



The Authority for U.S. Participation in the Paris Climate Agreement

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Introduction and summary

In December 2015, the parties to the U.N. Framework Convention on Climate Change, or UNFCCC, will meet in Paris to strike a new international agreement that aims to limit climate change. A central aspect of the agreement will be a set of national goals—from both developed and developing countries—to reduce greenhouse gas emissions. Many major emitters, including the United States, China, the European Union, and Mexico, have already announced their intended goals.¹ The United States, for example, aims to reduce emissions 26 percent to 28 percent below 2005 levels by 2025.²

There has been considerable discussion, however, about whether the United States will be able to become a party to the agreement, given the conspicuous opposition of some members of the U.S. Senate to addressing climate change. This report aims to shed light on this discussion by explaining the types of international agreements in the United States and the possible nature of the forthcoming climate agreement.

In the United States, there are two categories of agreements that are binding under international law: treaties, which require the formal consent of a two-thirds majority of the Senate, and executive agreements, which the president can be authorized to conclude on a variety of grounds. These grounds may include the consent of the Senate to a prior treaty to which the agreement is pursuant, the enactment by Congress of a statute to which the agreement is pursuant, or the president's independent constitutional authorities.

Despite popular understanding, executive agreements are a well-established means of entering international agreements and account for the overwhelming majority—94 percent—of international agreements in the United States in the modern era.³ They are also on par with treaties in force and weight under international law, as both can create international legal obligations for the United States.⁴ The Appendix to this report—which presents a memorandum from the Congressional Research Service on the 182 multilateral executive agreements

entered by the United States from 1985 through 2014—illustrates that executive agreements have been used in almost all areas of international law, in matters of both great and minor significance, and throughout both Republican and Democratic administrations and congresses.

The general topic of the Paris agreement and its level of importance, therefore, do not predetermine that it will qualify as a treaty rather than an executive agreement. Instead, the content and context of the agreement must be considered. To this point, U.S. Special Envoy for Climate Change Todd Stern has said:

We will submit to Congress any kind of agreement that requires that kind of submission. Some agreements do and some agreements don't. So it's going to depend entirely on how this agreement is written, how it's framed, what is or isn't legally binding, and so forth.⁵

The Paris agreement is still under negotiation. It is becoming increasingly clear, however, that the final agreement could lack the features—such as legally binding national emissions reduction targets or legally binding national targets for providing financial assistance—that would suggest the need for formal congressional consent.⁶ It is therefore possible that the Paris agreement will qualify as an executive agreement. If so, U.S. participation would be based on the authority granted by the Senate when it approved the original UNFCCC treaty in 1992, as well as the president's constitutional foreign affairs power. The fact that the agreement would be consistent with existing U.S. laws, such as the Clean Air Act, and could be implemented without new legislation would supplement these authorities.⁷

Meanings of 'treaty'

In general conversation and outside the United States, "treaty" is often used to refer to any written international agreement that is governed by international law.⁸ In a narrower, U.S.-specific sense, it refers to an international agreement—governed by international law—that is approved pursuant to Article II of the Constitution, requiring the consent of at least two-thirds of the Senate.⁹ This report uses "treaty" in the U.S.-specific sense. Binding international agreements in the United States that are not treaties are called "executive agreements." President George Washington concluded the first executive agreements during his tenure, and U.S. courts have upheld their constitutionality.¹⁰

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