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THE PRESIDENT, CONGRESS, AND SHARED AUTHORITY OVER INTERNATIONAL ACCORDS

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THE PRESIDENT, CONGRESS, AND SHARED AUTHORITY OVER INTERNATIONAL ACCORDS

TUESDAY, DECEMBER 5, 2017

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 3:20 p.m., in Room SD–419, Dirksen Senate Office Building, Hon. Bob Corker, chairman of the committee, presiding.

Present: Senators Corker [presiding], Gardner, Young, Cardin, Menendez, Shaheen, Coons, Murphy, Kaine, Markey, and Booker.

OPENING STATEMENT OF HON. BOB CORKER, U.S. SENATOR FROM TENNESSEE

The CHAIRMAN. The Foreign Relations Committee will come to order. We apologize to our witnesses. We had a photograph with 100 Senators. There are always three or four who do not show until long after it is supposed to start. And then we had a business meeting that went for a while. But thank you so much for being here.

Today, we are going to continue a series of hearings to examine the executive's authorities with respect to war-making, the use of nuclear weapons, and, from a diplomatic perspective, entering into and terminating agreements with other countries.

We are here today to discuss the shared authority over international accords, an issue of fundamental importance to our national interests and separation of powers.

Let me be clear. This is not about any effort to constrain the inherent powers of the President with respect to diplomacy. Our Nation must speak with one voice in diplomatic affairs. And under our Constitution, the President determines U.S. foreign policy. But Congress plays a vital role in providing advice and consent on treaties and authorizing U.S. participation in international agreements that shape our foreign policy.

Our Founders understood the danger of entrusting too much of this power to the President alone, and the Constitution clearly provides for a shared authority to enter into binding international agreements.

The House and Senate play an indispensable role in enacting legislation that provides the President with a domestic legal basis for fulfilling our international commitments. And with respect to agreements that rise to the level of a treaty, the Senate has a unique constitutional role in approving treaties. Therefore, we must be active participants in the process.

Through the years, Presidents from both parties have increasingly abused their authority to enter into and terminate binding international agreements with little input from Congress. To avoid further ceding of our authority to the executive branch, we must fulfill our constitutional role as partners in this effort and be vigilant in our oversight responsibilities.

This challenge is greater than ever before. As Professor Bradley will note in his testimony, more than 90 percent of the thousands of binding international agreements entered into by the United States over the last 80 years have not been treaties but various forms of executive agreements.

We are stronger internationally when the President and Congress work together. Unilateral presidential action, without a meaningful congressional partner, undermines our national strength.

For that reason, I hope this committee will work in a bipartisan way to ensure that the Senate will uphold its constitutional role in the process of making international agreements. We must work in partnership with the President when we can. And we must be ready to defend the rights and the obligations of the Senate when necessary.

And with that, I will turn to our distinguished ranking member, Ben Cardin.

STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM MARYLAND

Senator CARDIN. Thank you, Mr. Chairman.

As you know, we get opening statements that are sometimes prepared by our staff, and I think this one is particularly appropriate, so I am going to ask consent that my entire opening statement be put in the record, because it gives, in detail, some of my concerns.

And let me summarize very briefly, so we can get to the witnesses.

We point out that the number of treaties that we have entered into as a Nation, as a percentage of our national agreements entered into by our country, between 1789 and 1939, 66 percent of all foreign agreements were treaties. Between 1980 and 2000, that dropped to 12 percent. That number is even lower today.

So we have seen the disuse of treaties as a manner in which to enter into international agreements, and that involves the Congress. And I have been told that it was pretty common for Members of the Senate to be part of the negotiating teams on treaties, to assist in the relationship between the executive branch and the Senate, which makes sense. And we are not doing that today.

So when the President of the United States looks at Congress and the consideration of treaties today, sees the Law of the Sea that cannot be ratified by the United States Senate, sees the Rights of Persons with Disabilities not being able to be ratified by the United States Senate, which I to this day cannot determine any controversy at all in regard to that treaty, we can understand why the President would choose to use a method other than a treaty in order to enter into international agreements, which compromises the appropriate role of the United States Senate, something that we should be very concerned about.

So the President, when he wanted to enter into a climate agreement, he chose an executive agreement rather than a treaty. When he wanted to enter into an agreement with the international community on Iran, he chose an executive agreement rather than a treaty. Why? Because he couldn't get it ratified in the U.S. Senate under any scenario.

It was not this agreement. It is anything. You cannot even get tax treaties ratified by the Senate that are there to help us. You talk about tax reform, we cannot get tax treaties passed because one Member decides to hold up the process?

So we have problems. And now we have a President who wants to withdraw from international agreements, whether they are agreements like the JCPOA or they are trade agreements.

And I must tell you, quite frankly, I have been in the Congress for a long time when we have gone over the congressional role on trade agreements, and there is a formal process under the Trade Promotion Authority. And, yes, we go over the withdrawal procedures, but we never thought we would run into a President who would be using the withdrawal as this President has done, in a manner that is really contrary to us being involved in the process.

Now, we have taken some action. INARA was an example where Congress decided that it was going to do something about executive agreements, and I think we did the right thing in INARA, in regard to the JCPOA.

But I think this hearing is particularly important, so we have a chance to talk about reestablishing the appropriate role for the United States Senate as it relates to executive agreements.

And I thank our two witnesses for being here. They both have great expertise here.

I am interested in, Avril, how you were able to get so many treaties ratified. I think you have a record in modern times, so maybe you can give us an idea how that was done.

But I welcome both of our witnesses here today.

The CHAIRMAN. I will formally welcome them.

Senator MENENDEZ. Mr. Chairman, at the appropriate point, as I had asked you before we started, I would just like to make a brief comment about the resolution that I was not able to get to.

The CHAIRMAN. I think now would be a very appropriate time.

Senator MENENDEZ. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for reminding me of that.

STATEMENT OF HON. BOB MENENDEZ,
U.S. SENATOR FROM NEW JERSEY

Senator MENENDEZ. I appreciate it.

So I did not go. I had an amendment in Banking, and then I was told that the chair's preference was to have remarks made here, so I did not get over to the markup. So I appreciate the moment.

And I feel really compelled about this. This is a resolution that I used to carry before I became chairman of the committee, and then Bob Casey did with others, and it is the resolution on the protection of freedom of the press and expression around the world, and reaffirming the freedom of the press as a priority in the efforts of the United States Government to promote democracy and good governance.

Normally, that was an expression of our commitment to that fundamental, bedrock principle enshrined in the First Amendment to the Constitution of the United States as a global effort. But I have to be honest with you, I am really concerned—really concerned—when I see that, last month, CNN reported on live auctions of human beings, something that I know the chairman cares passionately about, by his work on human trafficking, and active slave trade in Libya, and the news network showed footage of human beings being sold at auction, which is a stain in our collective consciousness. But adding to this atrocity last week, Libyan authorities questioned the veracity of the reports, citing the President of the United States who calls CNN fake news.

Now, listen, I have had my share over 43 years of public service of not being enthralled by some press reports and how they ultimately carried themselves, but I believe in the fundamental, bedrock principle of a free press. And when we are in the league of individuals like Maduro in Venezuela and Putin in Russia, who constantly try to undermine the essence of a free press in their countries in order to promote their dictatorial, autocratic views, it really worries me.

It worries me that attacking the press is one of the most frequently used instruments in a dictator's toolbox. The fourth estate, in my mind, plays a crucial role in our democracy and all over the world. So advocacy for it as independent and critical is really important.

And finally, I am really shocked that, for the first time—for the first time—the Committee to Protect Journalists, an organization dedicated to protecting journalists doing critically important work to hold public officials accountable and uncover stories and expose the world to critical events, has concerns about the United States. I never thought that I would be in a moment in time in which the Committee to Protect Journalists would cite the United States as a place that they have concerns about.

So I appreciate that the chairman put this resolution on. I know he is committed to it. I think it is important not only to pass the resolution but to speak to these issues, because I do not want to be in the company of Putin and Maduro. I do not want the Committee to Protect Journalists to cite the United States as a place they now have concern on.

And I think it is important, when we are facing human trafficking in the world, when we are facing those who have efforts to use nuclear weapons, that the credibility that we have in having journalists question in those countries what is happening in those countries not be undermined.

I appreciate the opportunity.

The CHAIRMAN. Thank you so much for those important comments. I appreciate your work in this area.

Our first witness is Mr. Curtis Bradley, the William Van Alstyne Professor of Law, and professor of public policy studies at Duke University. Professor Bradley has written extensively on the authorities of the Senate in making treaties and the importance of cooperation between the branches. I want to thank you not only for being here but your help in the past.

Our second witness is the Honorable Avril D. Haines, former Deputy National Security Advisor to President Obama. Ms. Haines has an extensive resume that includes serving as deputy chief counsel for this committee. So thank you for being here.

If you would give your opening comments, you have done this before, I know, in about 5 minutes. Any written materials will be entered into the record, without objection. Then we will proceed with questions.

In the order introduced, Mr. Bradley?

STATEMENT OF CURTIS A. BRADLEY, WILLIAM VAN ALSTYNE PROFESSOR, DUKE UNIVERSITY SCHOOL OF LAW, DURHAM, NORTH CAROLINA

Mr. BRADLEY. Thank you very much for inviting me to speak today. My remarks are going to be focused on what I see as the need for more oversight and involvement by both the Senate and the full Congress in how this country makes and, to some extent, at times withdraws from international commitments.

The only process that the Constitution specifies for making international commitments is the one set forth in Article II, pursuant to which Presidents are supposed to seek the advice and consent of two-thirds of the Senate.

Part of the Founders' idea behind requiring legislative involvement, in addition to the executive branch, was the thought that international commitments can have important and long-term consequences for the United States and, thus, should be determined and considered by both political branches.

For a variety of reasons, and complicated reasons, and historical reasons, the Article II process is not used for the vast majority of international agreements today. As Senator Corker noted at the outset, over 90 percent of binding international agreements that the United States has made for decades are made through other processes, what we call executive agreements.

Some of these executive agreements are made with the full participation of the Congress, the majority of the Congress, congressional-executive agreements. And the ones that involve Congress looking at an agreement after it has been negotiated, revealing the content of the agreements, and deciding whether it is in the national interest, do involve collaboration, obviously, between the two branches of government. They are a tiny fraction of the executive agreements that are made.

Many congressional-executive agreements, the vast majority, in fact, are made by the President based on, often, old statutes, statutory delegations that date back many decades ago. And those agreements are not presented back to the legislative branch.

Presidents also sometimes make agreements without any legislative participation even at the front end, the so-called sole executive agreements. Supposedly, Presidents should do that only when these agreements relate to their own independent, constitutional authority.

As I discuss in a forthcoming Law Review article, increasingly, and I am not speaking about any particular presidential administration, but Presidents, in general, have concluded more agreements without any legislative involvement and, at times, without

any real claim that they have independent constitutional authority in the area, whether it be the environment or intellectual property or commerce.

Those are not independent presidential powers. Those are powers very much part of legislative authority. And I think this development, if left unchecked, is problematic, from the separation of powers standpoint.

We also have seen a rise in so-called political commitments. Presidents have long made diplomatic promises, and often, I think, unproblematically. We have seen a greater use of them in recent years, combined with the use of statutory authority, to make agreements that I think in the past would have been concluded with the participation of the Senate or the Congress, and that are now being done more unilaterally.

The increased unilateralism also extends to the termination or withdrawal from agreements as well. The Constitution does not tell us exactly how this process of withdrawing from agreements should occur, but in the 19th century, I looked at the history, and Congress was a frequent partner in those decisions. That has been much less the case since the 20th century.

In my written testimony, I suggest some things that Congress should at least consider to be a more collaborative partner in the international lawmaking that the United States engages in.

A first step, I think a very good step and one that Congress has considered before and made some progress on before, is simply more transparency, having more information from the executive branch about what it is doing, so that Congress can evaluate it and respond, if necessary.

The Case Act in 1972 was a major enactment in this area and has led to more transparency with respect to agreements that do not go through the Senate process. But there are many deficiencies in the Case Act reporting that have still not been remedied.

To take one example, there is no public reporting of the executive branch's claims about why it is able to conclude some of these agreements without going to the Senate.

Some of that information is provided to Congress, I think often cryptically, without a lot of detail. But in any event, if it were publicly provided, there would be more people watching those claims. And I think Congress itself would get better information from the executive branch, if we had public disclosure, just like we do for lots of areas of domestic law.

And I give additional examples in my written testimony of ways to increase transparency for political commitments and treaty terminations, and also some actions that Congress could take if it wanted to do more, such as by revisiting some of these many open-ended delegations of authority that lead to a lot of the agreements that never come back to the legislative branch.

Thank you.

[Mr. Bradley's prepared statement follows:]

PREPARED STATEMENT OF CURTIS A. BRADLEY

My remarks will be focused on the need for more oversight and involvement by the Senate, and the full Congress, in how the United States makes and withdraws from international agreements. I want to emphasize at the outset that my remarks

are intended to be non-partisan. My focus is on Congress's institutional role relating to international agreements and how this role has diminished over time, not on particular policy disputes.

The only process specified in the Constitution for making international legal obligations for the United States is the one set forth in Article II, pursuant to which presidents must obtain the advice and consent of two-thirds of the Senate in order to make treaties.[1] Part of the idea behind requiring legislative involvement in that process was that international commitments can have important and long-term consequences for the United States and thus should not be determined by the President alone.[2] Instead, the Constitution requires collaborative international lawmaking involving both the executive and legislative branches.

For a variety of reasons, the Article II process is no longer the process used for the vast majority of international agreements entered into by the United States. In fact, well over 90 percent of all binding international agreements concluded by the United States since the 1930s have been concluded without senatorial advice and consent. One reason is practical: the number of international agreements rose dramatically during the twentieth century, and more efficient processes for concluding international agreements were needed.

International agreements made with the authorization or approval of the full Congress rather than two-thirds of the Senate are referred to as "congressional-executive agreements." Some of these agreements involve genuine collaboration between the legislative and executive branches-in particular those agreements approved by Congress after they are negotiated. This is the process, for example, typically used for modern trade agreements. In those instances, Congress can review the content of the agreement and decide whether it is genuinely in U.S. interests. But such "ex post" agreements represent only a tiny fraction of the congressional-executive agreements. Most congressional-executive agreements involve merely an "ex ante" delegation of authority from Congress that is then used by presidents to make agreements that Congress does not review, often many years or even decades after the authorization.[3]

It is also generally accepted that the President has some ability to conclude "sole executive agreements" without congressional authorization or approval.[4] But this is supposed to be a narrow authority, applicable when an agreement relates to an independent constitutional power of the President. It has been thought, for example, that the President's role as the principal organ of diplomatic communications for the United States gives the President some authority to conclude sole executive agreements that settle claims with foreign nations.[5]

As Professor Jack Goldsmith and I discuss in a forthcoming law review article, presidents in recent years have sometimes been concluding binding international agreements outside of their independent constitutional authority, such as in the areas of environmental law or intellectual property law, when they also lack anything that could genuinely be called congressional authorization.[6] They have done so based on the mere claim that the agreement will, in their view, promote the policies in existing U.S. law. This theory of presidential authority is highly problematic from the perspective of the separation of powers. Among other things, such agreements potentially restrict the options of Congress by forcing it to violate an agreement if it wants to modify preexisting law.

Another development is that presidents increasingly have been entering into so-called "political commitments" and combining them with preexisting statutory au-

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[1] See U.S. Const. art. II, § 72.

[2] Alexander Hamilton emphasized this point in The Federalist Papers, despite otherwise being a strong supporter of executive authority. See The Federalist Papers, No. 70 (explaining that the treaty power belongs "neither to the legislative nor to the executive" and that whereas the Executive Branch "is the most fit agent" for negotiation, "the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them"); No. 75 (explaining that it would be unwise "to commit interests of so delicate and momentous a kind, as those which concern [this country's] intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States").

[3] See Oona A. Hathaway, *Presidential Power Over International Law: Restoring the Balance,* 119 Yale L.J. 140 (2009).

[4] See *Restatement (Third) of the Foreign Relations Law of the United States* § 303(4) (1987) ("The President, on his own authority, may make an international agreement dealing with any matter that falls within his independent powers under the Constitution.").

[5] See *Medellϕn* v. *Texas,* 552 U.S. 491, 532 (2008); *Dames & Moore* v. *Regan,* 453 U.S. 664, 681 (1981).

[6] See Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law,* 131 HARV. L. REV. (forthcoming 2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3074833.

thority to create arrangements that in the past would have required either senatorial or congressional approval. Recent examples include the Iran nuclear deal and portions of the Paris agreement on climate change. Administrative agencies also often make political commitments with their counterparts in other countries on a range of issues. Even if these commitments are technically not binding under international law-which in fact is often less clear than the Executive Branch suggests-they can entail consequential promises by the United States that can be difficult to undo later.

The increased Executive Branch unilateralism in the making of agreements has been paralleled by Executive Branch unilateralism in the termination of such agreements. Even though the Constitution does not specifically identify how the United States is to terminate agreements, it was generally assumed during the nineteenth century that presidents needed to work with Congress when doing so.[7] But that has generally not been the practice since then. Instead, for almost all treaty terminations since the 1930s, presidents have simply acted alone. The State Department's current internal regulations relating to treaty termination do not even require consultation with the Senate or Congress, let alone approval.[8]

I worked in the Executive Branch, and I am sensitive to the particular needs and responsibilities of that department of government in the area of foreign affairs. But, in my view, there should at least be more transparency in connection with the Executive Branch's management of this country's international legal obligations. Only with transparency can Congress and the public determine whether the Executive Branch is acting lawfully and making good policy decisions. More transparency would also help in evaluating whether additional regulatory reforms should be adopted.

Congress has focused at times on the need for more transparency in this area, most notably in the 1972 Case Act (also known as the "Case-Zablocki Act"), and in subsequent amendments to that Act.[9] As the Senate Report on the bill that became the Case Act stated, "if Congress is to meet its responsibilities in the formulation of foreign policy, no information is more crucial than the fact and content of agreements with foreign nations."[10] But there are still significant deficiencies in the transparency of Executive Branch actions relating to international law, which could be remedied through congressional action. These deficiencies include:

First, although the Executive Branch provides Congress in its Case Act filings with a citation of its purported legal authority for concluding the various agreements without the Senate's advice and consent,[11] it does not disclose these claims of legal authority to the public.

In other words, the public has no ability to know about the asserted legal authority for more than 90 percent of the binding international agreements made by the United States.[12] This lack of public disclosure stands in sharp contrast to what is required for Executive Branch actions relating to domestic law, where the legal basis of rules, regulations, and other actions must be published in the Federal Register. If the Executive Branch's claims of legal authority for international agree-

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[7] See Curtis A. Bradley, *Treaty Termination and Historical Gloss, 92 Tex. L. Rev.* 773 (2014).

[8] See U.S. Dep't of State, Foreign Affairs Manual, 11 Fam § 724.8 (requiring approval of the Secretary of State "or an officer specifically authorized by the Secretary for that purpose" and preparation of a Circular 175 memorandum "that takes into account the views of the relevant government agencies and interested bureaus within the [State] Department"), at https://fam.state.gov/Fam/FAM.aspx.

[9] See 1 U.S.C. § 7112b. The Act was amended in 2004 in response to serious deficiencies in reporting. See Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, § 77121, 118 Stat. 3638 (2004); see also 150 Cong. Rec. H10994-04, H11026 (noting that in 2004, "the House Committee on International Relations learned that, due to numerous management failures within the Department of State, over 600 classified and unclassified international agreements dating back to 1997, had not been transmitted to Congress, as required by the Case-Zablocki Act").

[10] S. Rept. No. 92-591, *Transmittal of Executive Agreements to Congress,* 92d Cong., 2d Sess. (Jan. 19, 1972).

[11] State Department regulations, in place since 1981, require the Department to provide Congress with "background information" for each agreement reported under the Case Act, including a "precise citation of legal authority." 22 C.F.R. § 7181.7(c). The regulations describe such background information as "an integral part of the reporting requirement." Id.

[12] This problem is compounded by the fact that the State Department currently publishes international agreements on its website without indicating whether they are Article II treaties or executive agreements, and, if the latter, what type. See U.S. Dep't of State, *Texts of International Agreements to Which the US Is A Party* (TIAS), at https://www.state.gov/s/l/treaty/tias/.

ments were disclosed to the public, interested third parties could review them, and then alert Congress when the claims seemed legally problematic.[13]

Second, reporting under the Act to Congress is still often incomplete or untimely. Part of the problem here is that departments of the Executive Branch other than the State Department sometimes conclude agreements, and the State Department is not always made aware of them in a timely way. I understand that there is a provision in a current Senate bill that would add an amendment to the Case Act to try to increase agency accountability for reporting agreements to the State Department,[14] and I think that would be a good first step.

Third, there is no systematic reporting to Congress or the public of the many political commitments made by the Executive Branch, even though some of them are very consequential. While it might not make sense for Congress to require reporting on all of them, it might well make sense for it to require reporting on some subset of the most significant ones.

Fourth, there is currently no mandated reporting of presidential decisions to suspend, terminate, or withdraw from treaties, and there is no readily accessible catalogue of terminated agreements. The Department voluntarily reports on some of these actions in its *Digests of United States Practice in International Law*,[15] but it is not required to do so, and the Digests often are published long after the events that they describe. In addition to mandating the reporting of such actions, Congress could also consider requiring the Executive Branch to articulate the reasons for its decisions to suspend, terminate, or withdraw from treaties, which would allow for greater oversight and accountability.[16]

These transparency measures would require only fairly modest changes in the law, and I do not think they would raise any serious constitutional issues. If Congress wanted to go beyond enhancing transparency and do more to limit presidential unilateralism concerning international law, it very likely has the constitutional authority to do so. Occasionally the Senate and Congress have in fact done more, without constitutional controversy. For example, leadership of both parties in the Senate have joined together on a number of occasions in pushing back when presidents have suggested that they might bypass the Article II process in concluding major arms control agreements.[17] In 1999, Congress took a more assertive action and made clear in a binding statute that, if the United States ever joins the International Criminal Court treaty, it can only do so by going through the process specified in Article II of the Constitution.[18]

In terms of additional actions to consider, Congress could, for example, conduct a comprehensive review of the various "ex ante" grants of authority to make agreements that have accumulated over the years, many of which are quite dated, and see how the Executive Branch has been using those statutes. Such a study might suggest the need for narrowing, updating, or repealing some of the statutes.

In addition, I believe that the Senate, when giving its advice and consent to a treaty, could validly include a condition in its resolution of advice and consent limiting the circumstances under which a President could invoke the treaty's withdrawal clause, and I believe that Congress could include a similar provision when authorizing or approving a congressional-executive agreement.[19] As a policy matter, I am not sure that the Senate or Congress would want to include such limitations

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[13] See Ryan Harrington, *Understanding the "Other" International Agreements,* 108 LAW LIB. J. 343, 352 (2016) (noting that "it is nearly impossible for the researcher to discover whether the Executive exceeded his statutory authority for any given agreement," and adding that, "in fact, it can be a challenge to determine whether the agreement had statutory authority at all").

[14] See Department of State Authorities Act, Fiscal Year 2018, S. 1631, 115th Cong. § 7802.

[15] See U.S. Dep't of State, *Digest of United States Practice in International Law,* at https://www.state.gov/s/l/c8183.htm.

[16] The Executive Branch has sometimes voluntarily provided such an explanation. See, e.g., White House, *ABM Treaty Fact Sheet* (Dec. 13, 2001) (explaining how "the circumstances affecting U.S. national security have changed fundamentally since the signing of the ABM Treaty in 1972"), at https://georgewbushwhitehouse.archives.gov/news/releases/2001/12/20011213-2.html.

[17] See *Curtis A. Bradley & Jack L. Goldsmith, Foreign Relations Law: Cases and Materials* 395-96, 400-01 (6th ed. 2017).

[18] See 22 U.S.C. § 77401(a).

[19] See Bradley, supra note 7, at 824-25. See also *Restatement (Fourth) of the Foreign Relations Law of the United States: Treaties*, Tentative Draft No. 2, § 7113, reporters' note 6 (Mar. 20, 2017) ("Although historical practice supports a unilateral presidential power to suspend, terminate, or withdraw the United States from treaties, it does not establish that this is an exclusive presidential power."); Cong. Res. Serv.,20th Cong., *Treaties and Other International Agreements: The Role of the United States Senate* 208 (Comm. Print 2001) ("To the extent that the agreement in question is authorized by statute or treaty, its mode of termination likely could be regulated by appropriate language in the authorizing statute or treaty.").

across the board, because they might reduce U.S. flexibility too much, but Congress might consider doing so for particular agreements.

As a final point, it is important to keep in mind that the preservation of Congress's institutional authority ultimately depends on congressional action. The courts do not typically play a significant role in sorting out the distribution of authority between Congress and the Executive Branch over issues like the ones I have discussed. As a result, this distribution often must, as a practical matter, be worked out over time through interactions between the governmental branches themselves.[20] This means that if Congress allows instances of Executive Branch unilateralism to build up with respect to control over international law, there is a danger that Congress may, in effect, be ceding away some of its own institutional authority through inaction. This is a reason for the Senate, and the full Congress, to be vigilant about protecting its institutional prerogatives even in situations in which it does not happen to disagree as a policy matter with what the President is doing on a particular issue. As I noted at the outset of my remarks, such vigilance does not need to be a partisan issue.

The CHAIRMAN. Thank you.

Ms. Haines?

STATEMENT OF HON. AVRIL D. HAINES, FORMER PRINCIPAL DEPUTY NATIONAL SECURITY ADVISOR, SENIOR RESEARCH SCHOLAR, COLUMBIA UNIVERSITY, NEW YORK, NEW YORK

Ms. HAINES. Thanks for the opportunity to be here today and, frankly, for convening a hearing on a subject that I happen to believe is of critical importance to the foreign policy and national security of the United States but is rarely focused on in earnest.

I am particularly honored to be here for the reason that you mentioned earlier, which is having served this committee previously many years ago and having had the honor to brief members on various treaties in advance of hearings in the past. I felt lucky to have a chance to serve the committee then, and I feel the same way today.

So although this will be obvious to all of you, I think it bears repeating at the outset, that treaties, whether advice and consent treaties or otherwise, are absolutely essential enablers of U.S. foreign policy that have helped us meet the challenges we face as a country and take advantage of the key opportunities for our prosperity.

And I think it is worth repeating because though the committee has a good appreciation of this act, I found that, over the course of my career, the public conversation about treaties has really changed. And I think that change is at least partially responsible for the diminished role of Congress in relation to international agreements and the challenges associated with the United States joining advice and consent treaties generally, particularly treaties that should be routine, such as tax treaties.

And I also worry that the current administration's approach to treaties and international law may serve to undermine the international legal order we helped build on a bipartisan basis over the history of our country, one that, in my view, is critical to our security, our prosperity, and our values.

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[20] When courts do consider issues relating to the separation of powers, they often give substantial weight to longstanding patterns of governmental practice. See *Zivotofsky* v. *Kerry,* 135 S. Ct. 2076, 2091 (2015); *NLRB* v. *Noel Canning,* 134 S. Ct. 2550, 2559 (2014). See generally Curtis A. Bradley & Trevor W. Morrison, *Historical Gloss and the Separation of Powers,* 126 *Harv. L. Rev. 411* (2012).

Treaties were, at one time, revered as instruments of foreign policy to be used in service of our country's interests. But instead, they are often perceived negatively without respect to their content, perhaps most popularly as illegitimate constraints on our sovereignty.

And I would never argue that all treaties are in the interest of the United States to join. Treaties have to be considered on a case-by-case basis. But the argument should be focused on the content and not on treaties generally. For the ability of the United States to negotiate and join treaties is absolutely essential to our interests.

Far more than people realize, treaties have helped us improve the lives of everyday citizens, and we need them now more than ever in this increasingly complex, mobile world.

So when you want to call, or email, or even send a letter to a friend living abroad, you are able to do so thanks to rules established in treaties. And one of the reasons you can feel reasonably safe when getting on commercial fights in countries around the world is that ICAO, an organization established by treaty, basically issues safety standards.

Treaties help improve the quality of our air and ensure the food imported from abroad does not make us sick. Treaties help American businesses operate and export their products to foreign markets and protect the intellectual property of American innovators. And bilateral tax treaties make it so that U.S. companies with an overseas presence are not subject to double taxation.

Yet despite what I view to be the growing importance of treaties, as you mentioned at the outset of this hearing, the Senate is finding it harder and harder to deliberate on and approve treaties.

Since 1960, the U.S. Senate has approved ratification of over 800 treaties, a rate of more than one treaty every month. And between 1995 and 2000, when President Clinton was in office and Jesse Helms chaired the Senate Foreign Relations Committee, the Senate approved over 140 treaties, or an average of 23 treaties a year, including the Chemical Weapons Convention, the START Treaty, treaties dealing with labor rights, law enforcement cooperation, environmental protection, investment protection. But since 2009, the Senate has provided advice and consent to just 21 treaties, or roughly 2.3 treaties per year, a fraction of the historical average.

And I know this committee has tried to reverse that trend, but the structural and political challenges are really quite formidable. And I would argue that the practical implications of not being able to get even routine treaties approved by the Senate are really very significant.

First of all, there is no question that, over time, the degree of congressional involvement in treaties throughout their life has been reduced. And this is not good for democracy, our prosperity, our foreign affairs, our national security. And although a number of international agreements that are not advice and consent treaties are based on statutory authorizations, the vast majority, as has been noted, of international agreements are concluded without the involvement of or even the barest consultation with Congress.

And to do otherwise may be impractical, given the number of international agreements that are and should be concluded on an

annual basis, but I think it is fair to say that the balance is not what it should be. And this is particularly true in today's complex and internationally mobile world in which what we do on the domestic plane and what we do internationally is increasingly intertwined.

Specifically, congressional involvement, and particularly the Senate's involvement, would likely enhance the legitimacy of international agreements from a domestic perspective. It would enhance the legitimacy and lasting nature of our commitments to foreign governments. And congressional involvement would allow for greater deliberation regarding the interaction of international law and domestic law, hopefully with the result of greater compatibility and mutual reinforcement between the two. And congressional involvement and more public debate would enhance the accountability of the executive branch in treaty-making.

Second, if it remains as difficult as it is today to provide the advice and consent of the Senate for routine treaties, we may lose the ability to negotiate and enter into certain critical international agreements that historically have been understood to be agreements that require the advice and consent of the Senate, such as extradition treaties, boundary treaties, mutual legal assistance treaties, tax treaties, all treaties that are viewed on a bipartisan basis as critical to U.S. interests.

Third, at a time when multinational intergovernmental organizations that serve our interests abroad and are at home struggling, in need of reform, we have made it increasingly difficult to negotiate changes to their underlying authorities, because many of these are based on treaties that get the advice and consent of the Senate.

And fourth, because Congress is less involved, we are feeding the perception that international law is not critically important to the United States, and the obligations we undertake are ones that do not endure from administration to administration.

So the hard question, of course, is, what do you do about this? I provided in my submitted testimony some recommendations on that, many of which overlap with what Mr. Bradley's recommendations are, particularly on the transparency front.

And then additionally, I indicate that I think it might be worth looking at the Senate rules and procedure for considering treaties, to see if there is not a way to improve the ability, essentially, of overcoming, essentially, when one or two Senators have an issue, to at least get to a vote and a consideration of the treaties.

And third, I would recommend establishing an annual report and hearing from the legal adviser's office of the U.S. Department of State regarding international agreements, their development and interpretation. I think it could provide the committee with an opportunity, among other things, to engage on issues of particular interest, including trends in treaty-making, while simultaneously raising the profile, frankly, of these issues.

Thank you very much.

[Ms. Haines's prepared statement follows:]

PREPARED STATEMENT OF AVRIL HAINES

Mr. Chairman, Ranking Member Cardin, and members of the committee, thank you for the opportunity to be here today—and for convening this hearing on a subject I happen to believe is of critical importance to the foreign policy and national security of the United States, yet is rarely focused on in earnest. I am particularly honored to be here, having served as deputy counsel to the Committee many years ago, and having had the honor to brief Members on various treaties in advance of treaty hearings for the committee during the 110th Congress. I felt beyond lucky to have a chance to serve the Committee then and I feel the same way now, particularly knowing how important the work of this Committee is, and how seriously you take your responsibilities.

Although this will be obvious to all of you, I think it bears repeating at the outset that treaties—whether advice and consent treaties, or otherwise—are absolutely essential enablers of U.S. foreign policy that have helped us meet the challenges we face as a country and take advantage of opportunities key to our prosperity. I say it is worth repeating because although the Committee has a good appreciation of this fact, I have found that over the course of my career, the public conversation about treaties has changed—and I think that change is at least partially responsible for the diminished role of the Congress in relation to international agreements, and the challenges associated with the United States joining advice and consent treaties generally, particularly treaties that should be routine, such as tax treaties. I also worry that the current Administration's approach to treaties and international law may serve to undermine the international legal order we helped to build on a bipartisan basis over the history of our country—one that in my view is critical to our security, prosperity, and values.

Treaties were at one time revered as instruments of foreign policy to be used in service of our national security and foreign policy, but instead they are now often perceived negatively without respect to their content—perhaps most popularly as illegitimate constraints on our sovereignty. I would never argue that all treaties are in the interest of the United States to join. Treaties must be considered on a case-by-case basis. Nevertheless, the argument should be focused on the content and not on treaties generally, for the ability of the United States to negotiate and join treaties is absolutely essential to our interests. Far more than people realize, treaties have helped us improve the lives of every day citizens and we need them now, more than ever in this increasingly complex, mobile world.

When you want to call, email, or even send a letter to a friend living abroad, you are able to do so thanks to rules established in treaties. One of the reasons you can feel reasonably safe when getting on commercial flights in countries around the world is that the International Civil Aviation Organization or "ICAO"—an organization established by treaty—issues safety standards. Treaties help improve the quality of our air and ensure that food imported from abroad doesn't make us sick. Treaties help American businesses operate in and export their products to foreign markets and protects the intellectual property of American innovators. Bilateral tax treaties make it so that U.S. companies with an overseas presence are not subject to double taxation.

Moreover, multilateral frameworks—frequently established by advice and consent treaties as an historical matter—substantially enhance our ability to address challenges that cross borders, which happens more frequently now than ever before, and to prevent and respond to increasingly complex threats that demand coordinated action. For example, when Ebola swept through West Africa, our response benefitted greatly from the resources of the World Health Organization, which was established by an international agreement. When the globe was gripped by a worldwide financial crisis, the World Bank and the International Monetary Fund, two institutions founded by treaties, allowed us to take measures to respond and mitigate the recession. And when we needed a force to maintain a fragile peace in South Sudan, Haiti, or Kashmir, the Security Council, an organ of the United Nations established by treaty, was able to react by sending in Blue Helmets. In other words, treaties framing the international order allow us to mobilize unprecedented collective action to address challenges central to global prosperity and stability.

Far from tying our hands, treaty regimes serve as mechanisms through which the United States exercises its power and advances its interests and values. The Genocide Convention and other core human rights treaties that promote our interests in preventing atrocities and promoting universal rights and fundamental freedoms consistent with our Constitution and the Declaration of Independence, are examples of U.S. global leadership. Furthermore, when the United States negotiates environmental treaties that obligate other countries to take measures that we already take domestically, we are effectively shaping the world's approach to dealing with envi-

ronmental problems, raising foreign standards to meet our own, leveling the playing field for our industries, and helping to protect the health of our people. When we negotiated the Law of the Sea Convention, we enshrined rules regarding freedom of navigation and rights of coastal states that benefit the United States more than any other state. Conversely, when we choose to stay outside treaty regimes, such as the Law of the Sea Convention, we allow others to shape the terms of international cooperation, in ways that maximize their interests and advance their values rather than our own. It means, for example, that our companies will have to operate under others' rules in many of the places they do business around the world—or else, in the absence of international legal frameworks, operate in a less predictable and certain environment.

Yet, despite what I view to be the growing importance of treaties, the Senate is finding it harder and harder to deliberate on, and approve treaties. Since 1960, the U.S. Senate has provided advice and consent to ratification of over 800 treaties, a rate of more than one treaty every month. Between 1995 and 2000, when President Clinton was in office and Jesse Helms chaired the Senate Foreign Relations Committee, the Senate approved over 140 treaties or an average of over 23 treaties a year, including the Chemical Weapons Convention, the START Treaty, treaties dealing with labor rights, law enforcement cooperation, environmental protection and investment protection. But since 2009, the Senate has provided advice and consent to just 21 treaties, or roughly 2.3 treaties per year—a fraction of the historical average. And I know this Committee has tried to reverse that trend, yet the structural and political challenges have become formidable.

I suppose some might question whether this trend is so terrible. Although the Constitution's only mention of treaties specifically provides that the President make treaties by and with the advice and consent of the Senate, the reality is that the Executive Branch has for quite some time entered into numerous international agreements, considered to be treaties from an international law perspective, without the advice and consent of the Senate. In fact, today, the vast majority of international agreements concluded by the United States are what are often referred to as "executive agreements" or "congressional-executive agreements." What, therefore, are the practical implications of the fact that it is becoming increasingly difficult to get treaties approved by the Senate?

I would argue that the practical implications are significant.

First of all, there is no question that over time, the degree of congressional involvement in treaties, throughout their life, has been reduced and this is not good for our democracy, our prosperity, our foreign affairs, or our national security. Although a number of international agreements that are not advice and consent treaties are based on statutory authorizations, the vast majority of international agreements are concluded without the involvement of, or even the barest consultation with, the Congress. To do otherwise may be impractical given the number of international agreements that are, and should be, concluded on an annual basis but I think it is fair to say that the balance is not what it should be, and this is particularly true in today's complex and internationally mobile world, in which what we do on the domestic plane and what we do internationally is increasingly intertwined. Specifically:

- Congressional involvement, and particularly the Senate's involvement, would likely enhance the legitimacy of international agreements from a domestic perspective, allowing for greater deliberation regarding the interaction of international law and domestic law, making it more likely that our efforts in foreign policy are perceived as bi-partisan, long-lasting, and well-considered.
- Congressional involvement would enhance the legitimacy and the lasting nature of our commitments to foreign governments, which we must maintain if we are to rely on other countries to follow through on their commitments to the United States. I know from personal experience that foreign governments care whether a treaty we conclude with them is an advice and consent treaty or an executive agreement. They see the former as more significant, more reliable, and potentially longer lasting. We should not lose that option, when it is appropriate to pursue.
- Congressional involvement would allow for greater deliberation regarding the interaction of international law and domestic law, hopefully with the result of greater compatibility and mutual reinforcement between the two.
- Congressional involvement, and more public debate, would enhance the accountability of the Executive Branch in treaty-making.

Second, if it remains as difficult as it is today to obtain the advice and consent of the Senate for even routine treaties, we may lose the ability to negotiate and enter into certain critical international agreements that historically have been un-

derstood to be agreements that require the advice and consent of the Senate, such as extradition treaties, boundary treaties, mutual legal assistance treaties, and tax treaties—all treaties that are viewed on a bi-partisan basis as critical to U.S. interests. Even if over time these treaties are done as congressional-executive agreements, there will be lingering questions regarding their validity in such a form.

Third, at a time when multinational intergovernmental organizations that serve our interests abroad and at home are struggling and in need of reform, we have made it increasingly difficult to negotiate changes to their underlying authorities because many of the underlying agreements establishing them were done by treaty with the advice and consent of the Senate.

Fourth, because the Congress is less involved, we are feeding the perception that international law is not critically important to the United States and that the obligations we undertake are ones that do not endure from Administration to Administration.

The harder question, of course, is what can be done about the fact that it has become so difficult to obtain Senate consideration of advice and consent treaties, and how can we move toward a more meaningful and productive consultative process between the branches regarding international agreements, grounded in a better informed public debate on these questions?

I would suggest a few possible ways to approach this question, some of which overlap with Mr. Bradley's recommendations.

First, I agree that there is a need for greater transparency in this area, as it would help to further a more productive conversation and at least allow the Congress and the public to respond to concerning trends in international agreement making. Specifically:

- I would promote making public the legal basis for concluding international agreements;
- I would support legislation requiring the Executive Branch to report notifications regarding the withdrawal or termination of international agreements to which the United States is a party;
- I would support legislation requiring the reporting of significant political commitments;
- I would support a mechanism for establishing agency accountability for reporting agreements to the State Department; and
- Perhaps most importantly, in support of these additional requirements, I would support increasing the resources provided to the Legal Adviser's office for such purposes.

Second, I would recommend having a look at the Senate rules of procedures for considering and disposing of treaties. There are a variety of anachronisms associated with the rules of procedures regarding treaties and through a streamlining process, it might be possible to make it easier to deliberate on treaties, while at the same time making it harder for one or two Senators to effectively block a debate on treaties. Such changes might help this Committee pursue a serious treaty agenda in future.

Third, I would recommend establishing an annual report and hearing from the Legal Adviser's Office of the U.S. Department of State regarding international agreements, their development and interpretation. Such a hearing could provide the Committee with an opportunity, among other things, to engage on issues of particular interest, including trends in treaty-making, while simultaneously raising the public awareness of their importance generally.

Let me just end by thanking you again for your work on these issues and your efforts to advance the interests of Americans who rely on treaties for their security and prosperity on a daily basis. I often think the skepticism you hear about the importance or value of treaties would have been surprising to our founders, who routinely relied on treaties to build political and economic relationships, leading to their prominent placement in our Constitution. Hearings like this help.

The CHAIRMAN. Thank you both very much.

Senator Cardin?

Senator CARDIN. I thank both of you for your testimony. You really raised the key issue. By definition, most treaties involve some degree of giving up sovereignty, because it is an effort to develop a more universal standard rather than a one-country standard. Some treaties do not fall into that category, but must do.

The second problem, where one Senator or a few Senators can block the consideration, is not unique to treaties. It is most of Sen-

ate work. But for treaties, you need a two-thirds vote, so there is an argument made that we could look at a different procedural process for treaties because of the higher threshold.

So these are the challenges we have. But I am just not optimistic.

I am curious as to how, Avril, you were able to overcome some of the sovereign-adverse Members' views when taking up treaties when you were successful in getting so many done, whether you think there is anything we can learn from that in today's political environment. Was there a particular argument that could be used to advance some treaties that we are not using today?

Ms. HAINES. Honestly, I do not know that there is a particular argument that you are not using that could be used. I would say, though, that it has become increasingly hard to have a public conversation about these issues that is honest and nuanced.

So, for example, as you say, one of the issues is the sovereignty question, right? And when we went through the 110th Congress and we did so many treaties, that issue was raised in the context of the Law of the Sea Convention. And one of the principal concerns about the Law of the Sea Convention was the dispute resolution mechanism, which was perceived as a particular sovereignty concern, as opposed to general treaties without, presumably, such dispute resolution mechanisms.

And yet, all of the tax treaties have dispute resolution mechanisms in them that we passed during that same Congress, and none of those issues were raised in relation to them. In fact, the tax treaty mechanism is really unusual, insofar as the dispute resolution mechanism is binding on both states when you go to tax treaty dispute resolution, but the individual can opt out of the decision. So it is even more, presumably, concerning, from a sovereignty perspective, if that is the issue.

My point being that it is not clear to me that sovereignty really is the issue. It is a proxy for a concern that I think it is harder to get to an honest conversation about.

And I do think you are right on the issue of the fact that there is an argument to be made, given that two-thirds is required, that the amount of debate for cloture could be smaller.

It is just very tough. I recognize that it is a high bar to clear to change the procedure on this.

Senator CARDIN. As I understand, we really do still need a cloture vote, even though the cloture vote is below the two-thirds.

Mr. Bradley, let me ask you this. Is Congress at fault here in some of the statutes we pass? When we passed the INARA statute in regard to the Iran nuclear agreement, we looked at our review statute from the point of view of an overzealous President and a reluctant Congress. Boy, are we wrong about that today. So things change.

Should Congress have been more astute in drafting that statute, looking at future administrations?

When we drafted Trade Promotion Authority, I do not think anyone—this is something the President was going to do, the executive is going to enter into. So we looked at putting restraints on the President entering into an agreement but never thought about withdrawing from an agreement having a congressional role.

Should we draft TPA authority differently, so that there is a continuing role for Congress if a President decides he wants to withdraw from a trade agreement?

Mr. BRADLEY. Thank you, Senator.

And just to say one word about the last dialogue that you had. I, of course, also agree that treaties are often in the U.S. national interests. We are a party to thousands of treaties. We often benefit tremendously from treaties. And I agree with the comment that the mere argument on sovereignty should not itself really be a reason not to think about creating agreements.

My last time I was before this committee I think was about 4 years ago, testifying about the disabilities convention, which had some controversies associated with it. One of the things I think we were trying to work out was whether the Senate could craft some reservations and other qualifications to address some issues. I thought that was a good conversation to have at that particular time.

I would like to point out, sometimes, on the other side of the debate, I hear people say we need to join a treaty because all these other countries have joined the treaty, and I think that is equally unpersuasive, just because other countries have seen fit to sign on. Some of those countries do not have real court systems, or they do not actually comply with the treaties, or their values might be different from ours. And I do not think that is enough of an argument for why the United States should join, particularly some of the more sensitive agreements.

And there are times when some of the committees under these treaties have not helped to the case by asserting jurisdiction that the United States certainly never thought it was signing up for at the front end, and it has made it more difficult to get some of the other agreements through. So it is a more complicated story.

On the issue of Congress, I do think we should not simply blame the executive for being the aggrandizing authority and concluding things unilaterally. Congress is a major player in this area, and it passed many statutes in the 1940s and 1950s and 1960s in very different times, in very open-ended ways.

One of the suggestions in my testimony is it may be worth doing a review of some of those statutes to see if they need to be updated, made more specific. I am a fan myself of sunset provisions, which are often not included. And I think those are ways to get Congress back into looking at statutes that it passes later in time.

I am a fan of the INARA statute. I do think that intervention did allow Congress to have a closer, collaborative look at the Iran deal. I would favor more actions like that.

As for termination of agreements, my own view, and executive branch lawyers would probably disagree with me, is that Congress certainly could certainly limit in its statutes, in the trade statutes or otherwise, the executive use of the withdrawal clauses in the trade agreements. Or, in my view, Congress could do that for other agreements as well.

I think Congress should be cautious because it may be in the U.S. interests to have flexibility. For example, if there is a material breach of a treaty, I am not sure you want your President hamstrung and the other party saying good luck getting your Congress

to agree to let you out of that agreement. I think that might hurt American interests.

But there may be times when Congress will want to put some conditions in, say in the trade promotion statutes. In my view, those would be perfectly constitutional and would require the President to follow whatever, whether it be procedural requirements of reporting to Congress, or substantive requirements of actually getting a new vote in Congress. I think those would be perfectly valid measures.

Thank you.

The CHAIRMAN. Thank you so much.

Senator Shaheen?

Senator SHAHEEN. Thank you, Mr. Chairman.

Thank you both for being here.

I was recently in Halifax for the security forum. As you might imagine, one of the things that I heard a lot of concern about was the President's threat to withdraw from NAFTA and the ongoing negotiations. I wonder if you could help us clarify, given that NAFTA was ratified by the Senate and that there would be profound implications for people, for millions of Americans, not to mention the rest of North America.

Can you talk about what role Congress should have in any decision, or what role it has in withdrawing from NAFTA? What is the mechanism?

Ms. HAINES. So NAFTA was not actually given the advice and consent of the Senate. It was through a congressional process.

In point of fact, and I think as Mr. Bradley was indicating, the statutory structure for trade agreements currently does not provide for or does not indicate that it is required that the President essentially come back to the Congress to get agreement before he withdraws. So the process would essentially be that the President would withdraw in accordance with the termination clause or the withdrawal clause within the treaty.

What I do think is possible, I agree with Mr. Bradley, that I think it is possible that you could pass legislation, for example, that would require some kind of consultation or do some kind of notification requirement at the very least, things along those lines, that would be part of it.

In the trade legislation more generally, there are clauses that relate to termination or withdrawal. They tend to go to things along the lines, as I understand it, of a sort of notice requirement, but after the fact, and one that indicates that the President has to tell you when it is that they think is the right thing for the tariffs to be dealt with after the trade agreement is ended. So one could imagine beefing that up, to some extent.

But this is an area where, obviously, the Congress has an enormous amount of power and is authorized to deal with foreign commerce. It is also an area where, frankly, from a congressional perspective, Congress has been more effective at getting involved in the negotiations and using the leverage that it has to bring the executive branch in more closely. I think you could take advantage of that.

I do think, having been a former staffer of this committee, it is true that one of the difficulties is that you are responsible for for-

eign affairs in this committee, but you do have a lot of other committees, when you are dealing with congressional-executive, doing those things.

So I think that is also just a piece of this that pulls these together.

Senator SHAHEEN. Do you have anything to add, Mr. Bradley, to that?

Mr. BRADLEY. Thank you. I largely agree with Ms. Haines on this issue. The issue, it has become controversial again, the issue of President's potentially pulling the U.S. out of agreements without going back to the legislature. It has been controversial before, most famously with the debate over President Carter's withdrawal from the Taiwan treaty in the 1970s, when he recognized Mainland China, and there were a number of Senators quite concerned about it, and the litigation that went all the way to the Supreme Court.

The courts have not resolved the question of whether Presidents can act on their own, but it does highlight an issue that I think should be of concern to both parties in the Senate and to Congress.

I should point out, I worked in the executive branch. I am quite sensitive to the concerns of the executive in foreign affairs. I worked in the State Department. But it is a fact that the more the executive acts in certain kinds of ways, they set precedent that I think ends up mattering in terms of their own claims of authority, and also, if it does get litigated, the claims that they will be able to make in court. And that is true in this area.

In the termination of treaties area, really all the way back to Franklin Roosevelt, Presidents have asserted the authority to act, to decide whether the United States withdraws even from very significant commitments. And Congress, for the most part, has not resisted these claims. The Taiwan event is unusual in that regard. There have been several dozen treaty terminations since then, all done, often not dramatically and not necessarily high-profile events, but by the executive on their own.

And I think this is something Congress should pay attention to, because the more these events accrue, the harder it is, I think, as a legal matter, to argue that the executive is required to come back to Congress.

I do agree, though, if Congress writes that in specifically, that it should be binding on the President.

Senator SHAHEEN. Ms. Haines, in your testimony, you talked about being concerned that the current administration's approach to treaties and international law may actually undermine the legal order that we helped build.

Can you talk about what happens internationally if that, in fact, is the result? What happens to all of those countries that we might want to get to engage with us in the future?

Ms. HAINES. Yes, maybe I could just make a few points.

Senator SHAHEEN. Just briefly.

Ms. HAINES. Absolutely. So I think there are a number of issues that are worth thinking about in this context.

One is, the international order, from my perspective, is one that really serves the United States, as you indicated, and one that helps us not sort of bring our thinking to the world but also allows us to address threats and issues, such as Ebola, for example. When

it was on its way to the United States, we relied on the World Health Organization to help us. When we are talking about financial disasters in different places, we rely on the IMF and the World Bank, all of which have been done by treaty.

But if we start to pull back, and if we are, in fact, not engaging on these issues, we cannot help those organizations reform, and they do need to be reformed. And I think that is something that there is bipartisan support for, in that sense.

Senator SHAHEEN. I agree.

Ms. HAINES. But we cannot actually engage in reforming them if we cannot actually change those agreements, if we do not engage, if we do not bring them back, and we actually get them approved.

So that is an example of the kind of thing that we might perceive.

I think it is also true that, through these types of mechanisms, we have managed to have an outsized influence on issues where we have wanted to and needed to. And if we allow other actors to dominate, such as China in a variety of scenarios, we are going to lose some of our influence, and we are going to be, again, on the retreat on issues.

Finally, I think another piece of this, I spent a lot of time, obviously, on national security issues. One of the big things that we look at are asymmetric threats that the United States faces on a variety of fronts, whether it is cyber, whether in space, or in the context of even migration or other places. And one of the ways we have been able to address asymmetric threats is through an international legal order.

A perfect example of this is the Law of the Sea where we engaged, and we developed rules of the road for freedom of navigation. That freedom of navigation is something we rely on for our military, for our trade, across-the-board. We cannot put a military ship in every strait, and we cannot enforce it around the world. But instead, we developed an international framework.

And even though we are not a party to it, Reagan made it customary international law for us, and we led the charge in developing it, and it is something that helps us essentially protect freedom of navigation around the world.

I think that is a good example of the kind of thing that we need to continue to be doing in asymmetric threat areas.

Senator SHAHEEN. Thank you for letting me go over, Mr. Chairman.

The CHAIRMAN. Actually, the answers have been very detailed. Thank you for those. They have been very good, actually.

Senator Menendez, if you wish to go, or I can go to Senator Kaine and let you get situated.

Senator MENENDEZ. I am happy to let Senator Kaine go ahead.

The CHAIRMAN. Sure.

Senator KAINE. Thank you.

Thank you, Mr. Chair. And thanks for having this hearing. It is very well-timed. And this question in matters of diplomacy, what are the appropriate roles for Congress and the President, is very vexing. I want to focus on a current example, a very current example.

In September 2016, the United States joined with other nations in passing a unanimous resolution at the United Nations. The New York compact recognized the growing global challenge of migrants and refugees, and it called on all the nations of the world to develop best practices for dealing with the challenge. The compact is being fleshed out at an international meeting that is being held in Mexico this week.

Late last week, the Trump administration announced that the U.S. was pulling out of the nonbinding compact and would not participate in the Mexico dialogue to develop better policies for addressing the crisis of refugees and migrants. The asserted reason was that the discussion with other nations, a discussion with other nations on a nonbinding compact, would invade U.S. sovereignty.

I was stunned at this announcement. The migrant and refugee problem in the world is massive and growing. The U.S. has been a leader for decades in this area. There is no invasion of U.S. sovereignty in sitting down and having a discussion about solving a problem. And the Trump administration announcement came during the Christmas season when people around the world are hearing the story about a family turned away because there was no room at the inn, so their child had to be born in the stable, and their subsequent flight to another country to avoid violence.

Why did the administration take this step? I want to tell my colleagues what I have learned in the last 48 hours from reporting and conversations from those involved in the discussions.

A principals meeting was held in the last 10 days to discuss U.S. participation in the compact and the Mexico summit. The CIA director, the U.N. Ambassador, the Secretary of Defense, and the State Department all initially argued that the U.S. should stay in the compact and exercise leadership to develop the best possible solutions to this current global crisis. But the Attorney General, the chief of staff at the White House, and White House adviser Stephen Miller argued that the United States needed to pull out of the dialogue not because of sovereignty concerns but because of a desire to cease participating in an initiative that had commenced during the Obama administration.

In the end, the Attorney General and the White House officials prevailed over the wishes of our national security professionals.

So I want to ask you this. When an administration takes a unilateral action like this, squandering American leadership on a critical humanitarian and national security question, because of a petty political calculation, what should the role of the United States Senate be?

Ms. HAINES. Well, it will not surprise you, Senator, to hear that I am very much in agreement that this is not the right decision. In other words, I think it is important to engage with your international partners on such a particularly and credibly critical issue that we are facing.

And I also think it is fair to say that, given the crisis, the migrant crisis that we face today with 65 million people displaced, over 20 million refugees around the world, it is very hard to imagine how on Earth we would actually address this crisis on our own. We absolutely need to be engaged with our partners, in order to figure this out and work through it.

It also is not true that the U.N. effort was something that we started, by any stretch of the imagination. It is true that the Obama administration joined in September, as you identified, the declaration or the statement that was made, and were intending during that administration at least to engage on this issue.

And I think there is not much you can do, I suppose, from a legislative perspective to force the executive branch to engage on these issues, but it does seem to me it would be worth making a statement to that effect and being as clear as possible in public about the fact that this is not even a substantive issue. It is just a question of not wanting to talk to other nations about what is a critical issue that we cannot solve alone.

Senator KAINE. Dr. Bradley?

Mr. BRADLEY. Thank you, Senator.

I do not want to speak to the specific policy issue of this particular nonbinding compact, but I am in agreement with Ms. Haines that, in general, I favor the U.S. staying engaged and offering its very important voice on these sorts of topics.

This example is a very good reminder of how executive unilateralism in international agreements and compacts really generates more unilateralism.

So as we have seen before, whether it be the Paris or Iran deals, which were also called nonbinding compacts, at least in part, they also set up the possibility of pulling out unilaterally by the executive branch. And we have seen that in the migration compact—nonbinding at the front end, executive participates on behalf of the United States.

In the last administration, nonbinding means the executive allegedly can just pull us out of the talks now. And it is a reason for Congress to be more involved in all steps, because the argument would be much harder to make that the President could then just unilaterally pull out of these sorts of agreements.

Thank you.

Senator KAINE. Thank you, Mr. Chair.

Senator CARDIN. [Presiding.] Senator Menendez?

Senator MENENDEZ. Thank you.

Senator KAINE. Mr. Chair, can I introduce the U.N. compact as an exhibit to the hearing?

Senator CARDIN. Without objection.

[The information referred to above is located at the end of this transcript on page 35.]

Senator KAINE. Thank you.

Senator MENENDEZ. Thank you.

I think that providing advice and consent on international treaties and accords is a critical function of this committee, and for that fact, of the United States Senate. And holding a hearing to explore the Senate's role in international accords today, however, seems to be serving mostly as a reminder that we have abrogated that duty at the behest of what I consider a few misguided voices.

As a long-serving member of this committee and its former chairman, I regret that some of my colleagues on the other side of the aisle are driven by an antipathy to treaties and international institutions that ultimately, in my view, undermine American foreign

policy. Their belief that participating in rules-based international order, including international treaties, joining our peers on the global stage to set standards, establish mechanisms for security and economic cooperation and vehicles for approaching common threats from communicable diseases to nuclear weapons undermines our sovereignty is bluntly wrong, and it is misplaced.

International organizations and treaties are a critical tool of the United States used to further our foreign policy objectives. We utilize treaties and institutions to set the standards by which we would like to see other countries and the global community more broadly operate.

Believing we can operate alone in today's world is as foolish as it is impractical. In essence, when the United States unilaterally sets rules of engagement when the rest of the world is working together on another set of rules, we are not even playing the same game. If we are not at the table, those who are will write the rules, and they do so at the expense of Americans and American businesses.

When I was chairman of this committee, I shepherded through the Convention on the Rights of Persons with Disabilities. Driven by a small number of misguided voices from the right, some of who bizarrely argued that ratifying this treaty would somehow amount to an assault on families who want to homeschool their children, this body failed to ratify that treaty.

The United States is the world's leader in protecting and having the highest standards for those with disabilities through our Federal and State laws, like the Americans with Disabilities Act. Our opportunity to ratify that treaty would take that global standard, be at the table, create that standard globally so that an American living here could, hopefully, at some point in time, travel anywhere in the world and expect that they would, ultimately, have the same access as they have in the United States.

To me, that was the motherhood and apple pie of treaties. And yet, we could not do it.

Similarly, as we see increased piracy and threats to American businesses that rely on international shipping lanes and international waters to conduct their business, it undermines our security and business interests not to participate in the Convention on the Law of the Sea. Being a party to the treaty would enable us to participate in a wide range of interdiction operations, be involved in more port security control, be able to work with our allies to confront China's continuing expansion in the South China Sea, if we were a party, among other places.

So now that I got that off my chest—[Laughter.]

Senator MENENDEZ. Let me ask you, Ms. Haines—yes, it has been frustrating—what countries would you say, I think you alluded to China as one, but what countries are taking advantage of the United States' refusal to fully ratify and participate in treaties like the Convention on the Law of the Sea, which you mentioned in your opening statement? And at what expense? If the average American would be listening to this hearing, at what expense does it mean to them? How do we make it that it is not something that is just up here but actually has a meaning to them?

And finally, what pending treaties do you believe would best serve the interests of the United States citizens and businesses?

Ms. HAINES. I have spent a lot of time thinking about just how can you change the conversation about treaties and really help people to understand the value that they bring to them in their everyday lives. When I think about the Law of the Sea Convention, all of the things you mentioned, another thing I would add would be, for example, we cannot actually make a submission of our continental shelf, for example, to the continental shelf commission because we are not a party, and get the blessing, essentially, of the continental shelf, which, again, hampers American businesses because there is not the sort of predictability, there is not the international recognition. We are not part of the organization that is making the rules that effectively affect their interests around the world.

And even though we are an observer, it makes a difference being at the table as a party. And that is something that you have to focus on.

And to your question about other countries that take advantage of it, I think there have been discussions about Russia, for example, taking advantage of that opportunity in the context of I think largely pointing out the fact that we are not a party, pointing out the fact that, therefore, our voice should count for less in certain circumstances and so on.

And that is true around these issues altogether. And it is hard to predict how other countries and which other countries will take advantage of this in the future, but I think you will see many of them. Particularly if we are not in the migrant conversation, we cannot actually shape the way it turns out. And that is where, I think, we really lose out, and people should be able to understand that.

But I would say, trying to translate the value that we get out of treaties so that people understand the everyday value is a really worthwhile exercise. Maybe I will come back to you with some additional examples.

Senator MENENDEZ. I would love to hear them, because we are going to have to get to a point where it is more than an esoteric exercise for the average American, so that they can understand what is at stake for them. For me, all the policy we do here is always, how do I make it connected to the average citizen I represent?

Thank you very much.

Ms. HAINES. Thank you.

Senator CARDIN. Senator Coons?

Senator COONS. Thank you, Ms. Haines, Mr. Bradley, for being here. Great to see you again.

Ms. Haines, you mentioned in your written testimony that certain Senate rules strike you as anachronisms that should be reformed in order to limit obstruction and streamline treaty consideration processes. Given the lengthy recitation we just received, with which I agree, of the frustrating difficulties in ratification—Law of the Sea Treaty, CRP, others—what would you specifically suggest we do to change Senate rules in order to address the concerns you raised?

Ms. HAINES. Thank you. So in terms of the anachronisms, I will just mention two that are sort of interesting.

One is that you see in the rules explicitly there is the option for the Senate to actually amend the treaty, in addition to amending the resolution of advice and consent. It sort of never really makes any sense that you are going to amend the treaty. Instead, you put into the resolution that such an amendment is required before ratification would occur.

But there are a lot of things like that. It is a very old rule, and it is not a very streamlined rule.

And the kind of things that I could imagine changing, but I would sort of recommend, frankly, that brighter minds than I, and people who really understand the procedure in a way that would be helpful, would put their thoughts on this, but I could imagine, for example, given that you have only one option for a cloture vote—because cloture in treaties is both on the treaty itself and on the resolution, and the motion to proceed to executive session and on a particular treaty is nondebatable, so you do not have the same thing that you have the legislation where you could have two cloture issues. You only have one.

I have thought, if you could reduce the hours for cloture—so in other words, you still get cloture, but you do not have 30 hours. You have significantly less hours. Would it then change the calculus for the majority leader when deciding whether or not to push through with essentially an objection and get to a vote on the treaty? I do not know. And I realize it will change over time.

But it strikes me that it is worth thinking about, because one of the main issues is that, as noted, you have a two-thirds vote. There has to be bipartisan support for the treaty for it to provide advice and consent.

So perhaps a lower bar for the process would actually make a difference in your being able to actually move on treaties, because I do think this committee is committed to doing that. I do think it is frustrating when you have the possibility that one Senator can really hold it up in a significant way. And that is largely because it is, it seems to me, relatively low cost for the majority leader to not proceed, in some respects.

Senator COONS. Thank you.

Mr. Bradley, in your recent Lawfare article, you claim presidential domination of America's shaping and termination of international agreements has a significant effect on U.S. States and private actors. Could you just briefly describe some examples, perhaps, of the consequences for U.S. States or for the private sector?

Mr. BRADLEY. Thank you, Senator. Yes, one of the things that I think people do not appreciate is how much international law and agreements today matter domestically, and not just for the United States international commitments. Many agreements are either directly or indirectly enforceable in litigation or affect the ability of agencies to regulate, including in the private sector. A lot of the agreements that are made under the old statutes that might be repurposed sometimes by the executive regulate sales agreements, transfer agreements, aid agreements, and the like that often have large effects, obviously, on government contracts and other private

sector actors. And a lot of that is managed by the executive branch, based sometimes loosely on very old grants of authority.

At the State level, international law, of course, is generally binding on the entire country and is, therefore, presumptively binding at the State and local levels as well. It is not all enforceable in court, but it often affects how statutes are interpreted, even with respect to localities.

One of the reasons for the Senate to be involved, in particular, by the way, for these agreements is the federalism side of this. When I testified on the disabilities convention, one of the biggest concerns was, how do we accommodate the federalism and local and State interests for that convention? I thought there were ways it could have been done, and there was actually a lot of bipartisan discussion about how it could be done successfully.

And when the President is doing these agreements without going back to the legislature, the interests of States and localities are not even considered, whereas States, of course, are all represented in the Senate, and that was by design in the founding.

Thank you.

Senator COONS. Thank you both. It is great to be with you. I appreciate your input.

Senator CARDIN. The chairman is going to be back in a moment, I hope. We will see. There is a vote on. We will try to keep the hearing going.

Okay, I want you to just put one thing into the record, and that is, I never really fully understood what reservations meant when Congress passed the reservations, or what conditions mean, if we were to condition our approval. But I at least put that out and appreciate your advice on that, if you could explain that. Senator Corker will explain it to me later, as I go to vote.

Senator CORKER. [Presiding.] Actually, go ahead.

Mr. BRADLEY. I will go ahead. Thank you.

The Constitution, of course, talks about the advice and consent of the Senate, advice and consent. And from the early days, Presidents, for a variety of reasons, did not heavily seek the actual advice of the Senate. They sought their consent at the end. One of the things that the Senate did, actually during the George Washington administration, was basically say, if that is how it is going to work, we insist on being able to condition our resolutions of advice and consent.

We have had over 200 years of the Senate having this prerogative of being able to consent to a treaty on the condition of removing clauses, amending clauses, having certain interpretations that the executive has to accept, or other declarations, such as not having direct enforcement of the treaty in litigation.

So the President is usually the one who benefits from all this historical practice. The Senate, in this instance, should benefit from a long tradition of having the ability to limit its consent.

And it is understood, if the President ratifies a treaty, after that happens, the President has accepted the conditions in the advice and consent resolution. And Presidents have generally agreed to that, and the courts really uniformly have given effect to the Senate's conditions.

So this is an opportunity for the Senate. If it has concerns about what the President might do under a treaty, I think it is fully within the prerogatives of the Senate to add conditions to the resolution.

Thank you.

The CHAIRMAN. So I think both of you have spoken to, really, the Senate, because of the way we are not functioning, just in all honesty, for many, many years—we passed I guess the START Treaty, when was that? In 2010? Was that part of your work here?

Ms. HAINES. No, sir. I had already left the committee at that time.

The CHAIRMAN. So I actually was a part of that, helped write the RUDs. To me, it was an important treaty to pass. I think it has been good for our country. And it was very controversial, but it happened.

We may have done a few things since then, but actually, because of the Senate's nonfunction, Presidents have chosen different routes. Part of it, too, though, in the case of Iran, part of that was, too, that the President took actions, because I do not think he believed could—there was not a majority of the Senate that would support what he was doing. So there are cases where the United States Senate is not functioning, and Presidents do not want to come to it. They do not want to go through the hassle. But there are also times when Presidents act in that way because they do not believe the majority of the Senate is with them.

Would you agree?

Ms. HAINES. Yes.

The CHAIRMAN. So in both cases, the Senate does damage to itself by not being willing to take up treaties. The tax treaty is one that is prime. It should take no time on the floor. We have one Member who opposes.

On the other hand, there are times when the President can abuse his authority. I say that with a light term "abuse." The President can abuse his authority by doing things that they know are not majority approval.

Would you all like to speak to that, in any way?

Ms. HAINES. I think it is absolutely true that there are times when Presidents make a decision not to take the hard road that is sort of the traditional route and instead take an alternative option.

I think it carries costs with it, both in terms of the relationship but also, frankly, in terms of what they can do in that agreement or in that political commitment just by its very nature. In other words, I think the flip side of what I was saying earlier, which is to say that I believe there are real costs if the Senate is unable to actually provide advice and consent to treaties, because then it means there are a lot of things that will not get done. The flip side of that is also that when Presidents, basically, and the executive branch, take another route, those routes do not have all of the bells and whistles that an advice and consent treaty has.

So if you are doing it as a political commitment, it means that there is not a legally binding obligation on the other party either. And so to the extent that we want that in our foreign policy, then we are not getting that. And if it is an executive agreement and

it is not an advice and consent treaty, there may be some things that we cannot put into that executive agreement because we know that there are things that warrant advice and consent through the Senate.

So I agree with your general proposition, and I think that there are costs for our foreign policy and national security as a consequence of the fact that we are not actually able to work together effectively.

The CHAIRMAN. So President Obama—I say none of this to be pejorative. It is an observation. President Obama did what he did on Iran. We were successful in passing INARA, which took back some of those powers, caused it to be frozen for 90 days, caused us to be able to examine it, and then caused us to be in a position to stop it, if we had the votes to do so. But again, it was a nonbinding political commitment.

The same thing happened on the Paris Accord. The Paris Accord was put in place. The Paris Accord could not have, on a treaty basis, pass through the United States Senate, and it was undone.

And it is very possible that that Iran agreement may be undone in the January time frame. We are working on ways to try to strengthen it, from the standpoint of the President, from his perspective. We are working on ways to change things in such a manner that maybe that does not happen, at his request, I might add.

But how does that affect, when other countries look on? I would assume that, in most other countries, typically, we do not have this back and forth. You might share with me whether that is the case or not.

But when other countries then see a President entering into a nonbinding political accord that has not gone through the Senate, they see what happens as a result, where the other party automatically begins railing against it, like well could happen with tax reform here, right? It passes with only Republican votes, a different issue.

But how will they begin to view, how are they viewing, these nonbinding commitments as they see them beginning to be, potentially, one undone and, potentially, another one?

Ms. HAINES. Yes, we might split this, because I know Mr. Bradley has done a lot of work on how other countries approach treating-making, and that would be useful. I will just give you, from my experience, a few things.

I think one is, particularly on the political commitment piece that you just mentioned at the end of your question, I think other countries are extraordinarily watchful of this. And I think it will make it harder if we pull away from our political commitment to Iran, with them not having violated the political commitment to begin with. I think it will make it harder, for example, when we are facing North Korea and other countries when we are trying to enter into a similar political commitment, potentially, or any kind of commitment, if they perceive us as simply not living up to the terms of what we have signed up to previously.

I have also found with other countries, repeatedly, they will ask us, what is the process that you are engaging in internally? So even though it does not matter from an international perspective if we do an executive agreement or an advice and consent treaty—

in other words, both are legally binding on the United States from an international legal perspective—other countries want to know whether or not we are sending our agreement to the Senate for advice and consent or whether it is getting some kind of congressional approval. And they see that as important because they believe that is going to be a longer lasting agreement if, in fact, it sticks.

And then finally, I have also heard from other countries that when they watch the sort of back and forth here, and they see, for example, on the Law of the Sea Convention or other things that we are not able to get through, after we essentially initiated the idea to begin with and we also spent an awful lot of time leading the drafting of it, they will bring that up in further multilateral convention negotiations. They will say why do we listen to you anyway, given that when you bring it back, you do not actually get it through the Senate?

Now, that is not always a good reason to join a treaty. Obviously, you join a treaty because you think it is the right thing for the United States, and the Senate has to deliberate appropriately. But I think it does make it more difficult when you have so much of the Congress agreeing with it and just a few Members managing to pull it down.

Mr. BRADLEY. Thank you, Senator.

So I agree with Ms. Haines. One thing that I think we are seeing with more unilateral executive agreement-making is just less stable American foreign policy. That is, I believe, how it is being perceived by the rest of the world.

But there is a more practical effect, in addition to the loss of leadership, which is that I think the U.S. is having a harder time persuading countries to give concessions in U.S. interests if those countries believe that the stability is not there for the commitments. That is one reason why they often do at least desire the Senate to be involved, because they think those would be, quite rightly, more lasting, stable commitments.

Another problem, and this is not just true externally but also inside the United States, I think there is just a lot of confusion about the nature of these agreements. I remember, just to use those examples of the Iran deal and the Paris Accords, there was confusion in Congress and among scholars and the rest of the world about what the nature of those agreements were and confusing statements by the executive about whether they were binding, binding in part. Some of the world had views that they were binding, and the administration said they were not.

I think that is a transparency problem, as I talked about earlier.

As to what other countries are doing, we are not alone. The United States is not the only constitutional democracy facing questions about the role of its legislature in a world in which a lot of agreements are being made. A number of countries, like the U.K., are looking for ways to keep Parliament more involved and to get it more involved and to be more active in the deliberative process, because they realize these commitments matter so much domestically. Of course, there is the famous Brexit decision now by the U.K. Supreme Court that insisted that the Parliament have a role in deciding on that momentous decision by the U.K.

So we are at a time when other democracies are studying this and actually trying to find ways to keep their legislatures involved in the process.

The CHAIRMAN. Generally speaking, I know you are not going to be able to remember what all of the countries did, but generally speaking, in an accord like the Paris Accord or in the Iran agreement, the other countries that were involved in that, how did they interact with their own legislative bodies? Or did they at all?

Ms. HAINES. It really depended on the particular country and their relationship with their legislative bodies, even though, for example, with the Joint Comprehensive Plan of Action, I am not aware of any country that put that through any kind of legislative process, per se.

The CHAIRMAN. The Iran accord?

Ms. HAINES. Right, exactly. So there was not that kind of formal thing. But what my experience was, was that different countries talked to people within their parliament, more or less, particularly for the Europeans because they were dealing with the sanctions regime just as we were here in the United States. So that was an area where they needed to make sure that everybody was at least aware of what was happening, in that context.

The Paris climate, similarly, it is different for others. In that case, I believe there were some. I just do not recall right now directly which one put it to a formal vote, but I can obviously bring that information back to you, if that is useful.

Mr. BRADLEY. I could add one comment, Senator. I talked to the negotiators, some of the negotiators on the Paris Accord. What I was told was that, for all the countries that normally require the legislature to participate in treaty-making, those countries did have the legislature participate.

If one just looked at the U.S. Constitution, you would think that the United States should also be in that category, since the process specifies the legislature's involvement.

There are some countries that do not have the legislature participate ordinarily, and those countries have a different process. But for those that do, I think they treated the Paris Agreement as they would any other important agreement and had the legislature involved.

The CHAIRMAN. Part of the reason we are having this hearing is because we look at what is happening right now with NAFTA. I know a number of Senators met today with the President to talk about NAFTA and where it is going. We have the South Korean agreement, where I know the President has concerns about the tariff on light-duty trucks and what that may, in fact, do to our own country.

And I guess this will be more of a macro question, but a part of our role in the world has been our leadership, if you will, on international agreements and creating relationships. The former President negotiated the TPP, and obviously, the political climate led to a situation where both the leading candidates on each side of the aisle condemned it. And obviously, it ended up not being something that we are part of.

The answer is very obvious, but can you step back—there is the world in turmoil. There are the kind moments, if you will, that took

place in our country in this last election that are taking place, no doubt, in other countries. Can you talk just a little bit about your perspective on international agreements in general, the United States' role in those, and how you see that affecting us over time as it relates to our U.S. leadership?

Ms. HAINES. Thank you, Senator.

When I first joined the State Department, my first job was working in the treaty office as a young lawyer, and I remember going to multilateral negotiations for treaties. One of the things that was remarkable to me, although I suppose it shouldn't have been, was just how much the international community relied on the United States to draft the first draft of proposals of treaties, of so much of what we would be doing.

And really, it is a point of pride in many respects, but it is also something that sort of brings home the fact that we have historically exercised enormous leadership in this area. We have seen so much of our own law internationalized through conventions, where we essentially negotiate things that are consistent with what we do domestically, and we have seen the value of it, and we show that to our partners, and we believe that it is worthwhile on an international basis.

So in many ways, we have really just leveraged our own success and prosperity to increase it through the international sphere. And I think it is an extraordinary thing to look back on how many treaties that are major multilateral treaties that we were really the instigators behind, not the least of which is the Law of the Sea Convention that we are not actually a party to.

And I think now it is changing. I think the last decade or so has seen a real shift in the conversation on treaties and on international law. I think that the American public is not often being reminded of the value that international law and the treaties bring to them. And I think it has made it more difficult for Members of Congress to take tough positions on what are often very complex issues in the context of international agreement-making.

As Mr. Bradley said, there is often a lot of confusion about these issues, and they are very tough. And these agreements are very long, and they are complicated. And it is a space that I think is just becoming less sort of honest, and it is less possible for us to have a real public dialogue that actually gets to the real issues.

And I think the consequence of that are that now, when we walk into the room, if we are even invited, that we are not going to be looked upon to essentially draft the rules. I think that will make a big difference to U.S. interests and our ability to shape the conversation and ensure that what is ultimately developed is in our interests.

The CHAIRMAN. Mr. Bradley?

Mr. BRADLEY. Thank you, Senator.

One of my experiences in this area came when I was working in mid-2000s in the executive branch. And one of the things that became obvious to me, and still is certainly the case, is the U.S. exists in a very dangerous world environment with security threats around the world, still an ongoing threat from global terrorism. That was one of the major issues the executive was focused on at that time, and still is. And it was abundantly clear that the United

States could not address these dangers and threats by itself and relied on other countries for intelligence, for law enforcement cooperation, for sanctions. And that required working with partners, both allies and other countries who might not always be allies, in hopefully constructive ways.

And some of that involves reaching agreements that are in the long-term interests of the United States, and also taking a leadership position on articulating what the U.S. thought should be the international norms.

I think that continues to be in the United States' interests. The world environment is not any less dangerous than it was when I had the privilege of working in the executive. So I would hope that both the Congress and the executive branch are focused on the many gains the United States obtains from cooperation and engagement with other countries.

Thank you.

The CHAIRMAN. Listen, we thank you both for being here. I know that we have relied upon both of you to help us through issues here in the Senate in years past, and we thank you for coming back here today.

I will say, just for my observation as a person who has been here now almost 11 years, I really do not see anything changing relative to the Senate's ability—we cannot even confirm nominations right now. One Senator will have an issue with a nominee. I was just asked, coming back from the Senate floor, about a nominee. We have one Senator holding, can we burn the floor time to actually have that person confirmed? And the answer is no, we cannot.

So there is going to have to be a cooperative rule-changing taking place on the Senate floor.

But even if that occurs, honestly, the ability to deal with major treaties today is diminished. It is just where we are as a Nation.

I think the executive branch still will be able to do nonbinding agreements and to enter into agreements at the United Nations, which I am sure will continue to happen, to a degree. But I think what executives have to be careful of is entering into an agreement that they know immediately becomes a lightning rod for the other side of the aisle.

Actually, it shouldn't be a surprise that the next President running against the policies of the President before—that is typically what happens in elections—is going to up end that when they have the executive pen and are able to do so.

So I think part of going forward is going to mean that Presidents are going to have to think through whether entering into an accord that actually destabilizes over time, because it is not agreed to by the general public here in our country, I think they themselves are going to have to show some moderation.

But our country is, in fact, I know that while we are showing strong leadership in a number of areas—there is no question, as a Nation, we are doing that today—we are doing less of it relative to agreements like this. And I do think, over time, while it may play well today, I think, over time, it is going to hurt America. It is going to hurt our standard of living. Certainly, it is going to hurt are standing in the world.

We thank you both for being here today. People are going to have questions through the close of business on Friday. I know that both of you have other work that you are involved in, but to the extent that you can answer them fairly promptly, we appreciate it.

The CHAIRMAN. And with that, again, thank you.

The meeting is adjourned.

[Whereupon, at 4:25 p.m., the hearing was adjourned.]

Additional Material Submitted for the Record

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO CURTIS A. BRADLEY BY SENATOR EDWARD J. MARKEY

Advice and Consent

In your testimony, you noted that over 90 percent of all binding international agreements concluded by the United States since the 1930s have been concluded without senatorial advice and consent. While this may be expedient, the lack of Congressional involvement undermines the legitimacy of these agreements, especially when these agreements may be terminated as quickly as they were agreed to.

Question 1. How do our negotiating partners perceive international agreements that have been concluded without senatorial advice and consent?

Answer. My understanding is that, when feasible, our negotiating partners prefer to have agreements concluded with either the Senate's advice and consent or the approval of a majority of the full Congress, because they believe that agreements that have such legislative approval reflect a more formal commitment by the United States and are less likely to undone based on fluctuations in this country's domestic politics.

Question 2. Do our current agreement frameworks adequately address the evolving global challenges? And the ability of the United States to continue playing a leadership role?

Answer. The established mechanisms under U.S. law and practice for entering into international agreements, which include Article II treaties and congressional-executive agreements, are adequate to address global challenges. However, collaboration between the executive and legislative branches in concluding international agreements has been diminishing, and in my view this development undermines the ability of the United States to play a leadership role in international relations.

Precedent—Iran and Climate Change

The President's decision not to certify Iran's compliance with the Joint Comprehensive Plan of Action (JCPOA) and his decision to withdraw from the Paris Climate Agreement because the President doesn't like the agreements undermines our diplomatic efforts across the globe and sends a message that the United States does not uphold its end of the bargain when the political winds change. Undermining these agreements could do untold damage to the National Security of the United States.

Question 3. What signal does withdrawing from these agreements send to the broader international community? Should North Korea trust that the United States will act on its international agreements?

Answer. Withdrawal from an international agreement pursuant to its terms can be appropriate under some circumstances—for example, if conditions have substantially changed such that the agreement is no longer in U.S. interests or another party to the agreement is materially breaching its obligations. But, in my view, the United States should only rarely withdraw from international agreements, and should never do so lightly. Among other things, if the United States begins withdrawing from agreements without substantial justification, it will likely undermine the stability of U.S. foreign policy and make other nations less willing to make concessions to the United States going forward. With respect to the question concerning North Korea: If the United States were to withdraw from its agreement with Iran relating to its nuclear program without clear evidence that Iran was violating the agreement, there is a danger that such an action would make it more difficult to conclude other comparable agreements, such as an agreement with North Korea relating to its nuclear program.

New York Declaration for Refugees and Migrants

A Resolution Adopted by the United Nations General Assembly on 19 September 2016

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[*without reference to a Main Committee (A/71/L.1)*]

71/1. New York Declaration for Refugees and Migrants

The General Assembly

Adopts the following outcome document of the high-level plenary meeting on addressing large movements of refugees and migrants:

New York Declaration for Refugees and Migrants

We, the Heads of State and Government and High Representatives, meeting at United Nations Headquarters in New York on 19 September 2016 to address the question of large movements of refugees and migrants, have adopted the following political declaration.

I. Introduction

1. Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons.

2. We have considered today how the international community should best respond to the growing global phenomenon of large movements of refugees and migrants.

3. We are witnessing in today's world an unprecedented level of human mobility. More people than ever before live in a country other than the one in which they were born. Migrants are present in all countries in the world. Most of them move without incident. In 2015, their number surpassed 244 million, growing at a rate faster than the world's population. However, there are roughly 65 million forcibly displaced persons, including over 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons.

4. In adopting the 2030 Agenda for Sustainable Development[1] one year ago, we recognized clearly the positive contribution made by migrants for inclusive growth

[1] Resolution 70/1.

and sustainable development. Our world is a better place for that contribution. The benefits and opportunities of safe, orderly and regular migration are substantial and are often underestimated. Forced displacement and irregular migration in large movements, on the other hand, often present complex challenges.

5. We reaffirm the purposes and principles of the Charter of the United Nations. We reaffirm also the Universal Declaration of Human Rights[2] and recall the core international human rights treaties. We reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law and international human rights law and, where applicable, international refugee law and international humanitarian law.

6. Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities, including in the context of large movements. "Large movements" may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. "Large movements" may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes.

7. Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected. Their capacities have been severely stretched in many cases, affecting their own social and economic cohesion and development. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and for their host countries and communities. Greater international cooperation is needed to assist host countries and communities.

8. We declare our profound solidarity with, and support for, the millions of people in different parts of the world who, for reasons beyond their control, are forced to uproot themselves and their families from their homes.

9. Refugees and migrants in large movements often face a desperate ordeal. Many take great risks, embarking on perilous journeys, which many may not survive. Some feel compelled to employ the services of criminal groups, including smugglers, and others may fall prey to such groups or become victims of trafficking. Even if they reach their destination, they face an uncertain reception and a precarious future.

10. We are determined to save lives. Our challenge is above all moral and humanitarian. Equally, we are determined to find long-term and sustainable solutions. We will combat with all the means at our disposal the abuses and exploitation suffered by countless refugees and migrants in vulnerable situations.

11. We acknowledge a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred

[2] Resolution 217 A (III).

manner. We will do so through international cooperation, while recognizing that there are varying capacities and resources to respond to these movements. International cooperation and, in particular, cooperation among countries of origin or nationality, transit and destination, has never been more important; "win-win" cooperation in this area has profound benefits for humanity. Large movements of refugees and migrants must have comprehensive policy support, assistance and protection, consistent with States' obligations under international law. We also recall our obligations to fully respect their human rights and fundamental freedoms, and we stress their need to live their lives in safety and dignity. We pledge our support to those affected today as well as to those who will be part of future large movements.

12. We are determined to address the root causes of large movements of refugees and migrants, including through increased efforts aimed at early prevention of crisis situations based on preventive diplomacy. We will address them also through the prevention and peaceful resolution of conflict, greater coordination of humanitarian, development and peacebuilding efforts, the promotion of the rule of law at the national and international levels and the protection of human rights. Equally, we will address movements caused by poverty, instability, marginalization and exclusion and the lack of development and economic opportunities, with particular reference to the most vulnerable populations. We will work with countries of origin to strengthen their capacities.

13. All human beings are born free and equal in dignity and rights. Everyone has the right to recognition everywhere as a person before the law. We recall that our obligations under international law prohibit discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Yet in many parts of the world we are witnessing, with great concern, increasingly xenophobic and racist responses to refugees and migrants.

14. We strongly condemn acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, and the stereotypes often applied to them, including on the basis of religion or belief. Diversity enriches every society and contributes to social cohesion. Demonizing refugees or migrants offends profoundly against the values of dignity and equality for every human being, to which we have committed ourselves. Gathered today at the United Nations, the birthplace and custodian of these universal values, we deplore all manifestations of xenophobia, racial discrimination and intolerance. We will take a range of steps to counter such attitudes and behaviour, in particular with regard to hate crimes, hate speech and racial violence. We welcome the global campaign proposed by the Secretary-General to counter xenophobia and we will implement it in cooperation with the United Nations and all relevant stakeholders, in accordance with international law. The campaign will emphasize, inter alia, direct personal contact between host communities and refugees and migrants and will highlight the positive contributions made by the latter, as well as our common humanity.

15. We invite the private sector and civil society, including refugee and migrant organizations, to participate in multi-stakeholder alliances to support efforts to implement the commitments we are making today.

16. In the 2030 Agenda for Sustainable Development, we pledged that no one would be left behind. We declared that we wished to see the Sustainable Development Goals and their targets met for all nations and peoples and for all segments of society. We said also that we would endeavour to reach the furthest

behind first. We reaffirm today our commitments that relate to the specific needs of migrants or refugees. The 2030 Agenda makes clear, inter alia, that we will facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. The needs of refugees, internally displaced persons and migrants are explicitly recognized.

17. The implementation of all relevant provisions of the 2030 Agenda for Sustainable Development will enable the positive contribution that migrants are making to sustainable development to be reinforced. At the same time, it will address many of the root causes of forced displacement, helping to create more favourable conditions in countries of origin. Meeting today, a year after our adoption of the 2030 Agenda, we are determined to realize the full potential of that Agenda for refugees and migrants.

18. We recall the Sendai Framework for Disaster Risk Reduction 2015–2030[3] and its recommendations concerning measures to mitigate risks associated with disasters. States that have signed and ratified the Paris Agreement on climate change[4] welcome that agreement and are committed to its implementation. We reaffirm the Addis Ababa Action Agenda of the Third International Conference on Financing for Development,[5] including its provisions that are applicable to refugees and migrants.

19. We take note of the report of the Secretary-General, entitled "In safety and dignity: addressing large movements of refugees and migrants",[6] prepared pursuant to General Assembly decision 70/539 of 22 December 2015, in preparation for this high-level meeting. While recognizing that the following conferences either did not have an intergovernmentally agreed outcome or were regional in scope, we take note of the World Humanitarian Summit, held in Istanbul, Turkey, on 23 and 24 May 2016, the high-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees, convened by the Office of the United Nations High Commissioner for Refugees on 30 March 2016, the conference on "Supporting Syria and the Region", held in London on 4 February 2016, and the pledging conference on Somali refugees, held in Brussels on 21 October 2015. While recognizing that the following initiatives are regional in nature and apply only to those countries participating in them, we take note of regional initiatives such as the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the European Union-Horn of Africa Migration Route Initiative and the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants (the Khartoum Process), the Rabat Process, the Valletta Action Plan and the Brazil Declaration and Plan of Action.

20. We recognize the very large number of people who are displaced within national borders and the possibility that such persons might seek protection and assistance in other countries as refugees or migrants. We note the need for reflection on effective strategies to ensure adequate protection and assistance for internally displaced persons and to prevent and reduce such displacement.

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[3] Resolution 69/283, annex II.

[4] See FCCC/CP/2015/10/Add.1, decision 1/CP.21, annex.

[5] Resolution 69/313, annex.

[6] A/70/59.

Commitments

21. We have endorsed today a set of commitments that apply to both refugees and migrants, as well as separate sets of commitments for refugees and migrants. We do so taking into account different national realities, capacities and levels of development and respecting national policies and priorities. We reaffirm our commitment to international law and emphasize that the present declaration and its annexes are to be implemented in a manner that is consistent with the rights and obligations of States under international law. While some commitments are mainly applicable to one group, they may also be applicable to the other. Furthermore, while they are all framed in the context of the large movements we are considering today, many may be applicable also to regular migration. Annex I to the present declaration contains a comprehensive refugee response framework and outlines steps towards the achievement of a global compact on refugees in 2018, while annex II sets out steps towards the achievement of a global compact for safe, orderly and regular migration in 2018.

II. Commitments that apply to both refugees and migrants

22. Underlining the importance of a comprehensive approach to the issues involved, we will ensure a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in our countries, and particularly those in large movements, whether refugees or migrants. We will also ensure full respect and protection for their human rights and fundamental freedoms.

23. We recognize and will address, in accordance with our obligations under international law, the special needs of all people in vulnerable situations who are travelling within large movements of refugees and migrants, including women at risk, children, especially those who are unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, victims of human trafficking, and victims of exploitation and abuse in the context of the smuggling of migrants.

24. Recognizing that States have rights and responsibilities to manage and control their borders, we will implement border control procedures in conformity with applicable obligations under international law, including international human rights law and international refugee law. We will promote international cooperation on border control and management as an important element of security for States, including issues relating to battling transnational organized crime, terrorism and illicit trade. We will ensure that public officials and law enforcement officers who work in border areas are trained to uphold the human rights of all persons crossing, or seeking to cross, international borders. We will strengthen international border management cooperation, including in relation to training and the exchange of best practices. We will intensify support in this area and help to build capacity as appropriate. We reaffirm that, in line with the principle of non-refoulement, individuals must not be returned at borders. We acknowledge also that, while upholding these obligations and principles, States are entitled to take measures to prevent irregular border crossings.

25. We will make efforts to collect accurate information regarding large movements of refugees and migrants. We will also take measures to identify correctly their nationalities, as well as their reasons for movement. We will take measures to identify those who are seeking international protection as refugees.

26. We will continue to protect the human rights and fundamental freedoms of all persons, in transit and after arrival. We stress the importance of addressing the immediate needs of persons who have been exposed to physical or psychological abuse while in transit upon their arrival, without discrimination and without regard to legal or migratory status or means of transportation. For this purpose, we will consider appropriate support to strengthen, at their request, capacity-building for countries that receive large movements of refugees and migrants.

27. We are determined to address unsafe movements of refugees and migrants, with particular reference to irregular movements of refugees and migrants. We will do so without prejudice to the right to seek asylum. We will combat the exploitation, abuse and discrimination suffered by many refugees and migrants.

28. We express our profound concern at the large number of people who have lost their lives in transit. We commend the efforts already made to rescue people in distress at sea. We commit to intensifying international cooperation on the strengthening of search and rescue mechanisms. We will also work to improve the availability of accurate data on the whereabouts of people and vessels stranded at sea. In addition, we will strengthen support for rescue efforts over land along dangerous or isolated routes. We will draw attention to the risks involved in the use of such routes in the first instance.

29. We recognize and will take steps to address the particular vulnerabilities of women and children during the journey from country of origin to country of arrival. This includes their potential exposure to discrimination and exploitation, as well as to sexual, physical and psychological abuse, violence, human trafficking and contemporary forms of slavery.

30. We encourage States to address the vulnerabilities to HIV and the specific health-care needs experienced by migrant and mobile populations, as well as by refugees and crisis-affected populations, and to take steps to reduce stigma, discrimination and violence, as well as to review policies related to restrictions on entry based on HIV status, with a view to eliminating such restrictions and the return of people on the basis of their HIV status, and to support their access to HIV prevention, treatment, care and support.

31. We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the human rights of women and girls. We will combat sexual and gender-based violence to the greatest extent possible. We will provide access to sexual and reproductive health-care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls. At the same time, recognizing the significant contribution and leadership of women in refugee and migrant communities, we will work to ensure their full, equal and meaningful participation in the development of local solutions and opportunities. We will take into consideration the different needs, vulnerabilities and capacities of women, girls, boys and men.

32. We will protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. This will apply particularly to unaccompanied children and those separated from their families; we will refer their care to the relevant national child protection authorities and other relevant

authorities. We will comply with our obligations under the Convention on the Rights of the Child.[7] We will work to provide for basic health, education and psychosocial development and for the registration of all births on our territories. We are determined to ensure that all children are receiving education within a few months of arrival, and we will prioritize budgetary provision to facilitate this, including support for host countries as required. We will strive to provide refugee and migrant children with a nurturing environment for the full realization of their rights and capabilities.

33. Reaffirming that all individuals who have crossed or are seeking to cross international borders are entitled to due process in the assessment of their legal status, entry and stay, we will consider reviewing policies that criminalize cross-border movements. We will also pursue alternatives to detention while these assessments are under way. Furthermore, recognizing that detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice.

34. Reaffirming the importance of the United Nations Convention against Transnational Organized Crime and the two relevant Protocols thereto,[8] we encourage the ratification of, accession to and implementation of relevant international instruments on preventing and combating trafficking in persons and the smuggling of migrants.

35. We recognize that refugees and migrants in large movements are at greater risk of being trafficked and of being subjected to forced labour. We will, with full respect for our obligations under international law, vigorously combat human trafficking and migrant smuggling with a view to their elimination, including through targeted measures to identify victims of human trafficking or those at risk of trafficking. We will provide support for the victims of human trafficking. We will work to prevent human trafficking among those affected by displacement.

36. With a view to disrupting and eliminating the criminal networks involved, we will review our national legislation to ensure conformity with our obligations under international law on migrant smuggling, human trafficking and maritime safety. We will implement the United Nations Global Plan of Action to Combat Trafficking in Persons.[9] We will establish or upgrade, as appropriate, national and regional anti-human trafficking policies. We note regional initiatives such as the African Union-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, the Plan of Action Against Trafficking in Persons, Especially Women and Children, of the Association of Southeast Asian Nations, the European Union Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, and the Work Plans against Trafficking in Persons in the Western Hemisphere. We welcome reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of human trafficking and migrant smuggling and the prosecution of traffickers and smugglers.

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[7] United Nations, *Treaty Series*, vol. 1577, No. 27531.

[8] Ibid., vols. 2225, 2237 and 2241, No. 39574.

[9] Resolution 64/293.

37. We favour an approach to addressing the drivers and root causes of large movements of refugees and migrants, including forced displacement and protracted crises, which would, inter alia, reduce vulnerability, combat poverty, improve self-reliance and resilience, ensure a strengthened humanitarian-development nexus, and improve coordination with peacebuilding efforts. This will involve coordinated prioritized responses based on joint and impartial needs assessments and facilitating cooperation across institutional mandates.

38. We will take measures to provide, on the basis of bilateral, regional and international cooperation, humanitarian financing that is adequate, flexible, predictable and consistent, to enable host countries and communities to respond both to the immediate humanitarian needs and to their longer-term development needs. There is a need to address gaps in humanitarian funding, considering additional resources as appropriate. We look forward to close cooperation in this regard among Member States, United Nations entities and other actors and between the United Nations and international financial institutions such as the World Bank, where appropriate. We envisage innovative financing responses, risk financing for affected communities and the implementation of other efficiencies such as reducing management costs, improving transparency, increasing the use of national responders, expanding the use of cash assistance, reducing duplication, increasing engagement with beneficiaries, diminishing earmarked funding and harmonizing reporting, so as to ensure a more effective use of existing resources.

39. We commit to combating xenophobia, racism and discrimination in our societies against refugees and migrants. We will take measures to improve their integration and inclusion, as appropriate, and with particular reference to access to education, health care, justice and language training. We recognize that these measures will reduce the risks of marginalization and radicalization. National policies relating to integration and inclusion will be developed, as appropriate, in conjunction with relevant civil society organizations, including faith-based organizations, the private sector, employers' and workers' organizations and other stakeholders. We also note the obligation for refugees and migrants to observe the laws and regulations of their host countries.

40. We recognize the importance of improved data collection, particularly by national authorities, and will enhance international cooperation to this end, including through capacity-building, financial support and technical assistance. Such data should be disaggregated by sex and age and include information on regular and irregular flows, the economic impacts of migration and refugee movements, human trafficking, the needs of refugees, migrants and host communities and other issues. We will do so consistent with our national legislation on data protection, if applicable, and our international obligations related to privacy, as applicable.

III. Commitments for migrants

41. We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times. We will cooperate closely to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation.

42. We commit to safeguarding the rights of, protecting the interests of and assisting our migrant communities abroad, including through consular protection, assistance and cooperation, in accordance with relevant international law. We

reaffirm that everyone has the right to leave any country, including his or her own, and to return to his or her country. We recall at the same time that each State has a sovereign right to determine whom to admit to its territory, subject to that State's international obligations. We recall also that States must readmit their returning nationals and ensure that they are duly received without undue delay, following confirmation of their nationalities in accordance with national legislation. We will take measures to inform migrants about the various processes relating to their arrival and stay in countries of transit, destination and return.

43. We commit to addressing the drivers that create or exacerbate large movements. We will analyse and respond to the factors, including in countries of origin, which lead or contribute to large movements. We will cooperate to create conditions that allow communities and individuals to live in peace and prosperity in their homelands. Migration should be a choice, not a necessity. We will take measures, inter alia, to implement the 2030 Agenda for Sustainable Development, whose objectives include eradicating extreme poverty and inequality, revitalizing the Global Partnership for Sustainable Development, promoting peaceful and inclusive societies based on international human rights and the rule of law, creating conditions for balanced, sustainable and inclusive economic growth and employment, combating environmental degradation and ensuring effective responses to natural disasters and the adverse impacts of climate change.

44. Recognizing that the lack of educational opportunities is often a push factor for migration, particularly for young people, we commit to strengthening capacities in countries of origin, including in educational institutions. We commit also to enhancing employment opportunities, particularly for young people, in countries of origin. We acknowledge also the impact of migration on human capital in countries of origin.

45. We will consider reviewing our migration policies with a view to examining their possible unintended negative consequences.

46. We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. Migrants can make positive and profound contributions to economic and social development in their host societies and to global wealth creation. They can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter's economies. We recognize the development benefits of migration to countries of origin, including through the involvement of diasporas in economic development and reconstruction. We will commit to reducing the costs of labour migration and promote ethical recruitment policies and practices between sending and receiving countries. We will promote faster, cheaper and safer transfers of migrant remittances in both source and recipient countries, including through a reduction in transaction costs, as well as the facilitation of interaction between diasporas and their countries of origin. We would like these contributions to be more widely recognized and indeed, strengthened in the context of implementation of the 2030 Agenda for Sustainable Development.

47. We will ensure that all aspects of migration are integrated into global, regional and national sustainable development plans and into humanitarian, peacebuilding and human rights policies and programmes.

48. We call upon States that have not done so to consider ratifying, or acceding to, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[10] We call also upon States that have not done so to consider acceding to relevant International Labour Organization conventions, as appropriate. We note, in addition, that migrants enjoy rights and protection under various provisions of international law.

49. We commit to strengthening global governance of migration. We therefore warmly support and welcome the agreement to bring the International Organization for Migration, an organization regarded by its Member States as the global lead agency on migration, into a closer legal and working relationship with the United Nations as a related organization.[11] We look forward to the implementation of this agreement, which will assist and protect migrants more comprehensively, help States to address migration issues and promote better coherence between migration and related policy domains.

50. We will assist, impartially and on the basis of needs, migrants in countries that are experiencing conflicts or natural disasters, working, as applicable, in coordination with the relevant national authorities. While recognizing that not all States are participating in them, we note in this regard the Migrants in Countries in Crisis initiative and the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change resulting from the Nansen Initiative.

51. We take note of the work done by the Global Migration Group to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.

52. We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance. The guiding principles and guidelines will be developed using a State-led process with the involvement of all relevant stakeholders and with input from the Special Representative of the Secretary-General on International Migration and Development, the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and other relevant United Nations system entities. They would complement national efforts to protect and assist migrants.

53. We welcome the willingness of some States to provide temporary protection against return to migrants who do not qualify for refugee status and who are unable to return home owing to conditions in their countries.

54. We will build on existing bilateral, regional and global cooperation and partnership mechanisms, in accordance with international law, for facilitating migration in line with the 2030 Agenda for Sustainable Development. We will strengthen cooperation to this end among countries of origin, transit and destination, including through regional consultative processes, international organizations, the International Red Cross and Red Crescent Movement, regional economic organizations and local government authorities, as well as with relevant private

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[10] United Nations, *Treaty Series*, vol. 2220, No. 39481.

[11] Resolution 70/296, annex.

sector recruiters and employers, labour unions, civil society and migrant and diaspora groups. We recognize the particular needs of local authorities, who are the first receivers of migrants.

55. We recognize the progress made on international migration and development issues within the United Nations system, including the first and second High-level Dialogues on International Migration and Development. We will support enhanced global and regional dialogue and deepened collaboration on migration, particularly through exchanges of best practice and mutual learning and the development of national or regional initiatives. We note in this regard the valuable contribution of the Global Forum on Migration and Development and acknowledge the importance of multi-stakeholder dialogues on migration and development.

56. We affirm that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents.

57. We will consider facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration, family reunification and education-related opportunities. We will pay particular attention to the application of minimum labour standards for migrant workers regardless of their status, as well as to recruitment and other migration-related costs, remittance flows, transfers of skills and knowledge and the creation of employment opportunities for young people.

58. We strongly encourage cooperation among countries of origin or nationality, countries of transit, countries of destination and other relevant countries in ensuring that migrants who do not have permission to stay in the country of destination can return, in accordance with international obligations of all States, to their country of origin or nationality in a safe, orderly and dignified manner, preferably on a voluntary basis, taking into account national legislation in line with international law. We note that cooperation on return and readmission forms an important element of international cooperation on migration. Such cooperation would include ensuring proper identification and the provision of relevant travel documents. Any type of return, whether voluntary or otherwise, must be consistent with our obligations under international human rights law and in compliance with the principle of non-refoulement. It should also respect the rules of international law and must in addition be conducted in keeping with the best interests of children and with due process. While recognizing that they apply only to States that have entered into them, we acknowledge that existing readmission agreements should be fully implemented. We support enhanced reception and reintegration assistance for those who are returned. Particular attention should be paid to the needs of migrants in vulnerable situations who return, such as children, older persons, persons with disabilities and victims of trafficking.

59. We reaffirm our commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and to provide access to basic health, education and psychosocial services, ensuring that the best interests of the child is a primary consideration in all relevant policies.

60. We recognize the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into migration policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against women and girls.

61. While recognizing the contribution of civil society, including non-governmental organizations, to promoting the well-being of migrants and their integration into societies, especially at times of extremely vulnerable conditions, and the support of the international community to the efforts of such organizations, we encourage deeper interaction between Governments and civil society to find responses to the challenges and the opportunities posed by international migration.

62. We note that the Special Representative of the Secretary-General on International Migration and Development, Mr. Peter Sutherland, will be providing, before the end of 2016, a report that will propose ways of strengthening international cooperation and the engagement of the United Nations on migration.

63. We commit to launching, in 2016, a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration at an intergovernmental conference to be held in 2018. We invite the President of the General Assembly to make arrangements for the determination of the modalities, timeline and other practicalities relating to the negotiation process. Further details regarding the process are set out in annex II to the present declaration.

IV. Commitments for refugees

64. Recognizing that armed conflict, persecution and violence, including terrorism, are among the factors which give rise to large refugee movements, we will work to address the root causes of such crisis situations and to prevent or resolve conflict by peaceful means. We will work in every way possible for the peaceful settlement of disputes, the prevention of conflict and the achievement of the long-term political solutions required. Preventive diplomacy and early response to conflict on the part of States and the United Nations are critical. The promotion of human rights is also critical. In addition, we will promote good governance, the rule of law, effective, accountable and inclusive institutions, and sustainable development at the international, regional, national and local levels. Recognizing that displacement could be reduced if international humanitarian law were respected by all parties to armed conflict, we renew our commitment to uphold humanitarian principles and international humanitarian law. We confirm also our respect for the rules that safeguard civilians in conflict.

65. We reaffirm the 1951 Convention relating to the Status of Refugees[12] and the 1967 Protocol thereto[13] as the foundation of the international refugee protection regime. We recognize the importance of their full and effective application by States parties and the values they embody. We note with satisfaction that 148 States are now parties to one or both instruments. We encourage States not parties to consider acceding to those instruments and States parties with reservations to give consideration to withdrawing them. We recognize also that a number of States not parties to the international refugee instruments have shown a generous approach to hosting refugees.

66. We reaffirm that international refugee law, international human rights law and international humanitarian law provide the legal framework to strengthen the protection of refugees. We will ensure, in this context, protection for all who need it. We take note of regional refugee instruments, such as the Organization of African

[12] United Nations, *Treaty Series*, vol. 189, No. 2545.

[13] Ibid., vol. 606, No. 8791.

Unity Convention governing the specific aspects of refugee problems in Africa[14] and the Cartagena Declaration on Refugees.

67. We reaffirm respect for the institution of asylum and the right to seek asylum. We reaffirm also respect for and adherence to the fundamental principle of non-refoulement in accordance with international refugee law.

68. We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.

69. We believe that a comprehensive refugee response should be developed and initiated by the Office of the United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. This should involve a multi-stakeholder approach that includes national and local authorities, international organizations, international financial institutions, civil society partners (including faith-based organizations, diaspora organizations and academia), the private sector, the media and refugees themselves. A comprehensive framework of this kind is annexed to the present declaration.

70. We will ensure that refugee admission policies or arrangements are in line with our obligations under international law. We wish to see administrative barriers eased, with a view to accelerating refugee admission procedures to the extent possible. We will, where appropriate, assist States to conduct early and effective registration and documentation of refugees. We will also promote access for children to child-appropriate procedures. At the same time, we recognize that the ability of refugees to lodge asylum claims in the country of their choice may be regulated, subject to the safeguard that they will have access to, and enjoyment of, protection elsewhere.

71. We encourage the adoption of measures to facilitate access to civil registration and documentation for refugees. We recognize in this regard the importance of early and effective registration and documentation, as a protection tool and to facilitate the provision of humanitarian assistance.

72. We recognize that statelessness can be a root cause of forced displacement and that forced displacement, in turn, can lead to statelessness. We take note of the campaign of the Office of the United Nations High Commissioner for Refugees to end statelessness within a decade and we encourage States to consider actions they could take to reduce the incidence of statelessness. We encourage those States that have not yet acceded to the 1954 Convention relating to the Status of Stateless Persons[15] and the 1961 Convention on the Reduction of Statelessness[16] to consider doing so.

73. We recognize that refugee camps should be the exception and, to the extent possible, a temporary measure in response to an emergency. We note that 60 per cent

[14] Ibid., vol. 1001, No. 14691.
[15] Ibid., vol. 360, No. 5158.
[16] Ibid., vol. 989, No. 14458.

of refugees worldwide are in urban settings and only a minority are in camps. We will ensure that the delivery of assistance to refugees and host communities is adapted to the relevant context. We underline that host States have the primary responsibility to ensure the civilian and humanitarian character of refugee camps and settlements. We will work to ensure that this character is not compromised by the presence or activities of armed elements and to ensure that camps are not used for purposes that are incompatible with their civilian character. We will work to strengthen security in refugee camps and surrounding local communities, at the request and with the consent of the host country.

74. We welcome the extraordinarily generous contribution made to date by countries that host large refugee populations and will work to increase the support for those countries. We call for pledges made at relevant conferences to be disbursed promptly.

75. We commit to working towards solutions from the outset of a refugee situation. We will actively promote durable solutions, particularly in protracted refugee situations, with a focus on sustainable and timely return in safety and dignity. This will encompass repatriation, reintegration, rehabilitation and reconstruction activities. We encourage States and other relevant actors to provide support through, inter alia, the allocation of funds.

76. We reaffirm that voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin.

77. We intend to expand the number and range of legal pathways available for refugees to be admitted to or resettled in third countries. In addition to easing the plight of refugees, this has benefits for countries that host large refugee populations and for third countries that receive refugees.

78. We urge States that have not yet established resettlement programmes to consider doing so at the earliest opportunity. Those which have already done so are encouraged to consider increasing the size of their programmes. It is our aim to provide resettlement places and other legal pathways for admission on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.

79. We will consider the expansion of existing humanitarian admission programmes, possible temporary evacuation programmes, including evacuation for medical reasons, flexible arrangements to assist family reunification, private sponsorship for individual refugees and opportunities for labour mobility for refugees, including through private sector partnerships, and for education, such as scholarships and student visas.

80. We are committed to providing humanitarian assistance to refugees so as to ensure essential support in key life-saving sectors, such as health care, shelter, food, water and sanitation. We commit to supporting host countries and communities in this regard, including by using locally available knowledge and capacities. We will support community-based development programmes that benefit both refugees and host communities.

81. We are determined to provide quality primary and secondary education in safe learning environments for all refugee children, and to do so within a few months of the initial displacement. We commit to providing host countries with support in this regard. Access to quality education, including for host communities, gives fundamental protection to children and youth in displacement contexts, particularly in situations of conflict and crisis.

82. We will support early childhood education for refugee children. We will also promote tertiary education, skills training and vocational education. In conflict and crisis situations, higher education serves as a powerful driver for change, shelters and protects a critical group of young men and women by maintaining their hopes for the future, fosters inclusion and non-discrimination and acts as a catalyst for the recovery and rebuilding of post-conflict countries.

83. We will work to ensure that the basic health needs of refugee communities are met and that women and girls have access to essential health-care services. We commit to providing host countries with support in this regard. We will also develop national strategies for the protection of refugees within the framework of national social protection systems, as appropriate.

84. Welcoming the positive steps taken by individual States, we encourage host Governments to consider opening their labour markets to refugees. We will work to strengthen host countries' and communities' resilience, assisting them, for example, with employment creation and income generation schemes. In this regard, we recognize the potential of young people and will work to create the conditions for growth, employment and education that will allow them to be the drivers of development.

85. In order to meet the challenges posed by large movements of refugees, close coordination will be required among a range of humanitarian and development actors. We commit to putting those most affected at the centre of planning and action. Host Governments and communities may need support from relevant United Nations entities, local authorities, international financial institutions, regional development banks, bilateral donors, the private sector and civil society. We strongly encourage joint responses involving all such actors in order to strengthen the nexus between humanitarian and development actors, facilitate cooperation across institutional mandates and, by helping to build self-reliance and resilience, lay a basis for sustainable solutions. In addition to meeting direct humanitarian and development needs, we will work to support environmental, social and infrastructural rehabilitation in areas affected by large movements of refugees.

86. We note with concern a significant gap between the needs of refugees and the available resources. We encourage support from a broader range of donors and will take measures to make humanitarian financing more flexible and predictable, with diminished earmarking and increased multi-year funding, in order to close this gap. United Nations entities such as the Office of the United Nations High Commissioner for Refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near East and other relevant organizations require sufficient funding to be able to carry out their activities effectively and in a predictable manner. We welcome the increasing engagement of the World Bank and multilateral development banks and improvements in access to concessional development financing for affected communities. It is clear, furthermore, that private sector investment in support of refugee communities and host countries will be of critical importance over the coming years. Civil society is also a key partner in every region of the world in responding to the needs of refugees.

87. We note that the United States of America, Canada, Ethiopia, Germany, Jordan, Mexico, Sweden and the Secretary-General will host a high-level meeting on refugees on 20 September 2016.

V. Follow-up to and review of our commitments

88. We recognize that arrangements are needed to ensure systematic follow-up to and review of all of the commitments we are making today. Accordingly, we request the Secretary-General to ensure that the progress made by Member States and the United Nations in implementing the commitments made at today's high-level meeting will be the subject of periodic assessments provided to the General Assembly with reference, as appropriate, to the 2030 Agenda for Sustainable Development.

89. In addition, a role in reviewing relevant aspects of the present declaration should be envisaged for the periodic High-level Dialogues on International Migration and Development and for the annual report of the United Nations High Commissioner for Refugees to the General Assembly.

90. In recognition of the need for significant financial and programme support to host countries and communities affected by large movements of refugees and migrants, we request the Secretary-General to report to the General Assembly at its seventy-first session on ways of achieving greater efficiency, operational effectiveness and system-wide coherence, as well as ways of strengthening the engagement of the United Nations with international financial institutions and the private sector, with a view to fully implementing the commitments outlined in the present declaration.

3rd plenary meeting
19 September 2016

Annex I

Comprehensive refugee response framework

1. The scale and nature of refugee displacement today requires us to act in a comprehensive and predictable manner in large-scale refugee movements. Through a comprehensive refugee response based on the principles of international cooperation and on burden- and responsibility-sharing, we are better able to protect and assist refugees and to support the host States and communities involved.

2. The comprehensive refugee response framework will be developed and initiated by the Office of the United Nations High Commissioner for Refugees, in close coordination with relevant States, including host countries, and involving other relevant United Nations entities, for each situation involving large movements of refugees. A comprehensive refugee response should involve a multi-stakeholder approach, including national and local authorities, international organizations, international financial institutions, regional organizations, regional coordination and partnership mechanisms, civil society partners, including faith-based organizations and academia, the private sector, media and the refugees themselves.

3. While each large movement of refugees will differ in nature, the elements noted below provide a framework for a comprehensive and people-centred refugee response, which is in accordance with international law and best international practice and adapted to the specific context.

4. We envisage a comprehensive refugee response framework for each situation involving large movements of refugees, including in protracted situations, as an integral and distinct part of an overall humanitarian response, where it exists, and which would normally contain the elements set out below.

Reception and admission

5. At the outset of a large movement of refugees, receiving States, bearing in mind their national capacities and international legal obligations, in cooperation, as appropriate, with the Office of the United Nations High Commissioner for Refugees, international organizations and other partners and with the support of other States as requested, in conformity with international obligations, would:

(*a*) Ensure, to the extent possible, that measures are in place to identify persons in need of international protection as refugees, provide for adequate, safe and dignified reception conditions, with a particular emphasis on persons with specific needs, victims of human trafficking, child protection, family unity, and prevention of and response to sexual and gender-based violence, and support the critical contribution of receiving communities and societies in this regard;

(*b*) Take account of the rights, specific needs, contributions and voices of women and girl refugees;

(*c*) Assess and meet the essential needs of refugees, including by providing access to adequate safe drinking water, sanitation, food, nutrition, shelter, psychosocial support and health care, including sexual and reproductive health, and providing assistance to host countries and communities in this regard, as required;

(*d*) Register individually and document those seeking protection as refugees, including in the first country where they seek asylum, as quickly as possible upon their arrival. To achieve this, assistance may be needed, in areas such as biometric technology and other technical and financial support, to be coordinated by the Office of the United Nations High Commissioner for Refugees with relevant actors and partners, where necessary;

(*e*) Use the registration process to identify specific assistance needs and protection arrangements, where possible, including but not exclusively for refugees with special protection concerns, such as women at risk, children, especially unaccompanied children and children separated from their families, child-headed and single-parent households, victims of trafficking, victims of trauma and survivors of sexual violence, as well as refugees with disabilities and older persons;

(*f*) Work to ensure the immediate birth registration for all refugee children born on their territory and provide adequate assistance at the earliest opportunity with obtaining other necessary documents, as appropriate, relating to civil status, such as marriage, divorce and death certificates;

(*g*) Put in place measures, with appropriate legal safeguards, which uphold refugees' human rights, with a view to ensuring the security of refugees, as well as measures to respond to host countries' legitimate security concerns;

(*h*) Take measures to maintain the civilian and humanitarian nature of refugee camps and settlements;

(*i*) Take steps to ensure the credibility of asylum systems, including through collaboration among the countries of origin, transit and destination and to facilitate the return and readmission of those who do not qualify for refugee status.

Support for immediate and ongoing needs

6. States, in cooperation with multilateral donors and private sector partners, as appropriate, would, in coordination with receiving States:

(*a*) Mobilize adequate financial and other resources to cover the humanitarian needs identified within the comprehensive refugee response framework;

(*b*) Provide resources in a prompt, predictable, consistent and flexible manner, including through wider partnerships involving State, civil society, faith-based and private sector partners;

(*c*) Take measures to extend the finance lending schemes that exist for developing countries to middle-income countries hosting large numbers of refugees, bearing in mind the economic and social costs to those countries;

(*d*) Consider establishing development funding mechanisms for such countries;

(*e*) Provide assistance to host countries to protect the environment and strengthen infrastructure affected by large movements of refugees;

(*f*) Increase support for cash-based delivery mechanisms and other innovative means for the efficient provision of humanitarian assistance, where appropriate, while increasing accountability to ensure that humanitarian assistance reaches its beneficiaries.

7. Host States, in cooperation with the Office of the United Nations High Commissioner for Refugees and other United Nations entities, financial institutions and other relevant partners, would, as appropriate:

(*a*) Provide prompt, safe and unhindered access to humanitarian assistance for refugees in accordance with existing humanitarian principles;

(*b*) Deliver assistance, to the extent possible, through appropriate national and local service providers, such as public authorities for health, education, social services and child protection;

(*c*) Encourage and empower refugees, at the outset of an emergency phase, to establish supportive systems and networks that involve refugees and host communities and are age- and gender-sensitive, with a particular emphasis on the protection and empowerment of women and children and other persons with specific needs;

(*d*) Support local civil society partners that contribute to humanitarian responses, in recognition of their complementary contribution;

(*e*) Ensure close cooperation and encourage joint planning, as appropriate, between humanitarian and development actors and other relevant actors.

Support for host countries and communities

8. States, the Office of the United Nations High Commissioner for Refugees and relevant partners would:

(*a*) Implement a joint, impartial and rapid risk and/or impact assessment, in anticipation or after the onset of a large refugee movement, in order to identify and prioritize the assistance required for refugees, national and local authorities, and communities affected by a refugee presence;

(*b*) Incorporate, where appropriate, the comprehensive refugee response framework in national development planning, in order to strengthen the delivery of essential services and infrastructure for the benefit of host communities and refugees;

(*c*) Work to provide adequate resources, without prejudice to official development assistance, for national and local government authorities and other service providers in view of the increased needs and pressures on social services. Programmes should benefit refugees and the host country and communities.

Durable solutions

9. We recognize that millions of refugees around the world at present have no access to timely and durable solutions, the securing of which is one of the principal goals of international protection. The success of the search for solutions depends in large measure on resolute and sustained international cooperation and support.

10. We believe that actions should be taken in pursuit of the following durable solutions: voluntary repatriation, local solutions and resettlement and complementary pathways for admission. These actions should include the elements set out below.

11. We reaffirm the primary goal of bringing about conditions that would help refugees return in safety and dignity to their countries and emphasize the need to tackle the root causes of violence and armed conflict and to achieve necessary political solutions and the peaceful settlement of disputes, as well as to assist in reconstruction efforts. In this context, States of origin/nationality would:

(*a*) Acknowledge that everyone has the right to leave any country, including his or her own, and to return to his or her country;

(*b*) Respect this right and also respect the obligation to receive back their nationals, which should occur in a safe, dignified and humane manner and with full respect for human rights in accordance with obligations under international law;

(*c*) Provide necessary identification and travel documents;

(*d*) Facilitate the socioeconomic reintegration of returnees;

(*e*) Consider measures to enable the restitution of property.

12. To ensure sustainable return and reintegration, States, United Nations organizations and relevant partners would:

(*a*) Recognize that the voluntary nature of repatriation is necessary as long as refugees continue to require international protection, that is, as long as they cannot regain fully the protection of their own country;

(*b*) Plan for and support measures to encourage voluntary and informed repatriation, reintegration and reconciliation;

(*c*) Support countries of origin/nationality, where appropriate, including through funding for rehabilitation, reconstruction and development, and with the necessary legal safeguards to enable refugees to access legal, physical and other support mechanisms needed for the restoration of national protection and their reintegration;

(*d*) Support efforts to foster reconciliation and dialogue, particularly with refugee communities and with the equal participation of women and youth, and to ensure respect for the rule of law at the national and local levels;

(*e*) Facilitate the participation of refugees, including women, in peace and reconciliation processes, and ensure that the outcomes of such processes duly support their return in safety and dignity;

(*f*) Ensure that national development planning incorporates the specific needs of returnees and promotes sustainable and inclusive reintegration, as a measure to prevent future displacement.

13. Host States, bearing in mind their capacities and international legal obligations, in cooperation with the Office of the United Nations High Commissioner for Refugees, the United Nations Relief and Works Agency for

Palestine Refugees in the Near East, where appropriate, and other United Nations entities, financial institutions and other relevant partners, would:

(*a*) Provide legal stay to those seeking and in need of international protection as refugees, recognizing that any decision regarding permanent settlement in any form, including possible naturalization, rests with the host country;

(*b*) Take measures to foster self-reliance by pledging to expand opportunities for refugees to access, as appropriate, education, health care and services, livelihood opportunities and labour markets, without discriminating among refugees and in a manner which also supports host communities;

(*c*) Take measures to enable refugees, including in particular women and youth, to make the best use of their skills and capacities, recognizing that empowered refugees are better able to contribute to their own and their communities' well-being;

(*d*) Invest in building human capital, self-reliance and transferable skills as an essential step towards enabling long-term solutions.

14. Third countries would:

(*a*) Consider making available or expanding, including by encouraging private sector engagement and action as a supplementary measure, resettlement opportunities and complementary pathways for admission of refugees through such means as medical evacuation and humanitarian admission programmes, family reunification and opportunities for skilled migration, labour mobility and education;

(*b*) Commit to sharing best practices, providing refugees with sufficient information to make informed decisions and safeguarding protection standards;

(*c*) Consider broadening the criteria for resettlement and humanitarian admission programmes in mass displacement and protracted situations, coupled with, as appropriate, temporary humanitarian evacuation programmes and other forms of admission.

15. States that have not yet established resettlement programmes are encouraged to do so at the earliest opportunity. Those that have already done so are encouraged to consider increasing the size of their programmes. Such programmes should incorporate a non-discriminatory approach and a gender perspective throughout.

16. States aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees to be met.

The way forward

17. We commit to implementing this comprehensive refugee response framework.

18. We invite the Office of the United Nations High Commissioner for Refugees to engage with States and consult with all relevant stakeholders over the coming two years, with a view to evaluating the detailed practical application of the comprehensive refugee response framework and assessing the scope for refinement and further development. This process should be informed by practical experience with the implementation of the framework in a range of specific situations. The objective would be to ease pressures on the host countries involved, to enhance refugee self-reliance, to expand access to third-country solutions and to support conditions in countries of origin for return in safety and dignity.

19. We will work towards the adoption in 2018 of a global compact on refugees, based on the comprehensive refugee response framework and on the outcomes of the process described above. We invite the United Nations High Commissioner for Refugees to include such a proposed global compact on refugees in his annual report to the General Assembly in 2018, for consideration by the Assembly at its seventy-third session in conjunction with its annual resolution on the Office of the United Nations High Commissioner for Refugees.

Annex II

Towards a global compact for safe, orderly and regular migration

I. Introduction

1. This year, we will launch a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration.

2. The global compact would set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. It would make an important contribution to global governance and enhance coordination on international migration. It would present a framework for comprehensive international cooperation on migrants and human mobility. It would deal with all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects of migration. It would be guided by the 2030 Agenda for Sustainable Development[17] and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development,[18] and informed by the Declaration of the High-level Dialogue on International Migration and Development adopted in October 2013.[19]

II. Context

3. We acknowledge the important contribution made by migrants and migration to development in countries of origin, transit and destination, as well as the complex interrelationship between migration and development.

4. We recognize the positive contribution of migrants to sustainable and inclusive development. We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses.

5. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, regardless of migration status. We underline the need to ensure respect for the dignity of migrants and the protection of their rights under applicable international law, including the principle of non-discrimination under international law.

6. We emphasize the multidimensional character of international migration, the importance of international, regional and bilateral cooperation and dialogue in this regard, and the need to protect the human rights of all migrants, regardless of status, particularly at a time when migration flows have increased.

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[17] Resolution 70/1.

[18] Resolution 69/313, annex.

[19] Resolution 68/4.

7. We bear in mind that policies and initiatives on the issue of migration should promote holistic approaches that take into account the causes and consequences of the phenomenon. We acknowledge that poverty, underdevelopment, lack of opportunities, poor governance and environmental factors are among the drivers of migration. In turn, pro-poor policies relating to trade, employment and productive investments can stimulate growth and create enormous development potential. We note that international economic imbalances, poverty and environmental degradation, combined with the absence of peace and security and lack of respect for human rights, are all factors affecting international migration.

III. Content

8. The global compact could include, but would not be limited to, the following elements:

(*a*) International migration as a multidimensional reality of major relevance for the development of countries of origin, transit and destination, as recognized in the 2030 Agenda for Sustainable Development;

(*b*) International migration as a potential opportunity for migrants and their families;

(*c*) The need to address the drivers of migration, including through strengthened efforts in development, poverty eradication and conflict prevention and resolution;

(*d*) The contribution made by migrants to sustainable development and the complex interrelationship between migration and development;

(*e*) The facilitation of safe, orderly, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies; this may include the creation and expansion of safe, regular pathways for migration;

(*f*) The scope for greater international cooperation, with a view to improving migration governance;

(*g*) The impact of migration on human capital in countries of origin;

(*h*) Remittances as an important source of private capital and their contribution to development and promotion of faster, cheaper and safer transfers of remittances through legal channels, in both source and recipient countries, including through a reduction in transaction costs;

(*i*) Effective protection of the human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations;

(*j*) International cooperation for border control, with full respect for the human rights of migrants;

(*k*) Combating trafficking in persons, smuggling of migrants and contemporary forms of slavery;

(*l*) Identifying those who have been trafficked and considering providing assistance, including temporary or permanent residency, and work permits, as appropriate;

(*m*) Reduction of the incidence and impact of irregular migration;

(*n*) Addressing the situations of migrants in countries in crisis;

(*o*) Promotion, as appropriate, of the inclusion of migrants in host societies, access to basic services for migrants and gender-responsive services;

(*p*) Consideration of policies to regularize the status of migrants;

(*q*) Protection of labour rights and a safe environment for migrant workers and those in precarious employment, protection of women migrant workers in all sectors and promotion of labour mobility, including circular migration;

(*r*) The responsibilities and obligations of migrants towards host countries;

(*s*) Return and readmission, and improving cooperation in this regard between countries of origin and destination;

(*t*) Harnessing the contribution of diasporas and strengthening links with countries of origin;

(*u*) Combating racism, xenophobia, discrimination and intolerance towards all migrants;

(*v*) Disaggregated data on international migration;

(*w*) Recognition of foreign qualifications, education and skills and cooperation in access to and portability of earned benefits;

(*x*) Cooperation at the national, regional and international levels on all aspects of migration.

IV. The way forward

9. The global compact would be elaborated through a process of intergovernmental negotiations, for which preparations will begin immediately. The negotiations, which will begin in early 2017, are to culminate in an intergovernmental conference on international migration in 2018 at which the global compact will be presented for adoption.

10. As the Third High-level Dialogue on International Migration and Development is to be held in New York no later than 2019,[20] a role should be envisaged for the High-level Dialogue in the process.

11. The President of the General Assembly is invited to make early arrangements for the appointment of two co-facilitators to lead open, transparent and inclusive consultations with States, with a view to the determination of modalities, a timeline, the possible holding of preparatory conferences and other practicalities relating to the intergovernmental negotiations, including the integration of Geneva-based migration expertise.

12. The Secretary-General is requested to provide appropriate support for the negotiations. We envisage that the Secretariat of the United Nations and the International Organization for Migration would jointly service the negotiations, the former providing capacity and support and the latter extending the technical and policy expertise required.

13. We envisage also that the Special Representative of the Secretary-General for International Migration and Development, Mr. Peter Sutherland, would coordinate

[20] See resolution 69/229, para. 32.

the contributions to be made to the negotiation process by the Global Forum on Migration and Development and the Global Migration Group. We envisage that the International Labour Organization, the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights and other entities with significant mandates and expertise related to migration would contribute to the process.

14. Regional consultations in support of the negotiations would be desirable, including through existing consultative processes and mechanisms, where appropriate.

15. Civil society, the private sector, diaspora communities and migrant organizations would be invited to contribute to the process for the preparation of the global compact.