

Approved by the ABA House of Delegates
August, 1995 Annual Meeting

**AMERICAN BAR ASSOCIATION
SECTION OF
INTERNATIONAL LAW AND PRACTICE
STANDING COMMITTEE ON
WORLD ORDER UNDER LAW**

RECOMMENDATION

RESOLVED, That the American Bar Association urges the United States Government to rejoin 1
UNESCO at the earliest possible time, so that it may take part in UNESCO's mandate to promote 2
international cooperation through education, science, and culture. 3

REPORT

This report is one of several relating to selected United Nations specialized agencies and the International Atomic Energy Agency. The reports have been developed by the American Bar Association Section of International Law and Practice through its Working Group on U.N. Specialized Agencies, as a contribution to the 50th anniversary of the United Nations, in furtherance of the American Bar Association's Goal 8 -- to advance the rule of law in the world.

This report concerns the U.N. Educational, Scientific and Cultural Organization. In particular, it describes the problems that led the United States to leave the organization in 1984 and the progress UNESCO has made in resolving those problems. It concludes that it is in the interest of the United States to rejoin UNESCO. The Recommendation relates to that issue.

1. UNESCO's Purpose and Functions

UNESCO was established in 1945 as one of the original group of specialized agencies. Its purpose, as stated in Article I of its Constitution, is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations." Article I of its Constitution also gives it a mandate to promote "mutual knowledge and understanding of peoples through all means of mass communication."

UNESCO's work in setting standards in the areas within its mandate is of particular importance to the American Bar Association. While it is not possible to describe all of UNESCO's conventions and recommendations here, the following gives an indication of their scope and importance.

Education:

- o UNESCO's Convention and Recommendation Against Discrimination in Education are intended to eliminate and prevent discrimination and to promote equality of opportunity and treatment in education.
- o The Beirut and Florence Agreements facilitate the international transmission of educational materials, by exempting books, films, recordings, and other listed materials used for educational purposes from customs duties. The United States is a party to both Agreements.

- o Together with the International Labor Organization, UNESCO has developed conventions and recommendations on the status of teachers and in the field of technical and vocational education.
- o UNESCO has adopted six regional conventions on the recognition of studies, diplomas and degrees in higher education.

Science:

- o The Convention on Wetlands of International Importance is designed to identify and protect wetlands and their flora and fauna. The United States has been a party since 1986.

Culture:

- o In 1970, UNESCO adopted a convention to prevent the illicit import, export and transfer of ownership of cultural property, to which the United States is party.
- o UNESCO's convention concerning the protection of the world cultural and natural heritage, which created the World Heritage Committee, provides an ongoing mechanism for the international community to recognize monuments, buildings, other human works, and natural sites which should be protected. Most of the countries of the world, including the United States, are party to the convention.

Information:

- o The Universal Copyright Convention of 1952, as revised in 1971, establishes the standards governing the international law of copyright. The United States is also party to the convention, which requires parties to protect the rights of authors, including foreign authors, and other copyright holders. UNESCO shares responsibility over this area with the World Intellectual Property Organization.

UNESCO is not primarily a rule-making body, however. It has important ongoing programs in all of the areas within its mandate. It serves as an umbrella organization for a large number of intergovernmental institutions, which provide concrete mechanisms for international scientific cooperation in particular areas. Examples include the International Hydrological Program, the Program on Man and the Biosphere, the International Geological Program, and the International Oceanographic Commission.

In addition, UNESCO has many programs to address specific problems. Current programs include: promoting literacy, particularly literacy of girls and women, in developing countries; assisting scientific education in developing countries, including training women for senior research and policy positions in the sciences and communications; promoting education for human rights; promoting environmental education; and promoting a free, pluralistic press. UNESCO has also begun to promote "peacebuilding" projects, such as programs to involve armies of developing countries in providing emergency services or communications for isolated villages.

UNESCO's programs often help the least developed countries, in ways that help those countries become more self-sufficient. For example, UNESCO in recent years sent advisers to develop nonintrusive tourism at Angkor Wat in Cambodia, helped to move the Indus River away from ancient ruins in Pakistan, and developed an audio-visual education system for Haiti designed to teach occupational skills and literacy.

UNESCO works closely with institutions of higher learning, including universities in the United States. Recent initiatives in this country include the establishment of the International Literacy Institute at the University of Pennsylvania, the International Institute for Theoretical and Applied Physics at Iowa State University, and an academic chair in information and resources studies at Columbia University.

2. Governance and Budget

UNESCO now has 183 members, which include almost all of the countries of the world. All of the members belong to the General Conference, which meets biennially. Its next session is to be held in Paris in October-November 1995. The General Conference elects the Director General, the head of the Secretariat, to a six-year term. UNESCO's Executive Board, which meets twice a year, is elected by the General Conference and consists of 51 member states. States are required to appoint representatives qualified in one or more of UNESCO's fields of competence.

The budget of UNESCO is sent in draft to the Administrative Committee on Coordination, which is composed of the U.N. Secretary-General and the heads of the specialized agencies and the International Atomic Energy Agency. UNESCO does not receive comments on its budget from the U.N. General Assembly.

3. U.S. Withdrawal from UNESCO

The United States, which was one of the founding 44 members of UNESCO, withdrew from the organization on December 31, 1984. The United Kingdom and Singapore followed one year later.

There were two primary reasons for the withdrawal. First, the United States accused UNESCO of mismanagement, resulting in overcentralization of decisions, an unfocused program of work, and runaway budget growth. Second, the United States accused UNESCO of "politicization."¹ The United States pointed to a proposal for UNESCO to endorse a so-called New World Information and Communication Order, which purported to address the perceived monopoly of communication by large corporations in developed countries. Free-press organizations, and many countries, including the United States, saw it as a pretext for government suppression of a free, pluralistic press.

4. Previous ABA Resolutions on UNESCO

The American Bar Association has considered the issue of U.S. membership in UNESCO twice since the United States withdrew.

In February 1986, the American Bar Association adopted a resolution supporting efforts by the United States and other nations to bring about reforms in UNESCO designed, *inter alia*, to emphasize its core programs, eliminate politicization, and reform budgetary and management practices. The resolution also supported the active continued participation of the United States through its observer mission, so that the United States would be in a position to consider a return to membership.

In February 1989, the American Bar Association adopted a resolution supporting the return of the United States to UNESCO, and urged the U.S. government to finalize arrangements necessary to enable it "to renew at the earliest feasible time its membership."

5. Has UNESCO Resolved the Problems That Led the United States to Withdraw?

In examining whether to reaffirm the February 1989 recommendation for the United States to rejoin UNESCO, this report first addresses whether UNESCO has successfully resolved the problems that led the United States to withdraw.

In November 1987, UNESCO elected a new Director General, Federico Mayor Zaragoza of Spain. Under his leadership, UNESCO has undertaken significant reforms, designed at least in part to address the concerns expressed by the United States and others about mismanagement and press freedoms.

¹ See The Activities of UNESCO Since U.S. Withdrawal: A Report by the Secretary of State (State Department Publication No. 9771, April 1990), pp. 1-2, for a description of the reasons the United States gave for its withdrawal.

Mismanagement. In December 1988, Director General Mayor appointed an independent commission chaired by Knut Hammarskjold to make recommendations on overall personnel and management issues. The report was submitted in December 1989. It echoed in many respects a comprehensive management review of UNESCO prepared by the General Accounting Office in 1984.² The two reports identified the following weaknesses in UNESCO's management:

1. UNESCO's governing bodies provided ineffective oversight of the Secretariat;
2. the Director General delegated too little authority;
3. UNESCO's services were too centralized at headquarters, and in particular its field offices' authority and accountability should be strengthened;
4. the program was unfocused with too many activities;
5. activities were not adequately planned or evaluated;
6. staff appraisals were not credible;
7. the use of consultants was not adequately controlled; and
8. budget growth was excessive.

In June 1992, GAO reviewed UNESCO's progress in each of these areas. It concluded that since Director-General Mayor's election in November 1987, UNESCO had "begun addressing the problems identified by GAO and the Hammarskjold commission."³ In particular, it made the following conclusions and recommendations:

1. UNESCO's Executive Board had strengthened oversight of the Secretariat. GAO made no further recommendations.
2. The new Director General had delegated significant authority to his staff. GAO made no further recommendations.
3. Although the Director General and the governing bodies had advocated decentralization, specific criteria for determining what activities to decentralize,

² Improvements Needed in UNESCO's Management, Personnel, Financial, and Budgeting Practices (GAO/NSIAD-85-32, Nov. 30, 1984).

³ UNESCO: Status of Improvements in Management, Personnel, Financial, and Budgeting Practices (GAO/NSIAD-92-172, June 9, 1992), p. 3.

how many people or how much money to put into the field, and where to locate these resources had not been developed. GAO therefore made recommended that UNESCO develop criteria, country data bases, and specific operational plans for decentralizing.

4. The program focus had improved, by decreasing the number of activities funded from 2041 in 1988-89 to 1354 in 1990-91. GAO found no evidence that any of these activities were consolidated or otherwise hidden in the program budget. GAO recommended that to improve program management, UNESCO should better track activities.
5. Although planning activities had improved, evaluation of their impact needed improvement. To that end, GAO recommended that UNESCO ensure that work plans include expected impact, and develop an evaluation plan.
6. UNESCO had introduced a new appraisal system based on job performance and had proposed a new promotion system based on merit and open competition. To ensure that personnel reform continue, GAO recommended that UNESCO continue to have periodic external reviews and develop a personnel data base.
7. UNESCO had made some reforms with respect to consultant contracts, but had not satisfactorily addressed concerns that it used too many supplementary staff and did not control their use. GAO therefore recommended that UNESCO develop a procedural checklist to control the contract authorization process for hiring such staff and make it more transparent and uniform.
8. Perhaps most impressively, UNESCO had reduced its real budget growth to 0.6 percent, from an average of 2.5 percent annually between 1977 and 1983. Except for salaries, which are linked to the U.N. system as a whole, its budget had had less than zero real growth since 1988.

Nine months later, in March 1993, GAO evaluated the extent to which UNESCO had implemented its June 1992 recommendations. It concluded that "UNESCO's member states, Director General, managers, and employee associations have demonstrated a commitment to management reform through their actions."⁴

In particular, the March 1993 report stated that UNESCO had already implemented or taken most of the necessary steps to implement eight of GAO's twelve June 1992 recommendations. For example, it had implemented the new merit-based promotion system, which requires open competition for each promotion. It had developed the recommended checklist for hiring consultants to ensure consistency and had revised its regulations to make

⁴ UNESCO: Improvements in Management Practices (GAO/NSIAD-93-159), p. 1.

them easier to follow. The only area lagging behind was decentralization, but even there UNESCO had taken concrete steps towards developing criteria for decentralization and developing country data bases, the two recommended precursors to developing operational plans.

In its June 1992 and March 1993 reports, GAO also noted areas in which UNESCO was undertaking reforms in addition to those proposed by GAO and the Hammarskjold report. Most important, GAO noted that in 1989 UNESCO broadened the role of its inspector general to include independent financial and management audits, and increased the number of the inspector general's professional staff from six to ten. (The inspector general is still, as in other specialized agencies, appointed by the Director General.) GAO found that the inspector general's office appeared to be having a greater effect within the organization. For example, after the inspector general found employees engaged in fraud, UNESCO terminated their employment. After the inspector general recommended that clear policies be established for recruiting, training, evaluating, and promoting staff, the organization implemented the recommendations.⁵

Press Freedoms. A number of organizations and countries, including the United States, were concerned in the 1980s that UNESCO was considering restrictions on press freedoms through the New World Information and Communication Order. UNESCO has not only ceased that consideration; it has renewed its efforts to promote a free, pluralistic press.

Shortly after his election, Director General Mayor met with free-press groups and pledged his commitment to press freedom. He appointed individuals in whom free-press groups had confidence to be his directors of public information. Examples of the resulting change in approach include:

- o a conference of independent African journalists held by UNESCO in May 1991 in Namibia, which emphasized the role of a free press in promoting democracy and development;
- o a declaration by the UNESCO General Conference that "a free, pluralistic and independent press is an essential component of any democratic society";
- o a decision by UNESCO's International Program for the Development of Communication to make freedom of the press and pluralism and independence of media priority considerations in project selection; and

⁵ UNESCO: Status of Improvements in Management, Personnel, Financial, and Budgeting Practices (GAO/NSIAD-92-172, June 9, 1992), p. 26-27.

- o a declaration by Director General Mayor in May 1992 on International Press Freedom Day (now an annual UNESCO event) pledging support "wherever press freedom is endangered or suppressed."

These examples and others were cited by the Executive Director of the World Press Freedom Committee, a non-governmental organization highly critical of UNESCO's policies in the 1980s, in a June 1993 letter to the State Department expressing support for revisiting the issue of U.S. membership. The letter stated in part, "For many years, UNESCO was part of the problem in world communications. Today, it is increasingly part of the solution. Free-press organizations around the world now consider it a partner in their efforts to promote a free press and to lessen abuses against journalists."

The President of the Fédération Internationale des Editeurs des Journaux (FIEJ) has urged the U.S. Government to rejoin UNESCO, saying in part:

". . . UNESCO has become, under the leadership of Director General Mayor, an important partner and ally. In the area of pressuring governments to respect freedom of expression, UNESCO is uniquely placed to intervene and demand the respect by member states of the principles enshrined in its Constitution. We are satisfied that UNESCO is now using its strong influence in this respect; it is reacting rapidly and effectively when cases of abuse are brought to its attention. In a broader sense, the organization is well on its way to becoming a real moral and political force in the defense of freedom internationally.

In terms of bringing material and other assistance to the independent press, UNESCO has made important reforms which permit its programmes to bring measurable improvements to these media. We are now absolutely satisfied that the organization wishes to work closely with the appropriate professional bodies . . . to ensure that the overriding criteria for the selection and implementation of its projects are their real effectiveness in furthering the cause of freedom of the press. Again, we believe that UNESCO has a unique role here which cannot be played on a global scale by any other organization."

The FIEJ presented Director General Mayor its 45th Anniversary Prize in May 1993 in recognition of his work.

Professor Leonard Sussman, the former Executive Director of Freedom House and a close observer of UNESCO, has informed the State Department that American and international non-governmental organizations concerned with freedom of the press have seen "UNESCO demonstrate its fundamental commitment to press freedom, pluralist journalism and assistance to developing countries in enlarging and democratizing their media of news and information." He states that it is "past time" for the United States to rejoin UNESCO.

Conclusion. The conclusion is inescapable that UNESCO has satisfactorily addressed the problems that led the United States to withdraw. Under the leadership of Director General Mayor, it has reformed its management and stabilized its budget. It now promotes in concrete ways a free, pluralistic press. The members of UNESCO reaffirmed their commitment to this changed course by electing the Director General in 1993 to a second six-year term.

6. Should the United States Rejoin UNESCO?

At the time it withdrew, the United States made clear that it would rejoin UNESCO if it made necessary changes. Now that UNESCO has made those changes, it might be argued that the United States should rejoin in order to fulfill its previous commitment, regardless of other factors.

This argument has great force. A failure to rejoin under these circumstances undoubtedly risks lowering the United States in the eyes of the international community.

Nevertheless, it is important to examine all factors relevant to the decision. At a minimum, however, UNESCO's reforms create an extremely strong presumption that the United States should rejoin. The report concludes that, far from overcoming this presumption in favor of rejoining, the other relevant factors reinforce the importance of UNESCO and indicate that it is in the United States' interest to rejoin.

Rejoining would enable the United States to ensure that the policies undertaken under Director General Mayor would continue and grow stronger. The United States, more than any other country in the world, is in a position to support and strengthen UNESCO's activities. In particular, rejoining would allow the United States to participate actively in UNESCO's important work to safeguard press freedoms and promote pluralistic, democratic press institutions. It would allow the United States to have a say in UNESCO's important normative work, such as its current efforts to draft a new instrument on bioethics. And it would give the United States great influence on management and budget matters.

An example of the ongoing work of the organization in which the United States cannot participate as an observer is the consideration by the UNESCO Executive Board of whether and how to give the International Oceanographic Commission more autonomy. The United States has a strong interest in the Commission, in which it continued to participate after its withdrawal from UNESCO. The United States will not, however, be able to participate in the decisions about the Commission's structure and budget until it rejoins UNESCO.

Conversely, a failure to rejoin would greatly reduce the United States' influence over the organization. The withdrawal has undoubtedly been a significant factor in the reforms UNESCO has made. But now that UNESCO has met the goals set by the United States in the

1980s, the United States will lose its leverage in the organization if it does not fulfill its commitment to rejoin.

Rejoining would support the many persons and organizations in the United States engaged in scientific, educational, and cultural activities who would benefit from UNESCO's international programs in those areas. Such organizations that have announced their support for the return of the United States to UNESCO include the American Association for the Advancement of Science, the American Association of Engineering Societies, the American Association of Museums, the American Chemical Society, the American Library Association, the American Physical Society, the American Society for Microbiology, the National Academy of Engineering, and the National Academy of Sciences.

Rejoining would also lead to greatly increased participation by U.S. nationals in the organization's staff. Like other U.N. organizations, UNESCO hires nationals primarily from its member states; in the last ten years, the Secretariat has hired only two U.S. nationals to its permanent staff.

Finally, rejoining would demonstrate the United States' commitment to addressing international problems cooperatively, before they develop into international conflicts. The preamble to UNESCO's Constitution states, "Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed." UNESCO's mission is to construct these defenses of peace through peaceful means: international cooperation in education, science, culture, and communications. Recent events in virtually every continent in the world underscore that UNESCO's mission is no less important now than when it was founded.

The U.S. Government has recognized the value of rejoining UNESCO. A June 1993 interagency review of UNESCO recognized its progress in reforming its management and in changing its approach to the press, and concluded that its current programs provide valuable services in a range of fields that reinforce the United States' foreign policy agenda.

The Clinton Administration did not seek funds for UNESCO membership in the fiscal year 1996 budget, however. In January 1995, in response to a letter from John Whitehead, Elliot Richardson, and Cyrus Vance on behalf of the United Nations Association of the United States of America urging that the United States rejoin, President Clinton stated that he looked forward to the United States' rejoining UNESCO "as soon as our resources permit." The only obstacle to rejoining therefore appears to be that it would add to the United States' financial commitments.

The United States' share of UNESCO's budget would be one-quarter, which would amount to about \$65 million in fiscal year 1996. It is important to recognize that U.S. dues to UNESCO would not be out of line with its current dues to other specialized agencies. On the contrary, they would be significantly less than current dues to the World Health Organization

(\$106 million), the Food and Agriculture Organization (\$95 million), and the International Atomic Energy Agency (\$80 million), for example. They would be in the same range as U.S. dues to the International Labor Organization (\$58 million).

The United States pays all of its dues to international organizations (other than development banks) from the Contributions to International Organizations account in the State Department. For fiscal year 1996, the Administration has requested \$934 million for that account, and another \$425 for voluntary contributions to international organizations. UNESCO's dues would increase the total of those accounts by less than five percent. The Administration has requested about \$21 billion for the total international affairs budget in fiscal year 1996; UNESCO's dues would be only about three-tenths of one percent of that amount. The entire international affairs budget is, in turn, only about one percent of the total U.S. budget. It is clear that, in the context of total U.S. contributions to international organizations, total international expenditures, and the total federal budget, the addition of the U.S. share of dues to UNESCO is not an unduly large amount.

In particular, it is a small amount to pay in return for the concrete ways in which UNESCO promotes activities around the world that are extremely important to the United States: development of a free press, maintenance of the international copyright system, education in poor countries, promoting women's literacy, retraining developing countries' armies, and international scientific and cultural cooperation in general.

7. Conclusion

For all of the reasons discussed above, and most importantly because UNESCO has successfully addressed the problems that led the United States to withdraw, the United States should delay no longer in deciding to rejoin UNESCO.

Respectfully submitted,

Jay M. Vogelson
Chair

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