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Foley Hoag Climate Update

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Two of the most critical weeks in the calendar ahead of the 21st Conference of the Parties (COP) to the UN Climate Change Convention have commenced. The formal negotiations in Bonn, scheduled from 1st-11th June 2015, will play a decisive role in determining whether an effective, durable and flexible legal agreement is reached six months' later in Paris. The Bonn meeting will provide the first opportunity for the negotiating text to be considered in a formal setting.

The Bonn negotiations follow several informal negotiation sessions over the past three months. In Lima in March 2015, there was a broad consensus that the Paris Agreement should consist of an underlying legal instrument complemented by a series of COP Decisions to flesh out the details. By contrast, there was no such alignment on how and where in the Agreement to inscribe the Parties' Nationally Determined Contributions (NDCs). This issue will certainly be addressed in Bonn; its resolution, however, remains uncertain given the divergence of views as to the legal effect that Parties' mitigation commitments should have. In particular, the US has indicated that it would prefer to keep the NDCs outside the Paris Agreement so that they are not legally binding at international level.

At the informal negotiations in Paris in May 2015, the Parties' switched focus to discuss other important issues, the first of which was how to achieve a high-level of ambition up to 2020. With the new Agreement only to take effect five years from now, there is a significant gap in which momentum to 2020 will need to be maintained. The second area of focus was on setting a long-term climate change objective to make the Agreement dynamic. According to current science, limiting warming to 2 degrees Celsius means a 65% emissions reduction by 2050 relative to 2010 levels, along with carbon neutrality, including negative emissions, by 2100. Given the gap between Parties' intended NDC commitments and the climate science, 'dynamism' has become one of the most common buzzwords in the negotiations, with attention focussed on designing the Agreement so that the level of mitigation ambition can be raised over time. With the notable exception of China, there is a clear wish among the Parties for the Paris Agreement to be durable and to guide global action on climate change beyond its 2030 timeframe. The aim is to agree on 'cycles' for Parties' contributions or commitments, but the length of the cycles and the process remain to be determined. Despite the drive to set more ambitious mitigation targets, anything beyond the 2 degrees Celsius objective will, as matters stand, be aspirational rather than legally binding.

The other key issue discussed in the May Paris talks was how Parties' intended NDCs can and should be assessed. This is a thorny issue: in order for the Agreement to be effective, Parties' contributions need to be adequate for the purpose of limiting warming to 2 degrees Celsius. However, the idea of Parties' contributions being individually assessed is politically unpalatable to many. Some kind of aggregated assessment by the Convention's Secretariat appears to be the most likely outcome.

Most recently at a high-level ministerial meeting in Germany (the 'Petersberg Summit'), proposals to involve non-state actors in climate action were given particular attention. Given that Parties' mitigation commitments are unlikely to be sufficient to keep the global community on track to meet the 2 degrees target, efforts are increasingly focused on widening participation in the mitigation effort to engage businesses, non-profit organisations and regional, municipal and city-level governments. Although non-state actors' efforts will receive official recognition at COP21, nothing will be prescribed and the substance of the negotiations and the Agreement will be unaffected. Nevertheless, this widening of participation in the global climate change endeavour represents perhaps one of the most positive and significant dimensions of the present negotiations. After the recent Business and Climate Summit in Paris (http://www.businessclimatesummit.com/wp-content/uploads/2015/05/Business-Climate-Summit-Press-release.pdf) the engagement will continue between now and the Paris Conference through a series of other international events, most notably the anticipated World Summit on Climate and Territories at the start of July (http://en.rhonealpes.fr/1197-world-climate-summit-2015-en.htm).

The atmosphere at the negotiating sessions has been described as 'constructive', but, given that the negotiating text is currently 90 pages long and filled with numerous different options on each subject, it would be difficult to underestimate the challenge ahead. In Bonn, the COP21 co-chairs will seek to rationalise the text by removing some of the options that are now redundant before the real negotiations on the substance of the text during the second week. However, progress on substance is expected to be limited; although the Paris Conference is now less than six months' away, the realities of hard-sought and politically sensitive negotiations is that many Parties will be reluctant to fully show their hand, even at this stage. The task after Bonn is therefore predicted to be for the French Presidency to find an innovative way of preparing the final negotiating text for Paris through identifying the areas of convergence on which agreement can most probably be reached, as well as the remaining stumbling blocks.

One of the largest stumbling blocks will likely go to the very heart of the current regime and relates to the way that the Parties are differentiated and divided between 'developed' and 'developing' countries. Some understandably feel that geopolitical realities have altered significantly in the twenty-two years since the Convention was signed, while others regard the dividing line as non-negotiable. Given that the side of the dividing line on which a country falls determines whether it is a net donor or recipient of climate finance, this is likely to remain one of the most contentious issues of all. Indeed, perhaps an even more contentious issue is climate finance – how much developed country Parties should provide to developing country Parties for mitigation, adaptation and other activities, and whether those financial commitments should sit inside or outside of the legal architecture. This is perhaps the issue that, more than any other, could still make a final agreement difficult to reach.

To conclude, although the Bonn negotiations will not be decisive, what emerges from the negotiating table in mid-June will provide not only a clear indication of progress on the tricky issues highlighted above, but also on the form, legal and otherwise, that the Paris Agreement looks set to take. A negotiating text narrowed in focus and reduced in length from its current 90 pages will be one of the outcomes that those involved are almost certainly hoping to attain.