

ARTICLE 21

ENTRY INTO FORCE AND RATIFICATION

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1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.
2. Solely for the limited purpose of paragraph 1 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

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COMMENTARY

A. INTRODUCTION

21.01 The Paris Agreement's entry into force was the subject of a number of usual treaty law procedural matters and other specific requirements.¹ In addition to dealing with such matters,

* All websites in the chapter were live as at 17 July 2020.

¹ *Paris Agreement to the United Nations Framework Convention on Climate Change* (adopted 12 December 2015; entered into force 4 November 2016) (Paris Agreement).

C. REQUIREMENTS FOR THE PARIS AGREEMENT'S ENTRY INTO FORCE

Article 21 also lays down the procedures that guide the Paris Agreement's entry into force for those States and regional economic integration organisations that seek to ratify the Agreement after its official entry into force. This Article must also be read, in conjunction with paragraph 5 of Decision 1/CP.21, which set out the basis for provisional application of 'all of the provisions of the Paris Agreement prior to its entry into force'.² Moreover, as discussed in the previous chapter, despite being part of what is often referred to as the 'Final Provisions' of an international treaty, the actions of State Parties in respect of the Paris Agreement's entry into force contribute to the advancement of relevant customary international law rules and the application of general treaty law rules.

B. PROVISIONAL APPLICATION OF THE PARIS AGREEMENT

Article 24 of the *Vienna Convention on the Law of Treaties* (VCLT)³ lays down the general practices and procedures relating to a treaty's entry into force. Relevantly, Article 24(4) of the VCLT deals with the issue of what happens between the time of a treaty's adoption and its subsequent entry into force: **21.02**

The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Consequently, once an international treaty, such as the Paris Agreement, is adopted its provisions are understood as being legal binding upon those States who have expressed their consent to be bound.⁴ Even so, as part of the final outcomes at the COP in 2015, Parties to the Convention expressly acknowledged that they could 'provisionally apply all of the provisions of the Agreement pending its entry into force' and requested 'Parties to provide notification of any such provisional application to the Depositary'.⁵ Although no such formal notifications were made, as Voigt suggests, 'even after entry into force, provisional application may continue to among those states which have not ratified the Agreement'.⁶

C. REQUIREMENTS FOR THE PARIS AGREEMENT'S ENTRY INTO FORCE

1. Article 21(1): Double-trigger process

In accordance with established practice, the Paris Agreement sets out specific requirements leading to its entry into force. Comprising a double trigger, laid down in Article 21(1), the 'Agreement shall enter into force on the thirtieth day after the date on which' the following **21.03**

² Christina Voigt, 'Institutional Arrangements and Final Clauses (Articles 16–29)' in Daniel Klein et al (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press 2017) 367.

³ *Vienna Convention on the Law of Treaties* (adopted 23 May 1969; entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

⁴ See further Article 20.

⁵ COP, *Decision 1/CP.C 21: Adoption of the Paris Agreement* (29 January 2016) FCCC/CP/2015/10/Add.1, para. 5.

⁶ Voigt (n 2).

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criteria are satisfied: (i) at least 55 Parties must have deposited their ratification instrument with the Depository; and (ii) the collective emissions of those Parties must amount to – an estimate – 55 per cent of total global greenhouse gas emissions (GGEs). These criteria were met in early October 2016 following the EU's ratification of the Paris Agreement on 4 October 2016.⁷ According to the European Commission, at that time '62 parties, accounting for almost 52 per cent of global emissions, had ratified the Paris Agreement'.⁸ Consequently, EU's 'ratification and deposit' crossed the 55 per cent total global GGEs threshold, triggering the treaty's entry into force process. The Paris Agreement entered into force – and becoming legally binding on those Parties to the Convention that ratified it at that time – 30 days later on 4 November 2016.⁹ As mentioned above, prior to the Paris Agreement's entry into force, Parties to the Convention were permitted to 'provisionally apply all of the provisions of the Agreement pending its entry into force'.¹⁰

2. Article 21(2) Introducing a special meaning term

21.04 As observed above, one of the triggers for the Paris Agreement's entry into force was the 55 per cent of total global GGEs requirement. In explaining what that actually means, Article 21(2) introduces a new definition, in addition to those provided for in Article 1 of the Paris Agreement.¹¹ It defines 'total global greenhouse gas emissions' to mean the 'the most up-to-date amount communicated on or before the date of adoption of this Paris Agreement by the Parties to the Convention'.¹² Pursuant to VCLT, it is clear that the special meaning attached to this term, expressed in Article 21(2), is intended by the Parties to apply *only* in respect of satisfying the second requirement to effect the Paris Agreement's entry into force.¹³ For this singular purpose, the required estimate of 55% of the total global GGEs was based on the information set out in official documents of COP21, notably, the Party's individual emissions data set out in Annex 1 to Decision 1/CP.21.¹⁴ In that document, it is noted that 'the total amount provided in this table should be used solely for the limited purposes of Article 21 of the Paris Agreement as it does not represent an accurate estimate of global greenhouse gas emissions'.¹⁵ Even so, this data is significant in terms of future greenhouse gas emissions reporting by Parties and their treaty obligation to demonstrate progressive 'improvements' in their mitigation actions and achievements under the Agreement.¹⁶ Accordingly, since 2015,

7 See earlier outcomes that lead to this, including the European Council, 'Conclusions of the Extraordinary Environmental Council from 30 September 2016' <<https://www.consilium.europa.eu/en/meetings/env/2016/09/30/>>; European Commission's Statement, Ministers approve EU ratification of Paris Agreement (Brussels, 30 September 2016) <https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_16_3265>.

8 European Commission, 'Paris Agreement to enter into force as EU agrees ratification' (4 October 2015) <https://ec.europa.eu/clima/news/articles/news_2016100401_en>.

9 Ibid.

10 COP, *Decision 1/CP.21* (n 5) para. 5.

11 See further Article 1.

12 See 'Information provided in accordance with paragraph 104 of decision 1/CP.21 related to entry into force of the Paris Agreement (Article 21)', which is set out in *Annex I to the Report of the Conference of the Parties on its twenty-first session* (Paris, 2015) UN Doc FCCC/CP/2015/10, 30–34.

13 VCLT (n 3), Article 31(4) states: 'A special meaning shall be given to a term if it is established that the parties so intended.'

14 COP (n 12) 30–34.

15 Ibid., 30.

16 Paris Agreement (n 2) Articles 3 and 4(3).

C. REQUIREMENTS FOR THE PARIS AGREEMENT'S ENTRY INTO FORCE

Parties have been engaged in providing more detailed information as part of their nationally determined contributions.¹⁷

3. Article 21(3): Ratification post entry into force

In some instances, Parties will ratify a treaty after it has entered into force. Article 21(3) provides for the situation where Parties ratify the Paris Agreement after 4 November 2016. In such circumstances, Article 21(3) states that the 'Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession'. Lebanon and Kyrgyzstan are amongst the most recent Parties to ratify the Paris Agreement. Pursuant to Article 21(3), the Paris Agreement is legally effective – its international obligations are binding on Lebanon and Kyrgyzstan – as of 6 and 19 March 2020 respectively, 30 days from the date of the deposit of the ratification instruments.¹⁸ Russia is another Party to the Convention that has also recently ratified the Paris Agreement, depositing its instrument of ratification with the Depository, late 2019.¹⁹ **21.05**

4. Article 21(4): REIO's instrument of ratification

Article 21(4) sets out a general rider to the entry into force requirements laid down in Article 21(1), effectively preventing a type of 'double counting' of the deposit of instrument of ratification by a regional economic integration organisation, such as the European Union, in addition to those of its Member States. **21.06**

¹⁷ Pursuant to COP, *Decision 1/CP.20 – Lima Call for Climate Action* (2 February 2015) FCCC/CP/2014/10/Add.1, para. 16(a), Parties' communications on their intended nationally determined contributions (INDCs) are published online by the UNFCCC Secretariat <<https://www4.unfccc.int/sites/submissions/indc/Submission%20Pages/submissions.aspx>>.

¹⁸ See UN Treaty Collection, 'Lebanon: Ratification' (5 February 2020) C.N.56.2020.TREATIES-XXVII.7.d (Depository Notification) <<https://treaties.un.org/doc/Publication/CN/2020/CN.56.2020-Eng.pdf>>; 'Kyrgyzstan Ratification' (19 February 2020) C.N.67.2020.TREATIES-XXVII.7.d (Depository Notification) <<https://treaties.un.org/doc/Publication/CN/2020/CN.67.2020-Eng.pdf>>.

¹⁹ See UN Treaty Collection, 'Russian Federation: Acceptance' (7 October 2019) Ref C.N.507.2019.TREATIES-XXVII.7.d (Depository Notification) <<https://treaties.un.org/doc/Publication/CN/2019/CN.507.2019-Eng.pdf>>.