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CHAPTER 4

Treaty Affairs

A. TREATY LAW IN GENERAL

1. Senate Advice and Consent to Ratification of Treaties

The President transmitted several law enforcement instruments for Senate consideration in 2020. See Chapter 3 for discussion of the transmittal of the Beijing Convention and the Beijing Protocol, as well as the U.S.-Croatia agreement on application of the extradition treaty and agreement on mutual legal assistance, which implement the U.S.-EU extradition and mutual legal assistance agreements, respectively.

2. The UN Treaty System

On October 15, 2020, Deputy Legal Adviser Julian Simcock of the U.S. Mission to the UN, addressed a meeting of the Sixth Committee on “Agenda Item 90: Strengthening and Promoting the International Treaty Framework.” Mr. Simcock’s remarks are excerpted below and available at <https://usun.usmission.gov/remarks-at-a-meeting-of-the-sixth-committee-on-agenda-item-90-strengthening-and-promoting-the-international-treaty-framework/>.

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The Committee's discussion of this topic follows on the significant and extended work the Committee did in 2018 resulting in a consensus set of revisions to the Secretariat's treaty registration and publication regulations. We welcome the chance to continue this discussion and thank the Secretariat for its useful discussion paper.

In general, we think the UN's treaty registration and publication program should strive for transparency and accessibility of treaty information, and ease of use. We commend the Secretariat for the efforts it has made in pursuit of these goals.

We agree with a number of states who have observed that expanded use of electronic means both for registration and publication has great potential to advance these objectives. In this regard, we would support further exploration of some of the ideas mentioned in the Secretariat's report, including the possible development of an online registration tool for treaties, further enhancement of the electronic treaty database, and adapting the Treaty Series to a new digital format of publication.

On other issues discussed in the Secretariat's report, we continue to believe that the practical value of publishing treaty texts in the Treaty Series would be significantly undermined were the Secretariat to cease their translation into English and French. We also agree with those states who have expressed the view that it would be inappropriate for the UN's treaty regulations to purport to determine or modify the responsibilities of depositaries other than the United Nations.

In light of the substantial revisions made to the registration and publication regulations in 2018, we think the scope for any further changes to the regulations in the near term should be limited. In general, frequent changes to the regulations complicate the ability of states to use and rely on them. We welcome the discussion at this session of possible limited additional changes to the regulations beyond those made in 2018. However, in the interests of stability and predictability in the registration and publication regime, we do not believe the Committee should take up revision of the regulations as a routine matter at each session, and would encourage the Committee to conclude its current consideration of such proposals during this session.x

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B. CONCLUSION, ENTRY INTO FORCE, ACCESSION, WITHDRAWAL, TERMINATION

1. Suspension or Termination of Agreements with Hong Kong

As announced in a State Department press statement, available at <https://2017-2021.state.gov/suspension-or-termination-of-three-bilateral-agreements-with-hong-kong/index.html>, the United States notified Hong Kong in August 2020 of the suspension or termination of three bilateral agreements: one covering the surrender of fugitive offenders; the second on the transfer of sentenced persons; and the third on reciprocal tax exemptions on income derived from the international operation of ships. The U.S. action came in response to the Chinese Communist Party's derogation from the autonomy of Hong Kong promised under the UN-registered Sino-British Joint Declaration. See Chapter 9 for further discussion of alterations in U.S. treatment of

Hong Kong in 2020. The text of the U.S. diplomatic note received by Hong Kong on August 18, 2020 follows.

* * * *

The Consulate General of the United States of America presents its compliments to the Government of the Hong Kong Special Administrative Region, and has the honor to refer to the Agreement between the Government of the United States of America and the Government of Hong Kong for the Transfer of Sentenced Persons (“Agreement on the Transfer of Sentenced Persons”), signed at Hong Kong on April 15, 1997. Article 14(2) of the Agreement on the Transfer of Sentenced Persons provides that either party may terminate the Agreement at any time by giving notice to the other in writing, and that the Agreement shall cease to have effect three months after the date of the receipt of such notice. In accordance with this provision, the United States of America hereby gives notice of its termination of the Agreement on the Transfer of Sentenced Persons, which termination shall be effective three months from the date of receipt of this note.

The Consulate General further refers the Government of the Hong Kong Special Administrative Region to the Agreement between the Government of the United States of America and the Government of Hong Kong Concerning Tax Exemptions from the Income Derived from the International Operation of Ships (“Agreement Concerning Tax Exemptions”), effected by an exchange of notes at Hong Kong on August 1 and 16, 1989. Paragraph 8 of the Agreement Concerning Tax Exemptions provides that either party may terminate the Agreement by providing written notice of termination. In accordance with this provision, the United States of America hereby gives notice of its termination of the Agreement Concerning Tax Exemptions, which termination shall be effective the first day of January next following the date of receipt of this note.

The Consulate General further refers the Government of the Hong Kong Special Administrative Region to the Agreement between the Government of the United States of America and the Government of Hong Kong for the Surrender of Fugitive Offenders (“Extradition Agreement”), signed at Hong Kong on December 20, 1996.

The United States notes the recent enactment by the People’s Republic of China of national security legislation in respect of Hong Kong. This legislation is incompatible with the ability of Hong Kong’s courts to exercise judicial power independently and free from any interference, as provided for in the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, which constituted an essential basis of the consent of the parties to be bound by the Extradition Agreement.

Accordingly, in accordance with its rights in light of the fundamental change in circumstances which has occurred with regard to those existing at the time of the conclusion of the Extradition Agreement, the United States hereby gives notice of the suspension of the Extradition Agreement, which suspension shall be effective three months from the date of receipt of this note.

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2. Withdrawal from World Health Organization

On July 6, 2020, the United States provided notice of its withdrawal from the World Health Organization, effective July 6, 2021, by letter from Secretary of State Michael Pompeo to the Secretary-General of the United Nations, acting as depositary.* The text of that letter states:

I have the honor on behalf of the Government of the United States of America to refer to the Constitution of the World Health Organization done at New York on July 22, 1946, as amended.

This letter constitutes notification by the Government of the United States of America that it hereby withdraws from the World Health Organization, effective on July 6, 2021.

See Chapter 7 for further discussion of U.S. statements regarding the Trump Administration's decision to withdraw from the World Health Organization.

3. Withdrawal from Open Skies Treaty

On May 22, 2020, the United States provided notice of its decision to withdraw from the Treaty on Open Skies, done at Helsinki on March 24, 1992, in accordance with the treaty's terms. The withdrawal became effective on November 22, 2020. See Chapter 19 of this Digest for statements by the Secretary of State and other Department of State officials regarding U.S. withdrawal from the Treaty on Open Skies. The text of the May 22, 2020 U.S. diplomatic notes providing notice of the withdrawal to the treaty Depositaries and other States Parties to the Treaty on Open Skies is excerpted below:

The Embassy of the United States of America ... has the honor to refer to the Treaty on Open Skies, done at Helsinki on March 24, 1992 (the "Treaty").

Paragraph 2 of Article XV of the Treaty provides that each Party "shall have the right to withdraw from this Treaty." Pursuant to paragraph 2 of Article XV, the United States hereby provides notice of its decision to withdraw from the Treaty. The United States' withdrawal will be effective six months from May 22, 2020.

* Editor's note: On January 20, 2021, the United States retracted its notice of withdrawal and stated that it "intends to remain a member of the World Health Organization." The depositary notification is available at <https://treaties.un.org/doc/Publication/CN/2021/CN.11.2021-Eng.pdf>.

Cross References

Asylum Cooperative Agreements, **Ch. 1.C.7**

Hague Abduction Convention cases, **Ch. 2.B.2.c**

Extradition Treaty and MLAT with the Republic of Croatia, **Ch. 3.A.1**

Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (“Beijing Convention”), **Ch. 3.B.1.a(1)**

Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (“Beijing Protocol”), **Ch. 3.B.1.a(2)**

Universal Periodic Review (U.S. treaty ratification and implementation), **Ch. 6.A.2**

Renegotiating Compacts of Free Association, **Ch. 5.D**

Treaty Bodies, **Ch. 6.A.5**

World Health Organization, **Ch. 7.A.1**

Algiers Accords, **Ch. 8.C**

Sudan Claims settlement agreement, **Ch. 8.D**

Agreements to normalize relations with Israel (Abraham Accords), **Ch. 9.B.8.a**

Air Transport Agreements, **Ch. 11.A.1**

United States-Mexico-Canada Agreement, **Ch. 11.D.2**

Antarctic Treaty, **Ch. 13.B.3**

Columbia River Treaty, **Ch. 13.C.5**

1970 UNESCO Convention on Cultural Property, **Ch. 14.A**

Bilateral and Multilateral Defense Agreements and Arrangements, **Ch. 18.A.3**

Nonproliferation Treaty, **Ch. 19.B.1**

Open Skies Treaty, **Ch. 19.C.4**