

## 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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## Legal Sidebar

# President Trump's Withdrawal from the Paris Agreement Raises Legal Questions: Part 2

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*This Sidebar is the second in a series of two posts analyzing legal questions arising from President Trump's [June 1st announcement](#) that the United States will withdraw from the [Paris Agreement](#). Questions related to the process for withdrawal and the United States' participation in the parent treaty to the Paris Agreement are analyzed in [Part 1](#). Background on the law of termination of treaties and other international agreements is available in this [CRS Report](#) and [Federal Law Update Seminar](#).*

### **What is the United States' Role in Future Climate Change Meetings Organized Under the Paris Agreement?**

President Trump's announcement of withdrawal from the Paris Agreement raises questions regarding the United States' role in future meetings organized under the Agreement. Like its parent treaty, [the United Nations Framework Convention on Climate Change](#) (UNFCCC), the Paris Agreement calls for its parties to meet annually to decide how to implement the Agreement, assess their progress toward achieving its goals, and perform other functions. Called the "Conference of the Parties serving as a meeting of the Parties to the Paris Agreement" or "[CMA](#)," this event was held for the first time in [Marrakech, Morocco in November 2016](#), and was [attended](#) by a delegation from the U.S. Department of State. As noted in [Part 1](#) of this post, Article 28 of the Paris Agreement would seem to contemplate U.S. withdrawal no earlier than November 2020. The presence (or absence) of U.S. representatives at the second CMA, [expected to take place](#) in November 2017, could act as an indicator of the Trump Administration's understanding of whether it remains a party to the Paris Agreement until 2020. It also may signal the extent of the President's willingness to participate in the implementation of the Paris Agreement during Article 28's multi-year withdrawal period.

### **What are the Prospects for Legal Challenges to the Withdrawal?**

Based on the nature and terms of the Paris Agreement, it is unlikely that a legal challenge to the President's withdrawal, such as a suit seeking to compel compliance with Article 28 or require implementation of the Agreement during the multi-year withdrawal period, would be successful. Unlike [some international agreements](#), the Paris Agreement does not require all parties to submit their disputes to an international tribunal, such as the [International Court of Justice](#). As such, there is no clear avenue for judicial intervention at the international level.

As a matter of domestic law, several legal considerations make it unlikely that a state or federal court in the United States would permit a lawsuit seeking to compel the United States to comply with the Agreement. First, the Supreme Court has instructed courts to give "[great weight](#)" to the executive branch's interpretation of international agreements, and the Obama Administration considered at least portions of the Paris Agreement to be nonbinding—a position that the Trump Administration appears to share and may have expanded. Second, even binding international agreements do not have the force of domestic law unless they are considered "self-executing" (a concept outlined in more detail in this [CRS Report](#)). Determining whether an agreement is self-executing is a [complex analysis](#), but [commentators](#) on [both sides](#) of the withdrawal debate appear to have concluded that the Paris Agreement is not self-executing. Finally, even when an international agreement is both binding and self-executing, under [Medellin v. Texas](#), there is a presumption that the agreement does not create a private right of action, meaning private litigants cannot sue to enforce its terms.

## What Legal Risks did the President Seek to Avoid by Announcing the Exit?

During his [June 1 speech](#) in the White House Rose Garden, President Trump cited the potential for “massive legal liability” and “unacceptable legal risks” if the United States were to remain in the Paris Agreement, raising the question: what form of legal exposure can be avoided by exiting the Paris Agreement?

As discussed above, there are many legal barriers to a lawsuit seeking to compel the United States to comply with the Paris Agreement, but [some](#) have [contended](#) that the Agreement still creates legal considerations because, in their view, it may impede the Trump Administration’s [efforts to repeal or revise](#) certain Obama-era environmental rules and regulations. Although the Trump Administration has not articulated the nature of the “unacceptable legal risks” caused by the Paris Agreement, [some](#) have speculated that the Administration believes that remaining in the Agreement might make it more difficult to survive an [Administrative Procedure Act](#) challenge if the Trump Administration were to repeal existing environmental regulations like the [Clean Power Plan](#). As explained in this [Report](#) and [Sidebar](#), an agency’s final decision to repeal an existing rule or regulation generally is subject to judicial review and cannot be made in a way that is “[arbitrary and capricious](#).” With some observers calling the risk of litigation “[spurious](#)” but others calling the Paris Agreement a “[Trojan Horse](#)” for future lawsuits, there is no agreement among commentators on this potential for increased legal risk.

It has also [been argued](#) that the United States’ participation in the Paris Agreement could trigger lawsuits seeking to compel the United States to utilize [Section 115 of the Clean Air Act](#). Titled “International Air Pollution,” Section 115 allows EPA to take certain actions (discussed in this [report](#)) to address endangerment of public health or welfare in foreign countries if those countries provide “essentially the same rights” to the United States. While proponents of climate action [have advocated](#) for the use of Section 115 since [before](#) the Paris Agreement, the potential for legal risk arising out of this provision of the Clean Air Act is difficult to forecast because Section 115 has never been implemented. Further, past efforts to compel EPA to invoke it to address acid rain pollution in Canada [were unsuccessful](#).

To the extent that the Paris Agreement does create the potential for some form of legal liability, it remains an open question whether the President’s withdrawal announcement would resolve that legal risk. In particular, if the United States follows Article 28’s withdrawal process discussed in [Part 1](#) of this Sidebar series, legal risks created by virtue of the United States’ status as a party to the Paris Agreement conceivably could continue until the withdrawal process can be finalized in November 2020.

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