



Foley Hoag Climate Negotiations Tracker Document

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Since the 19th Conference of the Parties (COP) to the UN Framework Convention on Climate Change, parties have been developing their Intended Nationally Determined Contributions (or INDCs) to comprise their individual commitments for post-2020 under the new protocol or other legally binding instrument to be agreed at COP21 in Paris in December 2015. This article provides a brief insight into what an INDC is intended to be, and analyses those of four important, but very different, players, in the international climate change negotiations – the USA, the EU, Russia and Mexico.

What is an INDC?

INDCs were conceived in 2013 at COP19 in Warsaw as a way of lessening the largely top-down approach to climate change mitigation under the Kyoto Protocol, and rebalancing it with more of a bottom-up approach that marries parties' national circumstances and capabilities with the collective objective of limiting global warming to 2 degrees Celsius. As they are "intended" contributions, INDCs should not contain final numbers and parties retain the liberty to make changes after publication. The importance of the contributions being "nationally determined" is that it enables each party to define what it considers to be a fair and ambitious contribution, a way to commit that reflects the principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR&RC). Importantly, INDCs are made without prejudice to the legal form of the Paris Agreement, and therefore of the legal force of national contributions at international level, depending also on whether they are housed inside or left outside, for example in a National Schedule. In other words, by submitting an INDC, parties are not automatically accepting for the commitments therein to be legally binding. The binding force of the parties' commitments and the nature of the legal instrument, which contains them are two key issues which will be fought over in Paris.

The INDC process involves parties indicating publicly in written form what action on mitigation they are prepared to take from 2020 onwards, primarily in terms of a percentage emissions reduction against a baseline. Following calls from developing country parties for adaptation to be afforded equal priority with mitigation, it was decided at COP20 in Lima that parties have the option to include adaptation commitments within their INDC.

All parties were invited to submit their INDC to the UNFCCC Secretariat "well in advance" of COP21 in Paris, and by the end of March 2015 for those able to do so. To date, only 37 parties have submitted one. The Secretariat has been requested to produce a synthesis report by 1st November 2015 of the aggregate effect of all the INDCs submitted by 1st October.

The four following examples show the range of approaches being taken to INDCs by key parties.

Russia's INDC

The language of the Russian INDC is both provisional and conditional; it states that a "final decision" on the INDC will only be taken at the conclusion of the international negotiations and is dependent upon the

commitments made by the “major emitters”. Russia’s provisional proposal is for an emissions reduction of 70-75% relative to 1990 levels for the period 2020-2030. This target will be met without the use of international carbon markets.

Although at first blush, this target seems meaningful, it reflects no real increase in ambition relative to Russia’s binding domestic commitment of a 20-25% reduction by 2020. The Russian INDC commitment is essentially, a carbon intensity target; rather than achieving an absolute reduction in emissions, Russia will seek to ensure that its continued economic growth occurs in a way, which has no net effect on emissions. There is no adaptation commitment in the INDC.

The EU’s INDC

By contrast, the EU’s pledge is to make an unconditional commitment to reduce all GHGs by **at least** 40% by 2030 relative to 1990 levels, regardless of the outcome of the negotiations or the commitments made by other parties. Furthermore, the words “at least” show that the EU’s level of ambition may be increased further. The mitigation commitment also reflects an increase from the 20% by 2020 target that the EU pledged in the previous negotiations, and an abandonment of the conditionality approach whereby that percentage would be increased to 30% if other countries followed suit. Similarly to Russia, none of that contribution will met by use of international market-based mechanisms. There is no adaptation component in the EU INDC.

The US’s INDC

The target is for a 26-28% reduction in economy-wide emissions by 2025 relative to the 2005 level, with “best efforts” to achieve a 28% reduction. This, says the US, represents a doubling of its annual emissions reduction. As with the EU’s INDC, this commitment is unconditional and independent of the outcome of the negotiations or the contributions of other parties. It is important to note the use of a different baseline relative both to the Russian and EU INDCs, but also in relation to the Convention’s ultimate objective, all of which are based on emissions as at 1990. This does mean that, although a significant step forward, the US’ level of ambition remains some way below that of other comparable economies. Like the EU and Russia, however, the US’s position is that at present, the target will be met without the use of international markets, although this could change.

The INDC also gives an insight into the US’ longer-term position by stating that the 2030 target is consistent with being on track to reduce emissions by 80% by 2050.

As with the previous two INDCs, there is no adaptation commitment, despite the US having suffered a number of recent natural disasters apparently at least partially caused by climate change.

Mexico’s INDC

This is the only one of the four to contain both a mitigation and adaptation dimension. The mitigation commitment is comprised of an unconditional and a conditional commitment, covering not only all greenhouse gas emissions but also “Short-lived Climate Pollutants” (SLCP). The unconditional commitment

is to reduce emissions of GHGs by 25% to 2030 relative to Business As Usual (BAU) levels – consisting of a 22% reduction of GHGs and a 51% reduction of black carbon.

The conditional element is that this commitment could be increased to 40% (36% for GHGs and 70% for black carbon) if the global agreement addresses certain specified topics: international carbon price, carbon border adjustments, technical cooperation, access to low-cost financial resources and technology transfer – all of which must be at a “scale commensurate to the challenge of global climate change”. The Mexican position is that the unconditional emissions reduction target can be met without the use of international market mechanisms (although it is noted that such mechanisms would assist implementation); whereas the conditional target would require the use of such mechanisms – international, regional and bilateral.

In terms of adaptation, Mexico proposes a suite of actions at national level for the period 2020 to 2030 to increase the country’s resilience to climate change. The proposed actions cover the ‘social sector’, the ‘ecosystems’ sector and the infrastructure sector, and therefore represent a comprehensive approach to addressing the issue.

Conclusion

INDCs are, and will be, highly diverse, given the differing positions and circumstances of the parties. It will therefore be a considerable challenge for the Secretariat to synthesize them and to ascertain whether or not they put global emissions on the right track towards reaching the 2 degrees Celsius target and the ultimate objective of the Convention in the longer term.

In terms of ambition, the four INDCs above present a mixed picture. Given that the US has already achieved a 17% reduction in GHGs relative to 2005 levels, the INDC commitment reflects only a further reduction of just 9-11% to 2025. The Russian commitment is even more disappointing; a lot of the 70-75% commitment is “hot air” stemming from industrial decline since the fall of the Berlin Wall, and it also relies on maximum account being taken of carbon sequestration in forests which is yet to be agreed at international level. It also fails to increase the level of ambition relative to what is already enshrined in its domestic legislation for the period to 2020.

Two key topics of discussion at COP21 in Paris will be as follows: firstly, the legal form of the Agreement, and secondly, if the Agreement is to be a legally binding treaty, whether the INDCs will be housed within the legal instrument itself, so that the commitments are internationally binding, or accommodated outside of the legal architecture and giving rise solely to international accountability and moral persuasion. Given the need for Senate advice and consent in order for international law to become binding in the United States unless the same commitment is already part of domestic law, housing the INDCs outside of the legal architecture is likely to be the US’s preferred option. This may enable ratification of the new legal instrument through executive action alone, although the position remains unclear.