

CLAIMS AND DISPUTE RESOLUTION

**Agreement Between the
UNITED STATES OF AMERICA
and SUDAN**

With Annex and Schedules

Effectuated by Exchange of Notes at Washington
October 21, 2020

Entered into force October 21, 2020



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”



The Department of State of the United States of America refers the Embassy of the Republic of the Sudan in Washington to the consultations between representatives of the Government of the United States of America and the Government of the Republic of the Sudan relating to the conditions for the release of funds to be placed in escrow in anticipation of the Government of the Republic of the Sudan providing compensation to address claims related to the bombings of the United States Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and the attack on the U.S.S. Cole.

During these consultations three conditions were identified as being required to be satisfied prior to the issuance of notifications by the Government of the United States of America and the Government of the Republic of the Sudan that would initiate a process to release the escrowed funds. It would appear desirable, in anticipation of the establishment of the escrow account (“Escrow Account”) under an agreement (“Escrow Agreement”) between the fiscal agents of the Government of the United States of America and the Government of the Republic of the Sudan and the escrow agent (“Escrow Agent”), to specify the three

conditions in a separate bilateral agreement between the Government of the United States of America and the Government of the Republic of the Sudan.

If the conditions and other terms set out in the Annex and Schedules enclosed with this Note are acceptable to the Government of the Republic of the Sudan, the Department proposes on behalf of the Government of the United States of America that this Note, including its Annex and Schedules, together with the Embassy's affirmative Note of reply on behalf of the Government of the Republic of the Sudan, shall constitute an Agreement between the Government of the United States of America and the Government of the Republic of the Sudan with respect to the conditions and other terms set out in the Annex to this Note, which shall enter force on the date of the Note of reply.

Enclosures:

As stated.

Department of State,

Washington, October 21, 2020

A handwritten signature in blue ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name or initials.

ANNEX

The Government of the Republic of the Sudan and the Government of the United States of America shall issue a notice in the form attached at **Schedule 1** (the “**Notice to Arrangement Party**”) to this Annex, to, respectively, the Central Bank of Sudan and the Federal Reserve Bank of New York, notifying them that the Trigger Event, as defined in Clause 2.2 of the escrow agreement among the Central Bank of Sudan, the Federal Reserve Bank of New York and the escrow agent appointed thereby (“Escrow Agreement”), has occurred either:

1. upon satisfaction of each of the following necessary conditions:
 - (A) Publication of a notice concerning the designation of Sudan as a state sponsor of terrorism in the Federal Register of the United States of America stating that the Determination of August 12, 1993, regarding Sudan is rescinded;
 - (B) Enactment of legislation that (i) contains the provision set forth at **Schedule 2** to this Annex and (ii) does not contain any exception, carve out, or limitation to that provision unless the Government of the Republic of the Sudan notifies the Government of the United States of America by written diplomatic communication that the Government of the Republic of the Sudan accepts such exception, carve-out, or limitation; and
 - (C) Signature of the bilateral claims settlement agreement between the Government of the Republic of the Sudan and the Government of the United States of America related to the claims of victims of the 1998 bombings of U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and the 2000 attack on the U.S.S. *Cole* by the duly authorized representatives of both Sudan and the United States; or
2. as otherwise agreed to by the Government of the Republic of the Sudan and the Government of the United States of America.

The Government of the Republic of the Sudan and the Government of the United States of America further agree that, in the event the condition described in 1(A) above has not been satisfied by February 28, 2021, the Government of the Republic of the Sudan shall have the option, in its sole and absolute discretion, to

instruct the Central Bank of Sudan to terminate the Escrow Agreement and the Escrow Account by providing the Escrow Agent with a Notice of Termination, as defined in Clause 1.1 of the Escrow Agreement. Sudan shall provide notice by written diplomatic communication to the Assistant Secretary for the Bureau of African Affairs of the United States Department of State of its intention to exercise this option within seven (7) calendar days before instructing the Central Bank of Sudan to provide a Notice of Termination to the Escrow Agent.

Schedule 1: NOTICE TO ARRANGEMENT PARTY

To: [Central Bank of Sudan]
[Federal Reserve Bank of New York]

This is a Notice to Arrangement Party, as defined in Clause 1.1 of the escrow agreement dated [DATE] among the Central Bank of Sudan, the Federal Reserve Bank of New York and the escrow agent appointed thereby (the “**Escrow Agreement**”). Expressions defined in the Escrow Agreement have the same meaning in this notice, unless given a different meaning herein.

Please be advised that receipt of this notice constitutes the “Trigger Event” defined in Clause 2.2 of the Escrow Agreement. You are therefore instructed to issue the “Trigger Event Notice” defined in Clause 1.1 of the Escrow Agreement, instructing the Escrow Agent to make an electronic funds transfer of USD 335,000,000 (three hundred thirty-five million) to the Recipient Account.

Dated: _____

By: _____

[Name]

Authorised Signatory

[United States of America]

[The Republic of the Sudan]

Schedule 2

“(a) Immunity.—

(1) IN GENERAL.—Notwithstanding any other provision of law, upon submission of a certification described in paragraph (2)—

(A) Sudan, an agency or instrumentality of Sudan, and the property of Sudan or an agency or instrumentality of Sudan, shall not be subject to the exceptions to immunity from jurisdiction, liens, attachment, and execution under section 1605(a)(7), 1605A, or 1610 (insofar as section 1610 relates to a judgment under such section 1605(a)(7) or 1605A) of title 28, United States Code;

(B) section 1605A(c) of title 28, United States Code, section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (28 U.S.C. 1605A note), section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (28 U.S.C. 1605 note), and any other private right of action relating to acts by a state sponsor of terrorism arising under Federal, State, or foreign law shall not apply with respect to claims against Sudan, or any of its agencies, instrumentalities, officials, employees, or agents in any action in a Federal or State court; and

(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Sudan, or property of any agency, instrumentality, official, employee, or agent of Sudan, in connection with an action that would be precluded by subparagraph (A) or (B) shall be void.”

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



THE AMBASSADOR

WASHINGTON, D.C.

السفير
واشنطن

The Embassy of the Republic of the Sudan in Washington presents its compliments to the Department of State of the United States of America and has the honor to acknowledge receipt of the Department's note, dated October 21, 2020, with Annex and Schedules, which reads as follows:

“The Department of State of the United States of America refers the Embassy of the Republic of the Sudan in Washington to the consultations between representatives of the Government of the United States of America and the Government of the Republic of the Sudan relating to the conditions for the release of funds to be placed in escrow in anticipation of the Government of the Republic of the Sudan providing compensation to address claims related to the bombings of the United States Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and the attack on the U.S.S. Cole.

During these consultations three conditions were identified as being required to be satisfied prior to the issuance of notifications by the Government of the United States of America and the Government of the Republic of the Sudan that would initiate a process to release the escrowed funds. It would appear desirable,

in anticipation of the establishment of the escrow account (“Escrow Account”) under an agreement (“Escrow Agreement”) between the fiscal agents of the Government of the United States of America and the Government of the Republic of the Sudan and the escrow agent (“Escrow Agent”), to specify the three conditions in a separate bilateral agreement between the Government of the United States of America and the Government of the Republic of the Sudan.

If the conditions and other terms set out in the Annex and Schedules enclosed with this Note are acceptable to the Government of the Republic of the Sudan, the Department proposes on behalf of the Government of the United States of America that this Note, including its Annex and Schedules, together with the Embassy’s affirmative Note of reply on behalf of the Government of the Republic of the Sudan, shall constitute an Agreement between the Government of the United States of America and the Government of the Republic of the Sudan with respect to the conditions and other terms set out in the Annex to this Note, which shall enter force on the date of the Note of reply.

Enclosures:

As stated.

Department of State,

Washington, October 21, 2020

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(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Sudan, or property of any agency, instrumentality, official, employee, or agent of Sudan, in connection with an action that would be precluded by subparagraph (A) or (B) shall be void.””

The Embassy of the Republic of the Sudan in Washington has the honor to confirm on behalf of the Government of the Republic of the Sudan that the proposal set forth in the above-quoted Department note, with Annex and Schedules, is acceptable to the Government of the Republic of the Sudan and that the Department's note and this note in reply shall constitute an agreement between the two Governments with respect to the conditions and other terms set out in the Annex to the Department's Note which shall enter into force on the date of this reply.

The Embassy of the Republic of the Sudan avails itself of this opportunity to renew to the State Department of the United States of America the assurances of its highest consideration.

Embassy of the Republic of the Sudan,

Washington, October 21, 2020.

