

INTERNATIONAL ORGANIZATIONS

Biden Administration Rescinds Sanctions Against International Criminal Court Officials
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On April 1, 2021, the Biden administration issued an executive order reversing the Trump administration's sanctions on International Criminal Court (ICC) personnel. The administration rescinded the sanctions placed upon the ICC prosecutor, Fatou Bensouda, and the head of the Office of the Prosecutor's Jurisdiction, Complementarity, and Cooperation Division, Phakiso Mochochoko, and removed the officials from the Treasury Department's Office of Foreign Assets Control List of Specially Designated Nationals and Blocked Persons. The ICC, European Union (EU), and human rights groups welcomed the reversal.

In Executive Order 13,928 on June 11, 2020, the Trump administration authorized the imposition of economic sanctions and visa restrictions on ICC employees investigating potential war crimes conducted by U.S. forces in Afghanistan.¹ Acting pursuant to the order on September 2, 2020, the United States then designated Bensouda and Mochochoko as subject to sanctions, based on, respectively, their investigation of and material assistance in investigating U.S. personnel. The designations froze their assets and prevented them from traveling to the United States.² The sanctions prompted widespread condemnation, including from the ICC, U.S. allies, and human rights groups,³ and sparked a lawsuit by several law professors challenging the order on First and Fifth Amendment grounds.⁴

In Executive Order 14,022 on April 1, 2021, President Biden revoked Executive Order 13,928 and terminated the national emergency it had declared with respect to the ICC investigation of U.S. personnel.⁵ As a result of the order, the State and Treasury Departments terminated the sanctions on Bensouda and Mochochoko.⁶ The order explained:

[A]lthough the United States continues to object to the International Criminal Court's (ICC) assertions of jurisdiction over personnel of such non-States Parties as the United States and its allies absent their consent or referral by the United Nations Security Council and will vigorously protect current and former United States personnel from any attempts to exercise such jurisdiction, the threat and imposition of financial sanctions

¹ See Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 775 (2020).

² See Kristen E. Eichensehr, *Contemporary Practice of the United States*, 115 AJIL 139 (2021).

³ *Id.*

⁴ See Complaint, *Open Soc'y Justice Initiative et al. v. Trump*, No. 1:20-cv-08121 (S.D.N.Y. Oct. 1, 2020) (Doc. 1).

⁵ Exec. Order 14,022, 86 Fed. Reg. 17,895 (Apr. 1, 2021).

⁶ U.S. Dep't of State Press Release, *Ending Sanctions and Visa Restrictions Against Personnel of the International Criminal Court* (Apr. 2, 2021), at <https://www.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court> [<https://perma.cc/YCN2-G5SR>]; see also U.S. Dep't of Treas. Action, *Termination of Emergency With Respect to the International Criminal Court* (Apr. 5, 2021), at https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210405_33 [<https://perma.cc/T9SQ-9P6X>].

against the Court, its personnel, and those who assist it are not an effective or appropriate strategy for addressing the United States' concerns with the ICC.⁷

A separate statement from Secretary of State Antony Blinken explained that although the United States “disagree[s] strongly with the ICC’s actions relating to the Afghanistan and Palestinian situations, . . . [w]e believe . . . that our concerns about these cases would be better addressed through engagement with all stakeholders in the ICC process rather than through the imposition of sanctions.”⁸ The State Department noted U.S. “support for the rule of law, access to justice, and accountability for mass atrocities” dating to U.S. leadership in the Nuremberg and Tokyo tribunals after World War II and carrying forward to “supporting a range of international, regional, and domestic tribunals, and international investigative mechanisms for Iraq, Syria, and Burma, to realize the promise of justice for victims of atrocities.”⁹ The State Department pledged to continue such efforts “through cooperative relationships” and noted that it is “encouraged that States Parties to the Rome Statute are considering a broad range of reforms to help the Court prioritize its resources and to achieve its core mission of serving as a court of last resort in punishing and deterring atrocity crimes.”¹⁰

In praising the revocation of the sanctions, the ICC noted that it “is mindful that the United States has traditionally made important contributions to the cause of international criminal justice” and “stands ready to reengage with the US in the continuation of that tradition based on mutual respect and constructive engagement.”¹¹ U.S. allies welcomed removal of the sanctions. EU High Representative for Foreign Affairs and Security Policy Josep Borrell called the repeal an “important step” that “underlines the US’s commitment to the international rules-based system.”¹² He reaffirmed that the EU “will stand together with all partners to defend the Court against attempts aimed at obstructing the course of justice and undermining the international system of criminal justice and . . . will continue to support the ongoing review process to enhance the Rome Statute system and make the Court stronger and more effective.”¹³ Australia’s Department of Foreign Affairs and Trade noted that it “welcomes the US revoking ICC sanctions [and] looks forward to constructive engagement,” and explained that Australia is “committed to ICC reform so the Court can best fulfil its core mandate over the most heinous international crimes, as a court of last resort.”¹⁴ UK Foreign Secretary Dominic Raab added that the United Kingdom welcomed “the

⁷ Exec. Order 14,022, *supra* note 5, 86 Fed. Reg. at 17,895.

⁸ U.S. Dep’t of State Press Release, *supra* note 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Int’l Crim. Ct. Press Release, The ICC Welcomes the Decision by the US Government Ending Sanctions and Visa Restrictions Against ICC Personnel (Apr. 3, 2021), at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1585>.

¹² European External Action Service Press Release, International Criminal Court: Statement by the High Representative/Vice-President Josep Borrell on the US Decision to Repeal Sanctions Against the International Criminal Court (Apr. 3, 2021), at https://eeas.europa.eu/headquarters/headquarters-homepage/96159/international-criminal-court-statement-high-representativevice-president-josep-borrell-us_en.

¹³ *Id.*

¹⁴ Australia Dep’t of For. Affs. & Trade (@DFAT), TWITTER (APR. 2, 2021, 8:57 PM), at <https://twitter.com/dfat/status/1378149514662440961> [<https://perma.cc/YQ7X-AGLE>].

constructive US decision to repeal sanctions against the ICC.”¹⁵ Spain’s Ministry of Foreign Affairs noted that “the lifting of these sanctions is yet another step towards multilateralism,”¹⁶ while Norway’s Ministry of Foreign Affairs affirmed that “ending sanctions and visa restrictions against ICC officials is the right thing to do.”¹⁷

Reversal of the sanctions drew praise from the human rights community. Human Rights Watch (HRW) noted that the end of the sanctions “removes a serious obstacle to the court’s providing justice to the victims of the world’s worst crimes,” and HRW’s international justice director, Richard Dicker said, “In removing this unprecedented threat to the global rule of law, President Biden has begun the long process of restoring U.S. credibility on international justice through the ICC.”¹⁸ Professor Philippe Sands of University College London said that the decision to remove sanctions came “not a moment too soon,” noting that the sanctions “had pernicious, copycat consequences,” citing China’s imposition of sanctions against lawyers and government officials investigating the country’s actions against the Uighurs.¹⁹

The sanctions withdrawal prompted favorable reactions from some in Congress as well. Representatives Ilhan Omar (D-MN), Jim McGovern (D-MA), and Joaquin Castro (D-TX), who had advocated for removal of the sanctions in a March 2021 letter to Blinken,²⁰ celebrated the Biden administration’s move.²¹ Omar called the withdrawal “a long overdue victory for international justice and the rule of law,”²² and McGovern described it as “a necessary step towards restoring American credibility as a champion of human rights and accountability at home and abroad.”²³

The issuance of Executive Order 14,022 brought to a close the lawsuit challenging the imposition of the sanctions. Filed by law professors Diane Marie Amann, Milena Sterio, Margaret deGuzman, and Gabor Rona and the Open Society Justice Initiative on October 1, 2020, the suit alleged that Executive Order 13,928 violated the plaintiffs’ First Amendment right of free speech and Fifth Amendment right to due process, exceeded the scope of the government’s authority under the International Emergency Economic Powers

¹⁵ Dominic Raab (@DominicRaab), TWITTER (Apr. 2, 2021, 3:35 PM), at <https://twitter.com/DominicRaab/status/1378068653531394049> [<https://perma.cc/7CAW-T2GZ>].

¹⁶ Spanish Ministry of Foreign Affairs Press Release, Revocation of Sanctions by United States on ICC (Apr. 5, 2021), at http://www.exteriores.gob.es/Portal/en/SalaDePrensa/Comunicados/Paginas/2021_COMUNICADOS/20210405_COMU037.aspx.

¹⁷ Norway MFA (@NorwayMFA), TWITTER (Apr. 2, 2021, 4:34 PM), at <https://twitter.com/NorwayMFA/status/1378083325450027013> [<https://perma.cc/XY4K-6FSX>].

¹⁸ Human Rights Watch, *US Rescinds ICC Sanctions* (Apr. 2, 2021), at <https://www.hrw.org/news/2021/04/02/us-rescinds-icc-sanctions#>.

¹⁹ Pranshu Verman & Marlise Simons, *Reversing Trump, Biden Repeals Sanctions on Human Rights Prosecutor*, N.Y. TIMES (Apr. 2, 2021), at <https://www.nytimes.com/2021/04/02/us/politics/biden-international-criminal-court-sanctions.html>; see also Kristen E. Eichensehr, *Contemporary Practice of the United States*, 115 AJIL 536, 543 (2021).

²⁰ Letter from Ilhan Omar, James McGovern, and Joaquin Castro to Antony Blinken, Sec’y of State (Mar. 12, 2021), available at https://omar.house.gov/sites/omar.house.gov/files/icc%20letter_omar_mcgovern_castro%5B1%5D.pdf [<https://perma.cc/XEA7-FUT6>].

²¹ Office of Representative Ilhan Omar Press Release, Omar, McGovern, Castro Hail Repeal of Trump ICC Sanctions (Apr. 2, 2021), at <https://omar.house.gov/media/press-releases/omar-mcgovern-castro-hail-repeal-trump-icc-sanctions> [<https://perma.cc/W8Y4-82FD>].

²² *Id.*

²³ *Id.*

Act, and violated the Administrative Procedure Act.²⁴ The plaintiffs claimed that their work advising the ICC could subject them to sanctions for materially supporting the court's investigations into U.S. personnel.²⁵ On January 4, 2021, U.S. District Judge Katherine Polk Failla granted the plaintiffs' request for a preliminary injunction, relying on their First Amendment claims to enjoin enforcement of criminal or civil penalties against them for conduct alleged to have violated Executive Order 13,928.²⁶ Following repeated extensions to the defendants' deadline to answer the complaint, the Biden administration and the plaintiffs agreed to have the case dismissed without prejudice at the end of April.²⁷

In her final briefing to the UN Security Council before the end of her term on June 15, Bensouda noted the removal of the sanctions and expressed that the prosecutor's office "hopes to establish a new relationship with the United States rooted in mutual respect and constructive dialogue."²⁸ In the same meeting, the U.S. representative affirmed that the sanctions were "inappropriate" and reiterated that the removal of these sanctions "can help us return to a time of cooperation between the United States and the ICC."²⁹ In an interview to mark the end of her term, Bensouda said that the sanctions had crossed a red line, but with their removal, the United States and the ICC "are working on some kind of a reset" of their relationship.³⁰

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

United States Seeks Answers on COVID-19's Origin While Stepping Up "Vaccine Diplomacy"
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As the COVID-19 pandemic continues to rage across the world, the United States and its allies are pushing for answers about the virus's origins while China rebuffs inquiry into its early handling of the outbreak. Meanwhile, a growing U.S. stockpile of vaccines has opened new avenues for "vaccine diplomacy," and the Biden administration has thrown its weight behind an effort to suspend cross-border intellectual property (IP) rules for vaccine

²⁴ Complaint at 34–36, *Open Soc'y Justice Initiative et al. v. Trump*, *supra* note 4.

²⁵ *Id.* at 26–32.

²⁶ Opinion and Order at 33, *Open Soc'y Justice Initiative et al. v. Trump*, No. 1:20-cv-08121 (S.D.N.Y. Jan. 4, 2021) (Doc. 56).

²⁷ Stipulation of Dismissal Under Federal R. Civ. P. 41 (a), *Open Soc'y Justice Initiative v. Trump*, No. 1:20-cv-08121 (S.D.N.Y. Jan. 4, 2021) (No. 68).

²⁸ Statement of the ICC Prosecutor to the United Nations Security Council on the Situation in Libya, Pursuant to UNSCR 1970 (2011) (May 17, 2021), at <https://www.icc-cpi.int/Pages/item.aspx?name=210517-otp-statement-unscl-libya> [<https://perma.cc/BMB6-EPAC>]; see also Edith M. Lederer, *ICC Prosecutor Hopes for New US Relations After Sanctions*, ASSOC. PRESS (May 17, 2021), at <https://apnews.com/article/united-nations-donald-trump-1486070a6dc353b950566f656f8fad15>.

²⁹ Amb. Jeffrey DeLaurentis, Acting Alt. Rep. for Special Pol. Affs., Remarks at a UN Security Council Briefing on Libya, United States Mission to the United Nations (May 17, 2021), at <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-libya-3> [<https://perma.cc/CP57-XMJT>].

³⁰ Mike Corder, *AP Interview: ICC Prosecutor Sees "Reset" Under Biden*, ASSOC. PRESS (June 14, 2021), at <https://apnews.com/article/government-and-politics-donald-trump-joe-biden-courts-4f191309f97a3734b032960877cccac6>.