A Brief Discussion on the United States' Sanctions Program and Venezuela

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States interact with other states in a myriad of ways. One such way is by the issuance of economic sanctions intended to impact another state's policies or practices. Economic sanctions are an "old tool," which historically have been grounded on the issuing state's own overarching goals and policies. However, economic sanctions are becoming more and more a means of exerting political influence over another state. One can question whether this is in fact "using an old tool in a new way." I would suggest this practice, when implemented in particular ways, can complicate the "new economic world order" in such a way as to create perverse incentives within a state's own sanctions regime.

The Bolivarian Republic of Venezuela is one of the wealthiest nations on earth when it comes to natural resources. For example, it has the highest amount of proven oil reserves of any member of the Organization of the Petroleum Exporting Countries. Despite this wealth, the country is in economic freefall and the great majority of its citizens are poor. Many are living day to day without basic food, water, and health care. Under the presidencies of Hugo Chávez and Nicolás Maduro, Venezuela has been governed for decades under what is referred to as "Bolivarian" socialism. Many consider Venezuela a "failed state," doomed for failure given its adoption and implementation of its own variety of socialism.

In this short presentation, I will briefly explore the impact of the United States' economic sanctions program toward Venezuela when compared to the initial stated policy of the sanctions program. I also will discuss the program's implementation and ultimate inconsistencies, which were created as a result of the United States' recognition of a new "de facto" Venezuelan president.

In 2014, the United States Congress enacted the Venezuela Defense of Human Rights and Civil Society Act, Public Law 113–278 (the Act). The Act's stated purpose was to address rampant corruption, criminal activity, and human rights violations including violence against anti-governmental protestors committed by various arms of the Venezuela government. The Act aspired to achieve, among other goals, a "mutually beneficial relationship with Venezuela based on respect for human rights and the rule of law and a functional and production relationship on issues of public security, including counter narcotics and counterterrorism. . . ." The Act granted the president of the United States authority to impose sanctions against those foreign individuals involved in the systemic human rights violations. Such sanctions included asset blocking and visa restrictions.

The United States sought to implement a sanctions program to create economic pressure on the Venezuelan government to achieve more freedom and protections for the Venezuelan people. Another goal was to apply political pressure to facilitate regime change; to lay the foundation for free and democratic elections to oust President Maduro. Other countries issued similar sanctions against Venezuela for similar reasons.

Under the Act, the United States issued a large number of sanctions against the Venezuelan government, individuals, and businesses. The broad authority afforded by the Act allowed the president as well as government agencies to issue sanctions at will. The result is a large and complex set of rules with exceptions (and exceptions to exceptions), which made it difficult for

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those who sought to do business with people or companies connected to Venezuela. Currently, the sanctions program consists of numerous executive orders, general licenses, specific licenses, interpretive guidance, and hundreds of answers to frequently asked questions. It provides (sometimes ambiguous) guidance to those trying to ensure they do not unwittingly run afoul of a sanction.

As of June 1, 2020, the United States Treasury had imposed sanctions on 144 individuals; the State Department had revoked hundreds of visas; and the president had issued numerous sanctions by executive order on the Venezuelan government, Central Bank, and the state-owned oil company PDVSA.

It is difficult for me to say how effective these sanctions have been. There is no question the Venezuelan economy has continued its steady decline, but this in large part can be attributed to the natural results of a socialist society, as well as the low international crude oil prices—oil exports being the life blood of the Venezuelan economy. The sanctions do not appear to have improved human rights in Venezuela. In fact, human rights violations appear to have increased. Sanctions did isolate Venezuela in international markets, but they also allowed certain countries (e.g., China, Russia, and Iran) the opportunity to increase trade and diplomatic relations with Venezuela and, thereby, increase their influence in Latin America. This development, in my view, is an unintended consequence of the United States' sanctions program. Finally, despite political pressure, there has not been regime change—at least not a clear and unequivocal one. President Maduro still holds power in Caracas, but his authority is in question in much of the rest of the world.

In January 2019, Juan Guaidó, a member of the National Assembly, announced that President Maduro's 2018 reelection was illegitimate. Guaidó reasoned that the presidency was vacant and so declared himself the rightful president. Very soon thereafter, a large number of states including the United States formally recognized Guaidó as the rightful president even though President Maduro was still in charge of the country including the military. This quasi-regime change did little more than create significant confusion in international markets as well as turn the United States' sanctions program on its head.

Prior to January 2019, the United States sought economic pressure against Venezuela, which included third parties seeking to enforce economic claims and arbitration awards against Venezuelan assets. After Guaidó was recognized as the leader, the sanctions program was now in conflict with the United States' goal of protecting and preserving the Venezuelan economy for the benefit of Guaidó's government.

Since the start of 2019, there have been numerous contentious matters in front of judges, courts, and arbitral panels where a central issue is who really is in charge of Venezuela. Lawyers representing each president are making arguments around the globe as to who the rightful head of state is. In different proceedings, the answer changes. The current state of play is now more complex and confusing than ever.

The United States' sanctions program has evolved since the start of 2019. Sanctions directed at individuals, especially those connected with criminal activity and/or the Maduro government are still valid and consistent with U.S. goals. However, those sanctions directed at key segments of the economy, such as PDVSA, are now in conflict with the United States' support of Guaidó. Guaidó desires to protect the economy and protect Venezuelan assets. Sanctions that were designed to weaken the economy are contrary to Guaidó's interests. The sanctions program has now become practically impossible to interpret given the competing interests of the U.S. government as to Guaidó versus Maduro.

An unfortunate byproduct is the negative impact on third parties seeking to enforce judgments and awards against Venezuela and/or PDVSA. Pre-2019, third-party enforcement against Venezuelan assets was both appropriate and consistent with the goal of putting economic pressure upon the Maduro regime. Thereafter, the same pressure is being felt not only by Maduro, but Guaidó as well. The United States has had to issue new sanctions directives to delay and/or limit the execution of valid awards against Venezuelan assets because of the harmful impact they would have on the Venezuelan economy. For example, on August 5, 2019, the president of the United States issued the Executive Order on Blocking Property of the Government of Venezuela to protect Venezuelan assets from execution by third party creditors. This executive order benefits both Maduro and Guaidó and is harmful to legitimate third-party creditors.

In conclusion, in my view, the U.S. sanctions program directed at Venezuela has been largely unsuccessful. It has had some impact on the Venezuelan economy, but it is hard to tell how much given the economy was bound to deteriorate under socialism and sustained low crude prices. Corruption and human rights violations still exist. States such as China, Russia, and Iran have provided economic support to Venezuela and, as a consequence, have a greater presence in the Western Hemisphere. Finally, sanctions now must be interpreted and enforced, if possible, in such a way as to increase the chance Maduro will be replaced while at the same time trying to ensure there will be a sustainable economy left for Guaidó.

The United States' use of sanctions in this context, in my view, cannot be considered beneficial to a new economic world order.