

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.

Maduro's decision on May 1, 2017 to convene a constituent assembly appears to have been the most direct catalyst.⁷ Under Venezuela's constitution, "[t]he original constituent power rests with the people of Venezuela. This power may be exercised by calling a National Constituent Assembly for the purpose of . . . drawing up a new Constitution."⁸ The constitution further provides that several actors possess the "initiative for calling a National Constituent Assembly," including the president, two-thirds of the National Assembly, and 15 percent of registered voters.⁹ Although Maduro called for a Constituent Assembly "to achieve the peace needed by the republic, defeat the fascist coup, and let the sovereign people impose peace, harmony and true national dialogue,"¹⁰ the opposition and critics considered that a new assembly would further weaken or even dissolve the opposition-dominated legislature, the National Assembly.¹¹ On July 16, more than 7 million Venezuelans overwhelmingly voted against support for the new assembly in a symbolic referendum organized by the opposition.¹² In response, Trump called for Maduro to cancel the elections, warning of U.S. sanctions otherwise:

Yesterday, the Venezuelan people again made clear that they stand for democracy, freedom, and rule of law. Yet their strong and courageous actions continue to be ignored by a bad leader who dreams of becoming a dictator. The United States will not stand by as Venezuela crumbles. If the Maduro regime imposes its Constituent Assembly on July 30, the United States will take strong and swift economic actions.¹³

On July 30, elections were held to convene the new Constituent Assembly. The opposition did not provide any candidates for the Constituent Assembly and boycotted the election.¹⁴ Throughout the day, violence erupted around the country as government forces clashed with demonstrators.¹⁵ Even though opinion polls indicated that only 15 percent of registered voters planned to vote, the official turnout provided that over 8 million, or 42 percent of

⁷ *Venezuela's President Maduro Calls for New Constituent Body*, BBC (May 2, 2017), at <http://www.bbc.com/news/world-latin-america-39775092>.

⁸ VENEZUELA (BOLIVARIAN REPUBLIC OF) CONSTITUTION OF 1999 WITH AMENDMENTS THROUGH 2009, Art. 347 (trans.), available at https://www.constituteproject.org/constitution/Venezuela_2009.pdf. This and other provisions relating to the Constituent Assembly were added to the constitution in 1999 during the presidency of Maduro's predecessor, Hugo Chávez. See William Partlett, *Hugo Chavez's Constitutional Legacy*, BROOKINGS INST. (Mar. 14, 2013), at <https://www.brookings.edu/opinions/hugo-chavez-constitutional-legacy>.

⁹ *Id.* Art. 348.

¹⁰ *Venezuelan President Maduro Calls for New Constitution Amid Further Clashes*, GUARDIAN (May 1, 2017), at <https://www.theguardian.com/world/2017/may/01/venezuelan-president-nicolas-maduro-police-protests>.

¹¹ Jennifer L. McCoy, *Venezuela's Controversial New Constituent Assembly, Explained*, WASH. POST (Aug. 1, 2017), at https://www.washingtonpost.com/news/monkey-cage/wp/2017/08/01/venezuelas-dubious-new-constituent-assembly-explained/?utm_term=.181f299f8d62.

¹² Julia Jones & Stefano Pozzebon, *Venezuelans Reject Constitutional Rewrite in Non-binding Referendum* (July 17, 2017), at <http://www.cnn.com/2017/07/17/americas/venezuela-referendum-votes/index.html>.

¹³ Donald J. Trump, Statement on the Situation in Venezuela, 2017 DAILY COMP. PRES. DOC. 1 (July 17, 2017).

¹⁴ *What Has Venezuela's Constituent Assembly Achieved?*, BBC (Aug. 30, 2017), at <http://www.bbc.com/news/world-latin-america-41094889>.

¹⁵ Nicholas Casey, Patricia Torres & Vanessa Herrero, *Venezuela Vote Marred by Violence, Including Candidate's Death*, N.Y. TIMES (July 30, 2017), at <https://www.nytimes.com/2017/07/30/world/americas/venezuela-constituent-assembly-election.html>.

registered voters, had voted.¹⁶ A software company involved in the voting process later announced that the figures had been manipulated.¹⁷ In the end, the majority of the members elected to new Constituent Assembly were pro-government.¹⁸

Reinforcing the concerns raised earlier by Trump, the U.S. State Department condemned the elections:

The United States stands by the people of Venezuela, and their constitutional representatives, in their quest to restore their country to a full and prosperous democracy. We will continue to take strong and swift actions against the architects of authoritarianism in Venezuela, including those who participate in the National Constituent Assembly as a result of today's flawed election.¹⁹

In addition, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) imposed sanctions on Maduro himself.²⁰ It was less than a month after these elections that Trump issued Executive Order 13,808.²¹

Since the issuance of that order and pursuant to it, additional U.S. sanctions have been imposed in the wake of regional elections for governorships in all twenty-three states of Venezuela on October 15, 2017.²² Opinion polls had predicted that the opposition would win many of the elections, yet Maduro's governing party won seventeen of the governorships.²³ Once again, considerable irregularities were identified in the voting process,²⁴ and once again, the State Department condemned the election results.²⁵ OFAC thereupon imposed sanctions on an additional ten Venezuelan government officials, including those associated with "undermining electoral processes."²⁶

¹⁶ McCoy, *supra* note 11.

¹⁷ Nicholas Casey, *Venezuela Reported False Election Turnout, Voting Company Says*, N.Y. TIMES (Aug. 2, 2017), at <https://www.nytimes.com/2017/08/02/world/americas/venezuela-election-turnout.html>.

¹⁸ Mariana Zuñiga & Anthony Faiola, *Venezuela Ushers in New Pro-government Chamber as Opposition Struggles to Regroup*, WASH. POST (Aug. 4, 2017), at https://www.washingtonpost.com/world/the_americas/venezuela-ushers-in-new-pro-government-chamber-as-opposition-vows-rebellion/2017/08/04/9c0c71e2-7883-11e7-8c17-533c52b2f014_story.html?utm_term=.c88a3fe9a129.

¹⁹ U.S. Dep't of State Press Release, *Defending Democracy in Venezuela* (July 30, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/07/272940.htm> [<https://perma.cc/V7EG-3XQS>].

²⁰ U.S. Dep't of Treas. Press Release, *Treasury Sanctions the President of Venezuela* (July 31, 2017), at <https://www.treasury.gov/press-center/press-releases/Pages/sm0137.aspx> [<https://perma.cc/3TRV-8HUA>].

²¹ Exec. Order No. 13,808, *supra* note 1.

²² Olga Onuch & Jeanmiguel Uva, *Venezuela's Latest Elections Are Likely to Trigger a Regional Migration Crisis*, WASH. POST (Oct. 19, 2017), at https://www.washingtonpost.com/news/monkey-cage/wp/2017/10/19/venezuelas-latest-elections-are-likely-to-trigger-a-regional-migration-crisis/?utm_term=.562a5bf010a3.

²³ *Id.*

²⁴ Rachelle Krygier & Anthony Faiola, *Overwhelmingly Defeated Opposition Decries 'Illegals' in Venezuela Vote*, WASH. POST (Oct. 16, 2017), at https://www.washingtonpost.com/world/the_americas/opposition-decries-illegals-as-venezuelans-go-to-the-polls/2017/10/15/361ba690-b12d-11e7-9e58-e6288544af98_story.html?utm_term=.438b54c5a3aa (describing the relocation of voting sites in opposition districts and other difficulties targeting the opposition).

²⁵ U.S. Dep't of State Press Release, *Gubernatorial Elections in Venezuela* (Oct. 16, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/10/274833.htm> [<https://perma.cc/7M5C-Y7Q7>].

²⁶ U.S. Dep't of Treas. Press Release, *Treasury Sanctions Ten Venezuelan Government Officials* (Nov. 9, 2017), at <https://www.treasury.gov/press-center/press-releases/Pages/sm0214.aspx> [<https://perma.cc/PSK7-Y9M6>].

Thus far, in response to the continuing political situation in Venezuela, the United States has relied mostly on economic sanctions. Nonetheless, the Trump administration has signaled its displeasure with the Maduro regime in other ways during the summer and fall of 2017. In August, President Trump stated that he would not “rule out a military option” with respect to Venezuela.²⁷ When asked about this statement, U.S. National Security Advisor H. R. McMaster remarked that “[i]n terms of military options or other options, there’s no such thing really anymore as only a military option, or a diplomatic option, or an economic option. We try to integrate all elements together.”²⁸ McMaster stated that “obviously, any decision would be in conjunction with our partners in the region, and no military actions are anticipated in the near future.”²⁹ In September, the Trump administration placed restrictions on certain Venezuelan officials traveling to the United States in its third iteration of the travel ban.³⁰ The proclamation imposing the ban described the government of Venezuela as “uncooperative” in sharing public safety information.³¹

The United States has also raised concerns about Venezuela at the United Nations. In his address to the United Nations General Assembly in September, Trump stated,

The socialist dictatorship of Nicolás Maduro has inflicted terrible pain and suffering on the good people of [Venezuela]. . . . As a responsible neighbor and friend, we and all others have a goal. That goal is to help them regain their freedom, recover their country, and restore their democracy.³²

When the United States organized an informal UN Security Council meeting on Venezuela in November, ambassadors from Russia, China, Egypt, and Bolivia chose not to attend, stating that the Council should not interfere in Venezuela’s domestic affairs.³³ Nonetheless, the United States has not been the only country to impose sanctions on Venezuela. In November 2017, for example, the European Union imposed an arms embargo and set in place a framework for additional sanctions.³⁴

²⁷ Donald J. Trump, Remarks Following a Meeting with Secretary of State Rex W. Tillerson et al., 2017 DAILY COMP. PRES. DOC. 5 (Aug. 11, 2017).

²⁸ White House Press Release, Press Briefing by Press Secretary Sarah Sanders et al. (Aug. 25, 2017), at <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-et-al-082517> [<https://perma.cc/G8PC-PYRQ>].

²⁹ *Id.*

³⁰ Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

³¹ *Id.* at 45,166. Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 109 (2018).

³² Donald J. Trump, Remarks to the United Nations General Assembly in New York City, 2017 DAILY COMP. PRES. DOC. 3 (Sept. 19, 2017).

³³ Michelle Nichols, *Russia, China, Others Boycott U.S. Meeting at U.N. on Venezuela*, REUTERS (Nov. 14, 2017), at <https://www.reuters.com/article/us-venezuela-politics-un/russia-china-others-boycott-u-s-meeting-at-u-n-on-venezuela-idUSKBN1DE056>.

³⁴ Council of the European Union Press Release, *Venezuela: EU Adopts Conclusions and Targeted Sanctions* (Nov. 13, 2017), at <http://consilium.europa.eu/en/press/press-releases/2017/11/13/venezuela-eu-adopts-conclusions-and-targeted-sanctions>.