



NEW YORK  
CITY BAR

JOHN S. KIERNAN  
PRESIDENT  
Phone: (212) 382-6700  
Fax: (212) 768-8116  
jkiernan@nycbar.org

November 13, 2017

Hon. Paul Ryan  
Speaker, U.S. House of Representatives  
H-232, The Capitol  
Washington, DC 20515

Hon. Mitch McConnell  
Majority Leader, U.S. Senate  
317 Russell Senate Office Building  
Washington, DC 20510

Hon. Nancy Pelosi  
Minority Leader, U.S. House of Representatives  
H-204 The Capitol  
Washington, DC 20515

Hon. Charles Schumer  
Minority Leader, U.S. Senate  
322 Hart Senate Office Building  
Washington, DC 20510

**Re: United States' Withdrawal from UNESCO**

Dear Speaker Ryan, Representative Pelosi, Senator McConnell, and Senator Schumer:

I write on behalf of the New York City Bar Association (the "Association") in response to the announcement by the Trump Administration on October 12, 2017 of its intent to withdraw from the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), effective December 31, 2018.<sup>1</sup>

The Association is a non-governmental organization with a roster of more than 24,000 members from nearly every American state, including some of the most distinguished lawyers and judges in the United States, legal academics, and U.S. lawyers who reside abroad and practice in private, public and governmental positions. The Association has long been committed to the rule of law, the protection of international human rights, and the United States' full participation in and support for the United Nations and other international institutions as the best way to assure peace and security.

---

<sup>1</sup> In explaining the Administration's decision to withdraw, a U.S. State Department spokesperson cited "mounting arrears at UNESCO, the need for fundamental reform in the organization, and continuing anti-Israel bias." See Press Statement, "The United States Withdraws From UNESCO," October 12, 2017, available at <https://www.state.gov/r/pa/prs/ps/2017/10/274748.htm>. Some believe that withdrawal from UNESCO will, in fact, hinder the United States' capacity to reform UNESCO and to combat any anti-Israel bias, and that the United States' "mounting arrears" arose because it stopped paying dues, pursuant to a funding cut-off trigger under U.S. law, after Palestine was admitted to UNESCO in 2011. See §414 of the Foreign Relations Authorization Act (FY 1990/91); §410 of the FRAA (FY 1994/95). This letter does not take a position on the reasons cited for the U.S. intent to withdraw. Rather, the purpose of this letter is to highlight the values served by international engagement and the many compelling reasons why the United States should not withdraw from UNESCO.

We write to express concern that the decision to withdraw from UNESCO is not an isolated act, but part of a pattern of broader unilateral withdrawal and disengagement from international treaties, international institutions and forums of global governance under the Trump Administration (as demonstrated by the United States' recent withdrawals from the Paris Agreement and the Trans-Pacific Partnership, as well as the Administration's criticisms of the United Nations, World Trade Organization, World Bank/International Monetary Fund, and Joint Comprehensive Plan of Action on Iran's nuclear program), with the UNESCO withdrawal being just the latest instance of this very concerning progression.<sup>2</sup>

Of equal concern is that the decision to disengage from UNESCO represents a hostility to the principles of UNESCO's mission, and a reassignment of priority away from core values that have been bedrock interests of United States' policy since the founding of UNESCO and the United Nations. The purpose of UNESCO, as outlined in its constitution, is to contribute to peace and security by promoting collaboration among member states in the fields of education, science, and culture.<sup>3</sup>

The United States has long been an important voice and leader in the protection of world cultural and natural heritage sites of universal value and has ratified international treaties to protect culture in the face of armed conflicts, and to prevent the pillage of architectural sites in the illicit traffic of antiquities.<sup>4</sup> As the U.S. Committee of the Blue Shield noted in its comment on the U.S. withdrawal from UNESCO, through participation and engagement with UNESCO, the United States has signaled the importance of international cooperation in education, science, cultural awareness and communication, all of which serve to strengthen ties amongst nations and

---

<sup>2</sup> See, e.g., Letter to Congressional Leaders on the Trump Administration's Handling of Human Rights and International Engagement in its First 100 Days, sent April 27, 2017 from the New York City Bar Association, available at [http://s3.amazonaws.com/documents.nycbar.org/files/First\\_100\\_Days\\_INTHUM\\_4.28.17.pdf](http://s3.amazonaws.com/documents.nycbar.org/files/First_100_Days_INTHUM_4.28.17.pdf). The isolationist attitude recently exhibited by the United States does not enable the United States to be an effective supporter of Israel, nor a compelling advocate for reform within UNESCO. It perpetuates a culture of antagonism rather than leadership and cooperation to the detriment of our allies and United States stated policy objectives.

<sup>3</sup> The Constitution of UNESCO provides in pertinent part "that since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed;... That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern; That a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind." Under its constitution the organization is intended to sponsor international exchanges and meetings in science, education, and other fields; promote the free flow of ideas; encourage the conservation of books, monuments, and works of art; and assist member states in developing educational, scientific, and cultural programs. See UNESCO website, <http://www.unesco.org/>.

<sup>4</sup> On November 16, 1972, the United States became the first country to ratify the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1037 U.N.T.S.151. In 1983, Congress passed The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601-13 (CPIA) to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 83 U.N.T.S. 231 ("UNESCO 1970"), a treaty focused on the prevention of theft and looting of cultural property as well as the restitution of illicit such property. On September 25, 2008, the United States ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 U.N.T.S.240, officially recognizing its obligation to the international community to safeguard cultural property under siege.

diverse societies and serve at the heart of American democratic principles.<sup>5</sup>

The decision to withdraw from UNESCO does more than undermine the historic role of the United States as a strong advocate for international cooperation in world heritage protection—it threatens our leadership role in the fight against terrorism, and our commitment to the protection of human rights, world peace and security. Specifically, withdrawal from UNESCO runs contrary not only to the established recognition of the important role played by education and cultural heritage in promoting international peace and security, but the recently documented and acknowledged connection between cultural destruction, terrorism, and genocide.<sup>6</sup>

Previous presidential administrations have acknowledged this critical link. In fact, the terrorist attacks of 2001 were a catalyst for the United States seeking global cooperation in its war on terror by rejoining UNESCO in October 2003 under President George W. Bush, after an almost twenty-year hiatus from the organization.<sup>7</sup> President Bush stated that, “[a]s a symbol of our commitment to human dignity, the United States will return to UNESCO and America will participate fully in its mission to advance human rights and tolerance and learning.” He continued by affirming that the “U.S. believes that peace depends upon building strong foundations of knowledge that bridge nations, enlarge freedoms, and promote democracy. It is in that spirit that the United States rejoined UNESCO and seeks to expand and improve education, promote scientific progress and press freedom, enhance understanding, and protect cultural heritage worldwide.”<sup>8</sup> By implication, *withdrawal* from UNESCO will logically make it more difficult for the United States and the international community to achieve these objectives.<sup>9</sup>

---

<sup>5</sup> Statement from the Archaeological Institute of America (AIA), American Alliance of Museums (AAM), American Anthropological Association (AAA), American Schools of Oriental Research (ASOR), Association of Art Museum Directors (AAMD), Society for Classical Studies (SCS), U.S. Committee of the Blue Shield (USCBS), and U.S. National Committee of ICOMOS (US/ICOMOS) Regarding the United States of America’s Intention to Withdraw from UNESCO.” *The U.S. Committee of the Blue Shield*, Oct. 18, 2017, <http://uscbs.org/>.

<sup>6</sup> September 21, 2017, “Protecting Cultural Heritage From Terrorism And Mass Atrocities: Links And Common Responsibilities”, a UN General Assembly program hosted by the European Union Delegation to the UN, the Permanent Mission of Italy to the UN, UNESCO, the United Nations Office on Drugs and Crime, and the Global Centre for the Responsibility to Protect, moderated by Simon Adams. *See also* *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15. The ICC convicted a member of a Malian jihadist organization for the war crime of “intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, Mali” during conflict there in 2012. *See also* UNESCO General Conference’s resolution 38 C/48, by which Member States have adopted the Strategy for the Reinforcement of UNESCO’s Actions for the Protection of Culture and the Promotion of Cultural Pluralism in the Event of Armed Conflict.

<sup>7</sup> President Bush also stated that the organization had made substantial structural and financial reforms under its then Secretary General. Membership in UNESCO is an executive decision; however, appropriation of funds for UNESCO is the purview of Congress. For a full report to Congress on rejoining UNESCO, see Bite, Vita, and Louis McHugh. *UNESCO Membership: Issues for Congress*. The Library of Congress, 2003, *UNESCO Membership: Issues for Congress*, <http://www.congressionalresearch.com/>.

<sup>8</sup> “Forging a New Partnership of Hope,” President George W. Bush speech at the United Nations General Assembly, September 12, 2002. *See also* Eli Rosenberg and Carol Morello, “U.S. withdraws from UNESCO, the U.N.’s cultural organization, citing anti-Israel bias,” *Washington Post*, October 12, 2017, available at [https://www.washingtonpost.com/news/post-nation/wp/2017/10/12/u-s-withdraws-from-unesco-the-u-n-s-cultural-organization-citing-anti-israel-bias/?utm\\_term=.a7c1fb277b6a](https://www.washingtonpost.com/news/post-nation/wp/2017/10/12/u-s-withdraws-from-unesco-the-u-n-s-cultural-organization-citing-anti-israel-bias/?utm_term=.a7c1fb277b6a).

<sup>9</sup> Phillip Y. Lipsy, Stanford University Assistant Professor of Political Science and Thomas Rohlen, Center Fellow,

The acknowledgement by the international community of the important relationship between culture, education, peace and security has led to a number of important recent initiatives. UN Security Council Resolutions 2199, *Threats to International Peace and Security Caused by Terrorist Acts* (February 12, 2015) (“Resolution 2199”); 2253, *Suppressing Financing of Terrorism* (December 17, 2015) (“Resolution 2253”); and 2347, *Maintenance of Peace and Security* (March 24, 2017) (“Resolution 2347”), represent important steps forward in promoting an advanced legal framework for the protection of cultural property in armed conflict.<sup>10</sup>

In adopting Resolution 2199, the Security Council reaffirmed its primary responsibility for the maintenance of international peace and security in accordance with Chapter VII of the Charter of the United Nations. The United Nations Security Council is vested with enforcement powers under Chapter VII of the United Nations Charter to “take such responsibility...as may be necessary to maintain or restore international peace and security.”<sup>11</sup> Resolution 2199 condemned trade with ISIS and listed trade in antiquities as a key element of terrorist funding. It reaffirmed that terrorism in all its forms constitutes one of the most serious threats to world international peace and security and that members of the United Nations recognize the need to combat it by all means and through international law, including applicable international human rights, refugee and humanitarian law. Resolution 2199 stressed the need for a sustained and comprehensive approach to these problems involving the active participation and collaboration of all states and international and regional organizations to impede, isolate and incapacitate the terrorist threat.

The Charter of the United Nations has the status of a “treaty” under U.S. law.<sup>12</sup> Resolutions adopted by the Security Council under its Chapter VII authority “have the effect of law for members” of the United Nations.<sup>13</sup>

---

Shorenstein Asia Pacific Research Center at Stanford University’s Freeman Spogli Institute for International Studies, “The folly of UNESCO withdrawal,” *The Hill*, October 18, 2017, available at <http://thehill.com/opinion/international/356067-the-folly-of-unesco-withdrawal>.

<sup>10</sup> See United Nations Security Council Resolutions, available at <http://unscr.com/en/resolutions>. See also December 2, 2016 Abu Dhabi Conference on Safeguarding Endangered Cultural Heritage, available at [http://www.unesco.org/new/en/media-services/singleview/news/director\\_general\\_opens\\_conference\\_for\\_safeguarding\\_cultural/](http://www.unesco.org/new/en/media-services/singleview/news/director_general_opens_conference_for_safeguarding_cultural/); Council of Europe Convention on Offenses relating to Cultural Property (Strasbourg, March 2, 2017), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/221>; Joint Declaration of the Ministers of Culture of G7 on the Occasion of the Meeting “Culture As An Instrument For Dialogue Among Peoples” (March 31, 2017), available at <http://www.g7italy.it/en/news/g7-ministers-culture-signed-florence-declaration>.

<sup>11</sup> United Nations, Charter of the United Nations (“UN Charter”), October 24, 1945, 1 UNTS XVI, Chapter VII, Articles 42, 48 (1). See also Chapter V, Article 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”)

<sup>12</sup> A “treaty” is an international agreement made with the advice and consent of the Senate. U.S. CONST. Art. II, § 2, cl. 2. Pursuant to Article VI of the U.S. Constitution, treaties together with the laws of the United States are the supreme law of the land. U.S. CONST. Art. VI.

<sup>13</sup> Security Council Resolutions can create legal obligations on UN member states. These two legal facts are clear in the language of Articles 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council...”) and 49 (“The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council”). See also James A.R. Nafziger and Edward M. Wise, “The Status in United States Law of Security Council Resolutions under Chapter VII of the United Nations Charter,” 46 Am. J. Comp. L. Supp., p. 421 (1998). See, e.g., Restatement 3rd, Restatement of the Foreign Relations

Thus, fulfilling its obligation to implement Resolutions 2199 and 2253, Congress enacted the Protect and Preserve International Cultural Property Act (the “Act”)<sup>14</sup> on April 28, 2016. The Act was a decisive bipartisan acknowledgement that the looting of antiquities is a direct threat to U.S. national security and to humanity’s shared heritage. Congress recognized that by closing the U.S. market to “conflict antiquities from Syria,” the U.S. was cutting off a key source of terrorist financing. The Act charged the President with establishing an inter-agency committee to protect and preserve international cultural property at risk from political instability, armed conflict or natural or other disasters.

The Act was explicit that the "committee be chaired by a Department of State employee of Assistant Secretary rank or higher...and include representatives of the Smithsonian Institution and Federal Agencies with responsibilities for the protection and preservation of cultural property." These agencies are not explicitly named in the Act but normally would include the Department of Justice, Department of Homeland Security, Department of Defense, U.S. Customs and Border Patrol, Department of the Interior, the Peace Corps and the Internal Revenue Service.<sup>15</sup> The inter-agency committee was charged with protecting core U.S. interests in (i) protecting and preserving international cultural property; (ii) preventing and disrupting looting and illegal trade and trafficking in international cultural property, particularly exchanges that provide revenue to terrorist and criminal organizations; (iii) protecting sites of cultural and archaeological significance; and (iv) providing for the lawful exchange of international cultural property.

Congress recognized that it was important to monitor executive compliance with the Act, particularly the President’s obligation to report on whether the inter-agency committee had been established not later than one year after the date of the enactment of the Act, and to provide to the appropriate congressional committees – Senate Foreign Relations, House Foreign Affairs, Senate Finance, House Ways and Means - an annual report thereafter for the next six years on the efforts of the executive branch during the 12-month period preceding the submission of the report to protect and preserve international cultural property. We respectfully urge that those so charged, do so.

The unanimous adoption of Resolution 2347 on March 24, 2017 by the UN Security Council is the first time the Security Council has emphasized that safeguarding heritage is not only about protecting civilization, it is also vital for security and plays a key role in restoring

---

Law of the United States ("Restatement") Section 102(2) and reporters' note 3 (American Law Institute Publishers 1987). *See also* United Nations Resolutions on Religious Hate Speech: The Impact on Freedom of Expression, United Nations Committee, Association of the Bar of the City of New York, June 2014. *available at* <http://www2.nycbar.org/pdf/report/uploads/20072724-UNResolutionsonReligiousHateSpeech--ImpactonFreedomofExpression.pdf>.

<sup>14</sup> H.R. 1493, Public Law 114-151, Protect and Preserve International Cultural Property Act, 114th Congress (2015-2016), *available at* <https://www.govtrack.us/congress/bills/114/hr1493/text>.

<sup>15</sup> *See #CultureUnderThreat: Recommendations for the U.S. Government*, Executive Summary of report of task force convened by the Antiquities Coalition, Asia Society, and Middle East Institute, 2016, *available at* <http://taskforce.theantiquitiescoalition.org/wp-content/uploads/2015/01/Executive-Summary-.pdf> at p. 3. This list of federal agencies is meant to be representative, not exhaustive.

peace and resolving conflict. It confirms that the implementation of an international legal framework to combat both the destruction of cultural heritage and the illicit antiquities trade that funds terrorism is a shared, global responsibility. Resolution 2347 specifically acknowledges the “central role played by UNESCO in protecting cultural heritage and promoting culture as an instrument to bring people closer together and foster dialogue, including through the [participation of international law enforcement] in preventing and countering all forms and aspects of trafficking in cultural property and related offenses.”<sup>16</sup>

In voting to adopt Resolution 2347, the United States explicitly acknowledged its commitment to these goals. As stated by Ambassador Michelle J. Sison, the U.S. Deputy Representative to the United Nations, “[t]he policy of the United States government is clear: the unlawful destruction or trafficking of cultural heritage is deplorable—we unequivocally oppose it, and we will take all feasible steps to halt, limit, and discourage it...The United States looks forward to strengthened international cooperation, and to finding new channels of cooperation for the protection and preservation of cultural heritage in armed conflicts, in order to preserve this priceless inheritance for future generations.”<sup>17</sup>

We respectfully urge you, as Congressional leaders, to ensure that the United States preserves its stature as a global leader against terrorism and the wanton destruction of culture. Maintaining that global position of leadership benefits our country for reasons of morality, security, and economic strength—but also requires Congress to take efforts to implement the international legal and normative framework to promote and implement the agenda of Resolution 2347, including coordinating with the efforts of UNESCO, the United Nations Office on Drugs and Crime (UNODC), and the International Police Organization (INTERPOL).<sup>18</sup>

The interests of the United States are enhanced by ensuring sufficient financial support of UN institutions and peacekeeping efforts. Dignity, equality, peace, security and fundamental rights are not partisan issues—rather, they are at the core of our democratic values and UNESCO’s mission. The Association is encouraged by congressional leaders who have

---

<sup>16</sup> UNESCO works with its member states to curtail the illicit trade in artifacts by raising public awareness of the problem and by developing legal mechanisms for tracking looted artifacts and settling disputes over their repatriation. But its most important programs are its capacity-building efforts, working with government officials to establish procedures for preventing and interdicting the black-market trade in antiquities and then training national customs officers and law-enforcement personnel in implementing those procedures. UNESCO has been actively working to hinder the trade in antiquities looted from both Syria and Iraq, or, in other words, the antiquities trade that is currently helping to finance the Islamic State. But all of UNESCO’s work in this area has suffered considerably due to the loss of the substantial portion of its annual budget that the United States once provided.

<sup>17</sup> Explanation of Vote at the Adoption of UN Security Council Resolution 2347, March 24, 2017, UN Security Council, available at <https://it.usembassy.gov/u-s-mission-un-explanation-vote-adoption-un-security-council-resolution-2347/>. The imperative of supporting the coordinated activity of UNESCO, Interpol, UNODC and the actions of membership was reaffirmed by the U.N. Secretariat. Following the vote, Jeffrey Feltman, Under-Secretary-General for Political Affairs, said terrorist groups like ISIL exploited cultural sites to finance their activities while strengthening their links with transnational organized crime. “Protecting cultural heritage requires us to make every effort to implement this international legal and normative framework and strengthen international cooperation,” he continued, noting that it demanded a global criminal-justice response. Briefing to the Security Council, March 24, 2017, available at <http://www.un.org/undpa/en/speeches-statements/24032017/cultural-heritage>.

<sup>18</sup> S/RES/2347 (March 24, 2017).

demonstrated their steadfast willingness to champion these values. It is important that they continue to act to meet our domestic and international obligations: Now more than ever it is important for Congress to affirm the United States' commitment to the stated purpose of this organization: "To further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion."

Respectfully,



John S. Kiernan  
President

Cc: Hon. Kevin Brady, Chair, House Ways and Means Committee  
Hon. Ben Cardin, Ranking Member, Senate Foreign Relations Committee  
Hon. Bob Corker, Chair, Senate Foreign Relations Committee  
Hon. Sheila Crowley, Acting Director, Peace Corps  
Hon. Elaine C. Duke, Acting Secretary, Department of Homeland Security  
Hon. Eliot Engel, Ranking Member, House Foreign Affairs Committee  
Hon. Nikki R. Haley, U.S. Permanent Representative to the United Nations  
Hon. Orrin Hatch, Chair, Senate Finance Committee  
Hon. David Kautter, Acting Commissioner, Internal Revenue Service  
Hon. James Mattis, Secretary of Defense  
Hon. Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection  
Lt. Gen. H.R. McMaster, Jr., National Security Advisor  
Hon. Richard Neal, Ranking Member, House Ways and Means Committee  
Hon. Ed Royce, Chair, House Foreign Affairs Committee  
Hon. Jeff Sessions, Attorney General  
Dr. David J. Skorton, Secretary, The Smithsonian Institution  
Hon. Rex W. Tillerson, Secretary of State  
Hon. Ron Wyden, Ranking Member, Senate Finance Committee  
Hon. Ryan Zinke, Secretary of the Interior  
Members of the NYS Congressional Delegation