

The Ambiguity of Legal Commitment in International Law and Its Impact on The Paris Agreement

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Abstract:

The rapid increase in climate change has shown severe consequences on the planet, which calls for international cooperation to solve this crisis. The Paris Agreement aims to maintain global warming below 2 degrees; ideally at 1.5 degrees. Additionally, the agreement aims to increase the annual financial support for developing nations to encounter climate change to \$100 billion by 2020. Unfortunately, these goals were unfulfilled according to COP26. This research seeks to comprehend the reasoning behind the failure to satisfy the agreement's objectives. In addition, the research aims to provide some practice suggestions that can aid in achieving the treaty's purposes.

key words: Climate Change, International Cooperation, The Paris Agreement, COP26.

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Introduction:

"I play fictitious characters often solving fictitious problems. I believe that mankind has looked at climate change in that same way as if pretending that climate change wasn't real would somehow make it go away" Leonardo DiCaprio, United Nations Climate Summit in 2014¹.

Many of us have heard about climate change, but do we know what it means? What are the causes? And what are the effects?

Climate change is the constant change of the earth's climate that can cause new weather patterns, which can last for an uncertain period of time. Climate change happens due to some natural causes, such as volcanoes, meteor strikes, and changes in the earth's orbit. However, climate change is rapidly increasing due to disorganized humangrowth in the environment², especially after the industrial revolution. This revolution led to a worldwide spread of carbon in the atmosphere, which increased the greenhouse effect. This effect causes the sunlight to trap inside the atmosphere, which highly participates in rising the global temperature³.

Climate change results in many extreme events, such as increasing the earth's temperature, rising sea levels, and worldwide draughts⁴. The severe consequences of climate change are noticeable, and it requires international efforts to reduce the effects of this crisis. The United Nations called for several conventions for international cooperation to face the issue of climate change. The Paris Agreement was the latest agreement regarding climate change.

However, the 26th United Nations Climate Change Conference (COP26) reveals that many of the obligations in the Paris Agreement remain unfulfilled. The lack of a solid commitment from the international society to the legal obligations of the agreement would not lead to the expected results.

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The importance of the study emerges in the rapid increase of the global temperature and the insufficient role of international law in encountering this crisis.

The study aims to demonstrate the Paris Agreement's obligations and the countries' commitment to their obligations. Additionally, the study seeks to provide some practical suggestions that can ensure countries' compliance with the agreement's obligations.

This research will follow descriptive and analytical methods. The study will present the international efforts toward decreasing the global temperature. The study will mainly focus on the Paris Agreement on climate change. The study will examine the legal obligations of the Paris Agreement and analyze the reasons for the failure to comply with some of the treaty's commitments.

This research will have Two sections and a conclusion. The first section will demonstrate the international efforts toward the climate change crisis. The second section will present the unfulfilled promises of the Paris Agreement. The conclusion will discuss the research results and provide some recommendations.

**SECTIONI:The International Efforts Toward Climate
Change:**

The United Nations acknowledged the severe crisis of climate change and the necessity for global collaboration to reduce the impacts of this issue. The United Nations have invited the global society to several conventions regarding the crisis of climate change, such as:

**First Requirement: United Nations Framework Convention on
Climate Change 1992:⁵**

In 1992, the United Nations called for the Framework Convention on Climate Change. In this convention, the treaty recognizes the tremendous impacts of greenhouse emissions caused by human participation in the environment, which is a critical reason for the

rapid increase in climate change. The treaty mainly focuses on controlling the greenhouse emissions caused by developing countries in order to reduce climate change consequences. Also, the treaty encouraged countries to adjust their domestic laws to collaborate with the purposes of the treaty in a way that does not conflict with sustainable social and economic development. Furthermore, the treaty highlighted the importance of advanced technologies that can serve the treaty's purposes. Also, the countries consented to meet annually in the Conference of the Parties (COP) to evaluate the parties' efforts in reducing their usage of greenhouse gases.

Second Requirement: Kyoto Protocol:⁶

The Framework Convention on Climate Change regulates the essential agreements among countries to decrease the impacts of climate change by minimizing the spread of greenhouse emissions in the atmosphere. However, the treaty required additional regulations to lower greenhouse emissions and assist developing countries with climate change challenges. Therefore, the United Nations established the Kyoto Protocol to advance the obligations and results of The Framework Convention on Climate Change. Kyoto Protocol was adopted in 1997 and activated in 2005. Kyoto Protocol establishes strict regulations for reducing the spread of greenhouse emissions, especially the spread made by the advanced countries as they are the most producer of greenhouse emissions. The protocol also establishes the Adaptation Fund to support the developing nations facing the consequences of climate change and aid them in creating sustainable economic systems. To assert the countries' commitments, Kyoto Protocol established a compliance committee to ensure the protocol's enforcement⁷. Most developed countries agreed to the Kyoto Protocol term except the United States and some other countries. President Bush opposed the obligations of the Kyoto Protocol because it does not effectively apply to significant polluter countries such as India and China, which will affect the United States economy^{8,9}.

Third Requirement: The Paris Agreement:¹⁰

Due to the constant and rapid rise in the global temperature, the United Nations called for strict action and commitment to maintaining the global temperature at a suitable level for convenient living. That is where The Paris Agreement came to solve. The Paris Agreement was established on December 12, 2015, adopted by 196 parties, and enforced on November 4, 2016. The agreement's main aim is to keep the glob temperature under 2 degrees; maintaining the temperature at 1.5 degrees is the ideal goal. The agreement required a transformation to sustainable development strategies of the parties' economic and social systems based on the available advanced technologies.

The agreement also requires the parties to communicate their plans, known as Nationally Determined Contribution (NDCs), to assess the progress in reducing greenhouse emissions within five years cycle. The agreement also obligates industrial countries to provide financial, technical, and building capacity supports for less fortunate developing countries. This support should assist developing counties in evolving sustainable economic and social plans, which will contribute to reducing the world's temperature.¹¹

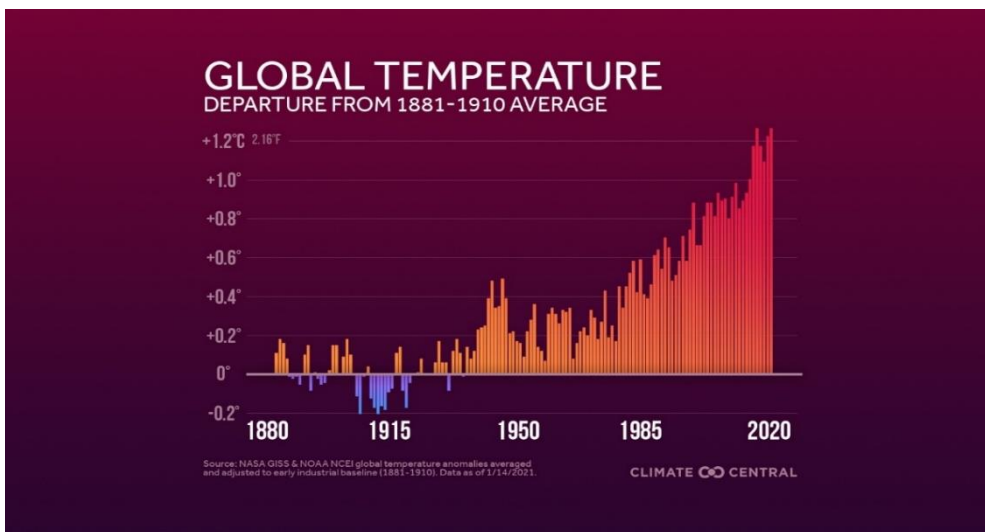


Figure 1 <https://www.climatecentral.org/gallery/graphics/2020-in-review-global-temperature-rankings>

Figure 1 displays the constant change of global temperature from 1880 to 2020. The global temperature was under 0.2 from 1880 until before 1950. However, the global temperature was below 0 C around 1915. around 1950, the global temperature sparked from 0.2C to 0.4C. After that, the temperature started to decrease below 0.4C until 1980. Around 1985, the global temperature rose tremendously, from 0.4 C to over 1.5C in 2016. According to the Nasa website, the years 2016 and 2020 have been recorded as the warmest global temperature record since 1880, with over 1.70 C on average of 1.78C¹²¹³. As the figure shows, from 1880 until 2020, the global temperature has increased by over 1.5C, which indicates the severe crisis of climate change. The global temperature will likely continue to increase if a strict measurement is not taken.

SECTIONII:The Unfulfilled Promises of The Paris Agreement:

The 26th Conference of the Parties (COP26) took place in Glasgow on the 13th of November 2021, to discuss the global progress in facing the climate change crisis. The conference evaluates the parties' fulfillment of The Paris Agreement's commitments. The conference concluded that the current effort is insufficient to keep the global temperature below 2 degrees in the future. Additionally, the wealthy countries failed to deliver the agreed amount of financial aid to the poor countries in 2020¹⁴.

First Requirement: Maintain the global temperature at 1.5 degrees:

The main goal of the Paris Agreement is to keep the global temperature below 2 degrees; ideally, to maintain it at 1.5 degrees. However, this idealism might not see the light with the current international effort. In a television interview regarding the outcomes of COP26 on Sky News channel with Professor Sir Dieter Helm, Professor of Economics and Energy Policy at Oxford University. Professor Helm stated that the hope to maintain the global temperature at 1.5 degrees is "dead." Even if all countries fulfilled their

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commitment to the Paris Agreement, the global temperature would rise to 1.8 - 2.4 degrees in the following decades.¹⁵

Furthermore, The Paris Agreement aimed to reduce the carbon emission in 2030 by 45% lower than the carbon emission in 2010 in order to keep the world's temperature at 1.5. However, some researchers believe that the current international effort is insufficient to reach this goal. Moreover, the current effort would raise the carbon emission in 2030 by 14% more than in 2010¹⁶.

Second Requirement: \$100 Billion Promise:

The climate change crisis affects the whole world, but the one who suffers the most from the consequences of climate change are the poor nations. While industrial countries spread greenhouse gases in the atmosphere, poor countries often lack the efficient sources to face this crisis. That's why the United Nations called for rich countries to support poor nations with annual financial aid to help them decrease the effects of climate change. In the Paris Agreement, the parties promised to provide developing countries with \$100 billion per year by 2020. However, this promise was never fulfilled¹⁷.

MISSED TARGET

Rich countries promised developing nations
US\$100 billion a year in climate finance by 2020.

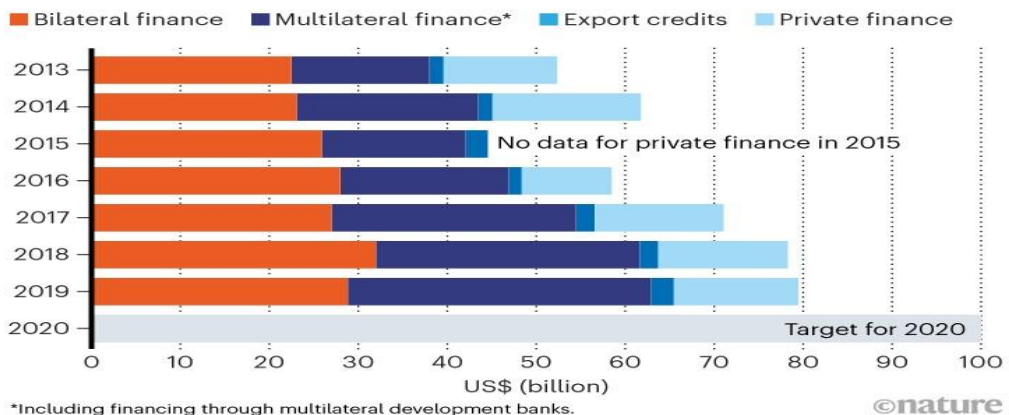


Figure 2 <https://www.nature.com/articles/d41586-021-02846-3>

Figure 2 illustrates the amount of financial aid provided by rich countries to poor countries from 2013 to 2019. The figure indicates the constant increase in the amount of financial support, yet still a slow growth. Obligated to The Paris Agreement, rich countries promised to provide \$100 billion dollars per year by 2020. However, the rich countries' efforts during the past years will not be sufficient to reach \$100 billion by 2020. The figure illustrates a remarkable increase in financial aid, around a \$10 billion growth from 2013 to 2014. Similarly, around \$10 billion in financial support to poor countries was raised from 2016 to 2017. The figure demonstrates that the lowest increase in financial aid from wealthy countries occurred from 2018 to 2019, with an almost \$2 billion increase. The figure illustrates that it took rich countries almost seven years (2013-2019) to increase their financial aid to around \$30 billion. It is almost impossible to increase \$20 billion from 2019 to 2020 to fulfill the promise of the Paris Agreement. The financial increase in the last two years was the lowest, and it would be challenging to raise it to \$100 billion in the following years due to the current global challenges, such as Covid 19, and different international conflicts.

Conclusion

The failure of the Paris Agreement is quite concerning, especially with the rapid increase in global temperature. It seems that the ambiguity and the lack of solid legal commitment of the Paris Agreement played a critical role in this failure.

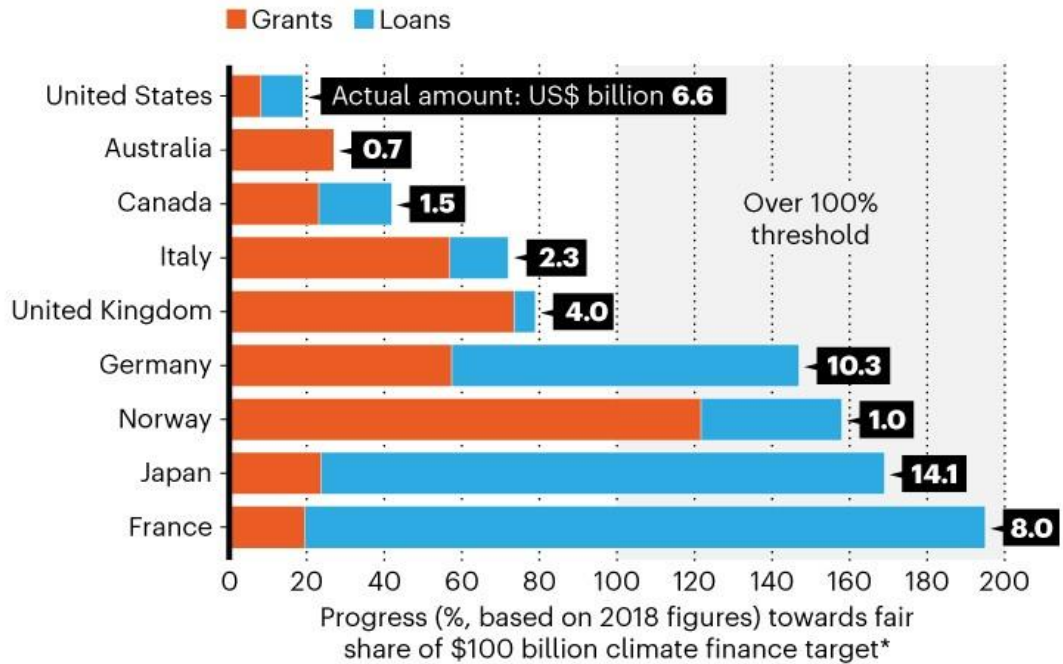
Results:

I-Ambiguous obligations

The ambiguity of obligations, especially the financial ones, is one of the essential reasons that led to the failure of the Paris Agreement. When the agreement's parties approved to provide poor nations with \$100 billion per year by 2020, there was no explicit arrangement on how much each country will pay¹⁸.

FAIR SHARE

The United States has not paid enough in climate finance to developing nations, considering the size of its economy. Japan and France have paid more than their fair share, but much of it in loans, not grants.



*Estimates include both bilateral and multilateral development bank financing, and incorporates European Union climate financing, apportioned to relevant nations

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Figure 3 <https://www.nature.com/articles/d41586-021-02846-3>

Figure 3 displays the various amount of financial support provided by the rich nations to the poor nations. As the figure illustrates, there is no precise approach to how much each country is obligated to pay. As we can see, the United States has provided the lowest financial support. On the other hand, France has provided the largest financial aid, then Japan, then Norway.

The absence of an explicit obligation would result in different interpretations of the agreement's commitments. Each rich country could pay what they consider a suitable amount of financial support for poor nations, and they would satisfy their legal obligation. This method is not sufficient nor fair to fulfill the \$100 billion's obligation

of the Paris Agreement. The countries should agree on a specific strategy to divide this amount between rich countries based on the amount of pollution each country makes and the economy size.

II-Solid Legal Commitment:

The United Nations states that the Paris Agreement is binding to all parties. Clearly, the parties acknowledged the legal commitment of the agreement, but the question is, what are the legal consequences regarding the failure to perform the obligations in the agreement? This question will lead to the legal debate about the legitimacy of international law.

Some legal philosophers, such as John Austin, the 18th-century legal positivism philosopher, argue that international law is a law of morals without an actual legal obligation. Austin concluded that the absence of an adequate sovereignty authority in international law similar to what the domestic law has within the main legal branches (Legislative, Executive, and Judicial) does not legally bind the international society with any multinational agreement. On the other hand, other scholars agree that international law might not be as efficient as it should be, yet still a binding law. The United Nations and its branches can perform as the legislative, executive, and judicial authorities for international law¹⁹.

This raises a question: can we consider international law a binding law or just a law of courtesy? It seems that Austin has a valid argument. Sovereignty is a fundamental element in creating a law, enforcing it, and punishing those who violate it. As COP26 shows, many of the Paris Agreement obligations were not fulfilled. Regardless of the reasons behind the agreement's failure, what actions were taken toward parties when they failed to meet their promises? COP26 recommended that more efforts should be made to meet the agreement's goals. Would this recommendation result in compelling the parties to satisfy their obligations? It seems doubtful, and it makes

the argument in favor of the legitimacy of international law questionable.

Regardless of this debate, it seems there is an agreement that the current "International Law" is insufficient in enforcing its obligations on many occasions. More research should be done to create a worldwide acceptable method that ensures the enforcement of international legal obligations, especially in vital global crises such as climate change. With the current regulations regarding the enforcement of international commitments, agreements such as the Paris Agreement might not ever be fulfilled.

Recommendations:

The rapid increase in climate change called for international collaboration to confront this problem. The Paris Agreement mainly aims to maintain the global temperature below 2 degrees, ideally at 1.5 degrees Celsius. Also, the agreement established an objective for annual financial support for developing nations with \$100 billion by 2020. However, these goals were unsatisfied due to the lack of explicit commitment and serious obligation. The parties should precisely agree on how much each country is financially obliged to support the developing nations based on the pollution rate and the economic size of each country. Additionally, more effort is required to establish an internationally accepted process that can enforce the legal promises in international law.

Marginalization:

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