seem to be shifting the burden of responsibility to major developing countries. Major developing countries may have advanced economies, but they are still struggling to achieve key development aims. For example, some 400 million people in India still have no access to electricity.

Having said that, it is clear that the world cannot come to grips with climate change without a meaningful contribution by developing countries. The challenge is to craft a way forward that is based on respect and mutual support. This means: ambitious targets and a robust financing system.

Copenhagen does not need to come up with all the fine print of a climate change deal. But it needs to ensure that the heart of an agreed outcome is functional and enables a way forward that is based on inclusiveness, trust and cooperation.

***To my mind, the heart of a Copenhagen deal consists of four political essential that need to be resolved at Copenhagen to breathe new life into international cooperation on climate change.***

They are: firstly, ambitious emission reduction targets by all individual industrialized countries; secondly, nationally appropriate mitigation actions by developing countries; thirdly, strong financial and technological support; and finally, equitable governance structures to manage the support.

**1. Ambitious mitigation by all industrialized countries**

For a Copenhagen deal to be truly effective, it is essential that **all** industrialized countries commit to ambitious mid-term targets on an individual basis.

The scientific community has estimated that there is a 50 per cent chance of limiting global mean temperature increases to 2°C, if emissions peak in the next 10 - 15 years, if emissions are globally reduced by 50 per cent by 2050, and if industrialized countries reduce their emissions by 25-40 per cent below 1990 levels by 2020.

The climate change effects associated with this scenario are still serious, but are widely regarded as more manageable. The G8 Summit of 2009 and the Major Economies Forum recognized the scientific view that the rise in global average temperature ought not to exceed 2°C.

Despite the recognition of a 2°C limit by the G8, the aggregate pledges for mid-term targets by industrialized countries fall far short of the IPCC range. Industrialized countries need to raise their level of ambition onto an emission path that will ensure a limit in the increase of global temperature of 2°C.

As the world's key industrialized nation, it is critical that the United States makes a serious domestic contribution. As a country with a leadership position on numerous global issues and developments, the international community is looking to the United States to take on a clear leadership role in climate change abatement.

## **2. The second political essential relates to nationally appropriate mitigation actions by developing countries**

Many developing countries are already implementing mitigation actions with little or no financial and technological support.

For example, the Republic of Korea's economic recovery package has the world's largest green component. The green component in China's economic recovery package is the world's second largest. China is also in the process of enacting a suite of policies, including ambitious energy efficiency targets and climate change assessment requirements for all new economic development plans. Actions such as these are likely to make it a leader in climate change abatement.

It is important that the international community recognizes this fact.

Developing countries have said time and time and again that they are willing to undertake additional nationally appropriate mitigation action, provided they receive financial and technological support.

These actions can be larger than projects, but smaller than entire strategies. Importantly, they must lead to a substantial limitation of emissions. For developing countries, nationally appropriate mitigation actions could drive a shift to sustainable development and help them not to follow the emissions-intensive development path of industrialized countries.

At the same time, the political reality is simply such that major developing countries will need to state what they will do to lower the growth of their emissions. Without this, it will be hard, if not impossible, to reach a political agreement in Copenhagen.

The negotiations do not distinguish between different groups of developing countries, and trying to create sub-groups is not beneficial for the negotiating process. But the reality is

this: a Copenhagen agreed outcome that does not drive clear, measurable action on the part of major developing countries will be stillborn.

### **3. The third core political issue is significantly scaled-up financial and technological support for mitigation and adaptation actions by developing countries**

Adequate financial, technological and capacity-building support is the engine for advancing both national action and international cooperation. A Copenhagen deal must put in place mechanisms for generating new, predictable and sustainable financial resources and technology to unleash both mitigation and adaptation actions in developing countries.

International and public capital need to be scaled up, and significant public funding is essential to boost technological support. Adaptation, as well as many of the sectors that are key to mitigation in poor developing countries, depend largely on public finance. Scaling up public funding is therefore critical. To this end, it is critical that a Copenhagen deal includes a cost-sharing formula for the generation of support by rich countries.

At the same time, the engagement of the private sector is indispensable because it makes the bulk of the investments that determine greenhouse gas emissions. An effective, regulated carbon market will channel significant resources to developing countries. The more ambitious the mid-term emission reduction targets of industrialized countries, the greater the use of the carbon market is likely to be. The potential of this should not be underestimated: in 2008, the global carbon market was worth USD 116 billion. In 2009, despite global economic difficulties, its worth doubled.

It will be important to create a mix of financial instruments to ensure predictable financing going into the future.

Developing countries have contributed the least to the problem, but they are already suffering climate change impacts such as storms and droughts. Adequate financial support for developing countries, especially for the least developed countries who have the least ability to cope, can only be ensured through concerted action at the global level.

### **4. The fourth political issue centres on equitable governance structures to manage the support**

It is critical that the funds that are agreed as part of a Copenhagen deal have a governance structure that is founded in equity, respects the needs of developing countries and includes them as equal decision-making partners.

These four political issues are strongly linked, both politically and functionally. They can only function effectively if all industrialized countries are fully engaged, if major developing countries make a measurable contribution, and if developing countries receive assistance. Consequently, they need to be resolved together at Copenhagen.

***The question that remains open - and the question that may interest you the most as law professionals - is: how will the resolution of these political issues be captured legally?***

In other words, what type of legal form will a Copenhagen deal take? There are two mandates that underpin the current negotiations under the climate change regime.

1. **The negotiating process that was launched under the Framework Convention on Climate Change in 2007** without pre-determining the legal form of the outcome. The mandate exclusively refers to an “agreed outcome” and the adoption of a decision by the Conference of the Parties in Copenhagen. This agreed outcome could take on several forms: a new protocol under the Convention, a set of decisions by the Conference of the Parties, or a combination of the two. To date, five proposals for a new protocol under the Convention have been submitted by countries.
2. **The second mandate underpins negotiations for further commitments of industrialized countries for subsequent commitment periods of the Kyoto Protocol.** The mandate for this negotiating stream refers to “amendments to the Kyoto Protocol” as an outcome.

Given these mandates and proposals submitted, what are the likely scenarios for the final outcome in Copenhagen in legal terms? There are three basic scenarios: a) a new protocol under the Convention concurrent with an amended Kyoto Protocol; b) a new protocol under the Convention superseding the Kyoto Protocol; or c) a set of decisions by the Conference of the Parties and an amended Kyoto Protocol.

- a) A new protocol under the convention, concurrent with an amended Kyoto Protocol.

This scenario is possible in a political context in which countries are not prepared to end the Kyoto Protocol, but nonetheless expect industrialized countries that are not party to the protocol, in particular the US, as well as some developing countries, to take on binding treaty commitments.

This scenario would provide a fair amount of legal certainty and parity in legal obligations. However, several critical legal issues would need to be addressed, including: the relationship between the two protocols, comparability of commitments, uniformity in reporting actions and uniformity in compliance procedures.

- b) The second scenario presents the most ambitious outcome. It provides a single legal framework for all countries willing to take on binding commitments and resolves the issue of industrialized countries that are not Party to the Kyoto Protocol.

This would entail a single legal instrument that captures the outcomes of both negotiating tracks, and incorporates the substantive provisions of the Kyoto Protocol and its amendments.

This scenario has several advantages. It leads to a more coherent approach to international climate change efforts; and it provides a measure of simplicity and avoids legally complex linkage issues between two protocols. At the same time, it would entail some complex legal issues, including the termination of the Kyoto Protocol.

c) The third scenario is the least ambitious and may well be considered a business as usual political choice given the doubts surrounding the legally binding nature of decisions by the Conference of the Parties.

Although the outcome at Copenhagen could be operational fairly quickly under this scenario, it could create a less coherent framework, making it difficult to compare commitments or to assess compliance and enforce the deal.

***The United States needs to be fully part of a Copenhagen deal by signing on to a legal framework.***

Many countries are sceptical as to whether this will happen or not. The refusal of the United States to ratify the Kyoto Protocol is still fresh in many memories. The United States needs to leave its status of “climate change pariah” in the past and reap the benefits of full engagement.

In quite a different context, Abe Lincoln once said “The dogmas of the quiet past are inadequate to the stormy present”. Given that human-induced climate change is unequivocal, that the entire world is affected and that solutions have to be global to be effective, I cannot help but find relevance in his words: a new way forward and a new level of engagement by the United States are needed.

The United States signing on to a legal framework on global climate change action will not result in a reduction of legal sovereignty. Rather, such a move will result in an increased level of international cooperation. Most importantly, it will ensure that the solutions to each political issue function together like well-oiled cogwheels.

Simply put: without the United States signing on to a strengthened legal framework on international climate change abatement, there is little serious prospect for the world to come to grips with climate change.

Domestically, the Waxman-Markey bill is currently under consideration and is a promising step. Discussions on whether the United States could sign on to an international agreement in the absence of domestic policy being in place have dominated many forums. I believe that this is possible. Developing both domestic and foreign climate change policy in tandem will ensure that they are mutually reinforcing, to the benefit of both the United States and the world.

But one thing is clear: if the US does not show ambition or if it walks away from yet another climate change deal, the political energy and moral credibility will be sucked out of the international climate change process.

Such a scenario would leave the world in great peril, and push it ever closer to the most catastrophic scenarios outlined in the assessment reports of the Intergovernmental Panel on Climate Change.

Thank you

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