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# This Time Is Different: Obama's Climate Change Opportunity

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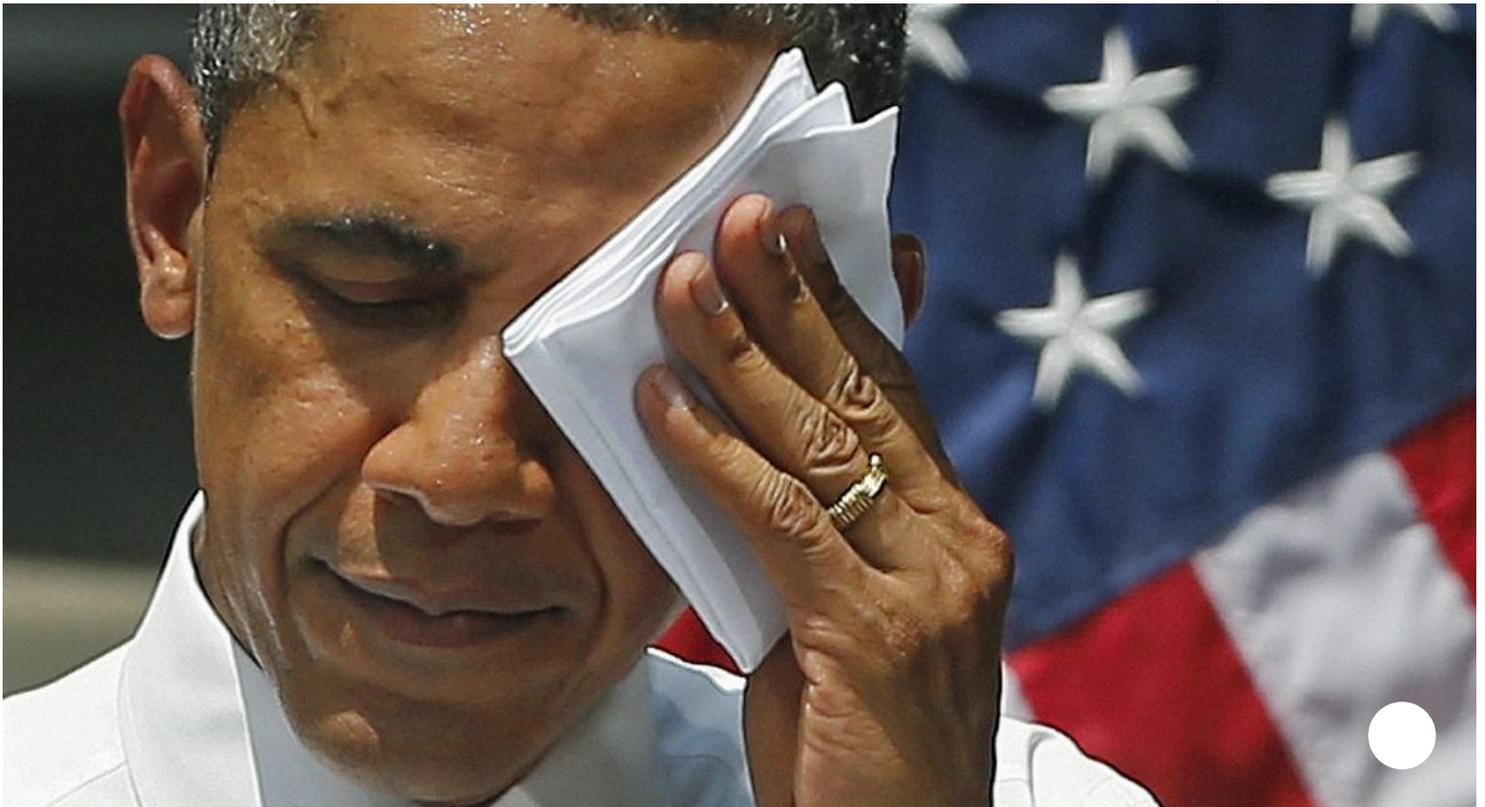
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## This Time Is Different: Obama's Climate Change Opportunity

March 25, 2015

By [David Wirth](#)

By the end of this month, the State Department will formally reveal U.S. targets for greenhouse gas reductions for at least the next decade. The announcement, due by March 31, was agreed to by the United States and 193 other countries at the climate negotiations in Lima, Peru last December. The release of that commitment — currently being calculated and drafted with

input from the Environmental Protection Agency, the White House and other government agencies — offers President Obama an extraordinary opportunity to seize a global leadership role for the United States by undertaking meaningful, internationally legally binding reductions. And he can do so without being hamstrung by a recalcitrant Congress.

The specter of the Kyoto Protocol overshadows this imminent event. In 1997, the Senate rejected Kyoto before the ink was dry, resulting in U.S. isolation from global climate policy for nearly two decades. An excess of caution and the chastening experience of Kyoto have prompted U.S. negotiators to propose only nonbinding reduction goals. But as the only remaining superpower, the world's largest economy and a potential world standard-setter on climate protection, we can and should aim higher.

## **The entire world looks to the United States for guidance. However, we are perceived as sorely lacking on climate protection.**

Most Americans think that the Constitution requires the Senate to approve all binding international agreements. Notwithstanding popular wisdom and even the text of the Constitution, most international compacts — upwards of 90 percent -- bind the United States under international law without Senate approval or even congressional input. Known as “executive agreements,” the practice dates back hundreds of years to the earliest days of the republic.

The legal theory is simple. Senate approval assures the legitimacy of treaties negotiated by the president, giving them domestic legal effect. But if the president has already taken action, or has the authority to do so under existing law like the Clean Air Act, then Senate participation is unnecessary.

The legal and policy setting is entirely different from the late 1990s, at the time of Kyoto when the U.S. had done little to cut climate-disrupting carbon emissions. Since then, the Supreme Court confirmed that carbon dioxide is a pollutant under the Clean Air Act.

On the heels of that decision, the president's initiatives on vehicle fuel efficiency, already authorized by Congress and approved by the courts, will reduce U.S. greenhouse gas emissions by 960 million metric tons. An extension through model year 2025 will cut 2 billion metric tons more. Obama's proposed Clean Power Plan, targeting power plants which account for about a third of U.S. greenhouse gas releases, will cut emissions 30 percent from 2005 levels by the year 2030. And the president just ordered reductions in emissions from federal facilities in the United States relying on his executive power.

Because the president already has the authority to implement these and other reductions domestically, they can equally well be offered as binding international commitments, to be incorporated into a new global climate agreement at a major conference to be held in Paris at the end of this year.

The president's executive agreement power rests on a solid legal foundation. It has been deployed to allow the United States to agree to major, binding, environmental agreements many times over. For example, the U.S. was the very first country to accept a new multilateral agreement on mercury in 2013. And in 1991, the U.S. settled a decades-long dispute with Canada over acid rain in an executive agreement.

The entire world looks to the United States for guidance. However, we are perceived as sorely lacking on climate protection. We are the largest historical contributor to the climate crisis and continue to have high per-capita emissions that are approximately 10 times greater than countries like India. But with dynamic American leadership, the Paris outcome can provide a rigorous response to the ever-burgeoning magnitude of the problem.

## **Serious commitments demand legally enforceable obligations...**

Although more aggressive aspirational goals are necessary for the long term, the serious and ambitious commitments the U.S. has already undertaken domestically can be used to leverage similar pledges from other nations. Particularly crucial are developing countries that will be responsible for the bulk of emissions in the future.

Last November's deal with China, which pledged emissions reductions after 2030 and a goal of 20 percent of energy from non-fossil fuels, is significant in potentially resolving competitiveness issues between the world's two biggest economies. But it is only a political statement, not a binding agreement covered by international law. Serious commitments demand legally enforceable obligations, as demonstrated by the European Union's commitment to binding pledges and its challenge to other countries to follow suit.

The world has waited a quarter century for the United States to step up and deliver internationally binding reductions, and the president has the power to make significant cuts that meet those expectations. By the end of the month we will know whether he has gotten it right.

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