



# Sanctions, Peacemaking and Reform: Recommendations for U.S. Policymakers

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*Preventing War. Shaping Peace.*

## Table of Contents

Executive Summary.....	i
I. Introduction .....	1
II. The View from Washington: Why the U.S. Uses Sanctions.....	4
A. An Evolving Tool.....	4
B. Four Key Purposes .....	8
1. Restricting resources.....	9
2. Addressing abuses .....	10
3. Changing the cost-benefit calculations of conflict parties .....	11
4. Pushing negotiations forward .....	13
III. Practitioner Perspectives: The Darker Side of Sanctions .....	15
A. Inhibiting Peace Processes and Post-conflict Recovery .....	15
B. Constraining Peace Organisations.....	17
C. Undercutting Negotiations .....	22
D. Entrenching Divisions .....	24
IV. Three Cross-cutting Challenges .....	29
A. Intractability .....	29
B. No Impact Assessments.....	31
C. An Increasingly Complex Sanctions Landscape.....	32
V. Mitigating Consequences, Seizing Opportunities .....	35
A. Clear Policy Objectives.....	35
B. Regular and Meaningful Reviews .....	35
C. Expanded Sanctions Carveouts .....	37
D. Private-sector Confidence.....	38
VI. Conclusion .....	41
APPENDICES	
A. Sanctions Authorities .....	42
B. About the International Crisis Group .....	43
C. Crisis Group Reports and Briefings on the United States since 2020.....	44
D. Crisis Group Board of Trustees .....	45

# Principal Findings

**What's new?** Sanctions have become an increasingly prominent tool of U.S. statecraft. As the use of sanctions has increased, so, too, has awareness of their collateral effects. The U.S. government has adopted new policies to mitigate the problems sanctions can cause. While important, these reforms are incomplete.

**Why does it matter?** While the U.S. looks to sanctions to further its goals in numerous conflicts, sanctions also sometimes obstruct peacemaking – that is, activities in the service of violence prevention and conflict resolution. The more Washington uses sanctions, the more far-reaching the downsides are and the more pressing it is to address them.

**What should be done?** The U.S. government should better align sanctions policy with peacemaking efforts. It could do so by setting clear objectives for sanctions programs, subjecting them to rigorous periodic review, expanding and making permanent carveouts for peace activities, and addressing private-sector concerns about investment in previously sanctioned jurisdictions.

## *Executive Summary*

The U.S. is using sanctions with greater frequency than ever before. Sanctions are an increasingly prominent tool of U.S. policy in matters of war and peace – whether used to constrain conflict actors’ resources, address their abuses, change their cost-benefit calculations or advance negotiations. Yet sanctions sometimes hinder conflict resolution efforts. They can inhibit peace processes and post-conflict recovery, constrain peace organisations, undercut negotiations and entrench divisions between conflict parties. These downsides are a function of U.S. sanctions’ intractability and increasing complexity, as well as the lack of protocols for assessing their impact. The U.S. has taken steps in recent years toward reforming sanctions practices, but gaps remain when it comes to addressing the negative effects of sanctions on peace efforts. To address these shortfalls, Washington should set clear objectives when imposing sanctions; conduct regular, meaningful reviews of their effects; expand sanctions carveouts for peacemaking; and bolster private-sector confidence in investing in previously or partially sanctioned jurisdictions.

Washington’s use of economic sanctions expanded greatly following the Cold War, intensifying again in the early and mid-2000s following the attacks of 11 September 2001. While the U.S. generally preferred to impose sanctions multilaterally (ideally within a framework created by the UN Security Council), it sometimes proceeded unilaterally. The centrality of the U.S. financial system and the U.S. dollar in global finance and trade gave Washington’s sanctions unique reach and leverage. Innovations in sanctions practice allowed policymakers more precision in applying them.

Against this backdrop, the use of sanctions ballooned. Washington looked to sanctions to pursue its struggles with foes such as North Korea, Iran and antagonists in the war on terror, as well as to press other agendas in the peace and security realm. It relied on sanctions to restrict conflict parties’ ability to acquire and use weapons and resources, hold them accountable for corruption and human rights abuses, raise the cost of destabilising behaviour, and encourage negotiations. U.S. policymakers tended to view sanctions as a low-risk tool – especially compared with military options – and some saw it as a release valve that helped reduce the pressure to resort to force.

As U.S. sanctions proliferated, however, so did concerns about their collateral effects. In the realm of conflict resolution, practitioners – including scholars, members of civil society and U.S. officials – saw evidence of sanctions compromising peace efforts. They sometimes undercut peace negotiations, particularly when conflict parties came to doubt that the U.S. would ever reverse them. They could prove stubbornly intractable, even after conflicts came to an end, and cast a shadow over political transitions, humanitarian operations and stabilisation efforts. They complicated the work of organisations trying to reconcile populations divided by conflict and help former belligerents find their footing in the post-conflict order. The U.S. Treasury authorised the activities of these organisations in certain cases, but these permissions did not fully set things right, in part because its licensing powers did not reach the full range of U.S. sanctions. Also, even when legal constraints were addressed, private companies and NGOs worried about reputational risks and compliance costs.

The reasons why sanctions pose obstacles to peace efforts are multi-faceted, but three main problems stand out. First, U.S. sanctions are sticky: they are hard to change, ease or lift because of domestic politics and bureaucratic inertia. In particular, the political pressures surrounding decisions to ease or rescind sanctions mean that presidents may be loath to incur the costs that such decisions may entail, including fear of alienating members of Congress whose support they need to advance other priorities. Secondly, Washington has no system for comprehensively assessing sanctions' harms or effectiveness – and thus the U.S. cannot gauge whether they are helping or hurting efforts to achieve the peace and security goals in whose name they have been launched. Thirdly, as sanctions have proliferated, they have become increasingly complex, making them hard to disentangle or reform. Sanctions have become less likely to sway conflict parties, who have no faith that the penalties will be lifted – or the effects alleviated – if they make concessions.

The Biden administration has taken landmark steps to address some of these problems. It commissioned a review of U.S. sanctions policy; co-sponsored a resolution at the UN Security Council to create a carveout for humanitarian activities in some Council sanctions; and through the Treasury Department issued general licences that implemented and expanded on these carveouts – broadening them to cover peacebuilding, conflict resolution and conflict prevention activities in a raft of sanctions programs. But despite these positive steps, the reforms remain incomplete. Meanwhile, the Biden administration shows no sign of taking its foot off the gas when it comes to imposing new sanctions. It has designated far more targets than its predecessors, and massive sanctions form a major part of its response to Russia's all-out invasion of Ukraine.

Economic sanctions remain an important tool of U.S. foreign policy – one that Crisis Group has supported in many instances (including the Ukraine crisis) – but they are also a highly imperfect instrument that requires further adaptation. More work should be done to understand and mitigate the negative effects that sanctions can have on peacemaking. In particular, the U.S. government should:

- ❑ Make it a practice to more precisely clarify which foreign policy objectives sanctions are intended to achieve, what behaviour prompted the sanctions and what targets can do to be considered for removal from the sanctions list. Doing so would bolster Washington's ability to use sanctions as leverage over conflict parties, including during negotiations, in turn allowing officials to use them more effectively as part of conflict resolution and mitigation strategies.
- ❑ Institute systems for meaningfully reviewing sanctions' performance, including their impact on peacemaking, and recalibrating them as needed. Reviews, informed by clearly defined objectives, would afford policymakers an opportunity to gauge whether sanctions are achieving their goals, so that they have a better sense of when to adjust or wind them down.
- ❑ Expand sanctions carveouts and codify them in legislation so that peacemaking activities are comprehensively and permanently permitted. Doing so will facilitate the work of peace organisations in conflict-affected countries.

- Better address private sector reluctance to pursue licensed or otherwise permitted transactions in sanctioned or previously sanctioned countries. This may require the U.S. to conduct deeper outreach and provide stronger assurances to private sector actors so that they are comfortable pursuing authorised activities, and to offer greater support for economic regeneration in previously sanctioned countries.

After decades of relying on sanctions, U.S. policymakers have shown an important interest in the reforms that will make them more effective while managing their downsides. But much more needs to be done. Serious measures to modify the way sanctions are assessed, calibrated and removed – and their after-effects addressed – will be needed in order to put this powerful tool to best use in the service of peace and security.

**Washington/Brussels, 28 August 2023**

# Sanctions, Peacemaking and Reform: Recommendations for U.S. Policymakers

## I. Introduction

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Today, sanctions are an integral part of Washington's foreign policy toolkit, used in more settings and at a higher frequency than ever before.<sup>1</sup> The U.S. looks to sanctions to help it achieve its national security goals in numerous conflicts, and it employs them to shape the behaviour of states, armed groups, companies and individuals around the world.<sup>2</sup> Today, U.S. sanctions are used to address, among other things, human rights violations, corruption, attempts to undermine democracy, peace process spoiling, drug trafficking, illicit trade in natural resources, piracy, weapons proliferation and a dizzying array of other conduct. Sometimes, sanctions programs are intended to serve multiple aims, which evolve over time, and in many cases individuals, entities and organisations can be sanctioned for more than one reason.<sup>3</sup> While sanctions can be useful in certain circumstances, they have downsides, too, with particular implications for peace and security.

As the use of sanctions has increased, U.S. officials have grown more aware of their costs and taken steps to mitigate them. These include a recent review conducted by the U.S. Treasury Department, which articulated a framework to guide future policy, and an uptick in the issuance of licences and guidance documents aimed at mitigating sanctions' adverse effects.<sup>4</sup> Notably, at the end of 2022, the U.S. championed a landmark UN Security Council resolution that established a humanitarian carveout from certain Council sanctions. Soon thereafter, the U.S. Treasury promulgated a series of general licences that not only implemented the Council's humanitarian carveout in Treasury-administered sanctions programs but also authorised carveouts from those programs

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<sup>1</sup> In U.S. foreign policy, the term "sanctions" refers to a wide range of economic and non-economic measures that penalise specified individuals, entities or countries for actions that the U.S. wishes to discourage. Sanctions that apply to individuals and business entities include financial restrictions; prohibitions on certain transactions with designated entities; the freezing of assets under U.S. jurisdiction; and non-economic penalties such as visa bans. Sanctions that apply to foreign states may include trade or arms embargoes; restrictions on exports or imports; denial of foreign assistance, loans and investments (including through directed voting at multilateral financial institutions); and other measures. The violation of sanctions can result in severe civil and criminal penalties for U.S. persons or persons who fall under U.S. jurisdiction. This report uses "sanctions" primarily to refer to economic measures. For a discussion of the major legal frameworks within which sanctions are applied, see Appendix A.

<sup>2</sup> U.S. sanctions are often authorised by presidential executive orders addressing activities that threaten the peace, security or stability of a particular country. U.S. sanctions programs in the Democratic Republic of Congo, South Sudan and Yemen are examples. "Sanctions Programs and Country Information", Office of Foreign Assets Control, U.S. Department of Treasury.

<sup>3</sup> Crisis Group interviews, current and former U.S. government officials, December 2021–February 2023.

<sup>4</sup> The Treasury 2021 Sanctions Review", U.S. Treasury, October 2021.

for peacebuilding, conflict resolution and conflict prevention activities.<sup>5</sup> Yet with U.S. sanctions policy seemingly on a one-way track toward greater use, there is more to be done in understanding and alleviating the effects that sanctions have on U.S. and other peacemaking efforts.<sup>6</sup>

This report seeks to map the growth of sanctions as a U.S. policy tool in the peace and security realm since the end of the Cold War, as well as to offer suggestions for managing their negative effects. It first explores the main goals of U.S. officials applying sanctions in conflicts and then outlines the primary ways in which experts and practitioners see sanctions as backfiring in those settings.

This report does not seek to reprise the full sweep of arguments attacking and defending the legitimacy and effectiveness of sanctions, which are set forth in an extensive literature.<sup>7</sup> Rather it seeks to chronicle their impact on peace and security efforts – both positive and negative – drawing from Crisis Group’s interviews with officials and experts who either found sanctions useful to their work or found their work impeded by them. Giving weight to both perspectives, the report offers recommendations for how the United States and its partners might begin to construct a more tailored sanctions policy that better manages the costs and risks of the sanctions tool as they relate to peacemaking.

The report is based on hundreds of interviews with current and former U.S. officials, diplomats, practitioners, experts, civil society representatives, conflict parties, lawyers, financial service providers and others from February 2020 to August 2023. Interviews

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<sup>5</sup> “Treasury Implements Historic Humanitarian Sanctions Exemptions”, press release, U.S. Treasury Department, 20 December 2022. “UN Security Council Adopts Resolution Establishing Humanitarian Carveout across UN Sanctions Regimes”, press statement, U.S. Secretary of State Antony J. Blinken, 9 December 2022.

<sup>6</sup> This report refers extensively to peacemaking, which it defines as activities in the service of violence prevention and conflict resolution. Falling under this expansive definition are grassroots efforts to address the root causes of conflict; high-level initiatives to negotiate peace agreements; and efforts by the U.S. and other governments, institutions and actors to shore up peace and security at the local, national and global levels.

<sup>7</sup> Many dozens of studies exist on the effectiveness and collateral costs of sanctions. They include Esfandiyar Batmanghelidj and Erica Moret, “The Hidden Toll of Sanctions”, *Foreign Affairs*, 17 January 2022; Justyna Gudzowska and John Prendergast, “Can Sanctions be Smart? The Costs and Benefits of Economic Coercion”, *Foreign Affairs* (March-April 2022); Daniel Drezner, “How Not to Sanction”, *International Affairs*, vol. 98, no. 5 (September 2022); Agathe Demarias, *Backfire* (New York, 2022); “Detrimental Impacts: How Counter-Terror Measures Impede Humanitarian Action”, InterAction, April 2021; Thomas Biersteker, Sue Eckert and Marcos Tourinho, eds., *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge, 2016); Elizabeth Rosenberg, Zachary K. Goldman, Daniel Drezner and Julia Solomon-Strauss, “The New Tools of Economic Warfare: Effects and Effectiveness of Contemporary U.S. Financial Sanctions”, Center for a New American Security, 2016; Kate Mackintosh and Patrick Duplat, “Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action”, Norwegian Refugee Council/UN Office of Humanitarian Affairs, July 2013; Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice”, *International Studies Review*, vol. 13, no. 1 (2011); Dursun Peksen, “Economic Sanctions and Human Security: The Public Health Effect of Economic Sanctions”, *Foreign Policy Analysis*, vol. 7, no. 3 (2011); Joy Gordon, “Smart Sanctions Revisited”, *Ethics and International Affairs*, vol. 25, no. 3 (2011); David Cortright and George Lopez (eds.), *Smart Sanctions: Targeting Economic Statecraft* (New York, 2002); and Robert Pape, “Why Economic Sanctions Do Not Work”, *International Security*, vol. 22, no. 2 (Fall 1997).



were conducted in Ankara, Bogotá, Brussels, Caracas, Dubai, Geneva, Harare, Idlib, Istanbul, Kabul, Kinshasa, London, Mogadishu, New York, Tripoli, Tunis, Washington and elsewhere. The report also draws upon Crisis Group's prior writings that discuss the application of U.S. and multilateral sanctions amid armed conflicts or in the furtherance of conflict prevention.<sup>8</sup>

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<sup>8</sup> Crisis Group has recommended and continues to support the use of sanctions in circumstances where analysis suggests that they may push conflict parties to take constructive action. By contrast, Crisis Group has discouraged sanctions in situations where costs would likely outweigh benefits. Recent writings that discuss the application of sanctions in conflict settings include: Crisis Group Middle East Report N°234, *Syria: Ruling over Aleppo's Ruins*, 9 May 2022; Crisis Group Asia Briefing N°171, *Resisting the Resistance: Myanmar's Pro-military Pyusawhti Militias*, 6 April 2022; Crisis Group Statement, "Avoiding an Even Worse Catastrophe in Ukraine", 18 March 2022; Crisis Group Latin America Report N°93, *Overcoming the Global Rift on Venezuela*, 17 February 2022; Crisis Group Middle East Report N°230, *The Iran Nuclear Deal at Six: Now or Never*, 17 January 2022; Crisis Group Europe Briefing N°92, *Responding to Russia's New Military Buildup Near Ukraine*, 8 December 2021; Crisis Group Asia Report N°317, *Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe*, 6 December 2021; Crisis Group Middle East Report N°228, *Managing Lebanon's Compounding Crises*, 28 October 2021; Crisis Group Statement, "The U.S. Should Reverse Its Huthi Terror Designation", 13 January 2021; Crisis Group Africa Report N°305, *Oil or Nothing: Dealing with South Sudan's Bleeding Finances*, 6 October 2021; Crisis Group Africa Report N°281, *Safe-guarding Sudan's Revolution*, 21 October 2019; Crisis Group Africa Report N°278, *Running Out of Options in Burundi*, 20 June 2019; and Crisis Group Africa Report N°267, *Drug Trafficking, Violence and Politics in Northern Mali*, 13 December 2018.

## II. The View from Washington: Why the U.S. Uses Sanctions

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Washington's use of sanctions has grown dramatically since the collapse of the Soviet Union. While East-West tensions kept the UN Security Council from agreeing to more than a handful of multilateral sanctions regimes during the Cold War, that changed once it ended. Sanctions became a prominent multilateral tool for managing peace and security issues around the world in the 1990s, and the U.S. and others ramped them up following the attacks of 11 September 2001, including as a means of countering al-Qaeda and other terrorist organisations. Although the U.S. preferred to apply sanctions through multilateral structures, it sometimes levied them unilaterally or with select partners, especially after growing major-power rivalry diminished cooperation at the Security Council. At present, U.S. reliance on sanctions is only increasing. Sanctions have been a cornerstone of the Western response to Russia's all-out invasion of Ukraine and a key component of U.S. national security efforts elsewhere.

### A. *An Evolving Tool*

Legal and practical changes over the course of the last century made the expanded use of sanctions possible. The UN Charter adopted in 1945 reformed the international legal system, enabling the UN Security Council to mandate sanctions that might previously have been understood as a violation of neutrality and an act of war.<sup>9</sup> While divisions among the veto-wielding members of the Security Council chilled the use of sanctions and other collective response tools for much of the Cold War, that changed with the collapse of the Soviet Union. The Cold War's end ushered in a period of relative cooperation among the major powers on addressing peace and security crises around the world. During the 1990s, the UN levied sanctions on Iraq, the former Yugoslavia, Libya, Liberia, Somalia, parts of Cambodia, Haiti, parts of Angola, Rwanda, Sudan, Sierra Leone and Afghanistan. Prior to this spate of actions, the UN had only applied sanctions twice, to Rhodesia and South Africa.<sup>10</sup>

Some of the sanctions imposed by the UN in the 1990s were narrow in scope, such as travel bans, while others were broad, consisting of comprehensive economic measures directed at entire countries. For example, the blanket sanctions on Iraq imposed in 1990 banned the import and export of all commodities and resources to or from the country. But reports of their devastating collateral impact on the civilian population, including spikes in hunger, malnutrition and disease, made policymakers wary

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<sup>9</sup> Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York, 2017). On the origins of modern economic sanctions, see Nicholas Mulder, *The Economic Weapon* (New Haven, 2022). There is a wide range of views on the legitimacy of sanctions as countermeasures for internationally wrongful acts and of the lawfulness of unilateral sanctions under international law. See Lori Fisler Damrosch, "The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts", *Berkeley Journal of International Law*, vol. 27, no. 2 (2019) and Charlotte Beaucillon (ed.), *Research Handbook on Unilateral and Extraterritorial Sanctions*, (2001).

<sup>10</sup> David Cortright and George Lopez, "Learning from the Sanctions Decade", Center for World Dialogue, 2000. The Council imposed on average one sanctions regime per year between 1990 and 2015. Since 2015, it has created only two new sanctions regimes: one for Mali (2017) and another for Haiti (2022).

of comprehensive sanctions and increasingly favourable to targeted (rather than jurisdiction-wide) measures.<sup>11</sup> These “smart” sanctions were designed to pressure select individuals and groups or to rein in specific activities while minimising damage to whole populations.<sup>12</sup>

These innovations galvanised policymakers to levy sanctions at a higher tempo at the beginning of the twenty-first century. In the wake of the 9/11 attacks, the U.S. pressed for a massive economic and financial response alongside its military efforts. It was a key proponent of applying sanctions under UN Security Council Resolution 1267 (1999) to al-Qaeda and Taliban members and affiliates, while also pioneering other tools intended to constrain financial and other support for terrorists and others posing threats at home or to U.S. interests abroad.<sup>13</sup>

Although the U.S. preferred to work multilaterally to maximise sanctions’ impact, it did not do so exclusively, and nor did it have to for its sanctions to bite. The U.S. dollar’s position both as the main currency of international trade and as a store of value, along with the central role of U.S. financial institutions in global commerce, gave Washington unique unilateral capacity to inflict pain on its adversaries with economic weapons. These advantages also helped the U.S. deter financial institutions, corporations and individuals in other countries from doing business with sanctions targets. The threat of being cut off from U.S. markets, and of large fines for violations, compelled compliance – and sometimes over-compliance – in the private sector.<sup>14</sup> In the late 2000s and early 2010s, the U.S. harnessed its financial dominance to restrict funds for North Korea’s nuclear activities and later to push Iran out of the global financial system, both times buttressing multilateral sanctions with even more robust unilateral measures.<sup>15</sup> Presidents most commonly used the International Emergency Economic Powers Act (IEEPA) to issue sanctions, but they also employed other legal authorities described in Appendix A.

As Washington’s militarised counter-terrorism and related counter-insurgency efforts known as the “global war on terror” continued into their second decade, policymakers became increasingly wary of the costs of heavy military engagements. But they still tended to view sanctions as a muscular but low-cost and low-risk means of crisis management. Some framed sanctions as an alternative to war: a way to demonstrate forcefulness without using actual force and perhaps something of a release valve

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<sup>11</sup> The uproar caused by then-UN Ambassador Madeleine Albright’s remarks in a 1996 interview, broadcast on the CBS News program “60 Minutes”, in which she said sanctions on Iraq were “worth it” despite the deaths of hundreds of thousands of Iraqi children, marked a turning point in perceptions of sanctions.

<sup>12</sup> See Drezner, “Sanctions Sometimes Smart”, op. cit.; Cortright and Lopez, *Smart Sanctions*, op. cit.; and Biersteker, Eckert and Tourinho, *Targeted Sanctions*, op. cit.

<sup>13</sup> In addition to economic sanctions, Washington stepped up its use of measures such as travel bans, visa restrictions, arms embargoes, political stigmatisation and criminal investigations as part of its post-9/11 counter-terrorism efforts. Juan Zarate, *Treasury’s War* (New York, 2013).

<sup>14</sup> Record billion-dollar settlements with major foreign banks demonstrated the high cost of compliance failures. Nate Raymond, “BNP Paribas sentenced in \$8.9 billion accord over sanctions violations”, Reuters, 1 May 2015.

<sup>15</sup> For background on Iran sanctions, first imposed in the 1980s, see Crisis Group Middle East Report N°138, *Spider Web: The Making and Unmaking of Iran Sanctions*, 25 February 2013.

when pressure to turn to the military was heightening.<sup>16</sup> Certain officials in the Obama administration worried about their overuse – expressing concerns that they sometimes masked under-developed foreign policies or insufficiently articulated strategies for achieving their stated objectives. Some also fretted that overusing sanctions could provoke a flight from the dollar as a reserve currency and medium of exchange. Yet this apprehension did not result in a trend toward sanctions restraint.<sup>17</sup>

Nor did such cautious instincts survive into the Trump administration. President Donald Trump launched “maximum pressure” campaigns that combined sabre rattling with sanctions to pursue non-proliferation and political goals in North Korea and Iran as well as to press for regime change in Venezuela. In some cases (Venezuela and North Korea), Trump’s White House worked with allies, and in others (Iran) against them, including by ramping up “secondary sanctions”, an especially aggressive sanctions approach that threatens non-U.S. parties with severe penalties if they engage in transactions with parties disfavoured by the U.S. – even if those transactions have no U.S. touchpoint whatsoever.<sup>18</sup> Secondary sanctions essentially force third parties to choose between trading with the U.S. or with parties it does not like.

The Trump White House was widely seen as using sanctions to curry favour with political constituencies, such as Venezuelan émigrés in the electorally significant state of Florida.<sup>19</sup> The Trump administration was also criticised for issuing sanctions without thinking through the foreign policy strategies they were meant to further and without evincing concern for the human costs.<sup>20</sup> For example, in the administration’s final weeks, it designated Yemen’s Huthi insurgents as a Foreign Terrorist Organization (FTO) – a move that Crisis Group and others criticised as unlikely to be effective as a means of pressuring the Huthis while almost certainly imperilling aid workers’ efforts to address one of the world’s worst humanitarian emergencies.<sup>21</sup> Washington insiders said the move was part of an attempt to score a political “win” – one embraced by Saudi officials close to the president’s team – before leaving office, while setting a course that the incoming Biden administration would find politically challenging to reverse.<sup>22</sup>

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<sup>16</sup> Crisis Group interviews, current and former U.S. officials, Washington, December 2021–August 2023. See also Natasha Turek, “US isn’t weaponizing the dollar; sanctions are the alternative to war, Mnuchin says”, CNBC, 15 December 2019.

<sup>17</sup> Crisis Group interview, former U.S. official, Washington, September 2022. See also Jackie Calmes, “Lew defends sanctions, but cautions on overuse”, *The New York Times*, 29 March 2016.

<sup>18</sup> Criticism of U.S. unilateral sanctions and assertions of what legal scholars called “exorbitant jurisdiction” intensified in this period. In 2018, the EU enacted blocking regulations that made it illegal for European companies to comply with certain U.S. sanctions against Iran and Cuba. Other states clarified that they would enforce UN and their own sanctions, but not unilateral U.S. sanctions, although private firms still felt compelled to comply with U.S. sanctions lest they be cut off from the international financial system. Crisis Group interviews, EU and other government officials and bank executives, Abu Dhabi, Ankara, Brussels, Dubai and New York, 2021–2023.

<sup>19</sup> See Gary Fineout, “Venezuelan crisis resonates loudly in battleground Florida”, PBS News, 3 February 2019; and Crisis Group Latin America Report N°86, *The Exile Effect: Venezuela’s Overseas Opposition and Social Media*, 24 February 2021.

<sup>20</sup> “‘Maximum Pressure’: US Economic Sanctions Harm Iranians’ Right to Health”, Human Rights Watch, October 2019.

<sup>21</sup> Crisis Group Statement, “The U.S. Should Reverse Its Huthi Terror Designation”, op. cit.

<sup>22</sup> Ibid.

Conscious of the Trump administration's heavy-handedness, and aware of increasing pushback against unilateral sanctions not only from rivals such as Russia and China but also from allies such as European Union members (especially with regard to Iran and Cuba sanctions), the Biden administration came into office prepared to consider changes in approach.<sup>23</sup> Some of Biden's changes reflected a desire to go in a different direction than Trump on matters of foreign policy. For example, in one of his first foreign policy acts in the White House, President Joe Biden reversed the Huthi FTO designation, which – in addition to addressing the listing's humanitarian and diplomatic fallout – was part of a broader reorientation of U.S. Yemen strategy.<sup>24</sup> The president also began negotiations to rejoin the 2015 Iran nuclear agreement, from which his predecessor had withdrawn, and considered scaling back sanctions in exchange for Iranian commitments.<sup>25</sup> Closer to home, he eased Venezuela sanctions and promised additional relief to sweeten the prospect of negotiations for Caracas.<sup>26</sup>

But the new administration also showed interest in taking a more measured approach to sanctions policy in general. President Biden appointed officials who had written extensively and sometimes critically on sanctions' effectiveness and reform to senior positions.<sup>27</sup> These new officials were familiar with the "best practice" considerations that outside experts had long espoused as key to sanctions' effectiveness. Broadly speaking, these include setting realistic expectations for what sanctions can achieve; ensuring that sanctions are part of a well-defined and communicated policy rather than an end in themselves; establishing clear requirements for sanctions easing so that targets have a motive to change their behaviour – and, relatedly, lifting sanctions when aims are achieved; imposing sanctions multilaterally where possible; and taking steps to mitigate their humanitarian and other collateral effects.<sup>28</sup> Indeed, several Biden appointees had led the research from which these guidelines emerged before joining government.<sup>29</sup>

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<sup>23</sup> Crisis Group interviews, current and former U.S. government officials, December 2021; February and December 2022. See also Peter Harrell, "Is the U.S. Using Sanctions Too Aggressively? The Steps that Washington Can Take to Avoid Overuse", *Foreign Affairs*, 11 September 2018; Jacob L. Lew and Richard Nephew, "The Use and Misuse of Economic Statecraft: How Washington is Abusing its Financial Might", November/December 2018; Demarais, *Backfire*, op. cit.

<sup>24</sup> "Revocation of the Terrorist Designations of Ansarallah", press statement, U.S. Secretary of State Antony J. Blinken, 12 February 2021; and Michael Wahid Hanna and Peter Salisbury, "The Shattering of Yemen: Why Ending the War is More Difficult Than Ever", *Foreign Affairs*, 19 August 2021.

<sup>25</sup> Crisis Group Middle East Briefing N°87, *Is Restoring the Iran Nuclear Deal Still Possible?*, 12 September 2022. The Biden administration also continued to impose targeted sanctions in response to Iranian government abuses, notably in response to the state's crackdown on members of the "Women! Life! Freedom!" protest movement.

<sup>26</sup> Crisis Group Commentary, "Venezuela: The Twilight of Maximum Pressure", 10 October 2022.

<sup>27</sup> "President Biden Announces More Key Administration Nominees", press release, White House, 26 May 2021.

<sup>28</sup> Crisis Group interviews, current and former U.S. government officials, Washington and by telephone, April 2020; December 2021; January, February, April, August and December 2022. See footnote 23 for several studies related to sanctions best practices.

<sup>29</sup> See this study, authored by four experts, two of whom were later Biden appointees: Elizabeth Rosenberg, Peter Harrell, Paula J. Dobriansky and Adam Szubin, "America's Use of Coercive Economic Statecraft", Center for New American Security, 17 December 2020.

The administration's Treasury Department led a review of U.S. sanctions policy that highlighted many of the same concepts.<sup>30</sup> Members of President Biden's cabinet – including his Treasury secretary, Janet Yellen, who had committed to the sanctions review in her confirmation hearing – also put into effect important reforms.<sup>31</sup> The most significant of these were the aforementioned UN Security Council humanitarian carveout (which the U.S. championed) and the issuance of even wider-ranging general licences for certain sanctions administered by Treasury's Office of Foreign Assets Control (OFAC), which represented an historic step forward in the trajectory of sanctions reform.<sup>32</sup> But as discussed below, these reforms are far from comprehensive – and do not mitigate sanctions' negative impact on peacemaking.

Meanwhile, notwithstanding increased attention to sanctions' undesired consequences, U.S. reliance on economic sanctions is increasing. The 2021 U.S. Treasury review described sanctions as “a tool of first resort” and recorded an increase in its sanctions by nearly 1,000 per cent over the years from 2000 to 2021.<sup>33</sup> In his second year in office, President Biden designated nearly 2,500 new groups and individuals, almost double the listings the Trump administration had made at the peak in 2018 (1,474) and four times as many as the Obama administration at its zenith in 2016 (695).<sup>34</sup> Multifaceted sanctions have been a pillar of the U.S. approach to backing Ukraine after Russia's unlawful, all-out invasion in February 2022. (As noted, Crisis Group supports these last measures.)

## B. *Four Key Purposes*

While the U.S. applies sanctions to advance a wide range of goals, policy objectives in the peace and security realm tend to cluster around four key themes. Washington's affirmative case for sanctions within each of these areas is catalogued here; an exploration of frequently cited negative consequences is set forth in Section III of this report.

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<sup>30</sup> “The Treasury 2021 Sanctions Review”, U.S. Treasury, October 2021. The review articulated a five-point framework to guide future sanctions policy that draws on longstanding recommendations of sanctions experts. The framework suggests that policymakers should consider whether a sanctions action: a) Supports a clear policy objective within a broader U.S. government strategy; b) Has been assessed to be the right tool for the circumstances; c) Incorporates anticipated economic and political implications for the sanctions target(s), U.S. economy, allies and third parties, and has been calibrated to mitigate unintended impacts; d) Includes a multilateral coordination and engagement strategy; e) Will be easily understood, enforceable and, where possible, reversible.

<sup>31</sup> The Treasury secretary also questioned the efficacy of certain U.S. sanctions policies. In testimony to the U.S. Senate, Yellen stated, “Our sanctions on Iran have created real economic crisis in the country, and Iran is greatly suffering economically because of sanctions. ... Has that forced a change in behaviour? The answer is much less than we would ideally like”. Janet Yellen, testimony before the U.S. Senate Financial Services and General Government Appropriations Subcommittee, 22 March 2023; and “Treasury Secretary Confirmation Hearing”, U.S. Senate Finance Committee, 19 January 2021.

<sup>32</sup> Previous administrations also sometimes offered humanitarian exemptions and licences for sanctions programs, although the 2022 general licences are unprecedented in their breadth and scope.

<sup>33</sup> “The Treasury 2021 Sanctions Review”, U.S. Treasury Department, October 2021.

<sup>34</sup> Data provided by Adam M. Smith, a partner at the Washington office of the international law firm Gibson Dunn, which has a sanctions advisory practice. The figures represent individuals and entities designated, blocked or identified pursuant to U.S. sanctions programs by the U.S. Treasury.

## 1. Restricting resources

An oft-cited purpose of U.S. sanctions is to restrict the access of belligerents and other dangerous actors to weapons, money and other resources. Existing U.S. sanctions aim to deprive groups engaged in terrorism, states pursuing illegal nuclear or other weapons proliferation, governments threatening international peace and security, and other “bad actors” of the means by which they could commit violent acts or develop the means to commit them.<sup>35</sup> The sanctions are designed to freeze their assets, limit their access to supplies and technology, and restrict their ability to save, transfer and withdraw funds.

Sanctions became a central component of U.S. efforts to starve terrorist groups of funds in the aftermath of 9/11. The hijackers had used bank accounts in their own names to finance the attacks, and policymakers sought to stop anyone else – whether affiliated with al-Qaeda or another group – from doing the same.<sup>36</sup> In late September 2001, President George W. Bush announced asset freezes of and prohibited transactions with entities suspected of ties to terrorism.<sup>37</sup> The Bush administration also expanded the legal authorities underpinning sanctions programs, enabling U.S. officials to freeze the assets of individuals and groups who commit, or threaten to commit, acts of terrorism, as well as their supporters, and enhancing prosecutors’ ability to bring charges against foreign individuals and groups.<sup>38</sup>

Subsequent administrations relied on these authorities, as well as others such as IEEPA, in efforts to deprive other militant groups of funding and to crack down on the industries that helped them make money. For example, U.S. sanctions prohibit charcoal trade from Somalia, the profits of which the Islamist insurgency Al-Shabaab uses to fund its activities.<sup>39</sup> U.S. sanctions in the Democratic Republic of Congo (DRC) target extractive industries, as well as other conflict drivers.<sup>40</sup> Officials employ similar strategies to restrict governments’ abilities to fund violent campaigns: sanctions on Libyan assets in 2011 aimed to stop President Muammar Qadhafi from getting access to monies they feared would help him slaughter civilians to quash Libya’s revolution.<sup>41</sup>

Washington has also used sanctions to limit weapons production by its adversaries. U.S. non-proliferation sanctions date back to the 1970s and increased in scope in the

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<sup>35</sup> As Congressman Jim A. Himes noted in a 2021 hearing, “The U.S. employs a robust sanctions program to deny adversaries the funding, logistics and resources to conduct illicit behavior”. “Schemes and Subversion: How Bad Actors and Foreign Governments Undermine and Evade Sanctions Regimes”, U.S. House of Representatives hearing, 16 June 2021.

<sup>36</sup> U.S. officials sought to restrict the access of a variety of terrorist organisations to financial services so as to impede their ability to raise and transfer funds, a goal that Washington continued to pursue as it responded to terrorist threats other than al-Qaeda. In the case of ISIS, U.S. officials used sanctions with the aim of draining the group’s resources and making it harder for it to move money to launch attacks. “Remarks by U.S. Under Secretary David S. Cohen on Attacking ISIL’s Financial Foundation”, Carnegie Endowment for International Peace, 23 October 2014; and Gudowska and Prendergast, “Can Sanctions be Smart? The Costs and Benefits of Economic Coercion”, op. cit.

<sup>37</sup> Zarate, *Treasury’s War*, op. cit.

<sup>38</sup> “President Freezes Terrorists’ Assets”, White House, 24 September 2001. Presidential Executive Order 13244. Crisis Group interview, former U.S. prosecutor, May 2022.

<sup>39</sup> “Somalia Sanctions Program”, U.S. Treasury Department, 3 October 2014.

<sup>40</sup> “Sanctions Against Persons Contributing to the Conflict in the Democratic Republic of Congo”, U.S. Treasury Department, 5 October 2016.

<sup>41</sup> Crisis Group interviews, U.S. officials and current and former Libyan officials, Tunis and Tripoli, May 2023.

1990s. Today, they encompass extensive programs targeting North Korea (which has built nuclear weapons in contravention of UN Security Council resolutions) and Iran (which has acquired much of the capability it would need to do so).<sup>42</sup>

More recently, Washington has imposed sanctions, in coordination with robust U.S. export controls, targeting Russia with the explicit aim of hampering Moscow's war effort in Ukraine, among other goals. U.S. officials note that a central objective of its sanctions program is to constrain the Kremlin's ability to wage war by restricting its access to advanced technologies, compromising Russia's attempts to modernise its military and degrading its fighting capability.<sup>43</sup>

## 2. Addressing abuses

U.S. policymakers have also long used sanctions to confront corruption and serious human rights abuses, including mass atrocities, which they assess as destabilising, contrary to U.S. values and, in some cases, a threat to global peace and security.<sup>44</sup> The Global Magnitsky Human Rights Accountability Act enhanced and greatly expanded their capacity to do so. The law, signed by President Barack Obama in 2016, gave the president authority to impose targeted sanctions on any foreign person who has committed or enabled corruption or gross violations of human rights. A year later, President Trump signed an executive order to implement the Magnitsky Act that went further than the congressional requirements.<sup>45</sup>

U.S. policymakers contend that sanctions can help break cycles of corruption, abuse and impunity.<sup>46</sup> In the absence of other means of bringing "bad actors" to justice, U.S. officials sometimes deploy sanctions with the intent that they serve as "vehicles of accountability".<sup>47</sup> Against this backdrop, Washington's sanctions related to human rights and corruption often have the overlapping goals of punishing abusers, signalling that their behaviour is transgressive, and deterring them and others from commit-

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<sup>42</sup> The first U.S. non-proliferation sanctions law was enacted in 1974, following India's nuclear test that year. Other nuclear non-proliferation sanctions followed, notably the Nuclear Proliferation Prevention Act (1978), which requires the imposition of sanctions on persons who contribute to the efforts of individuals, groups or non-nuclear weapons states to develop nuclear explosive devices.

<sup>43</sup> Crisis Group telephone interviews, U.S. government officials, January 2023. See also Wally Adeyemo, "America's New Sanctions Strategy", *Foreign Affairs*, 16 December 2022.

<sup>44</sup> According to the U.S. government, the Global Magnitsky sanctions program, "represents the best of the United States' values" and was issued in recognition that "the presence of human rights abuse and corruption had reached such scope and gravity as to threaten the stability of international political economic systems... [and] perpetuate violent conflicts]". "Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day", press release, U.S. Treasury Department, 10 December 2021; and "2022 Global Magnitsky Human Rights Accountability Act Annual Report", State Department Notice, U.S. Government Federal Register, 31 March 2023.

<sup>45</sup> Executive Order 13818 (2017) drew authority from the new law, IEEPA, the Immigration and Nationality Act, and U.S. code.

<sup>46</sup> Executive Order 13818 (2017) states that human rights abuses and corruption "perpetuate violent conflicts" and undermine other values key to "stable, secure and functioning societies".

<sup>47</sup> "United States Announces Targeted Sanctions; Human Rights First Calls on Other Nations to Act", press release, Human Rights First, 13 December 2021; and David Adesnik, "Don't cling to hopes that Putin will ever face justice", *Foreign Policy*, 9 May 2022.



ting future crimes.<sup>48</sup> Another impetus for using sanctions in these circumstances is to champion journalists, human rights defenders and others who have risked their lives to shed light on abuses. The idea, in the words of a senior U.S. official, is to “support them in their struggle”.<sup>49</sup>

U.S. officials often note they use sanctions in this way to respond to calls from civil society and human rights groups. U.S.-based and international human rights organisations, U.S.-based diaspora groups with connections to victims abroad, and local civil society groups in areas where people have experienced mass abuses have regularly called on Washington to sanction wrongdoers.<sup>50</sup> Their calls often mirror stated U.S. goals: stigmatising, deterring and holding to account offenders, while signalling U.S. solidarity with victims and their advocates.<sup>51</sup>

### 3. Changing the cost-benefit calculations of conflict parties

U.S. policymakers also impose sanctions to signal their priorities in crisis settings and heighten the consequences for those who oppose them.<sup>52</sup> U.S. officials have used sanctions to bolster U.S. calls on foreign actors to refrain from or stop stoking violence, undermining democracy or deepening grievances that prolong conflicts by raising the costs of those behaviours. In this way, Washington uses sanctions to complement diplomacy and other measures by creating a consequence that is intended to affect the calculations of foreign actors engaged (or potentially engaged) in conduct that Washington wishes to discourage.<sup>53</sup> A Western official told Crisis Group, “A message is forgotten; sanctions stick”.<sup>54</sup>

Current and former U.S. officials cite several examples of this approach being used amid election turmoil. The U.S. sanctioned Burundian government officials and their opponents to signal growing concern about violence in the lead-up to the country’s

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<sup>48</sup> Crisis Group telephone interviews, former U.S. government officials, December 2021 and January 2023.

<sup>49</sup> Michael Breen, “Congress Must Stand with Civil Society and Strengthen the Global Magnitsky Program”, *Just Security*, 20 April 2021; and Crisis Group, “A Conversation with Top U.S. Diplomat to Africa Molly Phee”, *The Horn* (podcast), 7 December 2022.

<sup>50</sup> Crisis Group telephone interviews, international human rights organisation staff, international policy organisation staff, U.S. congressional staffers and scholar, December 2021; April, August, September and December 2022; January 2023. See also George Clooney and John Prendergast, “War crimes shouldn’t pay in South Sudan”, *Washington Post*, 12 September 2016; Kristen Gelineau, Victoria Milko and Lori Hinnant, “Myanmar public urges gas sanctions to stop military funding”, *Associated Press*, 16 December 2021; Tyler Kustra, “Sanctioning the Homeland: Diaspora’s Influence on American Economic Sanctions Policy”, *Journal of Conflict Resolution*, vol. 56, no. 3 (April 2022); and “US Should Not Ease Corruption Sanctions on Dan Gertler”, *Rights and Accountability in Development*, 8 March 2023.

<sup>51</sup> Crisis Group interview, civil society activist, Kinshasa, May 2022. Annie Boyajian, “Leveraging Targeted Sanctions in Defense of Religious Freedom”, testimony to the U.S. Commission on International Religious Freedom, 27 October 2021.

<sup>52</sup> Crisis Group interviews, current and former U.S. government officials, December 2021–June 2023.

<sup>53</sup> Sometimes, the behaviour constitutes a breach of international law or norms; at other times, it conflicts with U.S. priorities; and at still other times, both circumstances apply. Crisis Group correspondence, legal scholar, February 2023.

<sup>54</sup> Crisis Group interview, diplomat, Kinshasa, 26 May 2022.

2015 presidential polls.<sup>55</sup> They employed a similar strategy in the DRC in 2018, to deter then-president Joseph Kabila from running for an unconstitutional third term, a move that rights groups cautioned would prompt a violent crisis in the country.<sup>56</sup> In these instances, U.S. officials maintained that sanctions added weight to their warnings and served a de-escalatory purpose.<sup>57</sup>

Türkiye is another example that U.S. officials cite. In 2019, the Trump administration sanctioned current and former Turkish officials, as well as two Turkish ministries, after Ankara launched an offensive in north-eastern Syria targeting Kurdish fighters it accused of being an extension of the Kurdistan Workers' Party (PKK) – its longstanding enemy.<sup>58</sup> After President Trump called on President Recep Tayyip Erdoğan to “stop the invasion”, and Vice President Mike Pence travelled to Türkiye to convince Erdoğan to do the same, Ankara halted its assault, and Washington lifted the sanctions.<sup>59</sup>

When it comes to U.S. efforts to deter Chinese military action against Taiwan, U.S. policymakers are increasingly considering sanctions as an element of their deterrence strategy. In March, U.S. lawmakers introduced a bill in Congress, the Sanctions Targeting Aggressors of Neighboring Democracies with Taiwan Act, which would mandate the imposition of sweeping sanctions on China if it were to invade Taiwan.<sup>60</sup>

Washington has also used sanctions and the prospect of sanctions relief to encourage reform.<sup>61</sup> President Obama eased sanctions on Naypyitaw in 2012 in response to reforms undertaken by the government in Myanmar, including its decision to reach ceasefires with ethnic armed groups, and continued with sanctions easing through the end of his administration in 2017 to push Naypyitaw toward additional reforms. As he noted when visiting Myanmar in 2012, “We will extend a hand if you are willing to unclench your fist”.<sup>62</sup> The U.S. then reimposed sanctions, targeting many of the same

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<sup>55</sup> Stephen Pomper, “Atrocity Prevention Under the Obama Administration: What We Learned and the Path Ahead”, U.S. Holocaust Memorial Museum, February 2018; and “Statement by NSC Spokesperson Ned Price on Burundi”, press release, White House, 23 November 2015.

<sup>56</sup> The 2022 Somalia elections offer another example. The U.S. imposed travel bans and threatened further sanctions on officials who they said were responsible for disrupting the election timeline to dissuade them and others from interfering with it further. Crisis Group interviews, former U.S. government officials and senior and working-level U.S. diplomats, Kinshasa, Mogadishu and by telephone, December 2021, April-May 2022 and March 2023.

<sup>57</sup> Crisis Group interviews, former U.S. government officials, April 2020 and December 2022. Crisis Group Commentary, “Burundi: Charm Offensive or Real Change”, 2 July 2021; and Hans Hoebeker, “Kabila Shows His Hand in DR Congo’s Electoral Poker”, Crisis Group Commentary, 16 August 2018.

<sup>58</sup> “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria”, Executive Order 13894, 14 October 2019; and “Treasury Designates Turkish Ministries and Senior Officials in Response to Military Action in Syria”, press release, U.S. Treasury Department, 14 October 2019.

<sup>59</sup> Pence told reporters that Trump had called on Erdoğan “to stop the invasion”. “U.S. imposes new sanctions on Turkey over offensive”, CBS News, 14 October 2019. Crisis Group interviews, Turkish government officials, Ankara, November 2019.

<sup>60</sup> Gerard DiPippo and Jude Blanchette, “Sunk Costs: The Difficulty of Using Sanctions to Deter China in a Taiwan Crisis”, Center for International and Strategic Studies, 12 June 2023; “Gallagher, Sullivan Introduce STAND with Taiwan Act”, press release, Congressman Mike Gallagher, 30 March 2023; and Ben Blanchard, Yimou Lee, John O’Donnell, Alexandra Alper and Trevor Hunnicutt, “Exclusive: U.S. weighs China sanctions to deter Taiwan Action, Taiwan presses EU”, Reuters, 14 September 2022.

<sup>61</sup> Crisis Group interview, former U.S. government official, Washington, April 2023.

<sup>62</sup> “Remarks by President Obama at the University of Yangon”, press release, White House, 19 November 2012.

people and businesses, following the February 2021 coup and the brutal crackdown that followed.<sup>63</sup>

#### 4. Pushing negotiations forward

U.S. officials have also used sanctions to nudge parties in conflict toward negotiations and to keep talks that are already under way on track.<sup>64</sup> They levy them as part of efforts to create momentum toward negotiations, or in existing ones, counting on the idea that parties will be enticed by the reward of sanctions lifting.<sup>65</sup> U.S. officials sometimes use the threat of sanctions to prod parties toward negotiations.<sup>66</sup>

U.S. officials cite several instances where this strategy has been employed. Washington offered Qadhafi's government in Libya sanctions relief in exchange for dismantling its nuclear program, destroying its chemical and biological weapons stocks, and renouncing terrorism, as it did in late 2003.<sup>67</sup> It phased sanctions easing to correspond to the results of weapons inspections in hopes that doing so would entrench commitments made during the negotiations and give Tripoli, Washington and other capitals involved in the negotiations reason (and the comfort) to fulfil the agreement.<sup>68</sup>

In the case of Sudan, U.S. officials applied sanctions and used other tactics to press then-president Omar al-Bashir to keep participating in discussions on the Darfur conflict and honour the 2005 Comprehensive Peace Agreement – the deal he made with rebels in the south that paved the way for South Sudan's independence. As a former U.S. official explained, "We wanted to talk to them about making peace. They wanted to talk about sanctions relief. Sanctions kept bringing the Sudanese back to the table".<sup>69</sup>

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<sup>63</sup> In addition to imposing costs on the military regime and its supporters to prompt changes in behaviour, the sanctions – which Crisis Group supported – also aimed to promote accountability in connection with the coup and the violence perpetrated by Myanmar's military leaders. Crisis Group Briefing, *Resisting the Resistance: Myanmar's Pro-military Pyusawhti Militias*, op. cit.; Crisis Group Asia Briefing N°173, *Coming to Terms with Myanmar's Russian Embrace*, 4 August 2022; "United States and Allies Impose Additional Sanctions on the Burmese Military Regime", press statement, U.S. Secretary of State Antony J. Blinken, 25 March 2022; and "Treasury Sanctions Officials and Military-Affiliated Cronies in Burma Two Years After Military Coup", press release, U.S. Treasury Department, 31 January 2023.

<sup>64</sup> Crisis Group interviews, current and former U.S. government officials, December 2021-June 2023.

<sup>65</sup> Crisis Group interview, U.S. government official, February 2022. See also David Lanz, "Relieve the Pain? A Framework to Understand Sanctions Relief as an Instrument of Peacemaking", conference paper presented at the Kroc Institute for International Peace Studies, Notre Dame University, 8 November 2019.

<sup>66</sup> Crisis Group interviews, current and former U.S. government officials, Washington, December 2021. Crisis Group telephone interviews, U.S. government officials, January and February 2022. On how the UN has used the threat of sanctions to further negotiations, see Thomas Biersteker, Rebecca Brubaker and David Lanz, "UN Sanctions and Mediation: Establishing Evidence to Inform Practice", United Nations University Centre for Policy Research, 18 February 2019.

<sup>67</sup> Crisis Group telephone interview, U.S. government official, February 2022.

<sup>68</sup> Richard Nephew, "Libya: Sanctions Removal Done Right? A Review of the Libyan Sanctions Experience, 1980-2006", Center on Global Energy Policy, Columbia University, March 2018. See also Anna K. Jarstad and Desiree Nilson, "From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords", *Conflict Management and Peace Science*, vol. 25, no. 3 (2008).

<sup>69</sup> Crisis Group telephone interview, former U.S. government official, August 2022.

U.S. officials also told Crisis Group that in neighbouring South Sudan, they escalated targeted sanctions and threatened more to spur South Sudanese elites to consider concessions at pivotal moments in negotiations aimed at resolving the civil conflict that has plagued the young country since 2013. These officials said they employed sanctions, and the threat of sanctions, to convince rival South Sudanese leaders to form a unity government in February 2020.<sup>70</sup>

Finally, U.S. officials often point to the Iran nuclear negotiations as a “gold standard” example of using sanctions to get an adversary to the table and pave the way for an agreement.<sup>71</sup> They reflect on how they used sanctions to encourage Iran to join the talks, to remain in the talks and to make concessions during the talks. Thus, they say, sanctions helped pave the way for the Joint Comprehensive Plan of Action in 2015. U.S. officials also explain that they used the prospect of sanctions relief to coax Iran to fulfil commitments it made after the deal was signed.<sup>72</sup>

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<sup>70</sup> Crisis Group Report, *Oil or Nothing: Dealing with South Sudan’s Bleeding Finances*, op. cit.

<sup>71</sup> Crisis Group interviews, current and former U.S. government officials, April 2020–February 2023.

<sup>72</sup> Crisis Group Middle East Report N°166, *Iran After the Nuclear Deal*, 15 December 2015. Crisis Group interview, U.S. government official, February 2022.

### III. Practitioner Perspectives: The Darker Side of Sanctions

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While sanctions have found favour as a tool that allows the U.S. government to pursue policy objectives in conflict settings without the blood and treasure required for military campaigns, these tools are not cost-free. Some of the downsides manifest themselves as impediments to peacemaking priorities, including Washington's own. Crisis Group's interviews with U.S. and foreign diplomats and officials, civil society representatives, and others who have worked in sanctions-affected conflict situations revealed four ways in which sanctions have at times obstructed peace and security efforts.

#### A. *Inhibiting Peace Processes and Post-conflict Recovery*

Lingering sanctions can inhibit peace processes and post-conflict recovery efforts when they outlive the circumstances that prompted their initial imposition. Colombia offers a prominent example. Even though the Revolutionary Armed Forces of Colombia (FARC) signed a peace deal with the Colombian authorities in 2016, the group remained a designated terrorist organisation for five more years. Some U.S. officials said the hurdles involved in lifting the FARC FTO designation were so significant that rescission "only" five years after the peace was signed should be considered a major achievement, especially in light of concerns about political backlash and difficulties navigating the U.S. government bureaucracy to make the delisting happen.<sup>73</sup>

While they remained in force, the sanctions made it harder for former rebels to reincorporate into society as the 2016 peace deal had envisioned. Because financial institutions wished to steer clear of sanctions and especially the risk of alienating international correspondent banks, former fighters struggled to open bank accounts, get access to credit or loans, or fund campaigns for the parliamentary seats the FARC's successor party received as a condition of the accord.<sup>74</sup> They could not take part in activities designed to make reparations to communities affected by war. For example, 1,500 of the 13,000 demobilised FARC fighters signed up to remove mines they had planted

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<sup>73</sup> The lifting coincided with a statutory deadline for periodically reviewing the FTO designation, which gave officials political cover for removal. A U.S. official explained the difficulties of lifting the FARC FTO for the Biden administration. Aside from the Huthi designation, which was removed weeks after it was imposed (a special case because the designation had just been made and there was a sense of political urgency behind lifting it before it could become part of the landscape), there was hardly any recent example of delisting a longstanding FTO. The previous administration had delisted only one group, and officials involved in delisting during the Obama and Bush administrations had moved on to new roles or left government. Legally, the process of delisting is straightforward, but the U.S. government's internal procedures for doing so at the time were not. Crisis Group interviews, U.S. government officials, Washington and by telephone, December 2021 and December 2022.

<sup>74</sup> FARC's political party, Comunes, received seats in parliament as part of the 2016 peace accord. Yet elected senators representing the party faced difficulties opening bank accounts because of sanctions. Former combatants also missed out on employment opportunities with international organisations. A former international staffer working in Colombia told Crisis Group that their organisation decided against hiring the top candidate for a gender research position due to concerns about violating the material support statute. Crisis Group interviews, former international organisation staffer, April 2023; former senior FARC member, Bogotá, March 2022.

during the war.<sup>75</sup> But they did not get the certificates that were legally required for them to begin demining due to the certifying agency's concerns that vetting former FARC members might constitute prohibited support to an FTO and thus violate U.S. laws. Former combatants told Crisis Group that certification delays pushed several of their peers to leave demining projects, lose hope in the peace process and rejoin armed groups. Landmine removal stalled.<sup>76</sup>

Some former combatants who had laid down their weapons were so disillusioned by the daily hurdles they faced in integrating into civilian life that, in the words of a former FARC commander, they "decided to go to war again".<sup>77</sup> Former members told Crisis Group that, ironically, sanctions had posed less of a problem for the FARC during its decades-long guerrilla campaign, when it funded itself almost exclusively through black-market activities, than after it demobilised and sought to rely on the formal economy. As a former fighter put it, "We weren't affected [by sanctions] in the war, but we were affected in peace".<sup>78</sup>

Sanctions can also impede U.S. efforts to encourage private-sector investment in post-conflict settings. Investors often lack the confidence to enter markets where sanctions exist, even when the U.S. Treasury has issued licences specifically authorising certain transactions or when sanctions have recently been lifted, in part or in full. In these situations, sanctions have a "chilling effect" on business activity or, in the words of one former U.S. official, hang over a country "like a black cloud".<sup>79</sup> Private firms often express confusion about the scope of permitted activity and may err on the side of caution by refusing to do business in these places altogether.<sup>80</sup> The legal, reputational and financial risks are often deemed too great, and the compliance costs and large potential fines (and possible criminal liability) too high, to consider investment.<sup>81</sup> Such have

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<sup>75</sup> Crisis Group telephone interview, international landmine removal organisation staff, April 2022. Crisis Group interviews, former FARC combatants, demining staff and diplomats, Bogotá and La Montaña, Caquetá, March 2022.

<sup>76</sup> Ibid.

<sup>77</sup> Former fighters found integration into society so difficult, not only because of the economic hurdles posed by sanctions but also because of numerous other obstacles, that, for some of them, rejoining armed groups was a more appealing option. A small number of them reneged entirely on the accord, often out of economic self-interest. Crisis Group interview, former FARC member, Bogotá, March 2022. See also Crisis Group Latin America Report N°92, *A Fight by Other Means: Keeping the Peace with Colombia's FARC*, 30 November 2021.

<sup>78</sup> Crisis Group interview, former senior FARC member, Bogotá, March 2022.

<sup>79</sup> Crisis Group telephone interview, former U.S. official, August 2022.

<sup>80</sup> Crisis Group interviews, bank compliance staff and staff at a major international bank, Dubai and New York, December 2021 and January 2023. See also Erica Moret, "Barriers to Afghanistan's Critical Private Sector Recovery", Norwegian Refugee Council, March 2023.

<sup>81</sup> Other concerns such as lack of a stable regulatory environment sometimes can also play a role, but in some cases, sanctions rank high on companies' lists of reasons to avoid business activities. Messaging from former U.S. officials can also fuel companies' risk aversion: former Treasury undersecretary Stuart Levey told companies in a *Wall Street Journal* op-ed that re-engaging in the Iranian market would be too risky, even though sanctions had been lifted following the 2016 nuclear deal and then-U.S. Secretary of State John Kerry was actively encouraging European financial institutions to engage in the Iranian economy. Some firms pointed out that even though sanctions were lifted, U.S. state-level sanctions remained in place that restricted the use of state funds (such as pension funds) to invest in companies working in Iran. In Sudan, the U.S. lifted trade restrictions in 2017, but it maintained Khartoum's state sponsor of terrorism designation until 2020. The private sector remained hesitant

been the calculations of many companies that had been active in Afghanistan before the Taliban takeover, which pulled out of the country despite the general licences published by the U.S. permitting extensive private-sector transactions as part of efforts to stave off state collapse.<sup>82</sup>

Potential investors may also fear, with good reason given the inherently political nature of sanctions, that eased sanctions will come back in full force – recalling, for example, that the Trump White House withdrew the U.S. from the Iran nuclear deal negotiated by the predecessor Obama administration and reimposed sanctions that the deal had lifted.<sup>83</sup> A 2018 study published by Crisis Group found that a combination of concerns about sanctions compliance and fears that the U.S. would reimpose sanctions had proven the main factor slowing trade and investment by multinational companies in Iran even before the Trump administration repudiated the nuclear deal. These concerns were even more determinative than challenges related to the business environment in Iran.<sup>84</sup>

### B. *Constraining Peace Organisations*

Sanctions can also hamper the work of peace organisations. These organisations, often working out of the limelight, help bring an end to conflicts, for instance by convening belligerents for discussions about ending hostilities, disarming combatants and training conflict parties in peaceful dispute resolution.<sup>85</sup> Many are funded by the U.S.

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despite a campaign by U.S. officials to encourage reinvestment in the country. Stuart Levey, “Kerry’s peculiar message about Iran for European banks”, *The Wall Street Journal*, 12 May 2016. Crisis Group Middle East Report N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017; Crisis Group Middle East Report N°181, *The Iran Nuclear Deal at Two: A Status Report*, 16 January 2018 and Crisis Group Report, *Safeguarding Sudan’s Revolution*, op. cit. Crisis Group interviews, financial services consultant, bank compliance staff, staff at a major international bank, current and former U.S. government officials, Dubai, Kinshasa, New York, Washington and by telephone, December 2021, March, April, May, August and September 2022, January 2023.

<sup>82</sup> The economic hardships imposed by sanctions fall most heavily on Afghan girls and women – even as Western officials justify sanctions on the Taliban as a response to the regime’s draconian gender policies. Sanctions are not the only reason for the private sector’s aversion to re-engagement in Afghanistan; crumbling rule of law, limited investment guarantees, reputational concerns and other factors have also affected their decision-making. Crisis Group interviews, aid workers, diplomats, international officials, banking and other business executives, Dubai, Istanbul, Kabul and by telephone, October 2022 and January and August 2023. See also Crisis Group Asia Report N°317, *Beyond Emergency Relief: Averting Afghanistan’s Humanitarian Catastrophe*, 6 December 2021; Graeme Smith and Delaney Simon, “Let Afghanistan Rebuild”, *Foreign Affairs*, 13 December 2022; and Crisis Group Asia Report N°329, *Taliban Restrictions on Women’s Rights Deepen Afghanistan’s Crisis*, 23 February 2023.

<sup>83</sup> “President Donald J. Trump is Reimposing All Sanctions Lifted Under the Unacceptable Iran Deal”, White House, 2 November 2018. U.S. officials, banking executives and experts note anecdotally that Washington’s decision to reimpose sanctions on Iran is responsible in large part for the persistent “chilling effect” of U.S. sanctions. Crisis Group interviews, U.S. government officials, sanctions experts and banking officials, Dubai, London, New York and Washington, December 2021, August 2022 and February 2023.

<sup>84</sup> “Survey Results – Iran Business Attitudes”, available in Crisis Group Report, *The Iran Nuclear Deal at Two*, op. cit.

<sup>85</sup> “When the Giving Gets Tough: Navigating Risk in Sanctioned Locations”, Charity and Security Network, November 2021.

government.<sup>86</sup> The Biden administration took a major step forward in addressing long-standing concerns of peace organisations by issuing general licences that, as noted above, authorised peacebuilding, conflict resolution and conflict prevention activities for OFAC-administered sanctions programs.<sup>87</sup> But these reforms do not fully mitigate the constraints that sanctions have placed on peace organisations – and which they continue to face – for the following reasons.

First, the recent reforms do not address the sanctions that apply when an organisation is designated an FTO – and in particular the criminal statutes that make it unlawful to provide “material support” to such an entity.<sup>88</sup> The legal concept of material support extends beyond the provision of money to include (among other things) training, expert advice or assistance. Peace organisations have long been concerned that their work could, if involving an FTO, violate the statute.<sup>89</sup> They often point to a 2010 U.S. Supreme Court decision, in which the court ruled that the conflict resolution training the Humanitarian Law Project (an NGO) sought to provide to the PKK in Türkiye, an FTO, constituted prohibited material support.<sup>90</sup> Both U.S. and non-U.S. entities and individuals can be held criminally liable for violating the statute, even if the prohibited conduct occurs outside the U.S.<sup>91</sup> Violations may entail fines and imprisonment for up to fifteen or twenty years, depending on the specific charge, and life imprisonment when the offence resulted in someone’s death.<sup>92</sup>

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<sup>86</sup> Global Fragility Act (2019); and “What We Do: Peacebuilding and Reconciliation”, USAID, 12 July 2021.

<sup>87</sup> “Treasury Implements Historic Humanitarian Sanctions Exemptions”, press release, U.S. Treasury Department, 20 December 2022.

<sup>88</sup> The primary material support prohibition is codified at 18 U.S. Code § 2339B. It provides that: “Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life”. Related material support and other offences are codified at 18 U.S. Code 2339A, C, and D.

<sup>89</sup> As per 18 U.S. Code § 2339A(b), the term “material support or resources” means “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation except medicine or religious materials”.

<sup>90</sup> U.S. Supreme Court, *Holder v. Humanitarian Law Project* (2010). See also “Preventing Peace: How Material Support Laws Undermine Peacebuilding”, Charity and Security Network and Alliance for Peacebuilding, July 2021; and “Holder v. Humanitarian Law Project”, Charity and Security Network and Alliance for Peacebuilding, 3 September 2020.

<sup>91</sup> The statute provides that there is jurisdiction over an offence if “after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States”. 18 U.S. Code § 2339B(d)(1)(C). As legal scholars have noted, “In effect, this provision means that the personnel of an organization headquartered outside the US and made up entirely of non-US staff, with operations completely outside the US, could be subject to US criminal jurisdiction if they find themselves in the US”. Naz Modirzadeh, Dustin Lewis and Claude Bruderlein, “Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape”, *International Review of the Red Cross*, vol. 93 (November 2011).

<sup>92</sup> Violations of 18 U.S. Code § 2339A are punishable by imprisonment for up to fifteen years; violations of 18 U.S. Code § 2339B punishable by imprisonment for up to twenty years. Charles Doyle, “Terrorist Material Support: An Overview of 18 U.S.C. §2339A and §2339B”, Congressional Research Service, 8 December 2016.



Given the breadth of the statute and the severity of associated penalties, many peace organisations have refrained from providing assistance to populations in areas controlled by FTOs, in addition to steering well clear of engaging those groups in conflict resolution.<sup>93</sup> Another reason the above-noted landmine removal in Colombia stalled after the 2016 peace deal was that international organisations stopped training demobilised former FARC combatants out of concern about the implications of training an FTO.<sup>94</sup> In north-western Syria, an organisation overseeing disarmament, demobilisation and reintegration activities excluded Hei'at Tahrir al-Sham, an FTO-listed Islamist rebel group, from programming, and worked only with non-listed armed groups for the same reason.<sup>95</sup>

Concern about falling foul of FTO regulations sometimes leads organisations to end programs that are only tangentially connected to designated terrorists. One U.S.-funded democracy project in Colombia did as much when it stopped publishing information on electoral fraud due to concerns that these reports could end up benefiting the ex-FARC political party – whose members at the time fell under the FTO listing – one of the many political parties running in the 2018 elections for seats in parliament.<sup>96</sup>

When hosting dialogues among conflict parties, private mediators regularly exclude members of listed terrorist groups from meetings, even if they have been central players in the conflict.<sup>97</sup> Others refrain from what would be considered normal operations in other circumstances, such as providing refreshments to dialogue participants, lest doing so makes them criminally liable for providing material support to terrorists.<sup>98</sup> The new Treasury licences appear to permit the inclusion of individuals or organisations named under IEEPA as Specially Designated Global Terrorists in conflict resolution activities, provided that, with few exceptions, no funds are transferred to a blocked person.<sup>99</sup> But if the group in question is also designated an FTO (many groups are simultaneously designated under both authorities), then any provision of “material support” to those groups nevertheless may constitute a criminal offence. The Treasury

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<sup>93</sup> Places where NGOs have avoided or withdrawn programming due to concerns about violating the statute include Gaza (where Hamas governs), parts of Somalia (where Al-Shabaab is active), and parts of Iraq and Syria (where ISIS and other listed groups have been active). NGOs are reluctant to run programs in areas controlled by Hei'at Tahrir al-Sham, as while Treasury licences allow for peacebuilding and other activities with the group, there are no licences that cover the material support restrictions stemming from the group's FTO listing. Crisis Group interviews, NGO workers, Idlib, March 2023.

<sup>94</sup> Legal advisers had informed the organisation that their activities working with former members of an FTO risked violating sanctions, which apart from its criminal implications could compromise the organisation's ability to operate, both in Colombia and worldwide, given that the U.S. provided almost half the organisation's annual budget. Crisis Group telephone interview, international landmine removal organisation staff, April 2022. See also 18 U.S. Code § 2339B(g)(4); 18 U.S. Code § 2339A(b)(2) (“the term ‘training’ means instruction or teaching designed to impart a specific skill, as opposed to general knowledge”).

<sup>95</sup> Crisis Group interviews, humanitarian workers, Geneva, February 2022.

<sup>96</sup> Crisis Group interview, former democracy promotion NGO employee, Bogotá, March 2022.

<sup>97</sup> As a matter of practice, dialogue organisations use software to check the names of participants against OFAC lists and choose not to invite listed persons to meetings, sometimes choosing to invite low-ranking armed group members instead who are not listed. Crisis Group interview, dialogue and mediation expert, February 2022.

<sup>98</sup> Crisis Group telephone interviews, international peace practitioners, February and May 2022.

<sup>99</sup> Crisis Group correspondence, legal scholar, August 2023.

licences are promulgated pursuant to statutes that do not reach FTO-related sanctions, which are governed by a different statutory scheme.

Secondly, the above-referenced chilling effect that sanctions have on the private sector has meant that firms deny services to NGOs due to efforts to comply (or over-comply) with sanctions and minimise risk exposure.<sup>100</sup> Access to financial services has been a particular hurdle, as banks are reluctant to facilitate transactions involving peace organisations or their partners or contractors in heavily sanctioned countries – even when licences are in place, as has been reported in Afghanistan, Syria, South Sudan and elsewhere (as well as in Sudan before the U.S. lifted sanctions on that jurisdiction).<sup>101</sup> The consequences of this forced inaction can be debilitating for peace organisations, which often depend on the private sector to carry out their basic operations, such as remunerating staff, paying utility bills and transporting staff for program delivery.<sup>102</sup> Financial institutions may also be unwilling to authorise transactions involving sanctioned service providers such as national airlines or mobile phone carriers – although they may be the only entities offering those services in a given country.<sup>103</sup>

Thirdly, peace organisations find that their operations in sanctioned places can pose a prohibitively high administrative burden.<sup>104</sup> They must lean heavily on legal counsel for guidance on compliance, which can be a significant expense, even where licences are in place.<sup>105</sup> Individual staff members sometimes decide to pay out of their

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<sup>100</sup> Crisis Group interviews, humanitarian workers, Kabul and Washington, October and December 2022; Crisis Group telephone interviews, humanitarian and peace organisation staff, December 2022 and February 2023. See also Tracey Durner and Liat Shetret, “Understanding Banking De-Risking and its Effects on Financial Inclusion”, Global Center on Cooperative Security and OXFAM, November 2015; and Joseph Daher and Erica Moret, “Invisible Sanctions: How Over-Compliance Limits Humanitarian Work on Syria”, Impact Civil Society Research and Development, 2020.

<sup>101</sup> Immediately prior to the lifting of sanctions in Sudan, only one bank was willing to facilitate international transactions for aid organisations; when the bank considered suspending its activities in Sudan, it threatened the whole aid sector in the country. The country lost almost half of its correspondent banking relationships between 2012 and 2015. “Recent Trends in Correspondent Banking Relationships – Further Considerations”, International Monetary Fund, 16 March 2017; and Crisis Group Report, *Oil or Nothing*, op. cit. Crisis Group interviews, peace organisation staff, humanitarian workers and UN staff working on Afghanistan and Syria, Idlib, Kabul and by telephone, February and October 2022; January, February and March 2023.

<sup>102</sup> In one example, ground services firms refused to refuel the plane transporting members of the Taliban back from a peace-focused dialogue held in a foreign capital due to concerns about violating U.S. sanctions. The plane sat on the tarmac for hours until the hosts eventually identified a refuelling solution, enabling it to depart. Crisis Group telephone interview, dialogue facilitator, December 2022.

<sup>103</sup> In Syria, the national airline and mobile phone carrier are under U.S. sanctions. One peace organisation told Crisis Group that banks do not authorise transactions with the mobile phone carrier, and its local staff cover mobile phone fees themselves rather than risk being out of communication with headquarters while on mission. Crisis Group telephone interview, peace organisation staff, February 2022.

<sup>104</sup> Crisis Group interviews, humanitarian and peace organisation workers based in Damascus, Kabul, New York and Washington, December 2021–June 2023.

<sup>105</sup> Lawyers typically advise their clients not to operate in such places and, if they continue programming anyway, to get “comfortable with the fact that you’ll never be comfortable”. Crisis Group interviews, sanctions attorney, peace organisation staff and humanitarian workers, Geneva and by telephone, November 2020; January and May 2022. Crisis Group correspondence, legal scholar, February 2023.

own pockets for personal liability insurance.<sup>106</sup> Donors such as the U.S. government may impose additional (and often high) compliance requirements, creating delay and time burdens for staff.<sup>107</sup> At the same time, available funding sometimes diminishes in heavily sanctioned areas as donors shift aid allocations to lower-risk areas.<sup>108</sup> Small, local organisations operating in conflict zones are particularly vulnerable as they do not have the money, resources or know-how that large, well-heeled international NGOs often have to manage risks.<sup>109</sup>

Such burdens are especially prohibitive for peace organisations funded by USAID, whose regulations make the provision of aid in places where sanctioned actors operate particularly difficult. The agency requires grantees to certify that they have not or will not provide material support (as defined by the so-called material support statute), not only to FTOs, but also to any individual or entity subject to OFAC-administered sanctions or sanctions established by the UN Security Council.<sup>110</sup> The certification persists even though recent Treasury licences broadly exempt the activities of U.S. government contractors or grantees, a move made intentionally to clarify that USAID-funded activities are authorised (although they do not apply with respect to FTOs).<sup>111</sup>

This requirement has several implications for USAID-funded peace organisations. The practical effect is to make FTO-linked prohibitions, which have a broader scope due to material support restrictions, applicable to all programming in sanctioned places. The result is additional administrative requirements, such as intensive vetting procedures.<sup>112</sup> Beyond the extra administrative costs they must bear, peace organisations are

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<sup>106</sup> Crisis Group telephone interview, peace organisation, February 2022. Most enforcement actions target firms and entities, but they also sometimes target individuals.

<sup>107</sup> Crisis Group interview, peace organisation employee, February 2022.

<sup>108</sup> In the two-year period following Al-Shabaab's terrorist designation, U.S. aid to Somalia decreased by 88 per cent. Mackintosh and Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action", *op. cit.*

<sup>109</sup> Crisis Group telephone interviews, peace organisation staff, February and April 2022. Crisis Group correspondence, legal scholar, February 2023. See also Daher and Moret, "Invisible Sanctions: How Over-Compliance Limits Humanitarian Work on Syria", *op. cit.*

<sup>110</sup> USAID requires grantees to certify that they have not provided such support in the preceding three years (previously the requirement was ten years) and applies to all work and projects of grantees including work not funded by USAID. One recipient of USAID funding for emergency assistance in South Sudan unintentionally breached its grant agreement because it had run projects in Gaza (for youth democratisation) and Iran (for demining) with non-U.S. funding; it paid U.S. authorities over \$2 million in a settlement. While U.S. donors expect grant recipients to share their challenges in meeting compliance requirements, organisations fear that disclosure could result in criminal liability, loss of funding and organisational collapse. This inhibits the kind of exchanges and building of an evidence base needed to address the complex challenges of delivering aid in hostile environments. Crisis Group telephone interview, peace organisation employee, February 2022. Crisis Group correspondence, scholar, February 2023. Crisis Group interviews, non-governmental organisation staff, March and May 2023. See also Modirzadeh, Lewis and Bruderlein, "Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape", *op. cit.*; "Norwegian People's Aid Reaches Settlement with the U.S.", press release, Norwegian People's Aid, April 2018; and "Certifications, Assurances, Representations and Other Statements of the Recipient", USAID, 26 July 2022.

<sup>111</sup> Crisis Group telephone interviews, sanctions attorney and former U.S. government official, August 2023.

<sup>112</sup> USAID requires more detailed vetting procedures for recipients of funding in Afghanistan, Pakistan, Iraq, Yemen, Lebanon, Syria, the West Bank and Gaza than in other locations. Peace organisations

also exposed to the risk of civil suits brought by private actors on the grounds that they have violated the terms of their agreements with USAID, even if inadvertently.<sup>113</sup> The sanctions-linked language in USAID grant agreements also complicates the agency's ability to fund peace organisations in sanctioned countries.<sup>114</sup>

### C. *Undercutting Negotiations*

Sanctions can only help bring parties to the table for peace talks, and provide leverage when they get there, if negotiators can credibly promise meaningful and enduring sanctions relief. But too often, U.S. negotiators cannot persuade the parties that such pledges are within their purview – and, indeed, they rarely are.

The consequences of the inability to provide such relief are significant. Iran's reluctance to re-enter the 2015 nuclear deal after the U.S. reneged on its promises of sanctions relief three years later is an example of this dynamic. Iranian negotiators feared that the benefits of any deal involving sanctions relief would be short-lived given the risk that a future president might exit the agreement once again.<sup>115</sup> In Colombia, the National Liberation Army (in Spanish, Ejército de Liberación Nacional, or ELN) told diplomats that Washington's delays in lifting the FARC's FTO designation deterred them from re-entering negotiations with the government.<sup>116</sup>

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stress they share USAID's desire to – and have worked for decades to establish due diligence mechanisms that – mitigate risks of waste, fraud and diversion, but that the effects of the regulatory requirements described above constrain them from efficiently and effectively undertaking peacemaking work. Crisis Group telephone interviews, peace organisation employees, February and April 2022, January, March and May 2023. See also Modirzadeh, Lewis and Bruderlein, "Humanitarian Engagement under Counter-Terrorism", *op. cit.*

<sup>113</sup> Such suits, which are filed under the False Claims Act, are rare but – if successful – put organisations at risk of ruinous damages and – even if not successful – can embroil them in expensive, years-long legal proceedings. One mediation outfit was the subject of such litigation after it facilitated the exchange of messages between senior Israeli military officers and senior Hamas members regarding a ceasefire. While the case was eventually dismissed, the organisation spent years in legal proceedings and hundreds of thousands of dollars in legal fees. Afterward, it was reluctant to pursue similar activities. The case was filed by a private entity under the False Claims Act, which allows private parties to bring litigation "in place of government" if an organisation has provided false assurances regarding its compliance with U.S. regulations (such as assurances that the organisation has not provided material support or resources to a terrorist group, which, as noted above, is a standard clause in USAID grant agreements). Crisis Group interview, staffer whose mediation organisation fought the above-mentioned legal challenge, May 2022. Crisis Group correspondence, legal scholar, February 2023.

<sup>114</sup> Crisis Group telephone interview, legal scholar, June 2023.

<sup>115</sup> As one Iranian negotiator put it, "without economic guarantees that outlast Biden's presidency ... we won't get the majority of the deal's dividends". Crisis Group Briefing, *Is Restoring the Iran Nuclear Deal Still Possible?*, *op. cit.*

<sup>116</sup> The FARC believed (and said they were led to believe) that the U.S. would lift sanctions directly after the rebel group signed the 2016 peace deal. Sudan offers another example. During negotiations with the U.S. in 2016 and 2017, Khartoum was beset with doubt due to Washington's history of "moving the goalposts", exemplified by what it saw as the U.S. reneging on its promises of lifting sanctions after Sudan consented to South Sudan's independence. Crisis Group interviews, former FARC members involved in the negotiations that resulted in the 2016 peace accord and diplomats, Bogotá, March 2022. Crisis Group Africa Briefing N°127, *Time to Repeal U.S. Sanctions on Sudan?*, 22 June 2017.

Moreover, the U.S. does not always make clear what parties can do that will lead to sanctions relief.<sup>117</sup> In some cases, Washington has not laid out any such steps or it has outlined steps that are unrealistic.<sup>118</sup> In others, the U.S. was never willing to lift sanctions in the first place. Elsewhere, Washington's communication on sanctions has been vague, leaving targets in the dark about what might lead to reversal.<sup>119</sup> Targets can be unsure why they were sanctioned, as members of Venezuela's electoral authority reported in 2020, or have learned about the designations second- or thirdhand (a former Congolese official found out about his listing from the newspaper and some FARC members learned from listening to the radio).<sup>120</sup> Some never see the full evidence underpinning the designations – even if they lobby the Treasury Department.<sup>121</sup> Without clarity on why they were sanctioned and what they can do to be delisted, targets have little incentive to make concessions in exchange for relief. For U.S. officials, negotiating without the ability to lift sanctions is, according to one diplomat, like “playing poker with someone else's money”.<sup>122</sup>

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<sup>117</sup> In its 2021 review, Treasury acknowledged shortcomings in communications around sanctions. Crisis Group interviews, former Congolese official, sanctions scholar and former U.S. government official, Kinshasa, West Sussex and by telephone, May and August 2022.

<sup>118</sup> For example, after the U.S. withdrew from the 2015 nuclear deal with Iran, then-Secretary of State Mike Pompeo shared twelve actions Iran had to take for sanctions to be lifted, which amounted to an overhaul of Iran's nuclear, foreign and defence policies. They included, for example, the cessation of Iranian influencing activities in Iraq and Syria. Iran saw the demands as running counter to its interests and thinly veiling a regime change agenda; it was never likely to fulfil them. Crisis Group Middle East Report N°195, *On Thin Ice: The Iran Nuclear Deal at Three*, 16 January 2019. See also Drezner, “How Not to Sanction”, op. cit. In another example, the U.S. sanctioned numerous officials amid the 2008 Zimbabwean elections without outlining the concessions expected for those officials to avoid sanctions or have them removed. Crisis Group telephone interview, former U.S. government official, May 2022.

<sup>119</sup> Communication issues are compounded when U.S. officials in the field fail to explain why policymakers in Washington imposed sanctions or when they send messages that contradict aims expressed in the capital. In one incident, amid the chaos of the Taliban's 2021 takeover of Afghanistan, an aid worker said U.S. officials insisted that she bump those on humanitarian lists from the flight to make room for Afghans on U.S. lists. U.S. officials reportedly threatened that if the aid worker did not do so, her organisation would not be granted sanctions exemptions that would allow her to continue to operate in the country. Such threats did not align with the expressed aims of the U.S. sanctions program in Afghanistan, which targeted terrorist groups and their supporters – not humanitarian agencies. Crisis Group interview, humanitarian worker, February 2022.

<sup>120</sup> Crisis Group interviews, former Congolese official, former FARC member and Venezuelan activist, Bogotá, Caracas, Kinshasa and Washington, March and May 2022.

<sup>121</sup> Sanctions targets often cannot get the full record because some (or all) of the supporting information leading to their designation remains classified. There is a process for individuals to petition OFAC for delisting, and individuals with the means have the option of hiring U.S.-based lawyers to seek more information about why they were listed. Sometimes sanctions targets receive incomplete or heavily redacted documents in response to requests for more information as to why they were listed. Crisis Group interviews, former Congolese official, former U.S. government official and sanctions attorneys, Kinshasa, Washington and by telephone, May and December 2022; January and August 2023.

<sup>122</sup> The diplomat was describing a situation in 2020, amid UN-led negotiations aimed at ending the Syrian conflict, when U.S. officials hinted that they would satisfy some demands in exchange for Syrian concessions, but then said they were unable to lessen U.S. economic restrictions, a key demand of Russia, the regime's main backer. Crisis Group interview, former diplomat, Washington, December 2022.

Finally, U.S. officials are sometimes hamstrung in delivering benefits parties expect from sanctions relief because they cannot compel the private sector to resume the business activities that would reverse sanctions' effects, even if it is legal to do so.<sup>123</sup> Negotiating parties thus know that sanctions relief in principle may not lead to sanctions relief in practice. U.S. officials involved in negotiations with Sudan from 2008 to 2012 found that they could not meet Sudanese requests for access to health and education technologies in exchange for concessions from Khartoum because they could not convince the private sector to offer Sudan the desired goods. Across the negotiating table, Sudanese officials accused U.S. diplomats (correctly) of being powerless to bring about sanctions relief.<sup>124</sup>

#### D. *Entrenching Divisions*

U.S. sanctions also sometimes reinforce tensions with targeted groups, individuals and countries in a way that is difficult to reverse even when the circumstances underlying the sanctions have changed. Frictions are often a purposeful result of the sanctions – the Trump administration's "maximum pressure" campaigns on Iran, North Korea and Venezuela, for instance, aimed to isolate those countries. But then, as in these cases, the distrust often becomes entrenched, due in part to the sanctions but also due to myriad other factors. Moreover, sanctions are sometimes a factor in locking in the perception among U.S. policymakers and the public that peaceful relations with the target are impossible.<sup>125</sup> In situations where the political price of normalisation is already high, sanctions can raise the costs further, making conflict resolution more elusive.

Sanctions can sometimes reinforce the impression that a state or armed group is "frozen in carbonate", in the words of a U.S. official, regardless of how the target may evolve over the years or whether the U.S. has other interests that require it to work with that adversary.<sup>126</sup> The idea of engagement can be an especially difficult pill to swallow

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<sup>123</sup> Crisis Group telephone interview, U.S. government official, August 2022. Crisis Group interview, former U.S. government official, Washington, December 2022.

<sup>124</sup> In another example, banks refused to open a checking account for Sudan's embassy in Washington, despite U.S. efforts to secure one on the Sudanese delegation's behalf. It took a year to find a bank willing to open a checking account for the embassy, despite extensive efforts by U.S. officials that included assurance letters, in-person meetings with branch managers and offers to co-sign the account papers. During that time, friction between the two countries had increased, slowing progress as U.S. officials tried to nudge Sudan toward constructive action on sensitive files. Crisis Group telephone interview, former U.S. government official, August 2022. Iranian officials faced a similar problem in 2016, when Tehran's embassy in London could not open a bank account after sanctions were lifted, even though the UK is a signatory of the Iran nuclear deal. Diplomats had to store cash in the basement for the embassy's daily operations. Crisis Group Middle East Report N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017.

<sup>125</sup> Crisis Group Middle East Report N°205, *Averting the Middle East's 1914 Moment*, 1 August 2019.

<sup>126</sup> The moralising language of sanctions announcements often locks in impressions of a group that are difficult to dispel. The State Department website frames counter-terrorism sanctions as part of a national commitment to halt "evil". A case where this framing has arguably been counterproductive is that of Hei'at Tahrir al-Sham in Syria, the former al-Qaeda affiliate and dominant rebel group in Idlib that broke with transnational jihadist networks. As Crisis Group has written, the terrorist designation has precluded discussions with the group about its conduct and the future of the territory it controls. Dareen

when it comes to terrorism-related sanctions. Terrorism designations are powerful legal tools in that they trigger sanctions and are strongly symbolic. The U.S. designates very few states as State Sponsors of Terrorism, generally reserving the distinction for countries it is seeking to cast as beyond the pale. In addition to the stigma, such a designation also often prompts severe sanctions that wind up applying to an entire population and economy of a listed country.<sup>127</sup> The FTO label is similarly powerful, both as a signal and in terms of the stringent sanctions it brings to bear, such as the material support restrictions outlined above.<sup>128</sup>

Sanctions can also complicate U.S. diplomatic overtures to sanctions targets because they end up shaping decisions on whether to engage in such outreach. While the U.S. government has mechanisms for authorising its own activities that might otherwise be prohibited, and there is no legal bar under any sanctions regime to diplomatic exchanges with designated actors, U.S. diplomats sometimes avoid activities that involve designated groups or individuals as a matter of policy.<sup>129</sup> They may wish to isolate the group or individual in question, in accordance with the wishes of senior officials, or they may be wary of the reputational costs of association; or they may be unsure which interactions with sanctioned entities are permitted and which are not.<sup>130</sup>

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Khalifa and Noah Bonsey, “In Syria’s Idlib, Washington’s Chance to Reimagine Counter-terrorism”, Crisis Group Commentary, 3 February 2021. “Executive Order 13224”, State Department website. Crisis Group telephone interview, U.S. government official, May 2022.

<sup>127</sup> Crisis Group has argued that designating Russia a State Sponsor of Terrorism – as some in Washington would like to do – would risk irreparably breaking off U.S. diplomatic relations with the Kremlin and hamper engagement with Moscow on global conflict management in forums such as the UN Security Council. See Michael Wahid Hanna and Delaney Simon, “A dangerous idea to punish Putin”, *Politico*, 4 October 2022; and Delaney Simon and Michael Wahid Hanna, “Why the U.S. Should Not Designate Russia as a State Sponsor of Terrorism”, Crisis Group Commentary, 4 August 2022.

<sup>128</sup> For more on how the terrorist label affects negotiations, see Sophie Haspeslagh, *Proscribing Peace: How Listing Armed Groups as Terrorists Hurts Negotiations* (Manchester, 2021); and Sophie Haspeslagh, “The ‘Linguistic Ceasefire’: Negotiating in an Age of Proscription”, *Journal of Peace Research*, vol. 52, no. 4 (2020). See also Crisis Group Special Report N°1, *Exploiting Disorder: Al-Qaeda and the Islamic State*, 14 March 2016; and Peter Salisbury and Michael Wahid Hanna, “Ending War in Yemen Requires Talk, Not Labels”, *Foreign Policy*, 1 March 2022.

<sup>129</sup> For example, U.S. diplomats sat out of segments of a UN Security Council visit to Colombia organised to highlight the peace deal’s successes because the program included interactions with the demobilised FARC, who were still sanctioned. Diplomats also avoided participating in the main forum for dialogue in Colombia between parties on the implementation of the peace agreement until after the FARC was delisted. Diplomats involved in the peace process told Crisis Group that Washington’s absence from the dialogue forum robbed the peace process of momentum that only the U.S. – the dominant power in the region and a close partner of the Colombian government – could give it. They added: “The biggest loser is the U.S. itself – the contacts they’ve not been able to have, everything from intelligence to understanding the conflict”. In many other cases, however, U.S. officials have communicated with sanctioned officials. For example, they participated in talks with Sudan when that country was under heavy sanctions in the 2000s, in talks leading up to the Iran nuclear negotiations and then in those negotiations themselves. Famously, President Trump met with North Korean leader Kim Jong-un in 2018. Crisis Group telephone interviews, current and former U.S. government officials, May and August 2022. Crisis Group interviews, diplomats, Bogotá, March 2022. Crisis Group United States Report N°1, *Deep Freeze and Beyond: Making the Trump-Kim Summit a Success*, 11 June 2018. See also William J. Burns, *The Backchannel: American Diplomacy in a Disordered World* (London, 2021).

<sup>130</sup> Crisis Group telephone interviews, current and former U.S. government officials, May 2022.

The effects can seem trivial (some diplomats working on Venezuela in 2019 and 2020 were told to avoid buying anything, even a cup of coffee, for sanctioned members of the Maduro government), but in other cases they can prove a hurdle to dialogue.<sup>131</sup> For example, some U.S. officials have expressed regret at the designation of Afghanistan's Haqqani network as an FTO, which they said made it harder for the U.S. government as a whole to come around to the idea of dialogue with the group on ending the conflict in Afghanistan.<sup>132</sup>

At the furthest end of the spectrum, sanctions – especially terrorism sanctions – can even go so far as to help cement rationales for the use of force (although, as a legal matter, sanctions are unrelated to force authorisations).<sup>133</sup> In the case of Iran, the designation of the Islamic Revolutionary Guard Corps as an FTO by the Trump administration may have played a subtle role in the strike on the Iranian general Qassem Soleimani by further conditioning the national security bureaucracy to think of Corps members in the same vein as ISIS and al-Qaeda, both FTOs, and to use the same military means of countering them.<sup>134</sup> The FTO designation of the Nepalese Communist Party (Maoists) helped U.S. officials justify the provision of training and weapons to the Royal Nepalese Army and its sponsoring of civilian militias to fight the Maoists.<sup>135</sup>

Sanctions targets may understand economic penalties as hostile acts, seeing them as part of military campaigns or as a prelude to war.<sup>136</sup> Targets sometimes associate sanctions with physical threats of violence, as former President Kabila of the DRC did when Washington sanctioned members of his inner circle in the run-up to the January 2018 presidential election, according to a Kinshasa-based expert.<sup>137</sup> In Afghanistan, the Taliban sometimes spoke in the same breath about sanctions and “kill” lists such as the Joint Prioritized Effects List that marked individuals for coalition forces in Afghanistan to capture or kill.<sup>138</sup> Former FARC commanders similarly connected U.S. sanctions

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<sup>131</sup> Crisis Group telephone interviews, former U.S. government officials, May and August 2022.

<sup>132</sup> In the early stages of negotiations with the Afghan Taliban, U.S. officials disagreed about whether sanctions prohibited them from speaking with listed individuals, and while eventually sanctioned individuals met U.S. officials as part of talks in Doha, Qatar, various officials cited sanctions as a reason to refrain from dialogue with key conflict parties such as the Haqqani network. Crisis Group interviews, U.S. government official, Washington, December 2021; former U.S. official, Washington, August 2022. See also Crisis Group Asia Report N°311, *Taking Stock of the Taliban's Perspectives on Peace*, 11 August 2020.

<sup>133</sup> For more on this dynamic, see Brian Finucane, “Dangerous Words: The Risky Rhetoric of U.S. War on Mexican Cartels”, Crisis Group Commentary, 17 July 2023.

<sup>134</sup> Crisis Group interview, former U.S. official, February 2023.

<sup>135</sup> Joshua Gross, “Proscription Problems: The Practical Implications of Terror Lists on Diplomacy and Peacebuilding in Nepal”, *Praxis*, 2011. The Communist Party of Nepal (Maoist) was listed as an FTO in 2003 and delisted in 2012. It signed a peace agreement with the government in 2006 and won a plurality of seats in Nepal's first internationally monitored election two years later.

<sup>136</sup> Crisis Group Report, *Averting the Middle East's 1914 Moment*, op. cit. For an historical account of how perceptions evolved from seeing sanctions as an act of war to seeing them as an alternative to war, to be used in peacetime, see Mulder, *The Economic Weapon*, op. cit.

<sup>137</sup> Crisis Group interview, expert, Kinshasa, May 2022.

<sup>138</sup> Crisis Group interview, Taliban official, Kabul, April 2022.



with U.S. military support for Colombia's counter-insurgency campaign.<sup>139</sup> Linking sanctions to the threat of force, sanctions targets sometimes respond forcibly, as Iran did when it attacked oil tankers in the Strait of Hormuz and oil processing facilities in Saudi Arabia, apparently in response to the Trump administration's "maximum pressure" sanctions.<sup>140</sup>

At the local level, parties sometimes manipulate the prospect of sanctions in the context of destabilising rivalries, deepening them. In Venezuela, individuals linked to Juan Guaidó, whom the U.S. and other countries recognised as interim president from 2019 until 2023, told politicians who were considering entering negotiations with President Nicolás Maduro's government that they could be put on a U.S. sanctions list.<sup>141</sup> U.S. diplomats described receiving regular text messages from Venezuelan opposition interlocutors with names of individuals to add to sanctions lists for a variety of offences.<sup>142</sup> Similar dynamics can occur in the business world, for instance in El Salvador, where rivals of one executive framed him as a narco-trafficker, leading to his subsequent placement on a U.S. sanctions list despite his lack of involvement in the drug trade.<sup>143</sup>

Sanctions also sometimes feed perverse political dynamics that underpin broader instability. For example, they can create openings for leaders to deflect blame for crisis conditions regardless of other, often more significant, factors (which may include their own corruption and mismanagement).<sup>144</sup> In Zimbabwe, for example, the government blames the country's economic decline on Western sanctions.<sup>145</sup> In Venezuela, the Maduro government cites sanctions as the leading cause of economic distress.<sup>146</sup> Sometimes these dynamics serve to entrench precisely the actors responsible for perpetuating crisis. In Syria, President Bashar al-Assad also blames sanctions for the coun-

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<sup>139</sup> In particular, they connected sanctions to extradition efforts and the Plan Colombia initiative, which involved U.S. military assistance to combat drug trafficking and the FARC insurgency. Indeed, all these measures were born of the same U.S. strategy for weakening the group. Crisis Group interviews, former FARC commanders, Bogotá, March 2022. See also Crisis Group Latin America Report N°87, *Deeply Rooted: Coca Eradication and Violence in Colombia*, 26 February 2021.

<sup>140</sup> Crisis Group and others have written that the attacks signified Iran's response to the U.S. "maximum pressure" campaign, which significantly interrupted Iran's oil exports, a key revenue source for the country. Mahsa Rouhi, "Whatever Iran's role in the Saudi attack, the regional status quo is unsustainable", *The Guardian*, 18 September 2019; "Pompeo blames Iran for strike on Saudi oil facilities", CBS News, 14 September 2019; and Crisis Group Visual Explainer, "Rough Seas: Tracking Maritime Tensions with Iran", 2022.

<sup>141</sup> Crisis Group interview, civil society activist, Caracas, May 2022.

<sup>142</sup> Crisis Group telephone interview, former U.S. government official, May 2022.

<sup>143</sup> The executive said he was shocked to discover these allegations of nefarious activities on his part. The U.S. Treasury eventually delisted him following a lengthy legal campaign, which established, among other things, that the accusations were false. Crisis Group interview, sanctions attorney, January 2022.

<sup>144</sup> A large body of academic research documents links between sanctions and their effects on authoritarian governments. Crisis Group correspondence, sanctions scholar, January 2023. See also Nikolay Marinov, "Do Economic Sanctions Destabilize Country Leaders?", *American Journal of Political Science*, vol. 49, no. 3 (July 2005); and Dursun Peksen, "Better or Worse? The Effect of Economic Sanctions on Human Rights", *Journal of Peace Research*, vol. 46, no. 1 (2009).

<sup>145</sup> Crisis Group interviews, Zimbabwean government officials, Harare, April 2022; former U.S. government official, May 2022.

<sup>146</sup> Howard LaFranchi, "Why Maduro blames US for Venezuela's domestic woes", *Christian Science Monitor*, 2 July 2021.

try's economic difficulties, while, according to some experts, sanctions appear to have had the counterproductive effect of strengthening networks around the regime, contributing to its survival.<sup>147</sup>

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<sup>147</sup> Zaki Mehchy and Rim Turkmani, "Understanding the Impact of Sanctions on Political Dynamics in Syria", Conflict Research Program, London School of Economics and Political Science, January 2021. Scholars have pointed out that sanctions often strengthen authoritarian governments, as sanctions create scarcity and highly autocratic regimes are in a position to distribute scarce resources in ways that benefit their supporters and undermine the opposition. Crisis Group correspondence, sanctions scholar, January 2023.

## IV. Three Cross-cutting Challenges

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In analysing the reasons that sanctions tend to create obstacles to peace and security efforts, practitioners frequently point to three challenges. Experts have long noted these problems, pointing to them and others as key factors limiting sanctions' effectiveness as a whole. The three issues that the following section highlights pertain specifically to the attributes of U.S. sanctions practice that limit their effectiveness in furthering peacemaking.

### A. *Intractability*

A key challenge that hinders U.S. sanctions from serving peace and security goals is that sanctions are very difficult to meaningfully and enduringly lift or ease. As noted above, it can thus be difficult for negotiators to use them as leverage in peace negotiations. Sanctions can also undercut other peace-related policy goals when they backfire or outlive the circumstances that prompted them. There are multiple reasons for the seeming intractability of U.S. sanctions.

First, U.S. domestic politics can create steep obstacles to sanctions relief.<sup>148</sup> The portrayal in U.S. politics of sanctions as tough and relief as weak makes administrations wary of the reputational risks and political backlash that lifting sanctions may provoke.<sup>149</sup> U.S. policymakers regularly refrain from advocating sanctions easing, or initiating conversations about the pros and cons of doing so, lest they be accused of being “soft” on terrorism, authoritarianism, crime, atrocities or other ills.<sup>150</sup> As one U.S. official explained, no time is ever politically convenient for lifting sanctions, leading officials to wheel out ostensibly situational pretexts for delay – for example, a forthcoming meeting with a foreign counterpart, a state funeral, or midterm or presidential elections.<sup>151</sup> The political costs of easing or lifting for the executive branch can be especially great if members of Congress oppose the move, even if proponents in Congress lack the ability to pass veto-proof legislation to reverse the executive's decision.<sup>152</sup> The

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<sup>148</sup> Crisis Group telephone interviews, current and former U.S. government officials; congressional staffers, April 2020; December 2021; April and August 2022.

<sup>149</sup> Advocating for imposing sanctions polls well for both Democrats and Republicans. Easing them can bring backlash, however, as the Biden administration experienced after it decided to lift sanctions on the FARC in 2021. Bipartisan opposition to the move was so strong in Florida, an important state in presidential elections, that the U.S. National Security Council director for the Western Hemisphere travelled there to defend the administration's policy. “Gonzalez meets Colombians in Miami to explain FARC decision”, *Miami Herald*, 29 November 2021. Crisis Group interviews, current and former U.S. government officials; U.S. congressional staffer, Washington and by telephone, April 2020; December 2021; April and August 2022; and February 2023.

<sup>150</sup> Crisis Group interviews, current and former U.S. government officials, Washington, April 2020, December 2021 and August 2022.

<sup>151</sup> Crisis Group telephone interview, U.S. government official, December 2021.

<sup>152</sup> For example, members of Congress criticised the Biden administration's issuance of a six-month sanctions exemption to allow for disaster relief in Syria as a “slap in the face”. The White House did not extend the exemption for an additional period. “McCaul, Risch ‘Gravely Concerned’ with Biden Admin Allowing Interactions with Assad Regime”, press release, House Foreign Affairs Committee, 10 February 2023. Elizabeth Hagedorn, “US sanctions exemption for earthquake relief in Syria expires”, *Al Monitor*, 8 August 2023. Crisis Group interviews, U.S. government officials, New York, April 2023.

president may also be reluctant to alienate powerful members of Congress he or she is relying on to advance other priorities.

Secondly, bureaucratic inertia and path dependency can hinder policymakers from scaling back U.S. sanctions. Officials across the government echo the adage that imposing sanctions should form part of a broader policy strategy, and not act as a surrogate for having a policy, and yet too often maintaining sanctions becomes an end in itself. This is especially true when sanctions are levied without a political strategy, or the strategy atrophies as sanctions are implemented, policymakers struggle to find rationales for lifting them.<sup>153</sup> Current and former U.S. government officials refer to situations where policymakers “dig [their] heels in” and expand existing sanctions programs without analysing whether the sanctions are achieving their goals or forecasting how additional sanctions will move the needle.<sup>154</sup> A former U.S. government official described this phenomenon as the “one-way ratchet”.<sup>155</sup>

Again, the case of Sudan offers an example. In 2016, the Obama administration used the promise of trade sanctions relief to motivate Sudan to cooperate with it in five discrete areas. The tactic was largely effective, in that Khartoum appeared to satisfy most of the conditions that were set for it; yet Washington slow-rolled the sanctions relief that was supposed to be Sudan’s reward. It was not Khartoum’s actions, but rather cold feet on Obama officials’ part that prompted them to defer decisions on permanently lifting sanctions until after Trump had taken office.<sup>156</sup> The Trump administration eventually moved ahead with lifting trade sanctions in 2017. Yet it subsequently struggled to lift Sudan’s designation as a State Sponsor of Terrorism even after an enormous protest led in 2019 to the ouster of strongman president Omar al-Bashir, whose abuses (Bashir was charged with genocide by the International Criminal Court) had contributed to the sanctions’ longevity. It took more than eighteen months after Bashir’s removal for rescission to be completed.<sup>157</sup>

Finally, even when the U.S. lifts sanctions, their effects may linger past the point of rescission because of the private sector’s risk calculus. The hesitancy of firms to invest in partially or previously sanctioned countries, as detailed above, means that sanctions

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<sup>153</sup> Crisis Group interview, former U.S. government official, May 2022.

<sup>154</sup> Crisis Group telephone interview, former U.S. government official, December 2021. Experts and officials often reference longstanding sanctions where the target has either not changed at all or become stronger. One oft-cited example is Hizbollah, which has been under increasing layers of U.S. sanctions since the 1990s but is a powerful member of the Lebanese government. Another is Cuba, which has been under extensive U.S. sanctions since the early 1960s but remains under the same governance structure today as it was then. Crisis Group telephone interviews, U.S. government officials, December 2021 and February 2022.

<sup>155</sup> Crisis Group telephone interview, former U.S. government official, December 2021.

<sup>156</sup> Even opponents of lifting sanctions acknowledged that Khartoum’s actions represented progress. Crisis Group interview, former U.S. government official, Washington, February 2023. See also Crisis Group Briefing, *Time to Repeal U.S. Sanctions on Sudan?*, op. cit.

<sup>157</sup> One factor that pushed Washington to lift Sudan’s terrorist designation was that country’s commitment to sign the Abraham Accords normalising its relations with Israel. Observers blamed the delayed lifting of the terror designation for weakening the civilian government that was later overthrown in a coup. Crisis Group Statement, “Reversing Sudan’s Dangerous Coup”, 26 October 2021; and Crisis Group, “Freeing Sudan from U.S. Sanctions”, *The Horn* (podcast), 17 February 2020. Crisis Group interview, former U.S. government official, Washington, February 2023.

effects can outlive the sanctions themselves; they remain intractable even after they are lifted.<sup>158</sup>

### B. *No Impact Assessments*

The parts of the U.S. government with responsibility for sanctions policy do not have institutionalised mechanisms for considering what a State Department official called the “downstream” impact of sanctions on peace processes or conflict resolution.<sup>159</sup> Other instruments of U.S. power deployed overseas have such mechanisms: the Pentagon, for example, has systems to track whether its weapons hit their mark. Not so with sanctions.

Washington has not developed systems to collect and share data on the impact of its sanctions programs, good or bad, or articulated an analytical framework to examine sanctions’ effectiveness. Nor has it developed a consistent doctrine governing their use by the U.S. government.<sup>160</sup> A 2019 study by the Government Accountability Office notes that while the Departments of Treasury, State and Commerce do gauge various effects of sanctions – for example, on a target country’s trade – they do not assess whether sanctions are serving to achieve broader U.S. policy goals, for example in the realm of peace and security.<sup>161</sup> While some sanctions regimes require periodic reviews, these are conducted out of the public eye and, by most accounts, are pro forma.<sup>162</sup> As a U.S.

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<sup>158</sup> Crisis Group interview, former U.S. government official, Washington, December 2022.

<sup>159</sup> A Treasury official concurred, noting, “We don’t talk about peace” when designing sanctions. Nor do officials working on conflicts, crises and negotiations receive much training in best practices to use sanctions constructively to further policy goals or mitigate potential negative consequences, although annual lectures at the Foreign Service Institute on sanctions issues do take place. Most U.S. government conflict resolution expertise is housed in the State Department, such as in the Bureau of Conflict Stabilization Operations and regional bureaus, whereas sanctions experts in the State Department (aside from those at Commerce, Treasury and other agencies) sit in other bureaus such as Counterterrorism, Economics and Business Affairs, and International Narcotics and Law Enforcement Affairs. Crisis Group interviews, current and former U.S. government officials, December 2021; April and May 2022; and January 2023.

<sup>160</sup> Crisis Group interviews, current and former U.S. government officials, December 2021, December 2022, January 2023 and Crisis Group interviews, scholars and experts, West Sussex, May 2022.

<sup>161</sup> Two exceptions stand out, but they were written more than a decade ago. In 2007, the U.S. Treasury reviewed the achievements of sanctions on foreign narcotics traffickers linked to Colombia. “Impact Report: Economic Sanctions Against Colombian Drug Cartels”, Office of Foreign Assets Control, U.S. Treasury Department, March 2007. In 2009, the Treasury provided a report to Congress assessing the effectiveness of sanctions on Sudan, as mandated by the Sudan Accountability and Divestment Act of 2007. “Report to Congress January 2009: Effectiveness of U.S. Economic Sanctions with Respect to Sudan”, U.S. Treasury Department, 2009. See also “Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions’ Effectiveness”, Government Accountability Office, 2019.

<sup>162</sup> Sanctions under IEEPA are reauthorized by the president annually, but it is usually a pro forma procedure. IEEPA also requires the president to provide Congress with periodic reports, but the requirement lacks specificity, and it is not clear that it is fully complied with. As former U.S. government official Peter Harrell noted in 2020, “Periodic reports ... offer no substantive analysis, and rather contain only short, factual recitations of actions taken during the reporting period and the Treasury Department’s estimated salaries and expenses associated with each action”. FTO designations must be reviewed every five years to consider whether circumstances warrant revocation, but these processes are not public and rarely result in rescissions. State sponsorship of terrorism designations are

congressperson reflected, “In Congress we really don’t talk about these things in any detail. ... We’re not reviewing methodically and thoughtfully whether sanctions ... are working or not”.<sup>163</sup>

Even the U.S. Treasury’s aforementioned sanctions review, which established a framework to guide sanctions policy, did not establish a mechanism for assessing how U.S. sanctions programs further policy goals, let alone fulfil Treasury’s own framework. Nor did it consider separate sanctions authorities handled by other agencies. With limited processes and capacity in place to review sanctions, programs sometimes outlast the crises they were designed to address and directly conflict with other U.S. peace and security goals.<sup>164</sup>

### C. *An Increasingly Complex Sanctions Landscape*

Another reason why sanctions sometimes work at cross-purposes with peace and security goals is that the U.S. sanctions policy infrastructure has ballooned, as have the legal mechanisms that underpin it. This issue manifests itself in two ways.

First, the different parts of the U.S. government involved in sanctions policy sometimes find themselves pulling in different directions.<sup>165</sup> Multiple entities – such as the Departments of State, Commerce, Treasury, Justice, Homeland Security and Energy, as well as various intelligence agencies – play a role in sanctions policy. Sometimes, their sanctions regulations are misaligned, as when the Treasury Department licences authorise peacebuilding work with sanctioned groups while material support-related restrictions prohibit the very same activities with the very same groups. In other cases, one agency is trying to calibrate sanctions to achieve a certain policy goal, while another is pursuing a wholly different agenda. Such was the case in 2020, when the State Department published a series of steps Venezuelan President Maduro could take in return for phased sanctions removal. At the same time, the Justice Department announced a \$15 million bounty for Maduro’s arrest on drug trafficking charges, essentially nullifying the impact of the State Department’s announcement.<sup>166</sup>

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not subject to mandatory review, although the statutes that underpin them outline two possible paths for rescission. Other sanctions authorities mandate the submission of reports, some of which are classified. Sometimes, Congress mandates the executive branch to assess the effects of sanctions, as it did in the 2023 National Defense Authorization Act by requiring a semi-annual assessment of the effects of sanctions imposed with respect to Russia’s invasion of Ukraine. “Economic Sanctions: Treasury and State Have Received Increased Resources for Sanctions Implementation but Face Hiring Challenges”, Government Accountability Office, March 2020; and Peter Harrell, “The Right Way to Reform the U.S. President’s International Emergency Powers”, *Just Security*, 26 March 2020. Crisis Group interviews, current and former U.S. government officials, Washington, December 2021-January 2023; legal scholar, 1 August 2023.

<sup>163</sup> Representative Jim McGovern, remarks at the Tom Lantos Human Rights Commission Hearing on Considerations on Economic Sanctions, 4 October 2022.

<sup>164</sup> This report has already adduced several examples of sanctions outlasting the circumstances they were designed to address. Still another is the listing of the United Self-Defence Forces of Colombia paramilitary network, which demobilised in 2006 but remained designated as an FTO until 2014.

<sup>165</sup> Other sanctioning states besides the U.S. run into similar challenges, as do multilateral institutions that issue sanctions.

<sup>166</sup> Crisis Group interviews, current and former U.S. government officials, April 2020, December 2021 and May 2022.

Competition between Treasury and State, which can be significant, has in the past been an obstacle to harmonising policy. While the two departments may agree in theory that foreign policy is State's domain – and it is certainly where conflict prevention expertise resides – Treasury often dominates interagency debates given its history and primary role in enforcing sanctions, and its superior grasp, real and perceived, of the penalties' technical aspects. As a former U.S. government official said of inter-agency discussions on sanctions, "Treasury wallops State".<sup>167</sup>

Another point of tension is between the executive branch and Congress. Members of Congress from both parties, including the president's own, often have their own sanctions-linked agendas that clash with the White House's goals, which they sometimes pressure the executive branch to pursue. In January, for example, members of Congress introduced (but did not pass) legislation that would require designation of Russia as a State Sponsor of Terrorism and the Russian private mercenary outfit the Wagner Group as an FTO – two moves that the Biden administration opposed because of their potentially detrimental implications for conflict management.<sup>168</sup> Moreover, legislative sanctions can only be rescinded by an act of Congress, and as a U.S. official noted, efforts to alter executive sanctions when legislative sanctions are in place can be like "toying at the margins", a dynamic that applies to most broad sanctions regimes, albeit with notable exceptions.<sup>169</sup> In short, legislative sanctions can greatly restrict the executive's freedom of movement, not just in lifting sanctions but in providing any easing whatsoever.

Secondly, today's sanctions are so numerous, and grounded in so many different legal authorities, that they can be difficult to understand, untangle, rescind and reform. There are at least 12,000 individuals and entities on U.S. Treasury lists, and more are subject to economic restrictions administered by the State and Commerce Departments.<sup>170</sup> Easing sanctions can be time-consuming and complex in the case of the many regimes that involve layers of sanctions imposed variously by the legislative and executive branches, resulting in what a former official referred to as a "crazy web".<sup>171</sup> Reform-

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<sup>167</sup> Crisis Group interview, former U.S. government official, December 2021. The Biden administration has reinstated an ambassador-level sanctions coordinator meant to bridge the gaps on this matter inside government and ensure the State Department's lead on foreign policy, although his reach may be limited by his small office and tight resources.

<sup>168</sup> Hanna and Simon, "A dangerous idea to punish Putin", *op. cit.*; Simon and Hanna, "Why the U.S. Should Not Designate Russia as a State Sponsor of Terrorism", *op. cit.*; and Pauline Bax, "Great-Power Competition Implications in Africa: The Russian Federation and Its Proxies", testimony at the House Foreign Affairs Subcommittee Hearing, 18 July 2023.

<sup>169</sup> The Obama administration significantly reduced Cuba sanctions, despite the continued existence of the Cuban Liberty and Democratic Act of 1996 (Helms-Burton Act) that prolonged the U.S. embargo on Cuba. Countries affected by both executive and legislative sanctions include Cuba, Iran and Syria. Crisis Group interviews, current and former U.S. government officials, Washington, December 2022 and January 2023.

<sup>170</sup> "U.S. Treasury Specially Designated Nationals and Blocked Persons List", updated on 17 August 2023.

<sup>171</sup> The official was referring to Sudan, but others used similar language to describe Gaza, Syria, Iran and other places. Crisis Group telephone interviews, current and former U.S. government officials, August and September 2022. Crisis Group correspondence, former U.S. official, January 2023. People working on UN-led negotiations on Syria in 2020 also recall U.S. officials lacking either an overview of the scope of sanctions or knowledge of the specific restrictions in place. Crisis Group interview, former diplomat, Washington, December 2022.

ing them may require several government agencies to take action and Congress to change multiple laws.<sup>172</sup> U.S. officials, governments (U.S. allies, partners and foes alike), conflict parties, practitioners and businesses report difficulty understanding sanctions' scope, especially when it comes to the more extensive U.S. regimes.<sup>173</sup>

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<sup>172</sup> The story of the landmark UN Security Council resolution that carved out humanitarian activities from Council-mandated asset freezes illustrates the onerousness of this task. Treasury released licences in December 2022 to implement the resolution, but those licences do not cover sanctions administered by other government agencies, such as any stemming from FTO designations or export control restrictions. Full adherence to the resolution likely requires additional reforms to cover not only those programs that expressly freeze assets but also those that might otherwise pose impediments to carveouts that states are now legally required to permit. Radhika Kapoor, Dustin A. Lewis and Naz Modirzadeh, "Interpretive Note for U.N. Member States on Security Council Resolution 2664 (2022)", Harvard Law School Program on International Law and Armed Conflict, March 2023. Rachel Alpert and Alyssa Bernstein, "Breaking Down Barriers to Emergency Earthquake Aid in Syria", *Just Security*, 16 March 2023. Crisis Group interviews, peacebuilding and humanitarian staff, legal scholars and sanctions scholars, Washington and by telephone, December 2022 and January-February 2023. Crisis Group correspondence, legal scholar, August 2023.

<sup>173</sup> Crisis Group interviews, sanctions targets, current and former U.S. officials, compliance staff and diplomats, Caracas, Bogotá, Dubai, Kinshasa, Washington, New York and by telephone and correspondence, December 2021-August 2023.



## V. Mitigating Consequences, Seizing Opportunities

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The U.S. government has taken significant steps to reform sanctions policy in recent years, but key gaps remain when it comes to addressing how sanctions affect peace efforts. Calibrating sanctions to help ensure they do more good than harm should be done on a case-by-case basis, based on the specifics of the crisis at hand. Still, there are structural reforms that the U.S. government could make, several of which have already been proposed by sanctions experts as ways to render sanctions more effective in general, to help manage the costs that U.S. sanctions may exact on peace and security goals.

### A. *Clear Policy Objectives*

When launching sanctions programs, the U.S. government should make clear and specific statements of the foreign policy objectives the sanctions are intended to achieve and how they will help reach those goals. Whether publicly or internally, the U.S. government should ensure that the sanctions are embedded in a well-articulated political strategy, recognising that if they are going to work toward their stated peace and security goals, they cannot function as an end in themselves. U.S. officials should also clarify to the public and to sanctions targets which behaviour prompted the sanctions – and what targets are expected to do to be removed from sanctions lists.

While officials note that the information underpinning some designations is wholly or partially classified and therefore cannot be shared, it would nevertheless behave policymakers to find ways to communicate clear rationales. The leverage that sanctions offer to negotiators and officials is limited if targets do not know why the sanctions were initiated or what needs to occur for the sanctions to be lifted. Conflict parties may also lose faith in negotiations if they make behaviour changes with the expectation of sanctions relief, but relief is not forthcoming or the goalposts have shifted. Greater clarity may also help the U.S. government take the often politically difficult step of dialling back or rescinding sanctions when they have served their purpose or are inhibiting stability efforts.

### B. *Regular and Meaningful Reviews*

To reduce sanctions' negative effects on conflict resolution, it will be necessary to build better systems for reviewing their performance. As discussed above, the U.S. government does not conduct systematic or comprehensive reviews of sanctions' costs and the extent to which they are meeting their objectives. Even though several sanctions authorities contain review requirements, they are too often exercises in box-ticking. Washington should fix this problem.

The executive branch should conduct regular reviews of sanctions' effectiveness and costs. Policymakers would then have the opportunity to consider the impact of sanctions on peacemaking and related policy goals, as well as impetus to recalibrate the measures when needed.<sup>174</sup> The Treasury Department made a good start by hiring a chief sanc-

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<sup>174</sup> Options could include lessening or altering sanctions, and not necessarily lifting them entirely. Sanctions are often viewed as binary (a target is either blacklisted or not), but the International Eco-

tions economist whose office will study sanctions' costs and impact.<sup>175</sup> Reviews should also be required for sanctions administered by agencies beyond the Treasury and should take into account the views of officials leading on foreign policy matters.<sup>176</sup> Consultations with peace organisations, researchers, local experts and others with insight on how the sanctions are affecting crisis dynamics – and how they might be shaped to have a more positive impact – should be built into the process.<sup>177</sup> Congress should also put procedures in place to review its own legislative sanctions, for instance by calling on the Government Accountability Office to assist.<sup>178</sup>

Congress should play a key role in executive branch sanctions reviews by subjecting them to meaningful oversight hearings. Congressional foreign affairs and foreign relations committees could bring in administration and outside witnesses to test the rationale for continuing sanctions and uncover complications for peacemaking and related efforts that could be addressed through either legislative or executive action. Scheduling hearings so that they match the timing of what are usually pro forma reviews and renewals could be a way to make them more consequential.<sup>179</sup>

Creating review mechanisms that have sufficient rigour will be a challenge given the volume of sanctions programs but concerns about government capacity cannot be an excuse for allowing sanctions programs to go unexamined. Both the executive branch and Congress could develop a list of priority situations for review, in consultation with civil society, looking first at sanctions pertaining to long-running conflicts, situations that have changed substantially since sanctions were imposed, or circum-

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conomic Emergency Powers Act, which authorises many sanctions, allows for lesser penalties than full blocking and provides space to reduce penalties, while keeping some sanctions in place. Crisis Group correspondence, sanctions attorney, January 2023.

<sup>175</sup> The Treasury announced the hire of its chief economist in May, after announcing the creation of her office several months earlier. Daniel Flatley, "U.S. Treasury hires economists to study consequences of sanctions", Bloomberg, 17 May 2023; and Michael Galant, "CEPR Sanctions Watch May 2023", Center for Economic and Policy Research, 31 May 2023.

<sup>176</sup> Experts and officials have proposed various modalities for reviews, suggesting for instance reviews led by an interagency "sanctions review committee" composed of senior officials of relevant agencies; the Government Accountability Office; the Congressional Research Service; the State Department Office of Sanctions Coordination; and the Department of Treasury. Regardless of modality, comprehensive reviews that analyse the implications of sanctions on overall policy goals – and peace and security goals in particular – will require some kind of interagency process involving the agencies that administer and sanctions and deliver on foreign policy.

<sup>177</sup> It would be important to put guarantees in place that if those organisations and individuals provide information for oversight hearings or reviews, they will not be exposing themselves to legal risk.

<sup>178</sup> While that office likely does not have the capacity to review all the legislative sanctions now in place, as a start it could review a select number of priority sanctions. Some commentators have suggested that sunset clauses, mandatory renewals or automatic expiry dates for sanctions would prevent sanctions from outliving their utility or becoming counterproductive and would necessitate discussions on sanctions effectiveness when renewal deadlines occur. Others have expressed concern that sunset clauses would undercut Washington's leverage, as targets would avoid behaviour changes and wait out any sanctions' impact until the measures expire.

<sup>179</sup> They can follow the lead of the House of Representatives' Tom Lantos Human Rights Commission, which held a hearing on the collateral effects of economic sanctions programs, including their impact on humanitarian assistance, human rights and peacebuilding in October 2022. Tom Lantos Human Rights Commission Hearing on Considerations on Economic Sanctions, 4 October 2022.

stances where sanctions have a significant, unintended impact on a target country's population.

Reviews could go a long way toward identifying the challenges that sanctions can pose to peacemaking. But without political will from senior U.S. policymakers to make responsive changes, it is possible that reforms could be made without affecting the status quo. True reform will require that U.S. policymakers seriously consider whether sanctions are working and whether imposing them is worth their costs. Moreover, policymakers will have to make decisions to alter sanctions policies when they are not working even if it is politically unpopular to do so. Continued pressure from civil society may be helpful in generating or bolstering political will, as well as educating the public on why the informed recalibration of sanctions is good policy and not a form of weakness.

### C. *Expanded Sanctions Carveouts*

Washington should build on Treasury's achievements in issuing general licences that authorise peace activities by expanding sanctions carveouts for the full range of economic restrictions in place.<sup>180</sup> Doing so would lessen the obstacles that sanctions pose for organisations undertaking conflict resolution and peace work and send a strong signal of support for their efforts. It would also allay organisations' concerns that licences can be withdrawn and encourage them to invest in long-term conflict resolution programming in places that need it most.

Such a measure could entail other agencies, such as the Commerce Department, updating their licensing procedures to reflect the spirit of the Treasury general licences.<sup>181</sup> They might consider an approach the Commerce and Treasury Departments follow in some programs and deem activities licensed by the other agency as licensed by both agencies without needing additional application or interpretation. Treasury could also issue additional licences and guidance to make clear certain assistance is understood to be authorised, even if pre-existing general licences cover those activities, when peace organisations and the private sector are refraining from conducting authorised activities due to concerns about violating sanctions.<sup>182</sup> Another positive step would

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<sup>180</sup> The general licences authorise "activities to support disarmament, demobilization and reintegration (DDR) programs and peacebuilding, conflict prevention and conflict resolution programs". Federal Register, "Addition of General Licenses to OFAC Sanctions Regulations for Certain Transactions of Nongovernmental Organizations", 21 December 2022. Several different types of sanctions carveouts exist in the U.S. system. They include exemptions (which carve out certain activities from sanctions' application), exceptions (which carve out legal space for actors, activities or goods within sanctions measures), general licences (which publicly authorise engagement in transactions that would otherwise be prohibited by sanctions), and specific licences (which authorise U.S. persons who have applied for and been granted licences to engage in transactions that would otherwise be prohibited by sanctions).

<sup>181</sup> A model is the Commerce Department's commitment to expedite licence application processing to facilitate earthquake relief efforts in Türkiye and Syria, following U.S. Treasury licences to authorise earthquake relief activities otherwise prohibited by the sanctions it administers. "Commerce Announce Expedited Licensing for Exports to Assist in Earthquake Relief", press release, Bureau of Industry and Security, U.S. Department of Commerce, 17 February 2023.

<sup>182</sup> These efforts would require communication with both the private sector and peace organisations, so that they can alert the government of their concerns and what steps the government could take to

be for Congress to codify the authorisations for conflict resolution activities contained in the aforementioned general licences in legislation.

Expanded sanctions carveouts will not fully remove the problems sanctions pose for peace organisations if they do not address the sanctions that apply with respect to FTOs – and particularly the statutes that criminalise “material support” to those entities. As noted above, these restrictions can pose significant obstacles to peace efforts in conflict situations where FTOs are active. To do so, Congress should legislate a carveout to the material support statute that would exempt peacemaking activities from the definition of material support. While policymakers are justifiably concerned that advocating for this reform would risk political backlash, especially from members of Congress, there is growing bipartisan understanding that such a move is necessary. In fact, in July the Senate Foreign Relations Committee approved an amendment that would make just such a carveout in one specific case – exempting various peace activities from the definition of material support with respect to the Wagner Group, should it be designated as an FTO.<sup>183</sup>

Pending a legislative carveout, the Justice Department should publish guidance for peace organisations that explains publicly what U.S. government officials have noted to certain groups in private – that it will not prosecute them for violating the material support statute when they are engaged in bona fide peace activities.<sup>184</sup> While future Justice officials could override such guidance, the guidance would serve as a good-faith measure to demonstrate support for peacemaking activities and give NGOs a degree, if imperfect, of confidence until legislation is passed.

#### D. *Private-sector Confidence*

U.S. policymakers should take steps to mitigate the private sector’s concerns about licensed or otherwise permitted activities in countries where sanctions are in place or have just been lifted. Being able to genuinely deliver on lifting sanctions and alle-

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alleviate them. Treasury took such an approach in February 2023, when it issued additional licences, provided written guidance, and communicated directly with financial institutions and NGOs to confirm that earthquake relief activities in Syria were authorised. Some NGOs confirmed that Treasury’s efforts helped to mitigate the chilling effect of sanctions and facilitate the earthquake relief programming. “Treasury Issues Syria General License 23 to Aid in Earthquake Disaster Relief Efforts”, press release, U.S. Treasury Department, 9 February 2023; and “Guidance on Authorized Transactions Relate to Earthquake Relief Efforts in Syria”, Compliance Communiqué, U.S. Treasury Department, 21 February 2023. Crisis Group interviews, staff at humanitarian organisations delivering earthquake relief in Syria, February 2023.

<sup>183</sup> The amendment would authorise, among other things, activities that support humanitarian projects to meet basic needs and to promote education; support peacebuilding, conflict prevention or conflict resolution programs; support disarmament, demobilisation or reintegration programs; and directly benefit the civilian population, including support for the removal of landmines and economic development projects directly benefiting the civilian population. Amendment to except humanitarian and peacebuilding activities from the definition of material support with respect to activities and transactions involving the Wagner Group, approved by the Senate Foreign Relations Committee on 13 July 2023.

<sup>184</sup> A peace organisation staffer told Crisis Group that the Department of Justice communicated to several NGOs in the aftermath of the Holder decision that it would not prosecute conflict resolution and humanitarian organisations for inadvertent violations of the material support statute. But it refused to issue an official statement saying the same. Crisis Group interview, peace organisation staffer, February 2022.

viating their ill effects will allow Washington more potent leverage in negotiations and more powerful tools for post-conflict stabilisation. It is a tall order, given that dissuading firms from investing in sanctioned places is a fundamental feature of the design of sanctions regimes. But a great deal of research has been done recently, including by the U.S. government itself, on how to overcome the challenge of unwanted de-risking, and this research should be augmented, and its findings implemented in a way that furthers peacemaking goals.<sup>185</sup>

At the outset, the executive branch should deepen its work with private sector actors to identify ways to address concerns about doing business or investing in previously sanctioned countries or countries where sanctions are in place but a range of activities are authorised. The U.S. Treasury's April de-risking strategy was an important signal of the department's recognition of and intention to tackle such concerns, but it is limited in its prescriptions for encouraging financial activity in the conflict settings highlighted in this paper.<sup>186</sup> The department has been increasingly engaged with non-governmental actors on de-risking; these contacts have also been important, but so far there has been little engagement with the private sector beyond financial institutions or outreach focused on concerns pertaining to conflict or post-conflict countries.<sup>187</sup>

The U.S. government should build on recent efforts to reach out to the private sector, and understand its concerns, to further consider how it might instil greater confidence about authorised activities. It could also consider issuing additional compliance guidance and organising regular exchanges with a range of private-sector actors to address their concerns.<sup>188</sup> Foreign policy adjustments, such as assuring U.S. support for economic regeneration to previously sanctioned countries underscored by aid packages, trade commitments or public-sector investment – as well as strengthened outreach to foreign governments on the aims and mechanics of U.S. sanctions regimes – could also help stimulate the private sector's confidence and give them reason to re-engage.

A range of technical solutions have been proposed in recent years which should also be the subject of further research and, if merited, be adopted as part of a strategy to address private-sector concerns. These include the creation of alternative payment channels to facilitate funding to NGOs in countries that commercial firms will not ser-

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<sup>185</sup> Over 40 multi-stakeholder dialogues and research projects have taken place over the past decade to address de-risking. Erica Moret, "Safeguarding Humanitarian Banking Channels: How, Why and by Whom?", Norwegian Refugee Council, January 2023. Also see Sue Eckert and Jacob Kurtzer, "Mitigating Financial Access Challenges: Proposals from the CSIS Multi-stakeholder Working Group on Financial Access", Center for Strategic and International Studies, October 2022; "The Bank Secrecy Act: Views on Proposals to Improve Access for Entities Transferring Funds to High-Risk Countries", Government Accountability Office, December 2021; and "Treasury Announces 2023 De-Risking Strategy", press release, U.S. Department of Treasury, 25 April 2023.

<sup>186</sup> "The Department of the Treasury De-Risking Strategy", U.S. Department of Treasury, April 2023; and Scott Paul, "Treasury is Taking a More Proactive Approach to Bank De-risking", *Just Security*, 25 May 2023.

<sup>187</sup> Crisis Group interview, Erica Moret, sanctions scholar, August 2023.

<sup>188</sup> Treasury and relevant U.S. government bodies could undertake regular engagements clarifying regulations, providing additional assurances as needed, responding to requests for information and sharing long-desired "comfort letters" with private firms eager to invest but needing a legal safe harbour to do so. Another improvement could involve enhanced press releases on sanctions lifting so that they detail how the target's behaviour has changed to merit sanctions being lifted when a delisting occurs (which Treasury has done occasionally but does not do as a matter of practice).

vice, the development of incentives for financial institutions to engage in sanctioned environments when doing so furthers U.S. priorities, such as written assurances and other “safe harbour” documents attesting that regulators will not act against an institution for facilitating certain transactions.<sup>189</sup>

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<sup>189</sup> Past examples of innovative mechanisms include the Swiss Humanitarian Trade Agreement for transfers to Iran (although it did not perform as desired) and the Federal Reserve’s transfer of humanitarian funds to North Korea. Eckert and Kurtzer, “Mitigating Financial Access Challenges”, *op. cit.*; Moret, “Barriers to Afghanistan’s Critical Private Sector Recovery”, *op. cit.*; and Erica Moret, statement at the Tom Lantos Human Rights Commission Hearing on Considerations on Economic Sanctions, 4 October 2022.

## **VI. Conclusion**

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Sanctions have enduring importance as an instrument of U.S. foreign policy. As U.S. officials consider Washington's response to wars and crises, they will almost certainly continue to reach for a powerful lever readily at hand. But the utility of what some describe as a measure of first resort will be undermined if policymakers do not also address the downsides of sanctions as they relate to peacemaking. As it stands, sanctions too often impede talks, hinder conflict resolution efforts and post-conflict recovery, and limit the work of peace organisations, including those working to advance U.S. policy goals, often with U.S. funding. The costs of these failures tend to be most keenly felt in places where the stakes for regional and global peace and security are highest – in war zones and post-conflict settings.

Change is possible, but it will require a concerted commitment to reform. Setting clear objectives for sanctions programs, accompanied by meaningful and regular reviews, would help policymakers weigh the costs and benefits, and provide a basis for calibrating sanctions in line with fresh developments. That flexibility will give policymakers greater leverage in negotiations and enhance their capacity to advance the political strategies that sanctions are meant to further. Expanding and codifying sanctions carveouts for peace organisations would help them do the hard work of mitigating the ravages of war. Addressing the private sector's concerns about investment in places affected by sanctions would help conflict-affected communities trying to rebuild.

Decades of experience with economic sanctions have lessons to offer today's policymakers. They teach that sanctions can be useful to policymakers in their efforts to achieve peace and security objectives, and that they can also be a hindrance. Policymakers have begun to pay heed to the latter, but far greater attention – and action – will be required to blunt sanctions' negative consequences and to help ensure that this tool of U.S. power is most effectively deployed in the service of global peace and security.

**Washington/Brussels, 28 August 2023**

## Appendix A: Sanctions Authorities

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A standard mechanism by which the U.S. Congress authorises the executive branch to apply sanctions is to create statutory “designation” authorities. These statutes give the executive branch broad discretion to determine which countries, groups and individuals will be subject to sanctions consistent with the articulated parameters. Among the most widely used designation authorities for imposing economic and financial sanctions in the service of peace and security objectives are the following.

**The International Economic Emergency Powers Act (IEEPA) of 1977.** IEEPA is the longstanding statutory basis for many financial and economic sanctions programs and the most commonly used authority the president invokes to issue sanctions. The executive branch often cites IEEPA, sometimes in coordination with other statutes, as the basis for executive orders that permit the designation by the Treasury or State Department of actors in countries or regions where the U.S. is seeking to influence behaviour. IEEPA is also part of the legal framework for thematic or targeted sanctions programs – such as programs that create a basis for designating individuals who have engaged in certain categories of conduct, like terrorism, drug trafficking or transnational organised crime. As with regional or jurisdiction-focused sanctions programs, thematic sanctions programs under IEEPA are generally given effect by executive order, with designation authority principally allocated to the Treasury Department, which it is to exercise in consultation with other departments, almost always including State. Treasury has the power to license otherwise prohibited activities under IEEPA sanctions.

**Section 219 of the Immigration and Nationality Act (INA).** Section 219 of the INA creates authority for the State Department to designate certain groups as Foreign Terrorist Organizations. The consequences of designation overlap to some extent with the consequences of designating groups under IEEPA-derived counter-terrorism authorities, but the criminal penalties for violating sanctions on Foreign Terrorist Organizations can be more severe. Unlike with IEEPA, no government agency has the power to license prohibited activities arising out of a Foreign Terrorist Organization designation. When the U.S. designates an organisation as an FTO, it generally will also do a parallel designation under IEEPA authorities.

**Section 620A of the Foreign Assistance Act, Section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019 and Section 40 of the Arms Export Control Act.** Working in concert, these authorities permit the State Department to designate foreign states as “state sponsors of terrorism”. Once a state is designated, export controls on dual-use items are imposed, U.S. arms sales and foreign assistance are cut, and access to debt relief and international financing are restricted. Other restrictions that penalise trade with the sanctioned state may also come into effect. The U.S. government has historically reserved this authority for punishing and stigmatising states it considers to be international pariahs. Currently designated countries are Cuba, Iran, North Korea and Syria. The president can waive restrictions on a case-by-case basis, in consultation with Congress.

Several entities within the political branches of government play a role in imposing, administering and enforcing sanctions. In addition to creating standing designation frameworks like those listed above, Congress can impose additional sanctions regimes which sometimes overlap with measures already on the books. The UN Security Council can impose coercive sanctions acting under Chapter VII of the UN Charter. While the Council’s actions are binding under international law, they must be given effect by appropriate domestic action in order to be binding as a matter of U.S. law.



## Appendix B: About the International Crisis Group

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former Foreign Minister of Argentina and Chef de Cabinet to the United Nations Secretary-General, Susana Malcorra.

Comfort Ero was appointed Crisis Group's President & CEO in December 2021. She first joined Crisis Group as West Africa Project Director in 2001 and later rose to become Africa Program Director in 2011 and then Interim Vice President. In between her two tenures at Crisis Group, she worked for the International Centre for Transitional Justice and the Special Representative of the UN Secretary-General in Liberia.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

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**August 2023**

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*COVID-19 and Conflict: Seven Trends to Watch*, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

*A Course Correction for the Women, Peace and Security Agenda*, Special Briefing N°5, 9 December 2020.

*Ten Challenges for the UN in 2021-2022*, Special Briefing N°6, 13 September 2021.

*7 Priorities for the G7: Managing the Global Fallout of Russia's War on Ukraine*, Special Briefing N°7, 22 June 2022.

*Ten Challenges for the UN in 2022-2023*, Special Briefing N°8, 14 September 2022.

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*Seven Priorities for the G7 in 2023*, Special Briefing N°10, 15 May 2023.

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*The U.S. Presidential Election: Managing the Risks of Violence*, United States Report N°4, 28 October 2020.

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*Overkill: Reforming the Legal Basis for the U.S. War on Terror*, United States Report N°5, 17 September 2021.

*Stop Fighting Blind: Better Use-of-Force Oversight in the U.S. Congress*, United States Report N°6, 26 October 2022.

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<b>A.J. Fuentes</b>	<b>Madison Malloch-Brown</b>	<b>Sherman Williams</b>
<b>Andrei Goldis</b>	<b>Federico Firmian Manfredi</b>	<b>Yasin Yaqubie</b>

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**CRISIS GROUP EMERITII**

<b>Mort Abramowitz</b> Founder and Trustee Emeritus	<b>Martti Ahtisaari</b> Chairman Emeritus	<b>Gareth Evans</b> President Emeritus
<b>Lord (Mark) Malloch-Brown</b> Founder and Chairman Emeritus	<b>George Mitchell</b> Chairman Emeritus	<b>Thomas R. Pickering</b> Chairman Emeritus