

Venezuela Nicolás Maduro Moros was indicted on narcotics and terrorism charges for acts during his presidency, a little more than a year after the United States announced it would no longer recognize him as head of government.³³ The same practice—to wait until a president’s term has concluded to take action against them—does not apply to listings or designations. On July 1, 2021, Hernández was listed on the United States’ Corrupt and Undemocratic Actors list, under Section 353 of the United States-Northern Triangle Enhanced Engagement Act, as amended.³⁴ That listing was classified until February 7, 2022.³⁵

USE OF FORCE, ARMS CONTROL, AND NON-PROLIFERATION

New U.S. Anti-Personnel Landmine Policy Adopted

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On June 21, 2022, the United States adopted a new Anti-Personnel Landmine (APL) Policy.¹ Coming nearly on the eighth anniversary of the Obama administration’s APL policy

³³ U.S. Dep’t of Justice Press Release, Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (Mar. 26, 2020), at <https://www.justice.gov/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism>. For a discussion of Maduro’s indictment and head of state immunity, see Jean Galbraith, Contemporary Practice of the United States, 114 AJIL 494, 511 (2020).

³⁴ See U.S. Dep’t of State Press Release, Antony J. Blinken, U.S. Actions Against Former Honduran President Juan Orlando Hernandez for Corruption (Feb. 7, 2022), at <https://www.state.gov/u-s-actions-against-former-honduran-president-juan-orlando-hernandez-for-corruption>. Hernández was not the first sitting president to have his visa revoked by the United States. See, e.g., Michael Dobbs, *U.S. Revokes Visa for Head of Colombia*, WASH. POST (July 12, 1996), at <https://www.washingtonpost.com/archive/politics/1996/07/12/us-revokes-visa-for-head-of-colombia/5dfedca4-a805-44ae-8b8d-0f562e72f806>.

³⁵ *Id.* Hernández predecessor, Porfirio “Pepe” Lobo Sosa, was designated for involvement in significant corruption (accepting bribes from narco-traffickers) under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021. See U.S. Dep’t of State Press Release, Antony J. Blinken, Designations of Former Honduran President Porfirio “Pepe” Lobo Sosa and Former First Lady Rosa Elena Bonilla Avila for Involvement in Significant Corruption (July 20, 2021), at <https://www.state.gov/designations-of-former-honduran-president-porfirio-pepe-lobo-sosa-and-former-first-lady-rosa-elena-bonilla-avila-for-involvement-in-significant-corruption>. Lobo himself was named in the Hernández indictment but no charges have been made public. See Indictment, *supra* note 5, at 7. Lobo’s son, Fabio Porfirio Lobo, pled guilty to conspiring to import cocaine into the United States. See U.S. Dep’t of Justice Press Release, Son of the Former President of Honduras Sentenced to 24 Years in Prison for Conspiring to Import Cocaine into the United States (Sept. 5, 2017), at <https://www.justice.gov/usao-sdny/pr/son-former-president-honduras-sentenced-24-years-prison-conspiring-import-cocaine>.

¹ White House Press Release, Fact Sheet: Changes to U.S. Anti-Personnel Landmine Policy (June 21, 2022) at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/21/fact-sheet-changes-to-u-s-anti-personnel-landmine-policy>; see White House Press Release, Statement by NSC Spokesperson Adrienne Watson on Changes to U.S. Anti-Personnel Landmine Policy (June 21, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/21/statement-by-nsc-spokesperson-adrienne-watson-on-changes-to-u-s-anti-personnel-landmine-policy>. Review of the policy began in April 2021. Its adoption fulfilled a campaign promise. John Ismay & Rick Gladstone, *Administration Decides It Is Keeping Land Mines in Arsenal, for Now*, N.Y. TIMES (Apr. 6, 2021), at <https://www.nytimes.com/2021/04/06/us/biden-land-mines.html>; Alex Ward, *6 Top 2020 Democrats Vow to Reverse Trump’s New Landmine Policy*, VOX (Feb. 6, 2020), at <https://www.vox.com/2020/2/3/21120684/2020-presidential-election-foreign-policy-landmines>. The announcement coincided with the inter-session meetings of the Ottawa Convention taking place in Geneva. Steven Costner, Deputy Director of the State Department’s Office of Weapons Removal and Abatement, took the floor to inform the meeting of the

announcement on June 27, 2014,² and almost two and a half years after the Trump administration's reversal of that policy on January 31, 2020,³ this is the fifth change in U.S. policy in as many administrations, dating back to the Clinton presidency. The Biden administration's decision returns the United States to greater consistency with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the Ottawa Convention), which is similar to the Obama and Clinton-era approaches.⁴ The new policy also renews a commitment to work toward acceding to the Ottawa Convention, which currently has 164 parties.⁵ In addition to the United States, other non-parties to the Convention include China, India, Iran, Russia, and the Koreans. Until the United States accedes to the Ottawa Convention, its international obligations regarding APL stem from the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on May 3, 1996 (Amended Protocol II) and customary international law.⁶

As described previously in these pages, the drafting of what would become the Ottawa Convention was initially supported and promoted by the United States.⁷ President Clinton announced in May 1996 "that the United States would aggressively pursue a worldwide agreement to ban use, stockpiling, production and transfer of antipersonnel landmines" and that policy was codified in a June 1996 Presidential Policy Directive, and pushed forward in the UN General Assembly in a November draft resolution, which was adopted that December, and also at the January 1997 Conference on Disarmament.⁸ Yet the Clinton administration declined to sign the Convention after it was concluded in September 1997 due to its unwillingness to abandon APLs in the Korean Peninsula, the use of which there would violate the agreement, which did not permit reservations.⁹

new policy shortly after it was released in Washington. See Statement by the United States of America at the 2022 Intersessional Meeting of the Anti-Personnel Mine Ban Convention (June 21, 2022), at <https://www.state.gov/statement-by-the-united-states-of-america-at-the-2022-intersessional-meeting-of-the-anti-personnel-mine-ban-convention>.

² Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 108 AJIL 783, 835 (2014).

³ Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 494, 526 (2020).

⁴ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, 2056 UNTS 211 (2002), 36 ILM 1507 (1997) [hereinafter *Ottawa Convention*].

⁵ Depositary Status for the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, UN TREATY COLLECTION, at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XXVI-5&chapter=26&clang=_en.

⁶ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996 (Protocol II, as Amended on 3 May 1996) Annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, 2048 UNTS 93. The U.S. obligations under Amended Protocol II are reflected in Section 6.12 of the Department of Defense's *Law of War Manual* (June 2015; updated Dec. 2016).

⁷ See Daugirdas & Mortenson, *supra* note 2, at 836.

⁸ Presidential Policy Directive/NSC-54 (Jan. 17, 1997); UN Doc. A/C.1/51/PV.14 (Nov. 4, 1996) (draft resolution introduced by the United States in the First Committee); GA Res. 51/45S (Dec. 10, 1996); UN Press Release, First Part of 1997 Conference on Disarmament Begins with No Agreement Yet on Agenda and Work Programme (Jan. 22, 1997), at <https://press.un.org/en/1997/19970122.dcf282.html>; see also Presidential Policy Directive/NSC-48 (June 26, 1996).

⁹ Ottawa Convention, *supra* note 4, Art. 19 ("The Articles of this Convention shall not be subject to reservations.").

President Clinton did, however, commit to accede to the Convention by 2006, provided an alternative weapon could be designed in the interim.¹⁰ He also “undertook not to use, and to place in inactive stockpile status with intent to demilitarize by the end of 1999, all non-self-destructing APL [‘persistent landmines’] not needed to (a) train personnel engaged in demining and countermining operations, or (b) defend the United States and its allies from armed aggression across the Korean Demilitarized Zone.”¹¹ However, he “reserve[d] the option to use self-destructing/self-deactivating [‘non-persistent’] APL,” subject to U.S. obligations under international law.¹² In 2004, the Bush administration withdrew President Clinton’s pledge to accede to the Convention.¹³ It promised to “eliminate persistent landmines of all types [i.e., anti-personnel and anti-vehicle] from [the U.S.] arsenal,” using only non-persistent landmines after 2010 (including potentially outside of the Korean Peninsula).¹⁴

In turn, the Obama administration, after five years of review, adopted a policy that informally aligned the United States with the Convention’s objectives, while still reserving the right to stockpile and use APL “for the defense of the Republic of Korea.”¹⁵ The Obama administration also committed not to “produce or otherwise acquire any anti-personnel munitions that are not compliant with the Ottawa Convention.”¹⁶ The Trump administration returned to the approach of the Bush administration, focusing again on the distinction between persistent and non-persistent landmines, both APL and anti-vehicle landmines. Thus, the administration promised “not to employ persistent landmines” but retained “the [Defense] Department’s ability to employ non-persistent landmines [without] any expressed geographic limitations.”¹⁷ A Pentagon official argued that landmines “remain a vital tool in conventional warfare that the United States military cannot responsibly forgo, particularly when faced with substantial and potentially overwhelming enemy forces in the early stages of combat.”¹⁸

¹⁰ Steven Lee Myers, *Clinton Agrees to Landmine Ban, But Not Yet*, N.Y. TIMES (May 22, 1998), at <https://www.nytimes.com/1998/05/22/world/clinton-agrees-to-land-mine-ban-but-not-yet.html>.

¹¹ White House Press Release, Fact Sheet: Banning Anti-Personnel Landmines (May 16, 1997), at <https://clintonwhitehouse6.archives.gov/1997/05/1997-05-16-fact-sheet-on-anti-personnel-landmines-ban-efforts.html>.

¹² *Id.*

¹³ Steven R. Weisman, *New U.S. Land Mines to Pose Less Long-Term Danger*, N.Y. TIMES (Feb 27, 2004), at <https://www.nytimes.com/2004/02/27/world/new-us-land-mines-to-pose-less-long-term-danger.html>.

¹⁴ See Bureau of Political-Military Affairs Press Release, Fact Sheet, New United States Policy on Landmines: Reducing Humanitarian Risk and Saving Lives of United States Soldiers (Feb. 27, 2004), at <https://2001-2009.state.gov/t/pm/rls/fs/30044.htm>.

¹⁵ White House Press Release, Fact sheet: Changes to U.S. Anti-Personnel Landmine Policy (Sept. 23, 2014), at <https://obamawhitehouse.archives.gov/the-press-office/2014/09/23/fact-sheet-changes-us-anti-personnel-landmine-policy>. The policy was subsequently codified as Presidential Policy Directive-37 (PPD-37) (Jan. 2016).

¹⁶ *Id.* This aspect of U.S. policy was first announced in June 2014 at the Third Review Conference for the Ottawa Convention. See Statement by Ambassador Griffiths, United States Embassy Maputo, to the Third Review Conference to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (June 27, 2014), available at http://www.maputoreviewconference.org/fileadmin/APMBC-RC3/friday/13_HIGH_LEVEL_SEGMENT_-_United_States.pdf.

¹⁷ DoD Policy on Landmines (Jan. 31, 2020), available at <https://media.defense.gov/2020/Jan/31/2002242359/-1/-1/1/DOD-POLICY-ON-LANDMINES.PDF>.

¹⁸ Landmine Policy (Jan. 31, 2000), at <https://www.defense.gov/News/Releases/Release/Article/2071692/landmine-policy>.

President Biden returned the United States to an APL policy that “align[s] . . . with key provisions” of the Ottawa Convention.¹⁹ Employing (without explicitly saying so) the words of Article 1 of the Convention, the White House announced that the United States will:

- Not develop, produce, or acquire APL;
- Not export or transfer of APL, except when necessary for activities related to mine detection or removal, and for the purpose of destruction;
- Not use APL outside of the Korean Peninsula;
- Not assist, encourage, or induce anyone, outside of the context of the Korean Peninsula, to engage in any activity that would be prohibited by the Ottawa Convention; and
- Undertake to destroy all APL stockpiles not required for the defense of the Republic of Korea.
- Additionally, the United States will undertake diligent efforts to pursue materiel and operational solutions to assist in becoming compliant with and ultimately acceding to the Ottawa Convention, while ensuring our ability to respond to contingencies and meet our alliance commitments.²⁰

As with the Clinton and Obama policies, the Biden policy focused exclusively on APL and reserved the use of APL in the Korean Peninsula. The United States currently has a stockpile of approximately three million APLs.²¹ According to Principal Deputy Assistant Secretary of State Stanley L. Brown, the “United States last used anti-personnel landmines in 1991 during the Gulf War. There was one single incident of one munition being used in the 2002 time-frame in Afghanistan.”²² Senator Patrick Leahy, who for decades has fought against the U.S. use of APLs, called upon the president to direct the “Department of Defense . . . to move expeditiously in fully implementing and institutionalizing the policy.”²³

President Biden’s announcement of the new APL policy emphasized its multilateralist, legal, and humanitarian dimensions. While noting that the policy changes “complement

¹⁹ See Statement by NSC Spokesperson Adrienne Watson *supra* note 1. It appears that there was resistance to the new policy in the Pentagon. According to a State Department official, Chairman of the Joint Chiefs of Staff General Mark Milley and Secretary of Defense Lloyd Austin “had the opportunity to raise the need that they feel that they had for land mines with the White House and talk about their operational effectiveness, but this was the decision.” Missy Ryan, *Biden Administration Reverses Trump-Era Rules on Land Mines*, WASH. POST (June 21, 2022), at <https://www.washingtonpost.com/national-security/2022/06/21/united-states-biden-landmines-trump/>. In April, in testimony before the Senate Armed Services Committee, General Milley said that landmines “are important . . . in order to shape enemy operations” and that “Antitank or anti-personnel mines are very effective used in combat.” Hearing to Receive Testimony on the Department of Defense Budget Posture in Review of the Defense Authorization Request for Fiscal Year 2023 and the Future Years Defense Program, Apr. 7, 2022, at 1:40:15, at <https://www.armed-services.senate.gov/hearings/to-receive-testimony-on-the-department-of-defense-budget-posture-in-review-of-the-defense-authorization-request-for-fiscal-year-2023-and-the-future-years-defense-program>.

²⁰ Fact Sheet: Changes to U.S. Anti-Personnel Landmine Policy, *supra* note 1.

²¹ U.S. Dep’t of State Press Release, Briefing on the United States’ Updated Anti-Personnel Landmine Policy (June 21, 2022), at <https://www.state.gov/briefing-on-the-united-states-updated-anti-personnel-landmine-policy>.

²² *Id.*

²³ Office of Senator Leahy Press Release, Reaction to the White House Announcement of Changes to U.S. Anti-Personnel Landmine Policy, at <https://www.leahy.senate.gov/press/reaction-to-the-white-house-announcement-of-changes-to-us-anti-personnel-landmine-policy>.

longstanding U.S. leadership in the clearance of landmines and other explosive remnants of war,” the White House stressed that they also “reflect the President’s belief that these weapons have disproportionate impact on civilians, including children, long after fighting has stopped, and that we need to curtail the use of APL worldwide.”²⁴ The Fact Sheet that was issued by the White House made clear that the United States “is joining the vast majority of countries around the world in committing to limit the use of anti-personnel landmines.”²⁵ And it went on to underscore that the new policy “represents a further step to advance the humanitarian aims of the Ottawa Convention, and to bring U.S. practice in closer alignment with a global humanitarian movement that has had a demonstrated positive impact in reducing civilian casualties from APL.”²⁶ Officials also emphasized the longstanding U.S. commitment to conventional weapons destruction, including landmines. Since 1993, the United States has provided over \$4.2 billion in funding for such programs.²⁷ In a statement, the European Union indicated that the change in U.S. policy “will contribute to the reinforcement of the humanitarian aims of the Ottawa Convention and to closer alignment with a global humanitarian movement that has demonstrated a positive impact in reducing civilian casualties.”²⁸

The policy announcement came several months into the invasion of Ukraine, and U.S. officials made a point of contrasting its position with the Russian use of landmines in Ukraine.²⁹ National Security Council Spokesperson Adrienne Watson underscored that the “world has once again witnessed the devastating impact that anti-personnel landmines can have in the context of Russia’s brutal and unprovoked war in Ukraine.”³⁰ In August, the State Department announced that the United States would provide \$89 million in funding for demining assistance in Ukraine.³¹

²⁴ Fact Sheet: Changes to U.S. Anti-Personnel Landmine Policy, *supra* note 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ U.S. Department of State, Bureau of Political-Military Affairs, *To Walk the Earth in Safety* 5 (21st ed., 2022).

²⁸ EU Press Release, US: Statement by the Spokesperson on the Change of Antipersonnel Landmine Policy (June 24, 2022), at https://www.eeas.europa.eu/eeas/us-statement-spokesperson-change-anti-personnel-landmine-policy_en.

²⁹ There have been extensive reports of Russian use of APL in Ukraine. See Karoun Demirjian, *Land Mines Create a Deadly Legacy for Ukraine and Possibly Beyond*, WASH. POST (Apr. 12, 2022); Thomas Gibbons-Neff & John Ismay, *Land Mines on a Timer, Scattered Over a Ukrainian Town*, N.Y. TIMES (Apr. 8, 2022); John Ismay, *New Russian Land Mine Poses Special Risk in Ukraine*, N.Y. TIMES (Apr. 7, 2022).

³⁰ Statement by NSC Spokesperson Adrienne Watson, *supra* note 1; see also Briefing on the United States’ Updated Anti-Personnel Landmine Policy, *supra* note 21 (statement of Principal Deputy Assistant Secretary of State Brown).

³¹ U.S. Dep’t of State Press Release, \$89 Million in New U.S. Humanitarian Demining Assistance for Ukraine (Aug. 9, 2022), at <https://www.state.gov/89-million-in-new-u-s-humanitarian-demining-assistance-for-ukraine>. The United States is providing Claymore mines to Ukraine, but these are not covered by the Ottawa Convention because they are manually triggered. See White House Press Release, Press Gaggle by Press Secretary Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby en Route Munich, Germany (June 25, 2022), at <https://www.whitehouse.gov/briefing-room/press-briefings/2022/06/25/press-gaggle-by-press-secretary-karine-jean-pierre-and-nsc-coordinator-for-strategic-communications-john-kirby-en-route-munich-germany>.