

Towards a 2015 Paris Agreement: Obligations of Results, Obligations of Conduct – or Both?

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This presentation will explore the scope for Parties to frame obligations/commitments in a 2015 Paris Agreement, with a focus on mitigation commitments (‘nationally determined contributions’). Generally, we may distinguish ‘obligations of result’ from ‘obligations of conduct’. While the former give more certainty regarding the actual outcome (e.g. the level of emission reductions), the latter provide an entry point for changing underlying behavior in a desired direction (passing legislation, promoting low-carbon energy and energy efficiency, etc.). Obligations of result allow a compliance assessment *ex post*, whereas conduct can be assessed on the way to a target year/period.

On the side of obligations of conduct, a wide variety of options exist that leave more or less flexibility to Parties or, in other words, ensure more or less meaningful ‘conduct’ towards effective climate protection at different levels. For example, Parties could be required to take implementing measures, report on implementation and/or subject themselves to international review and compliance procedures. As regards implementing measures, such an obligation of conduct could be more or less precise and prescriptive (e.g. requiring binding domestic implementing legislation vs taking undefined implementing measures).

Obligations of conduct can also be combined with obligations of result, or more or less closely linked to the result to be achieved. For example, implementing measures could be required to be adequate for a certain quantified emission target. Arguably, a combination of obligations of conduct and results provides for the strongest ‘legal force’, but may face challenges in terms of political feasibility. The effectiveness of a system primarily relying on obligations of conduct depends to a large extent on the specifics of its design, including the link to the results pursued.