

The White House has expressed greater skepticism about the prospects of negotiating with Pyongyang. Referring to the Secretary of State's remarks in late September, Trump tweeted that Tillerson "is wasting his time trying to negotiate with Little Rocket Man."⁴⁶ And in December, the White House issued a statement distancing itself from Tillerson's initial offer to meet with North Korea "without precondition," saying: "The President's views on North Korea have not changed."⁴⁷

GENERAL INTERNATIONAL AND U.S. FOREIGN RELATIONS LAW

United States Lifts Economic Sanctions on Sudan

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Effective October 12, 2017, the United States lifted a number of long-standing sanctions on Sudan. This decision reflects the U.S. view that Sudan has made "sustained positive actions" with respect to ongoing conflicts, humanitarian access, and cooperation with the United States.¹

The sanctions on Sudan began in 1997. In Executive Order 13,067, President Clinton stated:

[T]he policies and actions of the Government of Sudan, including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States²

This order blocked the Sudanese government from retrieving any of its property in the United States and largely prohibited the trade of goods and other transactions between Sudan and the United States.³

In April 2006, President George W. Bush issued Executive Order 13,400 to expand the sanctions imposed by Clinton due to "the persistence of violence in Sudan's Darfur region."⁴ This action came just over a year after Resolution 1591 of the UN Security Council, which imposed targeted sanctions on individuals who contributed in various ways to the conflict in

⁴⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 1, 2017, 7:30 AM), at <https://twitter.com/realDonaldTrump/status/914497877543735296>.

⁴⁷ Adam Taylor, *3 Big Questions About North Korea and No-Precondition Talks*, WASH. POST (Dec. 13, 2017), at https://www.washingtonpost.com/news/worldviews/wp/2017/12/13/3-big-questions-about-north-korea-and-no-precondition-talks/?utm_term=.90926c0bd714.

¹ U.S. Dep't of State Press Release, *Sanctions Revoked Following Sustained Positive Action by the Government of Sudan* (Oct. 6, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/10/274659.htm> [<https://perma.cc/YU73-S3R8>] [hereinafter Oct. 6 Press Release].

² Exec. Order No. 13,067, 62 Fed. Reg. 59,989 (Nov. 3, 1997) (generally citing the International Emergency Economic Powers Act and the National Emergencies Act as sources of presidential authority to impose sanctions).

³ *Id.*

⁴ Exec. Order No. 13,400, 71 Fed. Reg. 25,483 (Apr. 26, 2006).

Darfur.⁵ Executive Order 13,400 blocked persons whom the Secretary of the Treasury determined contributed in various ways to the conflict in Darfur from accessing property in the United States or under the control of U.S. persons.⁶ This order facilitated U.S. implementation of Resolution 1591.⁷

In October 2006, Bush issued Executive Order 13,412, which imposed still more U.S. sanctions on Sudan.⁸ This order noted “certain policies and actions of the Government of Sudan that violate human rights, in particular with respect to the conflict in Darfur.”⁹ Citing the Sudanese government’s “pervasive role” over the petroleum and petrochemical industries in Sudan, Bush prohibited most transactions between U.S. persons and these industries.¹⁰

On July 9, 2011, the United States recognized South Sudan as an independent sovereign after supporting its 2011 referendum on self-determination.¹¹ Starting in June 2016, the United States began a “high-level focused and hardnose diplomatic effort with Sudan.”¹²

On January 13, 2017, President Obama issued Executive Order 13,761, which conditionally provided for the future rollback of certain sanctions on Sudan in the following terms:

[T]he situation that gave rise to the actions taken in Executive Order 13067 of November 3, 1997, and Executive Order 13412 of October 13, 2006, relating to the policies and actions of the Government of Sudan has been altered by Sudan’s positive actions over the past 6 months. These actions include a marked reduction in offensive military hostilities in conflict areas in Sudan and steps towards the improvement of humanitarian access throughout Sudan, as well as cooperation with the United States on addressing regional conflicts and the threat of terrorism.¹³

The order specified that if those actions were sustained over the next six months, then Executive Order 13,412 and much of Executive Order 13,067 would be revoked effective July 12, 2017.¹⁴

⁵ S.C. Res. 1591 (Mar. 29, 2005) (creating a committee authorized to impose targeted sanctions on individuals who contributed in various ways to the conflict in Darfur and applying a Darfur-related arms embargo to the Sudanese government). A second resolution, from which the United States abstained, referred the situation in Darfur to the International Criminal Court. S.C. Res. 1593 (Mar. 31, 2005).

⁶ Exec. Order No. 13,400, 71 Fed. Reg. at 25,483–84.

⁷ See *id.* (referencing Resolution 1591 and identifying as one source of authority the United Nations Participation Act, which authorizes the president to implement Security Council resolutions).

⁸ Exec. Order No. 13,412, 71 Fed. Reg. 61,369 (Oct. 13, 2006).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See U.S. Dep’t of State, Bureau of African Affairs Fact Sheet, U.S. Relations with South Sudan (Oct. 26, 2017), at <https://www.state.gov/r/pa/ei/bgn/171718.htm> [<https://perma.cc/4HXG-STBM>]. On September 6, 2017, the U.S. Treasury Department placed targeted sanctions on two South Sudanese government officials, Malek Reuben Riak Rengu and Michael Makuei Lueth, and one former official, Paul Malong Awan, for contributing to the current crisis in South Sudan. U.S. Dep’t of State Press Release, Treasury Announces Targeted Sanctions on South Sudanese Officials and Companies (Sept. 6, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/09/273836.htm> [<https://perma.cc/YE29-A32Q>].

¹² U.S. Dep’t of State Press Release, Special Briefing, Senior Administration Officials on Sudan Sanctions (Oct. 6, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/10/274678.htm> [<https://perma.cc/MU2B-94KY>]. Sudan remains under the leadership of Omar al-Bashir, the subject of two arrest warrants from the International Criminal Court. See *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-95, Warrant of Arrest (Mar. 4, 2009); *Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09-95, Second Warrant of Arrest (July 12, 2012).

¹³ Exec. Order No. 13,761, 82 Fed. Reg. 5331 (Jan. 13, 2017).

¹⁴ *Id.*

This executive order was issued just before Obama left office. Almost immediately upon taking office, President Trump included Sudan on a list of Muslim-majority countries whose citizens were subject to a travel ban.¹⁵ Yet rather than reversing Obama's approach with respect to sanctions, on July 11, 2017, President Trump simply extended the review period provided for in Executive Order 13,761 for a further three months.¹⁶ Thereafter, on September 24, 2017, Trump issued a revised travel ban that no longer listed Sudan as a country whose citizens were subject to this ban.¹⁷

In early October 2017, the Trump Administration announced its decision to roll back the sanctions on Sudan consistent with the approach set forth by Obama in Executive Order 13,761.¹⁸ Executive Order 13,412 from the George W. Bush era was thus revoked, as were the portions of Clinton's Executive Order 13,067 that had blocked the Sudanese government from accessing property in the United States and had barred U.S. persons from entering into transactions with the Sudanese government.¹⁹ The press release announcing the sanctions relief highlighted that the government of Sudan is "serious about cooperating with the United States."²⁰

In a report accompanying the announcement of sanctions relief, the U.S. Secretary of State described Sudan's progress in five key areas:

- 1) maintaining a cessation of hostilities (COH) in Darfur, the Two Areas of South Kordofan and Blue Nile states; 2) improving humanitarian access throughout Sudan; and maintaining its cooperation with the United States on: 3) the conflict in South Sudan; 4) countering the Lord's Resistance Army; and 5) addressing the threat of terrorism.²¹

The report concluded with the statement that the Trump administration had also used its "expanded bilateral relationship to engage [the Sudanese government] to fully implement all UN Security Council resolutions on North Korea, a critically important issue for U.S. national security."²²

Despite these developments, U.S. relations with Sudan remain far from fully normalized. Sudan remains on the U.S. list of state sponsors of terrorism, which triggers various restrictions on U.S. foreign assistance and defense exports.²³ Furthermore, the October 2017 revocation of sanctions did not terminate the national emergency declared with respect to Sudan under Executive Order 13,067 and also left in place Executive Order 13,400, which facilitates the implementation of Security Council Resolution 1591. In addition, the Trump

¹⁵ Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

¹⁶ Exec. Order No. 13,804, 82 Fed. Reg. 32,611 (July, 11 2017).

¹⁷ Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

¹⁸ U.S. Dep't of State Press Release, Notice Regarding Positive Actions by the Government of Sudan, 82 Fed. Reg. 47,287 (Oct. 4, 2017).

¹⁹ See U.S. Dep't of Treasury, Sanctions Action Pursuant to Executive Order 13,067 and Executive Order 13,412, 82 Fed. Reg. 49,698 (Oct. 26, 2017).

²⁰ Oct. 6 Press Release, *supra* note 1.

²¹ U.S. Dep't of State, Bureau of African Affairs Press Release, The Secretary's Report on Whether the Government of Sudan Has Sustained the Positive Actions That Gave Rise to E.O. 13761 (Oct. 12, 2017), at <https://www.state.gov/p/af/rls/2017/274667.htm> [<https://perma.cc/TSG7-ZA8V>].

²² *Id.*

²³ *Id.*

administration's revocation of sanctions came with a warning that "the United States is prepared to use additional tools to apply pressure if the Government of Sudan regresses on progress to date . . . or takes negative actions on other areas of concern."²⁴

GENERAL INTERNATIONAL AND U.S. FOREIGN RELATIONS LAW

United States Imposes Broad Economic Sanctions on Venezuela After Constitutional Crisis

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On August 24, 2017, President Donald Trump signed Executive Order 13,808, imposing economic sanctions on Venezuela.¹ Trump issued the order not long after Venezuelan President Nicolás Maduro convened an election to assemble a new Constituent Assembly that would have the power to rewrite the Venezuelan constitution.² The sanctions prohibit U.S. individuals and entities from dealing in most transactions in new debt and equity with the government of Venezuela and its state-owned oil company, Petroleos de Venezuela, S.A. (PdVSA),³ but do not prohibit the import of Venezuelan oil.⁴

According to the Trump administration, the sanctions were imposed "in light of recent actions and policies of the government of Venezuela."⁵ These included:

serious abuses of human rights and fundamental freedoms; responsibility for the deepening humanitarian crisis in Venezuela; establishment of an illegitimate Constituent Assembly, which has usurped the power of the democratically elected National Assembly and other branches of the Government of Venezuela; rampant public corruption; and ongoing repression and persecution of, and violence toward, the political opposition.⁶

²⁴ Oct. 6 Press Release, *supra* note 1.

¹ Exec. Order No. 13,808, 82 Fed. Reg. 41,155 (Aug. 24, 2017).

² Anthony Faiola, *With Low Turnout, Venezuela's Election Will Create What Opponents Call 'Puppet Congress,'* WASH. POST (July 31, 2017), at https://www.washingtonpost.com/world/the_americas/defying-international-calls-venezuela-holds-contentious-election/2017/07/30/be3cd614-7089-11e7-8c17-533c52b2f014_story.html?utm_term=.48f0e0ee4a07.

³ Exec. Order No. 13,808, *supra* note 1, at 41,155 (also prohibiting dividend payments to the government of Venezuela and related entities). The U.S. Department of the Treasury Office of Foreign Assets Control published four general licenses that would authorize certain transactions otherwise prohibited by the sanctions, including certain transactions involving the U.S. subsidiary of PdVSA—CITGO Holding, Inc.—and transactions related to the exportation of agriculture, food, and medicine. See U.S. Dep't of Treas. Press Release, *Issuance of Venezuela-Related Executive Order and Associated General Licenses* (Aug. 25, 2017), at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170825.aspx> [<https://perma.cc/ZD9T-NTKD>].

⁴ Clifford Krauss, *White House Raises Pressure on Venezuela with New Financial Sanctions*, N.Y. TIMES (Aug. 25, 2017), at <https://www.nytimes.com/2017/08/25/world/americas/venezuela-sanctions-maduro-trump.html> (noting that this "would almost certainly be a crippling step").

⁵ Exec. Order No. 13,808, *supra* note 1, at 41,155. In 2015, an earlier executive order by President Obama prohibited certain transactions with specific Venezuelan individuals and entities involved in the political crisis. See Exec. Order No. 13,692, 80 Fed. Reg. 12,747 (Mar. 8, 2015).

⁶ Exec. Order No. 13,808, *supra* note 1, at 41,155.