



# Wat na Kopenhagen ? Juridische Aspecten

*Prof Dr Kurt Deketelaere*

*Secretaris-Generaal LERU  
Buitengewoon Hoogleraar  
KU Leuven/University of Dundee*





# Inleiding

- United Nations Framework Convention on Climate Change (UNFCCC)
  - 9 mei 1992
  - 194 ratificaties
  - 21 maart 1994
  
- Kyoto Protocol to the UNFCCC (COP 3)
  - 11 december 1997
  - 190 ratificaties
  - 16 februari 2005
  - 2008-2012



# Inleiding

## Article 3 KP

- 1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.
- 2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.



# Inleiding

## Article 3 KP

- 9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.



# Inleiding

- Uitwerking
  - 2005 Ad Hoc Working Group on further commitments by annex I Parties (AWG KP)
  - 2007 Ad Hoc Working Group on Long Term Cooperative Action (AWGLCA)
  - COP 15, 7-18 December 2009



# Copenhagen Accord

- Inhoud
  - Zie presentatie Dr Jos Delbeke
- Commentaar
  - Yvo de Boer (UNFCCC)
  - Connie Hedegaard (EC)
  - Barack Obama (USA)



# Copenhagen Accord

- Juridische waarde
  - UNFCCC-secretariat 18/01/10 Notification to Parties (Communication of information relating to the CA)
  - UNFCCC-secretariat 25/01/10 Notification to Parties (Clarification relating to the Notification of 18/01/10)
- ⇒ “... since the COP neither adopted nor endorsed the CA, but merely took notice of it, its provisions do not have any legal standing within the UNFCCC process ...”
- ⇒ “... since the CA is a political agreement, rather than a treaty instrument subject to signature ...”



# Copenhagen Accord

- Cf 1969 Vienna Convention on the Law of Treaties
  - artikel 2, 1°, a : “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation
  
- Juridische waarde : -
  
- Politieke waarde : +





# Copenhagen Accord

- “To adopt – To take note”

- Cf UNFCCC-secretariat 18/01/10 Notification to Parties (Communication of information relating to the CA) :

“The COP at its fifteenth session adopted a decision that took note of the CA of 18 December 2009. The decision was adopted with the explicit understanding that the CA would be attached to the decision and that the chapeau of the CA would list Parties that wish to associate themselves with it.”



# Copenhagen Accord

- COP decision
  - COP (art 7 UNFCCC) : “Conference of the Parties ... shall, as the supreme body of this convention, keep under regular review the implementation of the convention and any related legal instruments that the COP may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the convention.”
  - Decision (UNFCCC glossary) : “A formal agreement that (unlike a resolution) leads to binding actions. It becomes part of the agreed body of decisions that direct the work of the COP.”



# Copenhagen Accord

=>  *vorige COPs* : diverse “decisions” aangenomen met unanimiteit (meerderheidsstemming niet mogelijk obv COP rules)

=>  *COP 15* : unanimiteit niet mogelijk over CA (cf Tuvalu, Soedan, Bolivie, Venezuela)

=>  *Yvo de Boer (UNFCCC)* : “It is a way of recognizing that something is there, but not going so far as to associate yourself with it.”

=>  *Jacob Werksman (WRI)* : “... the decision to “take note” of the CA does not change the nature of the CA; it does not (...) give it the significance of a COP decision.”



# Copenhagen Accord

- “To associate”

- Cf UNFCCC-secretariat 18/01/10 Notification to Parties (Communication of information relating to the CA) :

“I would invite those Parties that wish to be associated with the CA to transmit this information to the secretariat by 31 January 2010.”

=> *Annex I parties* : information on quantified economy-wide emission targets for 2020 (format annex I CA)

=> *Non-Annex I parties* : information on mitigation actions (format annex II CA)



# Copenhagen Accord

=> *transmission of information* : “such an official communication may take the form of a simple letter to the Executive Secretary from a relevant officer of the Government or a note verbale indicating that your country wishes to associate itself with the CA and that its name should be included in the chapeau of the CA.”

=> *decision to submit information* : “... is for individual parties to make and they are at liberty to provide any clarifications of their inputs they deem appropriate.”

=> *UNFCCC 01/02/10 Press release* – “UNFCCC receives list of government climate pledges” :



# Copenhagen Accord

- “Following the conclusion of the climate change talks in Copenhagen, the United Nations Framework Convention on Climate Change (UNFCCC) has received submissions of national pledges to cut and limit greenhouse gases by 2020 from 55 countries. These countries together account for 78 per cent of global emissions from energy use.
- This represents an important invigoration of the UN climate change talks under the two tracks of Long-term Cooperative Action under the Convention and the Kyoto Protocol, said Yvo de Boer, Executive Secretary of the UNFCCC.
- The commitment to confront climate change at the highest level is beyond doubt. These pledges have been formally communicated to the UNFCCC. Greater ambition is required to meet the scale of the challenge. But I see these pledges as clear signals of willingness to move negotiations towards a successful conclusion, he said.



# Copenhagen Accord

- Industrialised countries listed their mid-term targets to cut emissions: <<http://unfccc.int/home/items/5264.php>>
- Developing countries communicated information on their nationally appropriate mitigation actions: <<http://unfccc.int/home/items/5265.php>>

EU and its MS acting in common : 20%/30% vav 1990  
[http://unfccc.int/files/meetings/application/pdf/europeanunioncphaccord\\_app1.pdf](http://unfccc.int/files/meetings/application/pdf/europeanunioncphaccord_app1.pdf)



# Copenhagen Accord

- ⇒ *Opm 1* : Niet alle EU MS zijn Annex I partijen
  
- ⇒ *Opm 2* : “As part of a global and comprehensive agreement for the period beyond 2012, the EU reiterates its conditional offer to move to a 30% reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and that developing countries contribute adequately according to their responsibilities and respective capabilities.”
  
- ⇒ *Opm 3* : Getekend door DG of DG Environment, EC, en Ambassador Deputy Permanent Representative of Spain, Council of the EU





# Copenhagen Accord

- “which is operational immediately”
  - Kan enkel voor die delen van het CA waarvoor geen COP decision nodig is (cf annex I/annex II CA)
  - COP decision nodig voor :
    - *Para 4* : COP may establish further guidelines for the MRV of developed countries actions and provision of support
    - *Para 5* : COP to adopt guidelines on MRV of supported NAMAs
    - *Para 9* : A High Level Panel will be established under the guidance of and accountable to the COP
    - *Para 10* : establishment of the Copenhagen Green Climate Fund as an operating entity of the financial mechanism of the Convention



# Hoe verder ?

- Nergens voorzien in CA om in 2010 tot een juridische bindende tekst te komen
  - Nochtans noodzakelijk
  - Rechten en plichten
  - Reductiedoelstellingen
  - Rechtszekerheid
- EU : “our aim should be a comprehensive, balanced and uniform legally binding agreement, in line with the level of ambition dictated by science”.
- Quid teksten AWG LCA en AWG KP ? Cf issues waarvoor COP decision nodig is.



# Hoe verder ?

- EU : “should seek to ensure that the next steps in the negotiations, currently planned for May/June in Bonn, integrate and build upon the CA with a view to reaching a legally binding agreement in 2010”.
- Louter aanpassen van Annex B KP ?
- Tweede commitment periode onder KP ?
- Nieuw Protocol ?
- Tabula Rasa ?



# Hoe verder ?

- Cf uiterst gecompliceerd onderhandelingsproces !
- Cf consensuele besluitvorming met 194 landen ?

Art 7, 2, c UNFCCC : “The COP, shall, at the request of two or more parties, facilitate 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.”

- Cf Europese aanpak 2010 ? Van Rompuy, Ashton, Hedegaard, Schauliege/Magnette
- Cf Carbon Tax ...