

How International Law Can Deal with Lack of Sanctions and Binding Targets in the Paris Agreement

Theodore Okonkwo¹

¹ Department of Public Law, Faculty of Law, University of Port-Harcourt, Port-Harcourt, Nigeria

Correspondence: Theodore Okonkwo, Department of Public Law, Faculty of Law, University of Port-Harcourt, Port-Harcourt, Nigeria. E-mail: t161962@gmail.com; theodore.okonkwo@uniport.edu.ng

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Abstract

The Paris agreement aims at strengthening how the global community has responded to the change in climate by forming international government bodies that would be committed to reducing emissions to the environment. The lack of sanctions and binding targets in the Paris agreement has made its implementation difficult because countries live in an anarchical scenario where there is no overarching body. The agreement was drafted in November 2015 and signed on 22nd April 2016 by 196 countries but since then the success of the agreement has been in question. Generally, the treaty aims at controlling climate change and this is one of the areas that has been so difficult to control. Climate change is a tricky area to tackle because the developed countries are high pollutants because of the industries. The developed countries are mostly the ones who drive the agenda of the Paris treaty because they have the force and resources to do so. They influence policies and the decisions made. Therefore, the lack of sanctions and binding targets makes the treaty difficult to implement because there are no punishments as such. International treaties are difficult to implement especially when there are no sanctions or binding targets. As an example of international treaty governed by international law, it means that the treaty has loopholes that can be targeted by member states not to comply when the provision does not favour them. This paper critically analyzes how international law can deal with the lack of sanctions and binding targets in the Paris agreement as it operates in the international arena.

Keywords: Paris agreement, international laws, sanctions, binding targets, environment, climate change, pollution, treaty

1. Introduction

The Paris agreement aims at strengthening how the global community has responded to the change in climate by forming international government bodies that would be committed to reducing emissions to the environment.¹ The agreement was drafted in November 2015 and signed on 22nd April 2016 by 196 countries. The countries that did not sign the agreement were Syria and Nicaragua.² It was pledged that all countries would control and contain the level of average global temperature below 2°C. The objective was to reduce the increase of temperature to 1.5.³ This temperature is ideal for optimizing the production of food, keep the resources of water clean, and regulate the production of energy.⁴ The agreement was meant to bring together all the major countries that pollute the earth the most and spearhead talks on how to mitigate environmental pollution. Though the agreement was crucial as a step to tackling issues concerning the environment, it has however been termed as being too lenient.⁵ In as much as the agreement of Paris is under the international law there are certain provisions about it that lack sanctions and are not binding legally. For instance, some of these include

¹ Achala Abeysinghe and Subhi Barakat. "The Paris Agreement." (2016) 11.

² Guri Bang, Jon Hovi, and Tora Skodvin. "The Paris Agreement: Short-term and long-term effectiveness." *Politics and Governance* 4.3 (2016) 61.

³ Delmas, Magali A., and Ann K. Terlaak. "A framework for analyzing environmental voluntary agreements." *California management review* 43.3 (2001) 44.

⁴ Rob Bailey and Shane Tomlinson. "Post-Paris: Taking Forward the Global Climate Change Deal." *Chatham House. Briefing. April* (2016) 83.

⁵ Lucas Bergkamp. "The Paris Agreement on Climate Change: A Risk Regulation Perspective." *European Journal of Risk Regulation* 7.1 (2016): 35.

determining the targets that are supposed to be set for the reduction of emissions⁶. Another one is how to achieve financial commitment to the countries that signed the pact.

2. Conceptual Definitions

NDCs-Nationally Determined Contributions

UN-United Nations

UNEP-United Nations Environmental Programme

International law- These are rules and laws that govern relations between or among nations including any treaty they involve themselves in.

3. Role of International Law

First, the Paris agreement is a treaty. Treaties are the sources of international law.⁷ Under the international law, a treaty is an agreement between more than two countries. This agreement is usually in written form, and it outlines the objective of that treaty or the accomplishments that are to be made out of that treaty and all the structures that have been put in place to govern all the processes of the treaty. All the agreements that have been arrived at by the concerned parties at every stage are contained in the agreement. The treaty is governed by the international law.⁸ An international law helps in setting up a framework that is based on the parties that are involved as being the principal actors in the legal system internationally. It helps in defining all the legal duties based on how they carry out among themselves and how they treat their individuals.⁹ International law controls many aspects such as international crime, migration, problems related to different nations, rights of humans, the conduct of war, how prisoners are treated among others, and this is mainly because treaties have binding international obligations.¹⁰

Besides that, it also controls and directs issues that are common, and that face the entire world such as water, global trade, sustainable development, global communications, environment and outer space.¹¹ Therefore, the Paris agreement being a treaty, it is governed by the international law, and it is under the environment a factor that is common to the whole world. First, it was signed by 196 countries all over the world.¹² This means that it outlined all the information on what was agreed by the countries and how the issues that were agreed upon could be met by the member countries. For instance, the member states decided that because the world has been polluted extremely, they were going to control the pollution by reducing the rate in which they were contributing to the pollution of the environment¹³. This was through lessening the level of emissions to the environment. This and other agreements on ways of mitigating pollution globally are outlined in the Paris agreement¹⁴. This agreement was voluntarily agreed on without any country being intimidated or forced to concur.¹⁵ The targets that were set have to be met especially the ones that are legally binding. Since the international law facilitates this, it becomes automatic for those that are not legally binding to be implemented since they act as a bridge to achieving those that are legally binding.

The member countries must be signatories to the Paris agreement since it has begun to be adopted by some nations. This role is facilitated by the governments' executive branch, and it is very significant since it points out that the particular country is ready to make the agreement formal.¹⁶ Becoming a signatory does not create any form of obligations legally under the agreement. However, when it comes to international law, a signatory is not

⁶ Bang, Hovi, and Skodvin. "The Paris Agreement: Short-term and long-term effectiveness." 61.

⁷ Alexander Zahar. "A Bottom-Up Compliance Mechanism for the Paris Agreement." (2017).

⁸ Lucas Bergkamp and Scott J. Stone. "The Trojan Horse of the Paris Agreement on Climate Change: How Multi-Level, Non-Hierarchical Governance Poses a Threat to Constitutional Government." (2015).

⁹ David A Wirth. "The International and Domestic Law of Climate Change: A Binding International Agreement Without the Senate or Congress?" *Browser Download This Paper* (2015).

¹⁰ Zahar. "A Bottom-Up Compliance Mechanism for the Paris Agreement."

¹¹ Roland Benedikter et al. Keep It in the Ground. "The Paris Agreement and the Renewal of the Energy Economy: Toward an Alternative Future for Globalized Resource Policy?" *Challenge* 59.3 (2016): 205.

¹² Margaretha Wewerinke-Singh and Curtis Doebbler. "The Paris agreement: Some critical reflections on process and substance." (2016).

¹³ Bergkamp and Stone. "The Trojan Horse of the Paris Agreement on Climate Change: How."

¹⁴ Wirth. "The International and Domestic Law of Climate Change: A Binding International Agreement Without the Senate or Congress?"

¹⁵ Daniel Bodansky. "The legal character of the Paris Agreement." *Review of European, Comparative & International Environmental Law* 25.2 (2016): 142.

¹⁶ Bob Ward. "President Trump's speech on the Paris Agreement was full of confusion and bogus claims." *LSE European Politics and Policy (EUROPP) Blog* (2017).

allowed to involve itself in actions that may be opposite to what is outlined in the agreement. Because of this, all the targets that are not provided for by the agreement legally can be taken care by international law.¹⁷

The fact that the Paris agreement lacks sanctions and goals that are binding may make other countries not to be committed to meeting their obligations. This may lead to conflicts. In situations where a conflict arises between the national law and the international obligations, the international rule takes the day.¹⁸ Under the General Assembly of the UN 1949, Article 13 provides that each state has the responsibility of fulfilling its obligations that arise from treaties including the sources of international law that may be available. Therefore, this binds the various countries of the Paris agreement and ensures that they fulfil their obligations.¹⁹ Further, all the legal systems of all the countries in the world acknowledge international law as being part and parcel of their laws.²⁰ The national courts decide whether they can use the international law and also establish what the international law means in their various laws. This means that the international law is powerful and thus different countries in the Paris agreement are bound to fulfill their obligations.²¹ This means that targets of reduction of emissions and financial obligations will be honoured.²²

Once a country has become a party to an agreement that is signing an agreement, the party is bound to adhere and obey all that the agreement is requiring of them. Before a party signs an agreement, all the terms and conditions are stipulated and made clear according to the international law.²³ International law spells out all the procedures that are supposed to be undertaken before signing an agreement²⁴. All the parties concerned are supposed to be engaged fully in all the proceedings and design of the agreement²⁵. All that includes all the obligations that are supposed to be met by each party.²⁶ The obligations are equally spelt to the parties with clarity because this is the most technical part. Most of the agreements that are signed become strained on the obligations section²⁷. That is why this section is clearly stipulated to the member parties so that they can understand it well before signing the contract to avoid any future disagreements.²⁸

International law clearly spells this in the procedures. All the parties of an agreement are supposed to sign their agreements voluntarily without being pushed or forced to.²⁹ Any party feeling that they are not satisfied with the obligations and they cannot be able to meet them are free to review them, reanalyze them with the advice of experts who are well acquainted with the concerned issue.^{30,31} Any party that is not satisfied can opt not to sign the agreement, and this is also provided in international law. That is why for instance not all countries have signed the Paris Agreement, for example, Syria and Nicaragua³². This law ensures that a party that takes part in agreement fully understands its place in the agreement.³³ This means that every party has a role to play in a pact and a party has to be ready to commit to executing their tasks adequately. Since all the parties understand this part, then it will be easier for them to perform their obligations which are fundamental to the success of an

¹⁷ Daniel Bodansky. "The Paris climate change agreement: a new hope?" *American Journal of International Law* 110.2 (2016) 288.

¹⁸ Eduardo Viola and Leonardo Paz Neves. "The World After the Paris Climate Agreement of December 2015." (2015).

¹⁹ Radoslav S Dimitrov. "The Paris agreement on climate change: Behind closed doors." *Global Environmental Politics* (2016).

²⁰ Charlotte Streck, Paul Keenlyside, and Moritz von Unger. "The Paris agreement: a new beginning." *Journal for European Environmental & Planning Law* 13.1 (2016) 3.

²¹ Sandra Cassotta. "The Paris Agreement in Logic of Multi-regulatory Governance: A Step Forward to a New Concept of "Global Progressive Adaptive-Mitigation"?" *European Energy and Environmental Law Review* 25.6 (2016) 196.

²² Viola and Paz Neves. "The World After the Paris Climate Agreement of December 2015."

²³ Michele Stua. "From the Paris Agreement to a Low-Carbon Bretton Woods."

²⁴ Charles E Di Leva and Xiaoxin Shi. "Sustainable development in international trade and investment: the Paris. agreement and the international trade regime: considerations for harmonization." *Sustainable Dev. L. & Pol'y* 17 (2016) 20.

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²⁶ Marinella Davide, Elisa Calliari and Aurora D'Aprile. "Energy and Environmental Observatory. Climate policy after Paris: assessment and perspectives." *ECONOMICS AND POLICY OF ENERGY AND THE ENVIRONMENT* (2015).

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²⁸ Wolfgang Obergassel et al. *Phoenix from the Ashes: An Analysis of the Paris Agreement to the United Nations Framework Convention on Climate Change*. (Wuppertal Institut für Klima, Umwelt, Energie, 2016).

²⁹ Sebastian Oberthür, Antonio GM La Vina, and Jennifer Morgan. "Getting specific on the 2015 climate change agreement: Suggestions for the legal text with an explanatory memorandum." (*World Resources Institute*, 2015).

³⁰ Lavanya Rajamani. "Ambition and differentiation in the 2015 Paris Agreement: Interpretative possibilities and underlying politics." *International & Comparative Law Quarterly* 65.2 (2016) 493.

³¹ Stua. "From the Paris Agreement to a Low-Carbon Bretton Woods."

³² Cassotta. "The Paris Agreement in Logic of Multi-regulatory Governance: A Step Forward to a New Concept of "Global Progressive Adaptive-Mitigation"?"

³³ Annalisa Savaresi. "The Paris Agreement: Reflections on an International Law-making Odyssey." (2017).

agreement.^{34, 35} Therefore, international law enables the countries to fulfill their obligations through smooth, voluntary and open processes during the signing of agreements.

International law has provisions that make an agreement to qualify as a treaty. An agreement becomes binding from the moment it is signed.³⁶ The most important aspect of an agreement is the commitment of the members to ensure that all the objectives of the agreement are met with ease³⁷. The procedures of an agreement are all well laid and explained in agreement. Once the parties have agreed to sign up, there are laws that take care of any member that wants to get out of the agreement.^{38, 39} This procedure is normally hectic and a very long process. These rules are put in place to control any member who may want to withdraw strategically. For instance, the Paris agreement has that provision that binds every any member who may decide to quit at any time due to being dissatisfied.⁴⁰ The clause that takes care of that situation states that any member that may intend to leave the agreement must submit that intention by writing to the depositary.⁴¹ The request to leave must be in writing.⁴²

Once the application is taken in, it is considered, but then the member entirely withdraws after at least four years. For instance, America will continue to be bound by the obligations of the Paris agreement even if it wants to opt out.⁴³ Even if a country is in the process of withdrawing, it is required to meet its obligations. This makes the countries who want to withdraw be adamant. Since they are contributing, they will take a back step in withdrawing⁴⁴. In addition, the international law makes the process of withdrawing complex in a way.⁴⁵ For instance, a country that wants to withdraw must acquire a given number of signatures to enable it to go through the process.⁴⁶ This decision does not often lie on the powers of the executive but rather on the legislative body of that country which means a majority of the House of Representative and Congress will have to concur with the move^{47,48}. This further makes the whole process of withdrawal to be elaborate more so on matters that are sensitive and familiar to the entire world such as environmental issues^{49,50}. For instance, Donald Trump's decision to withdraw from the agreement on the ground that America is being limited on their chances of exploiting itself economically is not automatic. He cannot effectively do this since the United States Congress does not support this since the environmental issue is susceptible and there is need to conserve the environment.⁵¹ At the end of it all, since the Congress is in favour of the Paris agreement, then America will fully meet its obligations.⁵²

International law can employ the use of technology. Technology is fundamental to ensuring that all the countries are closely monitored so that the levels they emit to the environment and which contribute to the deterioration of the environment can be determined.⁵³ The primary challenge that the Paris agreement has is the difficulty of

³⁴ Patrick Thieffry. "Environmental protection and European Union energy policy: Energy transition after the Paris Agreement." *ERA Forum*. (Springer Berlin Heidelberg, 2017) 2

³⁵ Green. "This time is different": the prospects for an effective climate agreement in Paris 2015."

³⁶ Robert Falkner. "The Paris Agreement and the new logic of international climate politics." *International Affairs* 92.5 (2016) 1107

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³⁸ Meinhard Doelle. "The Paris Agreement: Historic Breakthrough or High Stakes Experiment?" *Climate Law* 6.1-2 (2016) 1.

³⁹ Benoit Mayer. "Human rights in the paris agreement." *Climate Law* 6.1-2 (2016) 109

⁴⁰ Sander Chan et al. "Reinvigorating international climate policy: a comprehensive framework for effective nonstate action." *Global Policy* 6.4 (2015) 466.

⁴¹ Michaela Danneman. "The Paris Agreement's compliance mechanism." (2016).

⁴² Davide, Calliari and D'Aprile. "Energy and Environmental Observatory. Climate policy after Paris: assessment and perspectives."

⁴³ Alexandra Deprez, Michel Colombier, and Thomas Spencer. "Transparency and the Paris Agreement: driving ambitious action in the new climate regime." *Working Papers No. 03/2015* (2015).

⁴⁴ Doelle. "The Paris Agreement: Historic Breakthrough or High Stakes Experiment?"

⁴⁵ Benedikter et al. "The Paris Agreement and the Renewal of the Energy Economy: Toward an Alternative Future for Globalized Resource Policy?" 205.

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⁴⁷ Rajamani. "Ambition and differentiation in the 2015 Paris Agreement: Interpretative possibilities and underlying politics."

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⁵¹ Marlo Lewis Jr. "The Paris Climate Agreement Is a Treaty Requiring Senate Review."

⁵² Danneman. "The Paris Agreement's compliance mechanism."

⁵³ Magali and Terlaak. "A framework for analyzing environmental voluntary agreements."

determining whether the member states will adhere to the requirement of reducing their emissions to below 2.0 percent^{54,55}. This becomes hard because some of the countries may not be willing to represent the accurate and real reports on their emission levels.⁵⁶ Another challenge is that the countries may also not reduce the levels at all, but when filing their reports, they indicate that they have reduced them.⁵⁷ This is why technology needs to be adopted by international law in enforcing important agreements like that of Paris. Gadgets in the form of satellite devices can be put in place in every place to monitor the emissions.⁵⁸ The gadgets have to be fitted with or made in a way that they can measure the level of emissions in each country.⁵⁹

Upon achieving this, they then must be able to send the information to the central database of the management of the Paris agreement so that they can process the information and determine which country is not adhering to its obligations.⁶⁰ The report is also supposed to be sent to United Nations Environmental Programme (UNEP) so that it can use the data in pointing out the countries that are putting efforts towards reducing their emissions through the reports that they release about the environmental issues pertaining the whole world.⁶¹ Therefore, the kind of technology that is employed should be conformed to the requirements of the international law. Tools of technology ensure that the access to information is facilitated and this makes the member countries to be more accountable towards the agreement.⁶²

International law on the Paris agreement allows the member states to be monitored to determine whether they conform to their obligations. This monitoring is critical to the Paris agreement because, for it to achieve its obligations, it must ensure that there is a reduction in the emissions globally.⁶³ This can be made possible by educating the population of the world on their agenda in ensuring that there is a need for sustainable production, which will reduce the emissions to the environment, and as a result, we will have a green environment.⁶⁴ Since technology is on the rise in most parts of the world, these people can in turn relay the activities that are going on in their respective countries, and this will be crucial in determining the emission levels in the various countries^{65, 66}. This will increase the monitoring levels, which is a very vital aspect in determining the parties that are breaching the agreement of keeping emission levels below 2 percent.⁶⁷ Environmental awareness should be created widely in a way that the people can be able to question their governments about what they are doing to sustain the environment^{68,69}. They should also be sensitized to pressure their governments so that they can be able to implement the objectives of the agreement.

4. Provisions of the Paris Agreement Binding Targets

Through the Nationally Determined Contributions (NDCs), international law makes the member countries to fulfill their obligations. Member parties of an agreement signed a commitment pledge that is crucial in ensuring that they all work towards the principal aim of achieving the objectives of the agreement.⁷⁰ In the same note, the members of the Paris agreement pledged that they would commit to the aims of the agreement. The members promised that they would be involved in preparing, communicating and maintaining successive NDCs.⁷¹ These

⁵⁴ Savaresi. "The Paris Agreement: Reflections on an International Law-making Odyssey."

⁵⁵ Deprez, Colombier, and Spencer. "Transparency and the Paris Agreement: driving ambitious action in the new climate regime."

⁵⁶ Darren Hoad. "The 2015 Paris Climate Agreement: outcomes and their impacts on small island states." *Island Studies Journal* 11.1 (2016).

⁵⁷ Aslak Brun. "Conference diplomacy: The making of the Paris Agreement." *Politics and Governance* 4.3 (2016).

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⁵⁹ Conforti. *International law and the role of domestic legal systems*.

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⁶⁴ Guy Edwards et al. "Small group, big impact: how AILAC helped shape the Paris Agreement." *Climate Policy* 17.1 (2017) 71

⁶⁵ Sebastian Oberthür. "Where to go from Paris? The European Union in climate geopolitics." *Global Affairs* 2.2 (2016) 119.

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⁷⁰ Jason Jabbour et al. "Internationally agreed environmental goals: A critical evaluation of progress." *Environmental Development* 3 (2012) 5.

⁷¹ Marcelo Santos. "Global justice and environmental governance: an analysis of the Paris Agreement." *Revista Brasileira de Política*

NDCs would be very instrumental in pursuing measures in each of the countries that are aimed at mitigating the pollution levels.^{72,73}

The NDCs are important in monitoring and tracking each of the countries efforts in combating pollution. Since a government is aware of the NDCs, then it will implement all the policies that will contribute to the Paris agreement achieving its goals.⁷⁴ For instance, some countries have already shown total commitment to the agreement such as France, Germany, Brazil, and China among others. The NDCs have the mandate of preparing regular reports about the emissions of their respective countries and their progress in implementing the necessary policies that are aimed at reducing the emission levels.^{75,76} These countries will be obligated to play their roles effectively so that they can be appealing to their allies. These are all efforts of the international law in ensuring that the Paris agreement becomes a success⁷⁷. For instance, a country like America will at the end of the day be forced to conform to the Paris agreement.⁷⁸ This is because the agreement is being supported by most people in the U.S. Congress and the House of Representatives. This implies that the NDCs enforcers have the challenge of working hard so that they can put the government on their toes.⁷⁹ Also during the signing of the Paris agreement, all the parties agreed always to set the levels that would ensure that their NDCs attain a huge success. The success of the NDCs is very significant as they indicate that the member countries are making progress in making sure that each of the countries remains committed to the Paris agreement.⁸⁰ This will go a long way in ensuring that the countries meet the objectives of the Paris agreement, which is to reduce emissions. The countries will automatically be committed financially since this is one of the efforts of ensuring that the Paris agreement becomes a success.^{81,82}

5. Does the Lack of Sanctions Defeat the Purpose of the Paris Agreement?

International law can make provisions for the Paris agreement to get approval in each of the member countries to accept all the obligations of the agreement. The process can vary from country to country depending on the constitutional and legal structures of the governments.⁸³ This might involve parliament to vote, or it might require a legislative act to be enacted.⁸⁴ Once the agreement has been approved in the respective countries, then a country deposits ratification instruments with the registrar of the Paris agreement who is the UN-Secretary General^{85,86}. This will mark the final step towards the process of the ratification of the agreement. Once the ratification process is on, then all the members will become party to the agreement. Upon entering the force, the members of the agreement will automatically be bound to it⁸⁷. This will ensure that all the countries that are members will commit to all the obligations of the agreement.⁸⁸

6. Conclusion and Recommendations

The Paris agreement is a very crucial agreement that all the countries in the world need to fully commit to its success. The objectives that it is intended to attain are beneficial to the present and future generations. Our environment is in a bad shape, and if measures are not taken, then the earth may not be able to sustain future

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⁷² Wewerinke-Singh and Doebbler. "The Paris agreement: Some critical reflections on process and substance."

⁷³ Thieffry. "Environmental protection and European Union energy policy: Energy transition after the Paris Agreement."

⁷⁴ Nicholas Stern. "Growth, climate and collaboration: towards agreement in Paris 2015." (2014).

⁷⁵ Hoad. "The 2015 Paris Climate Agreement: outcomes and their impacts on small island states."

⁷⁶ Alfred Rest. "New legal instruments for environmental prevention, control and restoration in public international law." *Envtl. Pol'y & L.* 23 (1993) 260.

⁷⁷ Bodansky. "The legal character of the Paris Agreement." 142.

⁷⁸ Annalisa Savaresi. "The Paris Agreement: a new beginning?." *Journal of Energy & Natural Resources Law* 34.1 (2016) 16

⁷⁹ Anju Sharma. "Precaution and post-caution in the Paris Agreement: adaptation, loss and damage and finance." *Climate Policy* 17.1 (2017) 33

⁸⁰ Dinah Shelton, ed. *Commitment and compliance: The role of non-binding norms in the international legal system*. Oxford University Press on Demand, 2003.

⁸¹ Ward. "President Trump's speech on the Paris Agreement was full of confusion and bogus claims."

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⁸⁷ Bodansky. "The Paris climate change agreement: a new hope?"

⁸⁸ Bailey and Tomlinson. "Post-Paris: Taking Forward the Global Climate Change Deal." 83.

lives. Therefore, it is important to effect actions that are aimed at reducing the emission levels to the ecosystem. Though the Paris agreement was constituted under international law, it lacks sanctions and legally binding targets that would make the agreement a success. Nevertheless, international law can devise means to sanction countries that might not adhere to the obligations of the agreement. Through the NDCs, the Paris agreement can be able to make the members to be committed. Technology can also be adopted to help in monitoring the efforts of the various levels and their emission levels to ensure that they all adhere. International law can also work towards ensuring that all the members are signatories and that the agreement gains approval from the members. These factors among others will ensure that lack of sanctions and binding targets are dealt with.

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