

The Trump administration's arguments for withdrawing from the Paris Agreement are based on flawed assumptions

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*The Trump administration is facing a key foreign policy decision: whether or not the United States should remain in the Paris Agreement on climate change. **Bob Ward** argues that the administration's argument to retrench is based on flawed and false assumptions. The target set by the Obama administration as the contribution of the United States to the Agreement is not legally binding.*



President Trump's administration will make a decision after the G7 summit in Sicily in May about whether or not the United States should remain in the Paris Agreement on climate change, [according to the White House](#). While it is not yet clear what the outcome will be, the main argument being put forward to justify withdrawal from the Agreement is heavily flawed.

[Some media outlets](#) have suggested that the White House Counsel is advising President Trump that his administration could face legal action if it does not deliver on the pledge made by the United States Government ahead of the United Nations climate change summit in Paris in December 2015.

The US is committed to a '[nationally determined contribution](#)' to the Agreement, which was submitted by President Obama's administration on 31 March 2015. It states that the United States "intends to achieve an economy-wide target of reducing its greenhouse gas emissions by 26-28 per cent below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28%". The [latest figures](#) published by the Environmental Protection Agency show that net emissions by the United States were 11.5 per cent lower in 2015 than in 2005.

President Obama signed the Paris Agreement at a ceremony at the United Nations on 22 April 2016, and the United States [formally ratified it on 3 September 2016](#). The agreement [came into force on 4 November 2016](#) and is now legally binding on the 146 parties, including the United States, which have ratified it. [Article 28 of the Agreement](#) states that any Party wishing to withdraw would need to wait at least three years from 4 November 2016, the date it came into force, and that the process would take 12 months. This means the earliest that the United States could complete its withdrawal would be on 4 November 2020, the day after the next Presidential election.

This Agreement was achieved partly because although each country submitted nationally determined contributions to the Agreement, they are not formally part of it, and thus are not legally binding. Article 4 states: "Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions". The Agreement does not include any explicit provision for penalising Parties that do not achieve their contributions.

If the United States does not achieve the goal set out in its nationally determined contribution of reducing its annual emissions by 26-28 per cent by 2025, this would not be confirmed until 2026 at the earliest. Even if Donald Trump completes a full two terms as President, he will have left the White House by January 2025.

Conflicting Commitments

The White House Counsel has also [reportedly warned](#) that remaining in the Paris Agreement will open up the possibility of legal action against the [Executive Order](#) signed by President Trump on 28 March 2017 to review [President Obama's Clean Power Plan](#).

But the nationally determined contribution to the Paris Agreement submitted by President Obama's administration in March 2015 does not refer to the Clean Power Plan, launched in August 2015, among the list of "domestic laws,

regulations, and measures relevant to implementation” of the contribution.

The review of the Clean Power Plan could lead to litigation if it results in weaker efforts to reduce emissions which are not consistent with [the endangerment finding relating to greenhouse gases](#) under the Clean Air Act.

It is true that Trump’s administration would be challenged both domestically and internationally if it is clearly not trying to fulfil its nationally determined contribution to the Paris Agreement. However, there would be no concrete legal basis to these challenges.

It is understood that, collectively, the current set of countries’ contributions are not consistent with the goal set out in Article 2 of the Agreement of “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.

The Agreement acknowledges that nationally determined contributions will need to be reviewed and revised, and Article 4 also states: “Each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

In an article in ‘[The Washington Post](#)’ aimed at President Trump earlier this week, Todd Stern, who was the Secretary of State’s Special Envoy for Climate Change leading up to the Paris summit, pointed out that this means the Agreement could even allow the United States to lower the target for emissions reductions in its national determined contribution.

Mr Stern wrote: “And keep in mind that — as much as I would be sorry to see any retrenchment — countries can adjust their emissions targets downward. The agreement permits it, and I know because I helped negotiate that flexibility.”

Withdrawal from the Paris Agreement could have negative consequences for the United States and the world. The Trump administration should seriously reconsider their erroneous assumption that they must leave the Paris Agreement or face legal action.

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