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Navigating Humanitarian Exceptions to Sanctions Against Syria

Challenges and Recommendations

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Acknowledgements

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In the 10th year of war in Syria, the country's humanitarian situation is facing a dramatic deterioration, exacerbated by a spiraling economic crisis and the mounting toll of comprehensive sanctions. While almost two-thirds of Syrians are now living in areas that are not experiencing active conflict, the changing needs of this large portion of the Syrian population require immediate support to survive and access basic services.

the topic and is informed by interviews with small, medium, and large INGOs almost exclusively operating in Syria's government-controlled areas (with few of them having cross-line operations). The first section of the paper lays out the background and rationale. The second section examines the various challenges faced by humanitarian actors in navigating sanctions

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Also, the EU has sanctioned the export of European goods “that fall under the scope of similar items restricted for other purpose,”⁹ including some supplies that are crucial to humanitarian aid programs such as chlorine, commonly used in sanitation products and water purification but banned because it can be and has been used to make chemical weapons.¹⁰ The U.S. sanctions, however, are even more extensive, banning all U.S. exports, U.S.-origin goods, and even some items produced outside the U.S. from export to Syria. In December 2019, the U.S. approved its broadest sanctions yet as part of the Caesar Syria Civilian Protections Act.¹¹ The provisions of the Caesar Act, which took effect on June 17, 2020, expand upon secondary sanctions that punish non-U.S. individuals and entities doing business with sanctioned entities.¹²

While it is difficult to measure exactly how much sanctions have contributed to the economic and humanitarian crisis experienced by the Syrian people,¹³ humanitarian organizations report that sanctions have hampered concretely their programs, which “already face considerable operational challenges in Syria regardless of sanctions.”¹⁴

These challenges are unique to each of the three regions in which organizations operate: the government-controlled territory in about 70 percent of Syria; Turkish-controlled areas in the Northwest; and the Northeast, where Syrian-Kurdish groups control a de facto autonomous zone.¹⁵ Crucially, since the government began to regain control of much of the country in 2016, humanitarian organizations have had to base more of their operations in Damascus, where their projects are subject to the approval of the government, which, according to Human Rights Watch, “diverts aid, development, and reconstruction assistance in a way that creates significant risk of discriminating against residents who are not aligned with the government’s political agenda, and fails to allow for a distribution of aid in a manner that respects the rights of the population.”¹⁶

Although, arguably,

population already ravaged by a decade of violence and instability.¹⁷ Moreover, there is no

To ensure that humanitarian aid is not interrupted, both U.S. and EU sanctions requirements provide exceptions to support humanitarian operations.

The U.S. grants these exceptions through either:

- a) A "general license," which authorizes the performance of certain categories of transactions without needing to apply for specific licenses, or
- b) Individual/specific licenses issued on a case-by-case basis under certain limited situations and conditions by competent authorities.²¹

Under the EU framework, there are two broad categories:

- a) "Exceptions that do not require an authorization, and
- b) Derogations that are subject to authorization by the EU member state's competent authority."

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computers, software, technical devices, etc. Also, U.S. sanctions regulate the conduct of non-U.S. parties if their transactions have a U.S. connection. Hence, it is impossible to export any item containing more than 10% U.S.-origin goods without a license.²⁷

The Office of Foreign Assets Control (OFAC), a U.S. Treasury Department agency that administers and enforces economic and trade sanctions in support of U.S. national security and

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One of the most challenging aspects of managing humanitarian operations in Syria is moving money into the country without violating sanctions. The collapse of the banking platforms in areas outside the control of the government on one hand, and sanctions imposed on government-owned banks on the other, have drastically limited fund transfer channels. Even non-sanctioned banks can be caught under the sanction regime, because they are primarily established as joint ventures with Syrian investors, many of whom could be considered government linked or be under sanctions.³⁷

In such an intricate environment, banks are expected to conduct risk mitigation analyses for every transaction in Syria, which they are increasingly reluctant to do. Instead of applying “know your customer (KYC) procedures mandated in the transnational governance of sanctions,” banks have opted to de-risk

- Interconnectedness of counterterrorism financing (CTF) legislation with neighboring states' legislative and regulatory arrangements (Turkey) or issues of political economy (Lebanon).

It's worth noting that overcompliance is not practiced solely by global banks. Smaller European banks and correspondent banks in the Middle East are often pressured to sever ties with their clients in Syria. Often, this leads to delays in payments, which results in financial losses due to currency depreciation and exchange rate fluctuations and pushes humanitarian actors to resort to bulk cash smuggling.⁴²

Delayed payments also cause disruption of aid delivery, which severely diminishes the scale of response. One INGO reported an interruption in the rehabilitation of 200 apartments in 2019 due to a delay in transferring funds into the country, causing the organization to bear the cost of extension, which ended up costing around \$400,000 USD. Microgrant programs as well were severely impacted by delays in financial transfers, as reported by the same INGO, due to a significant price difference between the proposed plan and the market value at the time of execution.⁴³

Even in instances where an entity is not sanctioned, such as the General Organization for Seed Multiplication (GOSM), related entities with which they conduct business may be

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While 12 nonsanctioned private banks are operating in cities under government control, branches in nongovernment-controlled areas are still very limited due to security concerns, including reports of armed robberies. Damaged telecommunication structures and lack of hardware and software updates due to sanctions have further impacted banks, and ATMs are rarely operational. This has resulted in the growing use of nonbanking networks.⁴⁶ The use of informal payment channels not only creates a security risk for humanitarian actors, but also increases the risk of extortion and misuse since the funds are more difficult to trace.⁴⁷

The low risk appetite of banks and overcompliance have caused INGOs to plan their aid programs by prioritizing financial access rather than the needs of people they are trying to aid, which affects the relevance of some of the activities.⁴⁸

The humanitarian exemption logistical difficulties, the threat of sanction violations, and political pressure to cut ties wiut u]TJ-0.001sE955hh955hh955hn. 0 12 15btBDC l5p1 p3 (E-1 (y/)]TJETWBDC 0 -

availability of payment channels. When asked, one of the INGO representatives operating in Syria said, “We didn’t feel that there was any relaxation at all in expediting the process. We are

Notwithstanding the debate over whether sanctions produce the intended outcomes and whether sanctions violate human rights, in a growing environment of economic, humanitarian and legal uncertainties, there is an urgent need for a concerted international effort to improve the effectiveness of humanitarian exceptions. This paper has presented some of the challenges humanitarian actors face in delivering aid to Syria, particularly to government-controlled areas. A review of the literature and interviews with Damascus-based INGO representatives revealed that, despite the provision of humanitarian exceptions, aid workers are constantly facing risks, additional costs, logistical challenges and delays in their operations. It is important to note that, while concrete measures to address these challenges are lacking, there is more awareness and dialogue around the impact of sanctions on humanitarian aid. This is a first step in acknowledging the challenges and starting a dialogue around practical solutions.

The recommendations outlined below are drawn from interviews conducted with Damascus-based INGO representatives and a review of recent policy literature on the subject.

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- Continuous dialogue between sanctioning authorities, donors, humanitarian actors, banks, and financial sector regulators is paramount to building trust and improving regulatory guidance to make it easier for humanitarian actors to comply with the sanctions framework and reduce the chilling effect.⁷¹
 - Promote regular monitoring, evaluation, and reporting on the unintended consequences of sanctions on humanitarian activities. Sanctions committees should engage groups of experts and organize briefings with humanitarian organizations regularly to monitor the effect of sanctions on humanitarian response.⁷²
 - Establish a financial channel between a correspondent bank and a private bank in Syria for Damascus-based humanitarian organizations to transfer directly and access funds in Syria. This will remove the risks, delays, and costs involved with informal transactions.

- Engage in a goodwill dialogue and provide assurance to all parties involved in supporting humanitarian activities (banks, insurance, suppliers and shipping companies) that they will not be subject to legal fees and sanctions. This will facilitate humanitarian operations and allow INGOs to respond effectively to needs.⁷⁴
- Increase clarity and guidance on risk assessment and due diligence processes through regular workshops by donors or an authoritative guidance document. INGOs require both external and internal consistency and clarity as they are functioning on multiple levels within this multifaceted puzzle – from high-level advocacy and grant management to project delivery and field programs.⁷⁵
- Anticipate how sanctions provisions will impact humanitarian work by insulating situations in which humanitarian actors will need to transact with a sanctioned person or entity to ensure the safety of humanitarian actors, when all unsanctioned payment channels are inaccessible, or when critical telecommunication and transportation networks have been sanctioned.⁷⁶
- Adjust requirements for obtaining licenses according to operational contexts. For time-sensitive humanitarian projects and high-risk environments, it is especially important to remove burdens imposed by sanctions.⁷⁷ Explore the possibility of whitelisting organizations or issuing a comprehensive “project license” that extends over the various aspects of a project instead of requiring organizations to apply for multiple separate licenses pertaining to the same project.⁷⁸
- Allow humanitarian organizations to operate under the same umbrella as the UN. There are different regulations and licenses that the UN operates under, which provides them with more freedom-1 (a)-1 (e)-2 (do3u (e)-2 (ffsa (o)-3 (r)-19)-1 8t (tat)1

- Translate the high-level and often political rhetoric of sanctions and prescriptions into practical and actionable processes via formalized, systemized, and efficient exemption procedures. Appoint accessible technical advisors on both sides who can perform and coordinate this function as well as help troubleshoot.
- Increase risk-sharing by supporting humanitarian actors in managing the rules and regulations to obtain exceptions and fund the legal and staffing costs associated with compliance measures.
- Remove the restrictive clauses from donor agreements that add to the reporting and due diligence burdens of humanitarian actors, especially requirements – such as mandatory beneficiary screening – that challenge humanitarian impartiality.⁸²
- Focus less on strict guidelines regarding recovery vs. reconstruction and fund more activities that are geared toward sustainability and long-term recovery plans so that communities are empowered and less reliant on aid.⁸³

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- Engage with humanitarian actors to create a code of conduct on what constitutes sufficient compliance and transparency in terms of systems and recordkeeping, and the exceptions that are possible in the direst circumstances.⁸⁴
 - Keep correspondent banks informed about licenses used to enable payments and provide them with information about how payments will be used.⁸⁵
 - Hire experts in the humanitarian sector in order to become better informed on the risks involved in humanitarian work.⁸⁶

- Brief partner banks on the details of upcoming projects as well as the purpose and timeline of the payments that the banks will facilitate. Discuss the challenges of operating in high-risk environments openly with banks, addressing specific measures that will be taken to avoid sanctions violations and to ensure compliance such as due diligence processes and other strategies to mitigate risks.⁸⁸
- When applying for licenses and derogations:
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