



# Foley Hoag Climate Update

SEPTEMBER 2015



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After the last meeting of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“ADP”, 2<sup>nd</sup> session, 10<sup>th</sup> Part) which took place in Bonn earlier this month, the pace of climate talks for the adoption of a universal agreement on climate change under the auspices of the UNFCCC is still too slow, only three months ahead of the opening of COP21 on November 30th.

Since May 31<sup>st</sup>, negotiators have tried to consolidate the formal negotiating text, so called the Geneva Text, through a “mechanical streamlining” exercise aiming at the deletion of redundancies or overlaps among positions in order to reduce its size. Because this exercise did not lead to any real debate on substance, negotiators were frustrated and thus asked the co-chairs of the ADP (Ahmed Djoghlaif from Algeria, and Daniel Reifsnnyder from the United States) to develop, under their own responsibility, a more concise text before the ADP Session in September. This new text was presented as a “Tool” on July 24<sup>th</sup>, where the co-chairs took the opportunity of this mandate to restructure the Geneva Text in three different parts while taking account of the outcome of the mechanical streamlining exercise done in June:

- Provisions that are appropriate for inclusion in an agreement (e.g. overarching commitments, durable provisions and standard provisions for an agreement) were allocated to Part One of the Tool, entitled “Draft agreement”
- Provisions that are appropriate for inclusion in a decision (e.g. details of implementation, provisions likely to change over time, provisions related to pre-2020 actions and interim arrangements pending entry into force of the agreement) were allocated to the relevant sections of Part Two of the Tool, entitled “Draft decision”.
- All other provisions remain in Part Three of the Tool, entitled “Provisions whose placement requires further clarity among Parties in relation to the draft agreement or draft decision”.

At the ADP session in September and despite a certain degree of nervousness at the opening of the session, negotiators did not reject the “Tool”, which was a way for the co-chairs to get further confirmation of their legitimacy to help lead the negotiations. It is also important to note that this situation is different to what happened before the Copenhagen Conference, for the preparation of which there was no agreement to work out a negotiated text three months before.

As compared to previous meetings, this September session has been important therefore in moving forward the substance of a potential final agreement. Some substantive progress has been made, even if this has not yet been directly translated into text.

In this regard, we highlight the growing support for a durable agreement, with no end date, as well as some emerging consensus around the idea of five year “cycles” under which each country would come forward with new, more ambitious nationally determined contributions for each cycle. However a worrying signal came from the Umbrella Group, which includes the USA, that they would not object to an Agreement

without an operational long term emission reductions goal, echoing China, which did not even mention the “below 2°C” objective. It would be regrettable if the post-2020 international climate regime fails to give predictability regarding the ultimate objectives of the Agreement.

Another key topic is how to differentiate obligations between developed and developing countries to communicate, maintain, implement (or intend to implement) a nationally determined contribution in manner that may allow an dynamic interpretation of the famous Common But Differentiated Responsibilities and Respective Capabilities (CBDR&RC). In that respect, the September discussions were quite helpful in clarifying the various options put on the table, namely self-differentiation, or differentiation based on references to the relevant provisions of the UNFCCC (without necessarily referring to a binary distinction between developed/developing countries) or differentiation explicitly based on two categories of Parties (such as Annex I and non-Annex I Parties to the UNFCCC). Brazil is still pushing for a concentric differentiation, where developing countries would progressively reach the same level as developed countries in terms of coverage/type of commitments in the future, including a no-backsliding provision. This discussion on differentiation of commitments is echoed in the section of the negotiating text dedicated to transparency, where developing countries still oppose a unique streamlined MRV system even with some flexibility on stringency/frequency, despite the fact that each country would be committed to implement its nationally determined contribution. Some developing countries may consider a common transparency system on the condition they benefit from a grace period of 5 to 10 years. Most critically, developing countries made clear that, without prejudice to the decision made on differentiation, any enhancement of the current MRV would need to be matched by adequate support from developed countries for capacity-building and financing of the reports.

On adaptation and finance, which will become crucial parts of the Paris agreement in order to respond to strong demands for new and additional financial support from developed countries, some progress was made in Bonn to the extent that there seems to be a growing consensus that the Paris Agreement should contain some kind of global goal related to finance, namely an acknowledgement that addressing climate change requires shifting investment across the whole economy, and is not just a question of public finance.

At the end of the September session, negotiators agreed to build upon progress made on substance and to task the ADP co-chairs with producing by October a concise “non paper” expected to be the basis for the negotiations on the new universal climate agreement and accompanying decisions. This new text will need to be concise, clear, and consistent in identifying options in order to provide a sound and acceptable basis for drafting work, and mature enough for political considerations at the ministerial segment of the next ADP session (19 – 23 October, Bonn). This could go further than the existing ‘co-chairs tool’, drafted in legal language and taking the form of a draft agreement.