The four recently announced U.S. withdrawals are consistent with a broader trend by the Trump administration of pulling out of international commitments and engagements. Since Trump took office in January 2017, his administration has announced the present or future U.S. withdrawal from the Paris Agreement, the JCPOA, UNESCO, and the UN Human Rights Council, as well as disengaging from the Global Compact on Migration and the Trans-Pacific Partnership.[62] Those commitments and engagements were multilateral, mostly of recent vintage, and joined by the United States as a matter of domestic law not via the advice and consent of the Senate, but rather through alternative constitutional processes. While continuing the trend of disengagement, the four withdrawals announced in October 2018 had some different features from the earlier wave. Two of the international agreements at issue were bilateral rather than multilateral; three of these agreements were joined by the United States as Article II treaties that received the advice and consent of two-thirds of the Senate; and all of these agreements were long-standing ones, dating back to 1875, 1956, 1972, and 1988. These announced terminations indicate that the Trump administration has come to look beyond the rollback of major Obama-era initiatives and to undertake a more wide-ranging reexamination of U.S. international commitments.

Congress Passes Legislation Implementing the Marrakesh Treaty

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On October 9, 2018, President Trump signed into law a statute that implements the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty).[1] The implementing legislation broadens access to published works for persons with visual disabilities and paves the way for the United States to ratify the Marrakesh Treaty.

Administered by the World Intellectual Property Organization (WIPO), the multilateral Marrakesh Treaty was adopted on June 27, 2013 at the end of a diplomatic conference convened in Morocco and entered into force on September 30, 2016.[2] The treaty requires parties

[62] *See* Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 111 AJIL 1036 (2017) (discussing the announced U.S. withdrawal from the Paris Agreement); Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 107 (2018) (discussing the announced U.S. withdrawal from UNESCO); 112 AJIL 311 (2018) (discussing the cessation of U.S. participation in the Global Compact on Migration); 112 AJIL 315, 320 n. 42 (2018) (noting the decision not to seek ratification of the Trans-Pacific Partnership); 112 AJIL 514 (2018) (discussing the U.S. withdrawal from the JCPOA); 112 AJIL 745 (2018) (discussing the U.S. withdrawal from the UN Human Rights Council). The trend is not entirely in one direction, as the Trump administration has also pursued the making or renegotiation of some international agreements. *See, e.g.*, Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 151 (2018) (discussing the renegotiated NAFTA); 113 AJIL 142 (2018) (describing the recent passage of implementing legislation for the Marrakesh Treaty and noting more generally that from January 2017 to November 2018 the U.S. Senate advised and consented to six treaties).

[1] White House Press Release, President Donald J. Trump Signs H.R. 46, H.R. 2259, H.R. 4854, H.R. 4958, S. 791, S. 1668 and S. 2559 into Law (Oct. 10, 2018), *at* https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-signs-h-r-46-h-r-2259-h-r-4854-h-r-4958-s-791-s-1668-s-2559-law [https://perma.cc/T2CA-YEAG] [hereinafter White House Press Release].

[2] U.S. Dep't of State Press Release, Adoption of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (June 28, 2013), *at* https://2009-

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to implement copyright exceptions and limitations aimed at aiding the development of copyrighted works in accessible formats for persons with physical disabilities relating to vision or to the process of reading books.[3] The treaty also permits authorized organizations to share these materials across borders with authorized organizations or eligible persons located on the territory of other treaty parties.[4]

Although the United States has not ratified the treaty as of November 30, 2018,[5] it has now undertaken all the underlying legislative steps needed to ratify and implement it. On June 28, 2018, the U.S. Senate unanimously both gave its advice and consent to the Marrakesh Treaty and passed legislation to implement the treaty.[6] A few months later, the U.S. House of Representatives also unanimously passed the implementing legislation, and Trump subsequently signed the Marrakesh Treaty Implementation Act (MTIA) into law on October 9, 2018.[7] According to the U.S. Copyright Office, the United States is in the process of preparing its formal ratification for submission to WIPO.[8]

The MTIA amends the Copyright Act to expand a previous exemption that already permitted authorized entities "to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities."[9] Specifically, the legislation broadens the exemption to cover all literary works and musical works "fixed in the form of text or notation."[10] The act also allows such works to be reproduced in "an alternative manner or form," rather than limiting duplication to specific technologies such as braille or digital text.[11] Finally, the MTIA adds new provisions to the Copyright Act focusing on the cross-border exchange feature of the Marrakesh Treaty. These new provisions permit authorized entities to export the reproduced works as set forth in the

2017.state.gov/r/pa/prs/ps/2013/06/211308.htm [https://perma.cc/5WG6-PHSC]; *Summary of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (MVT) (2013)*, WORLD INTELL. PROP. ORG., *at* http://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html [https://perma.cc/5V4S-FGYP]. The United States signed the treaty on October 2, 2013. *Understanding the Marrakesh Treaty Implementation Act*, U.S. COPYRIGHT OFF., *available at* https://www.copyright.gov/legislation/2018_marrakesh_faqs.pdf [https://perma.cc/4BKM-A8W2] [hereinafter Copyright Office Information Sheet].

[3] Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, Arts. 3, 4, June 27, 2013, 52 ILM 1312.

[4] *Id.* Art. 5.

[5] *WIPO-Administered Treaties*, WORLD INTELL. PROP. ORG., *at* http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843 [https://perma.cc/7JA9-7ZKG].

[6] 164 CONG. REC. S109,4421 (including a declaration that the treaty is non-self-executing); S. 2559, 115th Cong. (2018), 164 CONG. REC. S109,4810–11 (daily ed. June 28, 2018). As these sources indicate, both the treaty and the implementing legislation came to a vote through the unanimous consent procedure in the Senate.

[7] S. 2559, 115th Cong. (2018), 164 CONG. REC. H158,8838 (daily ed. September 25, 2018); White House Press Release, *supra* note 1.

[8] Copyright Office Information Sheet, *supra* note 2, at 3 (also noting that the treaty will enter into force for the United States ninety days after ratification).

[9] The Marrakesh Treaty Implementation Act, Pub. L. No. 115-261 (to be codified as amended at 17 U.S.C. § 121); Legislative Branch Appropriations Act of 1997, Pub. L. No. 104-197, 110 Stat. 2394 (codified as amended at 17 U.S.C. § 121).

[10] The Marrakesh Treaty Implementation Act § 2(a)(1)(A).

[11] *Id.* § 2(a)(1)(C)–(D).

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treaty[12] and similarly permit authorized entities and eligible persons to import such works.[13]

The Marrakesh Treaty constituted one of six treaties that, as of November 15, 2018, the Senate has approved during the 115th Congress, which began on January 3, 2017. Prior to approving the Marrakesh Treaty, the Senate had given its advice and consent to four bilateral treaties.[14] Two of these were extradition treaties with Kosovo and Serbia,[15] while the other two established maritime boundaries with Micronesia and Kiribati.[16] The remaining treaty to which the Senate gave its advice and consent was an accession protocol approving Montenegro's entry into the North Atlantic Treaty Organization (NATO).[17] In addition to these treaties, the UN Convention on the Assignment of Receivables in International Trade has been reported out of the Senate Foreign Relations Committee for consideration by the full Senate.[18]

State Diplomatic and Consular Relations

Palestine Brings a Case Against the United States in the International Court of Justice at a Fraught Time for U.S.-Palestinian Relations

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While Palestine considers itself a state, the United States does not currently recognize it as such. The relationship between the two has continued to deteriorate following the December 2017 announcement that the United States would recognize Jerusalem as Israel's capital and move its embassy there. Alleging that the embassy relocation violates international law, Palestine brought a case against the United States in the International Court of Justice (ICJ) in September of 2018. The United States reacted by announcing its withdrawal from the Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes (Optional Protocol). Also in the fall of 2018, the Trump administration closed the Palestine Liberation Organization (PLO)

[12] *Id.* § 2(a)(2)(a). Authorized entities are defined as nonprofit organizations or governmental agencies with a primary mission to serve the visually impaired or other persons with disabilities. *Id.*, § 2(a)(2)(f).

[13] *Id.* § 2(a)(2)(b).

[14] 164 Cong. Rec. S126,5417–18 (daily ed. July 26, 2018) (documenting the Senate's advice and consent to all four of these treaties through unanimous consent and including declarations that all four treaties are self-executing).

[15] Extradition Treaty with the Republic of Serbia, S. Treaty Doc. No. 115-1; Extradition Treaty with the Republic of Kosovo, S. Treaty Doc. No. 115-2.

[16] The Treaties with the Republic of Kiribati and the Government of the Federated States of Micronesia on the Delimitation of Maritime Boundaries, S. Treaty Doc. No. 114-13 (including two separate treaties under a single treaty document number).

[17] Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro, S. Treaty Doc. No. 114-12; *see also* Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 111 AJIL 756, 762–64 (2017) (discussing the Senate's approval of this protocol).

[18] S. Exec. Rep. 115-7 (Sept. 12, 2018) (reporting this treaty forward with six declarations and five understandings). As of November 30, 3018, it remained be seen whether it will receive a floor vote before the term of the current Congress ends in early January 2019.

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