

cross-border e-commerce logistics in China, bringing a certain impact,” but that the impact would be small as China would also receive a greater amount in terminal dues.²³

Since Trump took office, the United States has withdrawn from a number of international agreements, including the Optional Protocol to the Vienna Convention on Diplomatic Relations, the Intermediate-Range Nuclear Forces Treaty, and the United Nations Educational, Scientific and Cultural Organization.²⁴ Unlike with the UPU, the notices of withdrawal given with respect to these agreements did not lead to renegotiation and the rescission of the withdrawals. Media reports indicate that the administration is considering withdrawing from yet another multilateral treaty, the Open Skies Treaty, which allows parties to engage in unarmed surveillance missions over each other’s territories.²⁵

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

United States Gives Notice of Withdrawal from Paris Agreement on Climate Change

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On November 4, 2019, the Trump administration notified the United Nations that the United States was withdrawing from the Paris Agreement, prompting expressions of regret from a number of countries. Although President Trump had announced in June 2017 that the United States intended to withdraw from the Paris Agreement, its terms had prevented the United States from giving formal notice of withdrawal until November 4, 2019. The withdrawal will take effect on November 4, 2020. Domestically, the governors of many U.S. states responded to the withdrawal by reaffirming their commitment to the goals of the Paris Agreement, consistent with recurring tensions between the Trump administration and progressive states with respect to climate. In another major manifestation of these tensions, on October 23, 2019, the United States sued California over the state’s cap-and-trade agreement with Quebec, Canada, alleging that this agreement is an unconstitutional exercise of foreign affairs powers.

Opened for signature in April of 2016, the Paris Agreement seeks to maintain the global average temperature “well below 2°C above pre-industrial levels and pursu[e] efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”¹ Each state party is required to “prepare, communicate and maintain successive nationally

²³ *China Says Postal Fees to Rise After US Complaint*, ASSOC. PRESS (Oct. 15, 2019), at <https://apnews.com/1e7020752c854accb3279aaba52cfb14>.

²⁴ For more details, see generally Galbraith, *supra* note 7; Jean Galbraith, *Contemporary Practice of the United States*, 112 AJIL 107 (2018).

²⁵ David Welna, *Closing the Open Skies*, NPR (Nov. 3, 2019), at <https://www.npr.org/2019/11/03/775818736/closing-the-open-skies>.

¹ Paris Agreement, Art. 2(1)(a), *opened for signature* Apr. 22, 2016, TIAS No. 16-1104.

determined contributions [NDCs] that it intends to achieve.”² Additionally, under the Paris Agreement, “[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the [United Nations Framework Convention on Climate Change].”³ The Paris Agreement entered into force on November 4, 2016, thirty days after fifty-five nations became party to it.⁴ Currently, there are 187 parties to the Paris Agreement.⁵

The United States signed the Paris Agreement on April 22, 2016,⁶ and deposited its instrument of acceptance on September 3, 2016.⁷ In having the United States join the Paris Agreement, the Obama administration acted without seeking or receiving specific congressional authorization to do so, concluding that the executive branch had the domestic authority to make this commitment on behalf of the United States.⁸ In its 2016 NDC, the United States pledged to “reduc[e] its greenhouse gas emissions by 26–28 per cent below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28%.”⁹

In June 2017, Trump announced that “the United States [would] withdraw from the Paris climate accord . . . but begin negotiations to reenter either the Paris accord or an . . . entirely new transaction on terms that are fair to the United States, its businesses, its workers, its people, its taxpayers.”¹⁰ He stated that the United States was “ceas[ing] all implementation of the

² *Id.* Art. 4(2).

³ *Id.* Art. 9(1).

⁴ Depositary Notification, Sec’y-Gen. of UN, Paris Agreement, Paris, Dec. 12, 2015, Entry into Force (Oct. 5, 2016), available at <https://treaties.un.org/doc/Publication/CN/2016/CN.735.2016-Eng.pdf> [<https://perma.cc/VAX7-2RPF>] [hereinafter Paris Agreement Depositary Notification, Entry into Force].

⁵ Depositary Status for the Paris Agreement, Sec’y-Gen. of UN, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XXVII-7-d&chapter=27&lang=_en&clang=_en [<https://perma.cc/NQF6-2T5Y>].

⁶ *Id.*

⁷ Depositary Notification, Sec’y Gen. of UN, Paris Agreement, Paris, Dec. 12, 2015, United States of America: Acceptance (Sept. 3, 2016), available at <https://treaties.un.org/doc/Publication/CN/2016/CN.612.2016-Eng.pdf> [<https://perma.cc/8K2E-B5QG>].

⁸ See White House Press Release, Press Briefing by Press Secretary Josh Earnest, Deputy NSA for Strategic Communications Ben Rhodes, Senior Advisor Brian Deese and Deputy NSA for International Economics Wally Adeyemo (Aug. 29, 2016), at <https://obamawhitehouse.archives.gov/the-press-office/2016/08/29/press-briefing-press-secretary-josh-earnest-deputy-nsa-strategic> [<http://perma.cc/YD9B-UFX5>] (“[T]he Paris agreement is an executive agreement. And so the President will use his authority that has been used in dozens of executive agreements in the past to join and formally deposit our instrument of acceptance and therefore put our country as a party to the Paris agreement.”); U.S. State Dep’t Press Release, Senior State Department Official on the Paris Agreement Signing Ceremony (Apr. 20, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/04/256415.htm> [<http://perma.cc/MK3F-8MKF>] (“With respect to the Paris agreement . . . we have a standard State Department exercise that we are currently going through for authorizing an executive agreement . . .”). In reporting the Agreement to Congress, the Obama administration cited a number of sources of legal authority for concluding it as an executive agreement, including the preexisting United Nations Framework Convention on Climate Change. See Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L. REV. 1201, 1250 (2018).

⁹ United States, First NDC Submission (2016), available at <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf> [<https://perma.cc/PPB7-B2AX>]; United States, UNFCCC: NDC Registry (Interim), at <https://www4.unfccc.int/sites/NDCStaging/Pages/Party.aspx?party=USA> [<https://perma.cc/6V7P-YZPV>].

¹⁰ Remarks Announcing United States Withdrawal from the United Nations Framework Convention on Climate Change Paris Agreement, 2017 DAILY COMP. PRES. DOC. 1 (June 1) [hereinafter Trump Statement of June 2017]. For discussion of the 2017 announcement of withdrawal, see generally Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 111 AJIL 1014, 1036–44 (2017).

nonbinding Paris accord and the draconian financial and economic burdens the agreement imposes on our country.”¹¹ Since Article 28(1) of the Paris Agreement prevents parties from giving formal notice of withdrawal until three years after the Agreement’s entry into force, the earliest possible date for such notice was November 4, 2019.¹²

On November 4, 2019, the United States formally notified the United Nations that it would be withdrawing from the Paris Agreement.¹³ Secretary of State Michael Pompeo explained that the United States was withdrawing

because of the unfair economic burden imposed on American workers, businesses, and taxpayers by U.S. pledges made under the Agreement. The United States has reduced all types of emissions, even as we grow our economy and ensure our citizens’ access to affordable energy. . . .

The U.S. approach incorporates the reality of the global energy mix and uses all energy sources and technologies cleanly and efficiently, including fossils fuels, nuclear energy, and renewable energy. In international climate discussions, we will continue to offer a realistic and pragmatic model—backed by a record of real world results—showing innovation and open markets lead to greater prosperity, fewer emissions, and more secure sources of energy.¹⁴

Consistent with the terms of the Paris Agreement, the withdrawal will take effect on November 4, 2020, one year after the date of notice of withdrawal.¹⁵ As a matter of international law, the United States could rejoin the Paris Agreement at any point thereafter, following a thirty-day waiting period.¹⁶ The United States remains a party to the United Nations Framework Convention on Climate Change.¹⁷

The U.S. notification of withdrawal was met with international regret. China and France issued a joint declaration “reaffirm[ing] their strong support for the Paris Agreement, which they consider an irreversible process and a compass for strong action on the climate,”¹⁸ and

¹¹ Trump Statement of June 2017, *supra* note 10, at 2.

¹² Paris Agreement, *supra* note 1, Art. 28(1); see Paris Agreement Depository Notification, Entry into Force, *supra* note 4 (noting the Paris Agreement’s entry into force on November 4, 2016).

¹³ Depository Notification, Sec’y-Gen. of UN, Paris Agreement, Paris, Dec. 12, 2015, United States of America: Withdrawal (Nov. 4, 2019), available at <https://treaties.un.org/doc/Publication/CN/2019/CN.575.2019-Eng.pdf> [hereinafter Paris Agreement Depository Notification, U.S. Withdrawal].

¹⁴ U.S. State Dep’t Press Release, Michael R. Pompeo, Sec’y of State, On the U.S. Withdrawal from the Paris Agreement (Nov. 4, 2019), available at <https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement> [<https://perma.cc/B9TP-B294>].

¹⁵ Paris Agreement Depository Notification, U.S. Withdrawal, *supra* note 13; see also Paris Agreement, *supra* note 1, Art. 28(2) (noting the one-year waiting period after the formal notification of withdrawal).

¹⁶ See Paris Agreement, *supra* note 1, Art. 21(3) (providing that nations can continue to join the Paris Agreement after its initial entry into force and that, for such a nation, “this Agreement shall enter into force on the thirtieth day after the date of deposit . . . of [that nation’s] instrument of ratification, acceptance, approval, or accession”).

¹⁷ United Nations Framework Convention on Climate Change, 1771 UNTS 707 (May 9, 1992), at https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en [<https://perma.cc/L927-SJUC>].

¹⁸ *China, France Reaffirm Support of Paris Climate Agreement, Call It “Irreversible,”* REUTERS (Nov. 6, 2019), at <https://www.reuters.com/article/us-china-france-paris-agreement/china-france-reaffirm-support-of-paris-climate-agreement-call-it-irreversible-idUSKBN1XG0QJ>; *Accord Appel de Pékin sur la Conservation de la Biodiversité et le Changement Climatique*, ÉLYSÉE (Nov. 6, 2019), at <https://www.elysee.fr/emmanuel-macron/2019/11/06/>

some other countries similarly emphasized their continued commitment to the Paris Agreement.¹⁹ Likewise, the European Commission reiterated that the Paris Agreement “is here to stay, its door remains open and we hope the U.S. will decide to pass it again one day.”²⁰ The spokesperson for the United Nations secretary-general stated that “our determination to move forward on the implementation of the Paris Agreement remains unchanged” and “encourage[d] member states to actively engage . . . to raise ambition, to tackle and defeat climate change.”²¹

Domestically, the U.S. notification of withdrawal highlighted the strong divergence between the U.S. government and numerous subnational governments with respect to the issue of climate. Immediately after the U.S. notification, a bipartisan coalition of twenty-five state governors “reaffirm[ed] our commitment to supporting climate action and . . . strongly oppos[ed] the Administration’s decision to formally withdraw from the Paris Agreement.”²² They noted that since June 2017, “our states have adopted or strengthened 29 greenhouse gas reduction targets and ramped up zero-carbon power generation, with 19 states now enacting or pursuing goals for 100 percent carbon-free or clean power by 2030 or later.”²³ In this same time period, a sizeable number of states and major cities have challenged the Trump administration’s domestic climate actions, including by filing lawsuits contesting its rollback of the Clean Power Plan²⁴ and energy-efficiency standards.²⁵

California has been a leader in these subnational attempts to address climate change and has consequently itself faced resistance from the Trump administration. In September 2019, the Trump administration revoked California’s authority to set stricter vehicle emissions

appel-de-pekin-sur-la-conservation-de-la-biodiversite-et-le-changement-climatique [<https://perma.cc/D85B-EGNN>]; see also Chinese Foreign Ministry Press Release, Chinese Foreign Ministry Spokesperson Geng Shuang’s Regular Press Conference on November 5, 2019 (Nov. 5, 2019), at https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1713475.shtml [<https://perma.cc/GKB6-NSHP>] (“China regrets that the US began the process to withdraw from the Paris Agreement We support the Paris Agreement, actively fulfill our international obligations that are consistent with our development stage and national condition, and take policy actions on climate change.”).

¹⁹ See, e.g., *EU Hopes US Will Rethink Choice to Pull out of Climate Pact*, AP NEWS (Nov. 5, 2019), at <https://apnews.com/f81a25b839324e578641946c358c22ec> (quoting German Environment Minister Svenja Schulze as calling the U.S. withdrawal “regrettable” and noting that “[t]he rest of the world stands together on climate protection”); Rossella Tercatin, *Israel Reaffirms Its Commitment to Paris Agreement*, JERUSALEM POST (Nov. 6, 2019), at <https://www.jpost.com/Israel-News/Israel-reaffirms-its-commitment-to-Paris-Agreement-607032> (quoting Israeli Environmental Protection Minister Zeev Elkin as saying, “The decision made by the United States to withdraw from the Paris Agreement will not lead us to withdraw from it as well”).

²⁰ European Commission (@EU_Commission), TWITTER (Nov. 5, 2019, 5:32 AM), at https://twitter.com/EU_Commission/status/1191709918094598145?s=20 [<https://perma.cc/B5WX-XLMC>].

²¹ UN/US Paris Agreement Reax, UN Audiovisual Library (Nov. 5, 2019), at <https://www.unmultimedia.org/avlibrary/asset/2494/2494475/> [<https://perma.cc/78QW-QSAB>].

²² U.S. Climate All. Press Release, U.S. Climate Alliance Governors Oppose Administration’s Withdrawal from the Paris Agreement (Nov. 4, 2019), at <http://www.usclimatealliance.org/publications/pariswithdrawal> [<http://perma.cc/M2V9-59QV>].

²³ *Id.*

²⁴ Petition for Review, *New York v. EPA*, No. 19-1019 (D.C. Cir. Aug. 13, 2019), available at <https://oag.ca.gov/system/files/attachments/press-docs/2019%2008%2013%20final%20petition%20for%20review.pdf>.

²⁵ Petition for Review, *New York v. U.S. Dep’t of Energy*, No. 19-____ (2d Cir. Nov. 4, 2019), available at https://ag.ny.gov/sites/default/files/2019_11_04_petition_for_review_gsl_definition_rule_withdrawal_final.pdf.

standards than those established under federal law,²⁶ leading California—along with twenty-two other states, the District of Columbia, and two cities—to sue the administration over this revocation.²⁷ In the latest salvo, on October 23, 2019, the United States filed a lawsuit against California, alleging that the cap-and-trade agreement between California and Quebec, Canada, is unconstitutional.²⁸ This agreement “link[s]” California and Quebec’s pre-existing cap-and-trade programs²⁹ by allowing regulated entities in California and Quebec to trade their emissions allowances with each other.³⁰ In challenging this agreement, the United States alleges that it is “an independent foreign policy in the area of greenhouse gas regulation” which “intrude[s] into the federal sphere,” “complexif[ying] and burden[ing] the United States’ task . . . of negotiating competitive international agreements.”³¹ In response, the governor of California described this lawsuit as a “political vendetta against California, our climate policies and the health of our communities,” adding that “the Trump administration’s abysmal record of denying climate change and propping up big polluters makes cross-border collaboration all the more necessary.”³² The case is pending before a federal district judge in the Eastern District of California.³³

²⁶ See generally The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310 (Sept. 27, 2019).

²⁷ Complaint, *California v. Chao*, No. 19-02826 (D.D.C. Sept. 20, 2019), available at https://oag.ca.gov/system/files/attachments/press_releases/California%20v.%20Chao%20complaint%20%2800000002%29.pdf [<https://perma.cc/7FG2-YRVJ>].

²⁸ Complaint, *United States v. California*, No. 19-2142 (E.D. Cal. Oct. 23, 2019), available at <https://www.justice.gov/opa/press-release/file/1212416/download> [<https://perma.cc/M3TW-RQGZ>] [hereinafter Complaint]; see also Amended Complaint, *United States v. California*, No. 19-2142 (E.D. Cal. Nov. 19, 2019).

²⁹ Cal. Air Res. Bd., *Linkage*, at <https://ww3.arb.ca.gov/cc/capandtrade/linkage/linkage.htm> [perma.cc/JKN3-UG6G].

³⁰ Cal. Air Res. Bd., Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions, Art. 7, available at https://ww3.arb.ca.gov/cc/capandtrade/linkage/2017_linkage_agreement_ca-qc-on.pdf [<https://perma.cc/QJC4-N5ZR>]. This agreement was made in 2017, updating an earlier one from 2013. See Cal. Air Res. Bd., Agreement Between the California Air Resources Board and the Gouvernement du Québec Concerning the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions, available at https://ww3.arb.ca.gov/cc/capandtrade/linkage/ca_quebec_linking_agreement_english.pdf [<https://perma.cc/72LK-E584>].

³¹ Complaint, *supra* note 28, para. 3.

³² Governor of Cal. Press Release, Governor Newsom Statement on Trump Administration’s Attack on California’s Landmark Cap-and-Trade Program (Oct. 23, 2019), at <https://www.gov.ca.gov/2019/10/23/governor-newsom-statement-on-trump-administrations-attack-on-californias-landmark-cap-and-trade-program> [<https://perma.cc/9FBY-CCTN>].

³³ See Stipulation and [Proposed] Order Extending Time for Defendants to Respond to Complaint or Amended Complaint, *United States v. California*, No. 19-2142 (E.D. Cal. Nov. 19, 2019) (requesting, with the joint agreement of the parties, that California have until January 6, 2020, to file an answer or a motion to dismiss).