

Binding or not: What legal form should the Paris agreement take?

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Key points

- + The symbolism of failing to agree on a new *legally binding* treaty has dominated public debate and distracted from the significant progress that has been made domestically and internationally to reduce pollution.
- + The true test of a country's commitment to climate action is its willingness to make the hard political decisions at home and enforce legal emissions reductions limits on its major emitting industries.
- + The legal form of an international agreement does not determine its effectiveness. For instance, countries continue to implement policies to meet their current 2020 targets even if they are not strictly speaking internationally binding.

A focus on "legally binding" is misplaced

Whether targets under the Paris agreement will be legally binding or not is a contentious issue within the UN climate change negotiations. Some countries - or negotiating blocs like the EU and the Small Island Developing States - have a strong preference for the post-2020 targets to be internationally binding. Others - like the US, China, India and New Zealand - would prefer a more flexible approach.

In the past, Australia has pioneered [new approaches](#) to capture new commitments in an international agreement. One such approach sees countries attach their nationally determined commitments to an agreement instead of the targets being hardwired into the agreement itself. This kind of approach will likely be the framework adopted in Paris.

The goal for Paris is to agree on a "*protocol, other legal instrument or agreed outcome with legal force under the Convention*". The terms "protocol" or "other legal instrument" are similar to those in the 1995 Berlin Mandate, which led to the signing of the Kyoto Protocol, a legally binding instrument. An outcome

"with legal force" under the UNFCCC is more ambiguous and could be interpreted as facilitating legally binding approaches at a domestic, not an international level.

Table 1 summarises possible approaches to how the new agreement may treat national contributions, based on work by the [Climate Change Authority](#) and others.

In their recent review of priorities for the post-2020 framework, the Climate Change Authority concluded that: "*One thing the Paris meeting will not deliver is a universal, prescriptive, enforcement-oriented legal agreement, similar in form to the existing Kyoto Protocol. For one thing, such an outcome is not achievable in the short term. Insisting on it would likely be counterproductive, and lead to more modest global action. The value of the Paris outcome will be its effect on emissions and efforts over time, not its particular legal form.*"

Focus should be on action not words

Legally binding instruments can build confidence that countries will act on their commitments. However, the legal form of an international agreement does not determine its effectiveness.

Even the most binding treaty would do little to address climate change if major emitters like the US and China do not participate. Also, countries continue to implement policies to meet their current 2020 targets even if they are not strictly speaking internationally binding. For example, the US does not have a binding 2020 target, but is implementing policies that have legal force at a domestic level to achieve this target (e.g. regulations to control emissions from vehicles and power stations).

To keep up to date with key global developments see our interactive [Global Climate Action Map](#).

Table 1. Capturing post-2020 targets: The table defines broad brush options for how post-2020 targets could be captured in the new agreement. It outlines whether the target would be binding (at an international or domestic level), the impact the option would have on a country's participation in the framework, its flexibility to increase ambition, and its overall effectiveness.

Commitment type	Impact on participation	Impact on flexibility	Impacts of effectiveness
Internationally binding targets	Would likely lead to very limited participation by major emitting countries.	Generally requires consensus of countries to agree target. Can be difficult to amend, unless it is explicit that countries can voluntarily increase ambition.	Stringency of target is nationally determined. Internationally binding may reduce ambition in short term as countries seek to avoid overcommitting. International reputational risks are higher for non-compliance.
Binding commitments to include targets in domestic laws	May promote greater participation. For example, can be consistent with US and China's domestic laws.	Determined by flexibility of domestic processes.	Stringency is nationally determined and compliance is enforced at a domestic level (with international review).
Binding to have target but commitments themselves are not binding	May promote greater participation.	Very flexible (but may limit international accountability).	Stringency and compliance is nationally determined (with international review). Countries voluntarily implement binding compliance measures.