



United States Department of State

Washington, D.C. 20520

OCT 19 2015

The Honorable
Bob Corker, Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank for your letter of September 22 regarding ongoing negotiations to reach a climate agreement at the 21st meeting of the UN Framework Convention on Climate Change (UNFCCC) Conference of Parties (COP), to be held this December in Paris. We appreciate your interest in this issue, and have enclosed the Department's responses to your questions related to the Paris climate agreement.

We hope this information is helpful. Please do not hesitate to contact us if we can be of further assistance on this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Julia Frifield".

Julia Frifield
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

Department of State Responses

1. The UN Climate Change Conference held in Durban, South Africa, in 2011 under the auspices of the UNFCCC set forth the "Durban Platform" calling for the adoption of a universal legal agreement on climate change as soon as possible, and no later than 2015. Specifically, the "Durban Platform" requires the development of "a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, which is to be completed no later than 2015 in order for it to be adopted at the twenty-first session of the Conference of the Parties (COP) and for it to come into effect and be implemented from 2020." Does the Administration intend to treat the Agreement implementing the Durban Platform that is expected to emerge from the Paris meeting as a treaty, with formal transmittal to the Senate for its advice and consent?

Response: We do not know yet what the specific provisions of the Paris agreement will look like, should an agreement be reached. We will evaluate the final agreement, and whatever the Administration does will be in accordance with the law.

2. The Paris agreement may contain both legal and political commitments, but it is my understanding that the core of the agreement will establish legal obligations. Does the Administration consider the expected Paris agreement to be an agreement that legally binds the U.S. under international law or a non-binding political document?
 - a. Will any part of the Paris agreement be binding on the U.S. in any way under the principles of international law? If so, please describe in detail which parts of the Paris agreement will be binding upon the U.S. under international law and how? Is the U.S. Intended National Determined Contribution (U.S. INDC) an obligation the U.S. must fulfill under international law or is it a political statement of nonbinding legal effect?

Response: The intended nationally determined contribution reflected in the U.S. "INDC" submission is not intended to constitute an obligation the United States must fulfill under international law, and the United States considers that the Paris agreement should reflect that approach more broadly. Thus, we are not seeking an agreement in which Parties take on legally binding emissions targets. We consider this the best approach to promoting both ambition and broad participation in the

agreement. It remains unclear which provisions of the agreement would contain legal obligations.

3. Please describe in detail the process by which the United States will signal its intent to our UNFCCC partners that the U.S. intends to be bound by the expected Paris Agreement. Will a formal process of an exchange of letters or instruments be required to take place before the United States becomes a full party to the Paris agreement? How does the Executive branch intend to ratify this agreement?

Response: It is expected that the Paris agreement, like other agreements, would provide for the deposit of instruments of ratification, acceptance, approval, or accession. The nature of the U.S. instrument will depend upon the ultimate content and legal nature of its various provisions.

4. With respect to whether the Paris agreement requires enabling legislation, please describe in detail the U.S. domestic legal authorities that currently exist and that the Administration intends to use to implement the U.S. INDC. Is it the position of the Administration that the Administration possesses all of the authority it needs under current statute to fully implement the INDC? Will any further legislative action of any kind be required by the Congress to fully implement any Paris agreement?

Response: As noted in the U.S. submission containing the U.S. INDC, several U.S. laws as well as existing and proposed regulations are relevant to the implementation of the U.S. target, including the Clean Air Act, the Energy Policy Act, and the Energy Independence and Security Act. Although the content and legal nature of the Paris agreement is still under negotiation, the Administration does not at this point anticipate the need for further legislative action to implement any obligations.

5. As you know, the UNFCCC and the Kyoto Protocol were submitted to the Senate as treaties. Will the expected Paris agreement supersede or replace the UNFCCC and the Kyoto Protocol in any legally meaningful way? Will the expected Paris agreement create any new international obligations for the U.S. or extend the existing obligations of the ratified UNFCCC treaty into new domains? If the Administration does not intend to treat the expected Paris agreement as a treaty, please provide the Administration's reasoning, given that these previous agreements are considered treaties under U.S. law?

Response: The Paris agreement would not replace the United Nations Framework Convention on Climate Change. As provided in the Durban mandate for the negotiations, the Paris agreement is to be concluded “under the Convention.” It is premature to provide the rationale for the particular treatment of the Paris agreement, in that its treatment has not and cannot be determined until the content and legal nature of its various provisions are known. (Separately, we note that President Clinton never submitted the Kyoto Protocol to the Senate for advice and consent, nor did any subsequent President.)

6. In what ways will the expected Paris Agreement preempt current or future state lawmaking with respect to carbon emissions? Is it the Administration's position that any part of the Paris agreement shall have legal primacy over any inconsistent previously enacted state or federal law?

Response: It is not expected that the Paris agreement would preempt current or future state law-making or have legal primacy over inconsistent previously enacted state or federal law with respect to carbon emissions. As noted above, we are not seeking an agreement in which Parties take on legally binding emissions targets.

7. Under Circular 175, please describe the obligations of the Administration to consult with the Senate as to the form of the agreement. Is the State Department obligated to consult with the Senate? Has the State Department to date consulted with the Senate on the form of the expected Paris agreement? If so, when did such consultations occur?

Response: With regard to questions relating to the form of an international agreement, 11 FAM 723.4(c) states that “consultations on such questions will be held with congressional leaders and committees as may be appropriate.” The Administration has briefed Senate staff on a regular basis throughout the year in a variety of fora. We will continue to consult in the period leading up to and during the December Conference of the UNFCCC Parties in Paris.

In addition, bipartisan Members of Congress and staff have attended numerous climate change meetings of the Conference of the Parties. Congressional staff formed a part of the U.S. delegation and attended regular briefings with the U.S. negotiating team.