

INTERNATIONAL ORGANIZATIONS

United States Gives Notice of Withdrawal from UNESCO, Citing Anti-Israel Bias
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On October 12, 2017, the United States announced its intent to withdraw from the United Nations Educational, Scientific and Cultural Organization (UNESCO), citing “concerns with mounting arrears . . . , the need for fundamental reform in the organization, and continuing anti-Israel bias.”¹ The United States will remain a full UNESCO member until December 31, 2018, when the withdrawal becomes effective.² Thereafter, it will continue to engage with UNESCO as a non-member observer state.³

The United States joined UNESCO in 1946 pursuant to a congressional-executive agreement.⁴ President Ronald Reagan withdrew the United States from the organization—without seeking congressional approval⁵—in 1984. In his notice of withdrawal, Secretary of State George Shultz wrote,

[W]e have been concerned that trends in the management, policy, and budget of UNESCO were detracting from the Organization’s effectiveness. . . . We felt that they tended to serve—wittingly or unwittingly, but improperly—the political purposes of a few member states.⁶

Subsequently, on September 12, 2002, President George W. Bush announced in a speech before the UN General Assembly that the United States would rejoin UNESCO.⁷ Explaining the decision to rejoin, the U.S. State Department observed that UNESCO “has recently made a concerted effort to institute financial and management reform and resumed efforts to reinforce founding principles, including an emphasis on international press freedom.”⁸

¹ U.S. Dep’t of State Press Release, *The United States Withdraws from UNESCO* (Oct. 12, 2017), at <https://www.state.gov/t/pa/prs/ps/2017/10/274748.htm> [<https://perma.cc/PQ2X-EAWJ>].

² *Id.*

³ *Id.* Shortly after the United States announced its intent to withdraw, Prime Minister Benjamin Netanyahu instructed the Israeli Foreign Ministry to prepare the country’s own withdrawal from UNESCO. Israel Ministry of Foreign Affairs Press Release, *PM Netanyahu Welcomes US Pres. Trump’s Decision to Withdraw from UNESCO* (Oct. 12, 2017), at <http://mfa.gov.il/MFA/PressRoom/2017/Pages/PM-Netanyahu-welcomes-US-Pres-Trumps-decision-to-withdraw-from-UNESCO-12-October-2017.aspx>.

⁴ Joint Resolution Providing for Membership and Participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and Authorizing an Appropriation Therefor, Pub. L. No. 79-565, 60 Stat. 712 (1946).

⁵ See Peri A. Hoffer, Note, *Upheaval in the United Nations System: United States’ Withdrawal from UNESCO*, 12 *BROOK. J. INT’L L.* 161, 190–91, 195 (1986) (noting that the president gave Congress little if any prior notice of his decision to withdraw). Before the withdrawal took effect, a bill was introduced in the U.S. House of Representatives to prohibit the president from terminating participation in UNESCO unless “specifically authorized by law,” but this bill did not become a law. *Id.* at 195 & n. 180. There is no evidence that the Trump administration is seeking congressional approval for its decision to withdraw from UNESCO.

⁶ Letter from George Shultz, U.S. Sec’y of State, to Amadou-Mahtar M’Bow, Dir. Gen., UNESCO (Dec. 28, 1983), reprinted in 23 *ILM* 220, 221 (1984).

⁷ George W. Bush, Address to the United Nations General Assembly in New York City, 38 *WEEKLY COMP. PRES. DOC.* 1529 (Sept. 12, 2002).

⁸ U.S. Dep’t of State Press Release, *The United States Rejoins UNESCO* (Sept. 22, 2003), at <https://2001-2009.state.gov/p/io/rls/fs/2003/24189.htm> [<https://perma.cc/P6U4-ZV2E>].

Well before the United States rejoined UNESCO in 2002, Congress had passed two laws placing certain conditions on U.S. funding to the United Nations and its specialized agencies. The first, passed in 1990, prohibits funding to any UN entity that “accords the Palestine Liberation Organization the same standing as member states.”⁹ The second law, while not mentioning Palestine or the Palestine Liberation Organization by name, prohibits funding for the UN or any affiliated organization which “grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood.”¹⁰ Pursuant to the second law, the United States halted funding to UNESCO on October 31, 2011 when UNESCO admitted Palestine as a full member—a move which the United States described as “regrettable” and “premature.”¹¹ As a result, beginning in 2013, the United States lost its voting rights in the UNESCO General Conference.¹²

Most recently, in July 2017, UNESCO designated the occupied West Bank city of Hebron, site of the historic Tomb of the Patriarchs, as a Palestinian World Heritage Site.¹³ Along with what the State Department has characterized as chronic, structural problems plaguing UNESCO, this decision contributed to the U.S. decision to withdraw from UNESCO a second time. A press release of October 12, 2017 from the U.S. Mission to the United Nations reads:

In July, when UNESCO made its latest outrageous and politically based decision, designating the Old City of Hebron and the Tomb of the Patriarchs as part of Palestinian territory, the United States clearly stated that this decision would negatively affect our evaluation of our level of engagement with the organization. The United States will continue to evaluate all agencies within the United Nations system through the same lens.

“The purpose of UNESCO is a good one. Unfortunately, its extreme politicization has become a chronic embarrassment. The Tomb of the Patriarchs decision was just the latest in a long line of foolish actions, which includes keeping Syrian dictator Bashar al-Assad on a UNESCO human rights committee even after his murderous crackdown on peaceful protestors. Just as we said in 1984 when President Reagan withdrew from UNESCO, U.S.

⁹ Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, § 414, Pub. L. No. 101-246, 104 Stat. 70 (1990).

¹⁰ Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, § 410, Pub. L. No. 103-236, 108 Stat. 454 (1994).

¹¹ U.S. Dep’t of State Press Release, Palestinian Admission to UNESCO (Oct. 31, 2011), at <https://2009-2017.state.gov/r/pa/prs/ps/2011/10/176418.htm> [<https://perma.cc/M5QN-DQUB>]. In 2015, the U.S. Supreme Court held that, as a matter of constitutional law, the president has the exclusive power vis-à-vis Congress to make decisions about the recognition of foreign nations. *Zivotofsky v. Kerry*, 135 S. Ct. 2076 (2015). It remains unclear precisely what effect this decision will have on the validity of congressional statutes that tie appropriations to preconditions related to recognition.

¹² *U.S., Israel Lose Voting Rights at UNESCO over Palestine Row*, REUTERS (Nov. 8, 2013), at <https://www.reuters.com/article/us-unesco/u-s-israel-lose-voting-rights-at-unesco-over-palestine-row-idUSBRE9A70I320131108>. Israel similarly lost its voting rights, as it had also frozen its funding to UNESCO after Palestine became a member. *Id.* UNESCO’s Constitution provides that a “Member State shall have no vote in the General Conference if the total amount of contributions due from it exceeds the total amount of contributions payable by it for the current year and the immediately preceding calendar year.” United Nations Educational, Scientific and Cultural Organization Constitution, Art. IV(C)(8)(b).

¹³ UNESCO Press Release, World Heritage Committee Inscribes New Site and Approves Extension of Existing Site on UNESCO’s World Heritage List (July 7, 2017), at <http://whc.unesco.org/en/news/1685>.

taxpayers should no longer be on the hook to pay for policies that are hostile to our values and make a mockery of justice and common sense,” said Ambassador Nikki Haley.¹⁴

In a press briefing that same day, State Department spokeswoman Heather Nauert described the U.S. decision as the culmination of a “long and deliberative process” related to the congressional funding limitations and the Obama Administration’s decision to halt its funding to UNESCO.¹⁵ Several factors, including arrears amounting to approximately \$550 million, the need for overall UN reform, and anti-Israel bias, all factored into the decision to withdraw, she said.¹⁶ She remarked that if UNESCO “wants to reform itself and get back to a place where they’re truly promoting culture and education and all of that, perhaps we could take another look at this, but we haven’t seen that taking place.”¹⁷ Describing the decision as “deeply regrettable,” Director-General of UNESCO Irina Bokova expressed her “profound regret” for the U.S. decision to withdraw.¹⁸ “This is a loss to UNESCO. This is a loss to the United Nations family. This is a loss for multilateralism.”¹⁹

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Presidential Proclamation Indefinitely Restricting Entry of Individuals from Designated Countries Is Fully Implemented Amid Ongoing Legal Challenges

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On December 4, 2017, the U.S. Supreme Court permitted the most recent version of President Trump’s executive action restricting the entry of nationals from certain countries to take effect. The decision stayed nationwide injunctions granted by two federal district courts on constitutional and statutory grounds.¹ This version of Trump’s “travel ban,” (EO-3), issued on September 24, 2017, restricts the entry of nationals from Iran, Libya, Somalia, Syria, and Yemen—all of whom had been restricted under previous orders—as well as North Korea, Venezuela, and Chad.² While litigation continues in the Courts of Appeals for the Fourth and Ninth Circuits, the Trump administration fully implemented EO-3 by December 8.³

¹⁴ U.S. Mission to the United Nations Press Release, Ambassador Haley on the United States’ Withdrawal from UNESCO (Oct. 12, 2017), at <https://usun.state.gov/remarks/8009> [<https://perma.cc/GY2N-ECGU>].

¹⁵ U.S. Dep’t of State Press Release, Daily Press Briefing (Oct. 12, 2017), at <https://www.state.gov/r/pa/prs/dpb/2017/10/274769.htm> [<https://perma.cc/6D4Y-TDN8>].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ UNESCO Press Release, Statement by Irina Bokova, Director-General of UNESCO, on the Occasion of the Withdrawal by the United States of America from UNESCO (Oct. 12, 2017), at <https://en.unesco.org/news/statement-irina-bokova-director-general-unesco-occasion-withdrawal-united-states-america-unesco>.

¹⁹ *Id.*

¹ *Trump v. Hawaii*, No. 17A550, 2017 WL 5987406, at *1 (S. Ct. Dec. 4, 2017); *Trump v. Int’l Refugee Assistance Project*, No. 17A560, 2017 WL 5987435, at *1 (S. Ct. Dec. 4, 2017).

² Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017) [hereinafter EO-3].

³ U.S. Dep’t of State Press Release, Presidential Proclamation Fully Implemented Today (Dec. 8, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/12/276376.htm> [<https://perma.cc/QAX4-QVRC>].