

Paris Agreement: United States, China Move to Become Parties to Climate Change Treaty

September 12, 2016 (IN10568)

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On September 3, 2016, the United States and China consented to be bound by the international [Paris Agreement](#) (PA) to address greenhouse-gas-induced climate change.

The PA was negotiated under the [United Nations Framework on Climate Change](#) (UNFCCC), which the United States ratified in 1992 with the advice and consent of the Senate. The UNFCCC set an objective of "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"—implicitly requiring that human-related net emissions of greenhouse gases (GHG) ultimately decline to near zero. The UNFCCC outlined general obligations for all Parties plus specific obligations of the then-wealthiest countries, regarding national policies and measures to mitigate GHG emissions, assistance to developing countries, reporting, and reviews.

President Obama and China's President Xi Jinping synchronously deposited their nations' signed instruments with U.N. Secretary-General Ban-Ki Moon, who was present for that purpose. As of September 10, 2016, 27 nations have deposited their [ratifications and acceptances of the PA](#), accounting for 39% of global GHG emissions. The PA will [enter into force](#) 30 days after the ratifications, acceptances, approvals, or accessions pass a threshold of 55 states, accounting for at least 55% of global GHG emissions. A [White House official](#) stated that he expects another 35 countries—including Argentina, Brazil, India, Japan, and South Korea—to deposit their instruments in 2016, which would bring the total to almost 56% of global GHG emissions. In this case, the PA could enter into force in 2016. Toward this end, Ban-Ki Moon has [invited all nations](#) to deposit their instruments on September 21, 2016, in New York City. The European Union (EU) and the Russian Federation have pledged to work through their domestic processes to deposit their instruments as quickly as possible, but most commentators expect those actions to occur in 2017.

Figure 1. Presidents Obama and Xi with U.S. Secretary General Ban-Ki Moon

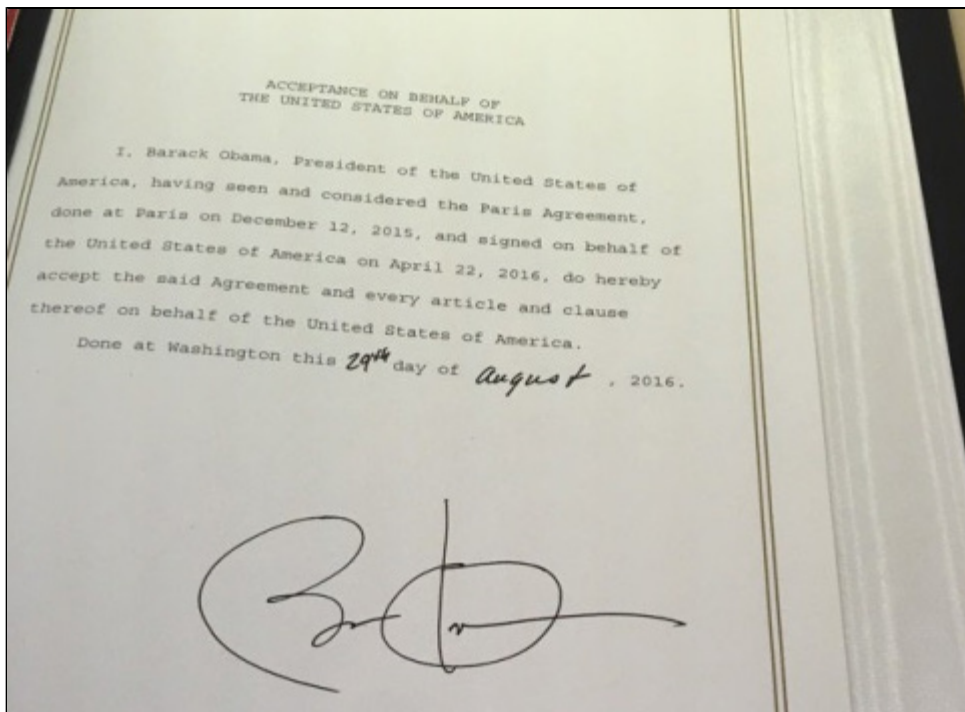


Source: White House, September 3, 2016.

The U.S. and Chinese presidents also expressed their [commitments](#) to work toward a global agreement, in October 2016, to phase down production and consumption of hydrofluorocarbons—a set of trace gases that are potent and extremely long-lived greenhouse gases—by amending the [Montreal Protocol](#) on Substances that Deplete the Ozone Layer. They also committed to support a [global market-based measure to limit carbon dioxide emissions from international aviation](#) under the auspices of the International Civil Aviation Organization when it meets beginning September 27, 2016.

In the PA, 195 nations plus the EU adopted a structure for Parties to pledge measures every five years to abate their GHG emissions, adapt to climate change, and cooperate to these ends, including mobilization of financial and other resources. A single framework to promote transparency and track progress of Parties' efforts applies, for the first time, to all Parties—whether wealthy or not—in line with their capacities. The PA is intended to be legally binding on Parties, though not all provisions within it are mandatory or, arguably, enforceable.

Figure 2. Instrument of Acceptance Signed by President Obama, August 29, 2016



Source: Brian Deese, "It's Official: The US Has Joined the #Paris Agreement," Executive Office of the President, September 3, 2016, https://twitter.com/Deese44/status/772078584806637568/photo/1?ref_src=twsrc%5Etfw.

President Obama accepted the PA on behalf of the United States ([Figure 2](#)). Whether the United States legally could—or should—join the PA without Senate advice and consent has been a matter of interest for some in Congress and the public. While the PA was meant to be a treaty under international law, the term *treaty* under U.S. law refers to agreements that receive Senate advice and consent to presidential ratification in conformance with Article II of the Constitution. Whether becoming a Party to the PA should have required the Senate's advice and consent prior to joining depends on a number of [considerations](#), including whether the PA was negotiated pursuant to a ratified treaty (e.g., the UNFCCC); its content and importance; whether it requires additional legislative authorizations for the United States to comply; related congressional resolutions; and other factors. [Officials](#) of the executive branch articulated the view that the PA is an [executive agreement](#) that the President could approve—an act now executed—under his constitutional authorities to conduct foreign affairs. This process has been used for other international treaties, such as the 2013 [Minimata Convention on Mercury](#).

Nonetheless, the Senate Legislative Counsel in 1975 stated its position that "the scope of presidential authority to make executive agreements is unclear." A few [commentators](#) have given reasons why they believe that the PA should have been submitted to the Senate in conformance with the Constitution's treaty clause (Article II). Members introduced four resolutions ([S.Con.Res. 25](#), [S.Res. 329](#), [S.Res. 290](#), and [H.Res. 544](#)) in 2015 to express the sense that the PA should be considered a treaty requiring the advice and consent of the Senate. Additional resolutions in the House were introduced ([H.Con.Res. 97](#) and [H.Res. 218](#)) opposing the PA or setting conditions on its signature or ratification by the United States. None received further congressional action. The [1997 Byrd-Hagel Resolution](#) ([S.Res. 98](#), 105th Congress, adopted 98-0) expressed the Sense of the Senate opposing an agreement pursuant to the UNFCCC that would:

- (A) mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period, or
- (B) would result in serious harm to the economy of the United States.

What further actions Congress may take with regard to the PA remain to be seen.

For further details and assessment of the PA, see CRS Report R44609, [*Climate Change: Frequently Asked Questions about the 2015 Paris Agreement*](#), by Jane A. Leggett and Richard K. Lattanzio. See also CRS Report RL32528, [*International Law and Agreements: Their Effect upon U.S. Law*](#), by Michael John Garcia.