

Legal Sidebar

President Trump’s Withdrawal from the Paris Agreement Raises Legal Questions: Part 1

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On June 1, President Trump announced his [long-anticipated decision](#) to withdraw the United States from the [Paris Agreement](#)—an international agreement intended to reduce the effects of climate change by maintaining global temperatures “well below 2°C above pre-industrial levels[.]” As analyzed in this [earlier report](#) and [live CRS seminar](#), historical practice suggests it is within the President’s constitutional authority to withdraw from the Paris Agreement without first receiving congressional or senatorial approval. However, legal questions remain as to how the Trump Administration will implement the withdrawal and what role the United States will play in future international climate meetings. This two-part Sidebar series analyzes legal questions arising from the President’s announcement.

Will the United States Follow the Multi-Year Process for Withdrawal in Article 28?

[Article 28.1](#) of the Paris Agreement specifies the procedure for withdrawal, stating: “any time after three years from the date on which this Agreement has entered into force . . . , [a] Party may withdraw from this Agreement by giving written notification” to the Secretary-General of the United Nations. Further, under [Article 28.2](#), a notice of withdrawal does not become effective until one year after the Secretary-General receives written notification. Because the Paris Agreement did not [enter into force](#) until [November 4, 2016](#), the United States could not fully withdraw under the Article 28 process until November 4, 2020, the day after the next U.S. presidential election. President Trump did not mention Article 28 during his June 1st announcement, but [many observers have assumed](#) that the Trump Administration intends to follow the multi-year withdrawal process, and one Trump Administration official is [reported](#) to have [confirmed](#) that the United States will do so.

Can the United States Immediately Withdraw from the Paris Agreement?

International law, as described in the [Vienna Convention on the Law of Treaties](#) (to which the United States is not a party, but which [many consider to reflect customary international law](#)), does not provide a general right to withdraw from an international agreement at any time. Instead, parties may withdraw “[in conformity with the provisions of the \[agreement\]](#)” or “by the consent of all the parties after consultation with the other contracting States.” Because it does not appear that the United States sought or obtained the consent of the other [147 parties](#) to the Paris Agreement, exiting the Agreement without following

Article 28's multi-year process would have an [uncertain legal effect](#) in international law. Some have argued that withdrawal outside the Article 28 process [could be considered](#) a breach of the Agreement, but this position depends on whether Article 28 and the Paris Agreement as a whole are understood to be legally binding—an issue discussed below.

To What Extent Does the Trump Administration Consider the Paris Agreement Binding Under International Law?

As discussed in [earlier CRS products](#), the [Obama Administration interpreted](#) the Paris Agreement to contain a mix of legally binding and nonbinding provisions. Most notably, the prior Administration understood the Agreement to create binding obligations to formulate plans to address greenhouse gas emissions, known as [Nationally Determined Contributions \(NDCs\)](#). But Obama Administration officials [were reported](#) to have [insisted](#) that [Article 4.4](#) of the Paris Agreement be written in such a way that nations are not actually legally obligated to achieve the emission reduction targets in their NDCs.

Other than Article 4.4's hortatory statement that developed nations “should” pursue economy-wide emission reductions, the Obama Administration did not specify on an article-by-article basis which provisions of the Paris Agreement it believed to be nonbinding, and there is some disagreement among commentators on this issue. [Some contend](#) that, with the exception of provisions that are written in clearly aspirational language (like Article 4.4), the Paris Agreement is binding under international law. On the whole, the text contains provisions consistent with the form of an agreement [intended to be governed by international law](#), such as entry into force, a depositary, and a withdrawal clause. But [some commentators](#) have described the Agreement as generally [nonbinding](#) without differentiating between its terms. Still [others argue](#) that, as a matter of constitutional law, the Senate's advice and consent was required for the United States to join the Paris Agreement. Under [this view](#), the United States never fully assented to be bound because President Obama did not submit the Agreement to the Senate.

Although potentially ambiguous, the President's statements in his June 1st announcement could be interpreted to align with the view that the United States is not legally bound to the Paris Agreement. Without discussing whether the Paris Agreement might contain both binding and nonbinding provisions, President Trump [stated](#), “as of today, the United States will cease all implementation of *the non-binding Paris Accord*[.]” To the extent that the Trump Administration considers the full Paris Agreement to be nonbinding on the United States, the Article 28 withdrawal procedure would likewise be nonbinding (although there may be [political](#) or other [non-legal motivations](#) for compliance). However, such an approach would counter the [stated position](#) of the Obama Administration as well as the understanding of [many observers](#) and [foreign countries](#) that consider the Paris Agreement to be binding in part. Given the most [recent reporting](#) that the United States will follow Article 28's withdrawal process, the Trump Administration may agree that the Paris Agreement is binding, at least in part.

Will the United States Remain in the United Nations Framework Convention on Climate Change?

As discussed in this [earlier report](#) and [Sidebar](#), [some commentators](#) advocated for withdrawal from the parent treaty to the Paris Agreement—the United Nations Framework Convention on Climate Change (UNFCCC)—as a more expedient method of exiting the Paris Agreement. However, President Trump did not mention withdrawal from the UNFCCC during his June 1st announcement.

Analyzed in this [report](#), the UNFCCC established a framework system of global cooperation through annual meetings called the “Conference of Parties” in which the parties meet and assess their progress toward meeting the UNFCCC’s goals for addressing climate change. Both major subsidiary agreements to the UNFCCC—the [1997 Kyoto Protocol](#) (to which the United States is not a party) and the Paris Agreement—were negotiated and adopted during earlier Conferences of the Parties. If the United States remains a party to the UNFCCC (which appears to be the case), it retains the right to participate in the Conference of the Parties. The extent to which the United States will participate in similar annual meetings organized under the Paris Agreement, however, remains unclear, and is discussed in [Part 2](#) of this Sidebar series.

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