

**United States Senate**  
**Committee on Banking, Housing, and Urban Affairs**

*Hearing*

“Afghanistan’s Future: Assessing the National Security, Humanitarian, and  
Economic Implications of the Taliban Takeover”

538 Dirksen Senate Office Building  
10:00 AM  
Tuesday, October 5, 2021

*Testimony of:* Adam M. Smith – Partner at Gibson, Dunn & Crutcher, LLP  
Former Senior Advisor to the Director of the Office of Foreign Assets Control  
Former Director for Multilateral Affairs, National Security Council

\* \* \* \*

Chairman Brown, Ranking Member Toomey, and Members of the Committee:

Good morning and thank you for inviting me to speak before the Committee. I have been asked to share my perspectives on the situation in Afghanistan, especially as they relate to the micro- and macroeconomic impacts of the Taliban takeover of the country. In particular, I have been requested to provide some thoughts and analysis on the inter-relationship between sanctions, humanitarian assistance, and national security given the unique implications of the Taliban’s and the Haqqani Network’s dual identities as parties with members in senior roles in the new Afghanistan government while simultaneously being parties that have long been subject to U.S. sanctions.

I have been writing and speaking about this issue extensively.<sup>1</sup> My views are informed both by my time at the Treasury Department’s Office of Foreign Assets Control (“OFAC”) and the National Security Council under President Obama and just as importantly by my more recent experience in the private sector where I have seen the direct and collateral impacts of sanctions in a diversity of jurisdictions including Afghanistan.

The private sector – both non-profit and profit-making enterprises – are critical to understanding how sanctions work and how best to calibrate sanctions to meet foreign policy aims. Sanctions, after all, are a unique tool of coercive authority in that they are designed by the government but implemented by the private sector. It is principally private enterprises that sell products and provide services and are asked to refrain from doing so under sanctions; and it is the same private concerns that are caught up in enforcement actions and are severely penalized if they misstep. Consequently, understanding the views, misgivings, and even misunderstandings of the private

---

<sup>1</sup> See, e.g., Adam M. Smith, “The Humanitarian and Policy Challenges of U.S. Sanctions on the Taliban,” (*Just Security*, August 23, 2021). <https://www.justsecurity.org/77957/the-humanitarian-and-policy-challenges-of-u-s-sanctions-on-the-taliban/>

sector with respect to sanctions is critical if we hope for sanctions to contribute to the success of whatever policy goals for which we are deploying them.

## **The Situation on the Ground**

As this Committee is well aware, the economic situation in Afghanistan even prior to the Taliban takeover, was precarious. The country is almost entirely dependent upon foreign aid – 80 percent of its GDP comes from donors.<sup>2</sup> Substantial portions of the population are in need of assistance. With winter coming widespread malnutrition, famine, illness, and death are increasingly likely; children are particularly vulnerable.<sup>3</sup>

The Taliban’s takeover exacerbated already challenging circumstances. Not only has the group’s human rights violations and violence restricted physical access to the limited assistance that remains available, but also the fact that the Taliban (and the Haqqani Network – members of which have assumed senior roles in the new Afghan government) remain sanctioned by the United States has further reduced the availability of the support. Banks have closed, and while some financial services have resumed in cities, currency is in short supply and the movement of funds even internally in the country is very challenging.

The Afghan government has scant official assets located domestically, and given the Taliban sanctions the country has been shut off from its modest assets domiciled abroad. Limiting access for the Taliban to Afghanistan’s funds has had immediate macroeconomic effects for the country – leading to a near certain balance of payments crisis – and potentially cataclysmic microeconomic effects as food and medical supplies dry up given the absence of funds and donations. This dire situation has been exacerbated by the near-term scaling down or outright shuttering of many embassies in Kabul and international aid operations in the country.<sup>4</sup>

The Taliban remain sanctioned – rightfully so. U.S. sanctions policy must continue to work to limit flows of funds and goods to the Taliban and other sanctioned parties. It should also work to ensure that tens of millions of Afghani citizens are not victimized twice over – once by being subjected to the brutality of the Taliban and again by being denied access to basic needs.

Pursuing such a dual policy of pressuring the Taliban while assisting innocent Afghans is not a purely altruistic endeavor – we know from Afghanistan in the 1990s and numerous others

---

<sup>2</sup> Jeff Stein, “Biden Administration Freezes Billions of Dollars in Afghan Reserves, Depriving Taliban of Cash,” (*Washington Post*, August 17, 2021). <https://www.washingtonpost.com/us-policy/2021/08/17/treasury-taliban-money-afghanistan/>

<sup>3</sup> “Aid Official Warns of a Bleak Situation in Afghanistan as Winter Approaches,” (*National Public Radio*, September 24, 2021). <https://www.npr.org/2021/09/24/1040092084/afghanistan-situation-winter-save-the-children-director>

<sup>4</sup> Adam M. Smith, “The Humanitarian and Policy Challenges of U.S. Sanctions on the Taliban,” (*Just Security*, August 23, 2021). <https://www.justsecurity.org/77957/the-humanitarian-and-policy-challenges-of-u-s-sanctions-on-the-taliban/>

jurisdictions around the world, that without some support to Afghans the likelihood of radicalization among the population increases as does the potential of the country returning to being a failed state (and a likely safe harbor for terrorists and other groups that wish to do us harm). Moreover, how the United States addresses the mounting humanitarian crisis will impact both whether the only viable commercial enterprise in Afghanistan returns to being heroin production and whether other rivals – including China and Russia – are able to make inroads into the country. Both outcomes could potentially have broader geopolitical impacts on U.S. and our allies’ interests. The existence of potentially thousands of people (Afghans and non-Afghans) remaining in the country who wish to depart Afghanistan further pressurizes the situation.

Balancing these policy interests is difficult and sanctions are of course only one instrument in the tool box. However, sanctions are a key element and their unique flexibility and impact – the very reasons that sanctions have become such a popular policy choice to address a diversity of national security challenges – provides a potential way forward. The key will be to provide clarity to the private sector, international and domestic non-government organizations (NGOs), multinational entities like the United Nations (UN), and foreign governments with respect to both the Administration’s goals and how the Administration interprets the sanctions as they apply to Afghanistan today while also leveraging and calibrating sanctions in order to further U.S. interests going forward.

### **The Current Sanctions and a Call for Clarity**

The Taliban was one of the first targets of U.S. counter-terrorism sanctions launched in the immediate wake of the 9/11 attacks. Given the role of the United States, and in particular the U.S. dollar, in global finance, these sanctions have had far-reaching consequences for the Taliban – choking off their access to formal finance. Existing U.S. sanctions freeze any assets associated with the Taliban that come under U.S. jurisdiction, while also criminalizing almost any transaction with a U.S. nexus involving the Taliban. Such a U.S. nexus can occur through the involvement of a “U.S. person” in a financial transaction or a U.S. entity including a financial institution. Non-U.S. entities and individuals can easily come under U.S. jurisdiction given the ubiquity of the use of U.S. dollars and financial institutions in international commerce and within the multilateral aid community.<sup>5</sup> Moreover, the reach of U.S. sanctions is far greater than their legal grasp as many international financial institutions, NGOs, and corporations around the world choose to comply with U.S. sanctions even if they have no legal obligation to do so.

From the perspective of sanctions, the Taliban’s move from rebel group at the periphery to central government leadership is unprecedented. There has never been a case of which I am aware in which a designated terrorist group has assumed the control of an entire jurisdiction. Exactly what the Taliban’s status as a sanctioned entity means for the Afghanistan government and for the jurisdiction of Afghanistan is uncertain.

---

<sup>5</sup> See, e.g., Global Terrorism Sanctions Regulations, 31 CFR Part 594.

Unfortunately, uncertainty is anathema to the private sector – it leads to paralysis and de-risking by private actors even if the policy of the United States would prefer a more nuanced, engaged approach. The increasing reflex to de-risk by the global banking community (and increasingly other private actors) means that without clarity many key players – for reasons of their own internal policies and fiduciary obligations – will stay on the sidelines even with respect to humanitarian assistance.<sup>6</sup>

## Interpreting the Taliban Sanctions

There are three primary options for how the United States could view the Taliban’s sanctions status with respect to the Afghanistan government and the Afghan state. In each case there are analogs to other U.S. sanctions programs from which we can learn.

First, the United States could view the Taliban sanctions as limited solely to those entities and parties identified as sanctioned. In such a case, the prohibitions regarding dealings with the Taliban would only extend to the entities identified as such and would not extend to the government of Afghanistan nor to the jurisdiction of Afghanistan. This is broadly the model that has been in place in Burma since that country’s coup in February 2021. The junta is designated, as are several members of the government and some major economic actors in the country that are owned by the government – but neither the government as a whole nor the state itself is restricted.<sup>7</sup>

Second, the United States could view the Taliban’s designation as extending to the Afghanistan government that it now controls and to that government’s various agencies and instrumentalities – but *not* extending to the entire jurisdiction of Afghanistan. This is similar to the sanctions model the United States has in place with respect to Venezuela. The government of Nicolás Maduro – which is defined very broadly by Executive Order 13884<sup>8</sup> – is sanctioned, as are all agencies and instrumentalities of his government, including commercial actors. However, the jurisdiction of Venezuela is not designated. So long as parties can engage in activities in Venezuela without touching the government (or can do so under the protection of a license) transactions remain permitted.<sup>9</sup>

---

<sup>6</sup> See, e.g., “De-risking in the Financial Sector,” (World Bank, October 7, 2016).  
<https://www.worldbank.org/en/topic/financialsector/brief/de-risking-in-the-financial-sector>

<sup>7</sup> Executive Order 14014, “Blocking Property with Respect to the Situation in Burma,” February 10, 2021.

<sup>8</sup> The Government of Venezuela is defined to include “any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela..., any person owned or controlled, directly or indirectly, by the foregoing, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing, including as a member of the Maduro regime.” Executive Order 13884, “Blocking Property of the Government of Venezuela,” August 5, 2019.

<sup>9</sup> See OFAC Frequently Asked Question 519: “Sanctions do not preclude U.S. persons from exporting or reexporting items to Venezuela provided that the transactions do not involve sanctioned individuals or entities or certain prohibited activities.”

Third, and most restrictive, the United States could view the Taliban’s designation as extending to both the government *and* the jurisdiction of Afghanistan. This outcome would be similar to the comprehensive, jurisdiction-based sanctions programs that the United States has in place against Iran, Cuba, North Korea, Syria, and the Crimea Region of Ukraine. In such a case, the sanctions would amount to an embargo and presumptively all transactions with any entity in the jurisdiction of Afghanistan – or any party ordinarily resident in Afghanistan – would be prohibited.<sup>10</sup>

It does not appear that the Administration has made a choice as to which interpretation it is pursuing. On the one hand, the fact that the \$9.4 billion of Afghanistan’s foreign reserves located at the Federal Reserve Bank of New York have been reported as “frozen” suggests that the Administration may view the entire government of Afghanistan as restricted.<sup>11</sup> After all, these reserves are “owned” by the Central Bank of Afghanistan which is not a sanctioned entity though it is now under the control of the Taliban. This would imply that the sanctions restrictions on the Taliban now extend to at least some governmental instrumentalities under their ownership and control. (As noted below, there could be other practical and non-sanctions-related reasons for the funds’ unavailability.)

Regardless how one interprets the blocked funds at the Federal Reserve, OFAC’s recently-issued General Licenses (General License 14 and 15) suggest a broader restriction. These licenses extend authorization for trade with the Taliban only to non-governmental actors pursuing humanitarian activities and only to parties seeking to deliver food, medicine and related items, respectively.<sup>12</sup> This means that even benign trade in consumer goods, for example, are effectively prohibited. Such a restriction implicitly creates a more extensive ban than just on the Taliban or the Afghan government. In the Venezuela context for instance, in order to calibrate the restrictions on the government (and to ensure that the restrictions do not have broader impact), OFAC has issued dozens of General Licenses to allow commercial activities even outside the humanitarian realm,<sup>13</sup> and has issued Frequently Asked Questions (“FAQs”) confirming as much.<sup>14</sup>

---

<sup>10</sup> For example, in the Iran context, U.S. persons are prohibited from importing goods or services from Iran, as well as prohibited from exporting, reexporting, selling, or supplying goods, technology or services to Iran. *See*, 31 CFR 560.201; 31 CFR 560.204.

<sup>11</sup> *See, e.g.*, Saleha Mohsin, “U.S. Freezes Nearly \$9.5 Billion Afghanistan Central Bank Assets,” (*Bloomberg*, August 17, 2021). <https://www.bloomberg.com/news/articles/2021-08-17/u-s-freezes-nearly-9-5-billion-afghanistan-central-bank-assets>

<sup>12</sup> General License 14, “Authorizing Humanitarian Activities in Afghanistan,” September 24, 2021 ([https://home.treasury.gov/system/files/126/ct\\_gl14.pdf](https://home.treasury.gov/system/files/126/ct_gl14.pdf)); General License 15, “Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates in Afghanistan,” September 24, 2021 ([https://home.treasury.gov/system/files/126/ct\\_gl15.pdf](https://home.treasury.gov/system/files/126/ct_gl15.pdf)).

<sup>13</sup> *See* “Venezuela-Related Sanctions,” Office of Foreign Assets Control (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions>).

<sup>14</sup> OFAC Frequently Asked Question 519.

As for which interpretation of the current Taliban sanctions the Administration should choose, the more limited interpretations akin to those in effect in Burma or Venezuela are logical and could provide the needed flexibility going forward for U.S. policy to adjust to changing realities. However, U.S. policy goals could potentially be met with any of the options – so long as the Administration provides guidance and authorizations to calibrate the diverse effects of each option. As we move from a narrower targeting of just the Taliban as identified, to a broader sanctions regime that would include the Afghanistan government, to an even more extensive blocking covering the entire jurisdiction of Afghanistan, the requirement for private sector clarity – necessary if the Administration seeks to have private actors remain engaged in some way in the country in order to effectuate U.S. policy interests – moves from the need for guidance to the need for formal authorizations.

### **Elements of a Potential Sanctions Strategy**

We have learned in the context of U.S. sanctions on Iran, Russia and in other programs that the multilateralization of sanctions efforts both enhances the clarity of policy while serving as a critical force multiplier. As such, to the extent that the elements discussed below could be undertaken in parallel bilaterally with key core allies like the United Kingdom, and multilaterally with partners like the Group of Seven (“G7”), the European Union (“EU”), and the UN – amongst others – the more consistent and effective the approach will be.

The following are a list of tools and related policies that could be considered in the context of Afghanistan sanctions.

- *Authorizations*

OFAC licenses are the principal tool used to calibrate broad sanctions, permitting activities on either a “General” or “Specific” basis that would otherwise be prohibited. As sanctions in recent years have become ever more ubiquitous and focused on larger and more economically-critical actors in the global economy OFAC licenses have proliferated. In the context of the Taliban and Haqqani Networks such licenses are required to engage in almost any transaction. This is because the terrorist sanctions authorities pursuant to which they are designated do not have many of the even limited exemptions for food, medicine, and medical devices that many other sanctions programs include as a matter of course.<sup>15</sup>

---

<sup>15</sup> See, e.g., the various General Licenses and exemptions available in the Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia sanctions program allowing for food, medicine, and medical devices. An overview is available in “Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19,” Office of Foreign Assets Control, April 16, 2020.  
[https://home.treasury.gov/system/files/126/covid19\\_factsheet\\_20200416.pdf](https://home.treasury.gov/system/files/126/covid19_factsheet_20200416.pdf)

Specific licenses are not public but I am aware that OFAC granted the U.S. State Department a license to allow USAID operations to continue in Afghanistan even if they involve certain transactions with sanctioned parties.<sup>16</sup> General Licenses, on the other hand, are public.<sup>17</sup> OFAC’s issuance of General Licenses 14 and 15 on September 24, 2021 was welcomed by the international aid community.<sup>18</sup> General License 14 authorizes the U.S. Government, NGOs including the UN and other identified multilateral entities to engage with sanctioned parties as needed in order to provide for humanitarian assistance in Afghanistan. General License 15 meanwhile allows transactions to the extent required to provide for food, medicine, and medical devices to be sent into the country.

These General Licenses are a good and necessary start. However, further clarity – in addition to the FAQs published alongside the General Licenses<sup>19</sup> – are critical if private parties are expected to find comfort to act. In particular, it is not clear how broadly to interpret “humanitarian” transactions. For instance, where does “humanitarian” end and “development” begin?

Moreover, the United States could consider adding to these General Licenses other authorizations that have become commonplace in even comprehensively sanctioned jurisdictions. For instance, the Administration could promulgate licenses to cover activities such as overflight fees<sup>20</sup> and to allow the payment of fees associated with intellectual property protection.<sup>21</sup> The Administration could also make known a formal statement of licensing policy that it will look to authorize, on a case-by-case basis, the shipment of U.S.-origin goods into Afghanistan for the purposes of repairing aircraft and potentially other vehicles needed to deliver goods and services in the country.<sup>22</sup> Each of these additional authorizations would go far in furthering the policies that appear to be animating General Licenses 14 and 15.<sup>23</sup>

---

<sup>16</sup> Daphne Psalidakis, “U.S. Treasury Issued New License to Ease Flow of Aid in Afghanistan,” (*Reuters*, August 31, 2021). <https://www.reuters.com/world/asia-pacific/exclusive-us-treasury-issued-new-license-ease-flow-aid-afghanistan-2021-09-01/>

<sup>17</sup> *See, e.g.*, OFAC Frequently Asked Question 4: “OFAC regulations often provide General Licenses authorizing the performance of certain categories of transactions.”

<sup>18</sup> *See, e.g.*, “Treasury Issues Two General Licenses for Humanitarian Activities in Afghanistan,” (Charity & Security Network, September 24, 2021). <https://charityandsecurity.org/news/treasury-issues-two-general-licenses-for-humanitarian-activities-in-afghanistan/>

<sup>19</sup> OFAC Frequently Asked Questions 928-931.

<sup>20</sup> *See, e.g.*, 31 CFR 542.518 (Syria), 31 CFR 560.522 (Iran).

<sup>21</sup> *See, e.g.*, 31 CFR 542.520 (Syria), 31 CFR 560.509 (Iran).

<sup>22</sup> *See, e.g.*, 31 CFR 560.528 (Iran): “Specific licenses may be issued on a case-by-case basis for the exportation or reexportation of goods, services, and technology to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft.”

<sup>23</sup> In announcing the General Licenses, the Treasury stated that it was doing so “to support the continued flow of humanitarian assistance to the people of Afghanistan.” “Treasury Issues General Licenses and Guidance to Facilitate Humanitarian Assistance in Afghanistan,” U.S. Treasury - Press Release, September 24, 2021 (<https://home.treasury.gov/news/press-releases/jy0372>)

Finally, to the extent the U.S. government wants to provide even limited commercial options to Afghans outside narcotics and other troubling sectors and to potentially tamp down the potential for radicalization born of lack of opportunity, additional General Licenses may be prudent. For a sense of the scope of such potential General Licenses U.S. policy in Venezuela may be instructive. With respect to Venezuela, the United States has sought to limit as much as possible the collateral consequences of the designation of the Maduro regime. To achieve that end, the U.S. government has issued a record number of General Licenses – more than thirty. These measures allow transactions with sanctioned parties in the Maduro government in order to promote a limited amount of approved commercial activities. For example, such licenses include authorizations to pay entities related to the Maduro regime for licensing fees and for costs associated with electricity and other utilities.<sup>24</sup>

While OFAC licenses are an important indicator of policy intent and a powerful tool to further policy, in highly risky and fluid environments licenses can be too passive and reactive to properly serve their policy purposes. Private actors need even more certainty. Afghanistan is such an environment and consequently in order to effectuate its policy goals the Administration may need to consider more proactive efforts to actually facilitate (rather than just allow) the kinds of transactions they seek to support. A “humanitarian channel” is one such option.

- *A Humanitarian Channel*

U.S. and non-U.S. parties eager to comply with U.S. regulations in heavily-sanctioned countries have often found even broad General Licenses (and accompanying explanatory FAQs) insufficient to overcome their reflexive risk aversion. Rather, parties have long-asked OFAC for more formal “safe harbors” or “comfort letters” on an *ex ante* basis. OFAC has historically been reluctant to offer such assurances. The agency has, however, taken small steps in that direction with respect to developing a “humanitarian mechanism” for Iran that offers at least foreign financial institutions some comfort if they provide the U.S. Treasury substantial information about their activities. The Administration could revisit that mechanism and consider applying it to Afghanistan.

In the Iran context, in order to receive the benefits of the mechanism, OFAC requires enhanced due diligence by foreign banks interested in engaging with Iran. This diligence includes robust reporting obligations to OFAC by interested parties including with respect to the purpose of proposed transactions, the list of customers and end users to be involved, and a commitment to compliance. To the extent the entity is able to provide this information on an on-going basis it can

---

<sup>24</sup> General License 35, “Authorizing Certain Administrative Transactions with the Government of Venezuela,” November 5, 2019 ([https://home.treasury.gov/system/files/126/venezuela\\_gl35.pdf](https://home.treasury.gov/system/files/126/venezuela_gl35.pdf)); *see also* “Venezuela-Related Sanctions,” Office of Foreign Assets Control (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions>).



“seek written confirmation from Treasury that the proposed financial channel will not be exposed to U.S. sanctions.”<sup>25</sup>

Such a mechanism – and parallel efforts like the Swiss Humanitarian Trade Arrangement in place with respect to Iran<sup>26</sup> – could be expanded in the Afghanistan context to cover not just banks but also shippers, logistics providers, and other critical players, and could be extended and calibrated to cover development and even approved commercial activities (in addition to humanitarian trade).

As an added benefit, if such a channel were implemented broadly, it could also provide meaningful opportunities for intelligence gathering. The channel could encourage information sharing among parties and between the private sector and the government (in the spirit of the Treasury Department’s FinCEN Exchange information-sharing authority).<sup>27</sup> If the effort was expanded further, through multilateral partners (and leveraging entities such as the Financial Action Taskforce,<sup>28</sup> the Egmont Group,<sup>29</sup> and other initiatives), the Administration may gain real “over the horizon” financial intelligence while allowing critical transactions to take place.<sup>30</sup>

- *Safely Leveraging Afghanistan’s Assets Outside of the Country*

While providing humanitarian – let alone development – assistance to Afghanistan will require an investment by the international community, Afghanistan does have some assets of its own that could potentially be leveraged to that end. Most of those assets are presently domiciled outside the country. Ajmal Ahmad, a former governor of the Afghanistan Central Bank, has reported that the country has approximately \$9.4 billion of official reserves held at the Federal Reserve Bank of New York, \$2.4 billion of World Bank Reserve Advisory and Management Partnership (RAMP) funds, \$700 million at the Bank for International Settlements, as well as some fiat

---

<sup>25</sup> “Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations,” U.S. Treasury, October 25, 2019 ([https://home.treasury.gov/system/files/126/iran\\_humanitarian\\_20191025.pdf](https://home.treasury.gov/system/files/126/iran_humanitarian_20191025.pdf))

<sup>26</sup> *See, e.g.*, “The United States and Switzerland Finalize the Swiss Humanitarian Trade Arrangement,” U.S. Treasury – Press Release, February 27, 2020 (<https://home.treasury.gov/news/press-releases/sm919>); Michael Shields, “First Swiss Deal with Iran via Humanitarian Channel has Gone Through: Swiss Government,” (*Reuters*, July 27, 2020) <https://www.reuters.com/article/us-swiss-iran/first-swiss-deal-with-iran-via-humanitarian-channel-has-gone-through-swiss-government-idUSKCN24S0MV>

<sup>27</sup> *See generally*, Alex Zerden, “Reassessing Counter Terrorism Financing in Taliban-Controlled Afghanistan,” (*Just Security*, September 17, 2021). <https://www.justsecurity.org/78221/reassessing-counter-terrorism-financing-in-a-taliban-controlled-afghanistan/>

<sup>28</sup> *See generally*, The Financial Action Taskforce. <https://www.fatf-gafi.org/>

<sup>29</sup> *See generally*, The Egmont Group. <https://egmontgroup.org/en>

<sup>30</sup> *See generally*, Alex Zerden, “Reassessing Counter Terrorism Financing in Taliban-Controlled Afghanistan,” (*Just Security*, September 17, 2021). <https://www.justsecurity.org/78221/reassessing-counter-terrorism-financing-in-a-taliban-controlled-afghanistan/>

currency and gold assets at private sector institutions largely in the United States.<sup>31</sup> Afghanistan also stands to receive some \$440 million worth of Special Drawing Rights (“SDRs”) from the International Monetary Fund’s (“IMF”) recent disbursement – SDRs could be converted into hard currency.<sup>32</sup>

As of today, all of those funds are effectively blocked. As noted above, it is not clear the legal basis upon which they are blocked. For the sake of not just Afghanistan policy, but also to protect the Federal Reserve’s role as a banker to central banks, providing clarity in this regard would be prudent. Are the funds at the Federal Reserve blocked because they are deemed to be frozen (owned by sanctioned parties)? Or are they blocked because of uncertainty regarding which party has signing rights to access the funds? The situation with respect to the IMF is clearer – the IMF has stated that it is a question of international recognition of the new government in Afghanistan that is holding up distribution of the SDRs.<sup>33</sup>

While there are several potential options through which foreign-domiciled Afghan funds could be used, simply deeming the new Afghanistan government the rightful owners of these assets and releasing them accordingly would be unwise. The challenge with doing is not just due to concerns about terrorism financing and sanctions, but also from the fact that the Taliban do not appear to have appointed any individuals with the sufficient technical expertise and experience to professionally manage the funds for the benefit of the Afghan people.<sup>34</sup>

One potential option is to apply some of the lesser known aspects of U.S. sanctions on Iran. As the Committee is aware, in the Iran program billions of dollars of Iranian funds have been immobilized outside of Iran in financial institutions in jurisdictions that have continued to purchase Iranian oil. Due to concerns stemming from U.S. sanctions, these foreign banks have been restricted from repatriating any funds directly to Iran. Instead, under the scrutiny and control of these banks (and with the U.S. Government paying close attention) Iran has able to use the funds only for “approved bilateral trade” – this has largely meant payments for humanitarian and agricultural goods, along with some benign consumer goods.<sup>35</sup>

---

<sup>31</sup> Ajmal Ahmady, (Tweet, August 18, 2021). <https://twitter.com/aahmady/status/1427883012348424192?s=20>

<sup>32</sup> David Lawder, “IMF Blocks Afghanistan’s Access to SDR Reserves Over Lack of Clarity on Government,” (*Reuters*, August 18, 2021) <https://www.reuters.com/world/asia-pacific/biden-Administration-seeks-block-taliban-accessing-reserves-imf-new-york-times-2021-08-18/>

<sup>33</sup> The IMF’s “engagement with Afghanistan has been suspended until there is clarity within the international community on the recognition of the government...” “IMF / Special Drawing Rights, Afghanistan, Ukraine,” (*IMF Media Center*, September 16, 2021) <https://mediacenter.imf.org/news/all/imf---special-drawing-rights--afghanistan--ukraine/s/c49e6106-b937-45de-95dc-c040b4633d05>

<sup>34</sup> *See, e.g.*, “Taliban Name Obscure Official as Central Bank Governor as Crisis Looms,” (*Bloomberg*, August 23, 2021) <https://www.bloomberg.com/news/articles/2021-08-23/taliban-name-obscure-official-central-bank-chief-as-crisis-looms>

<sup>35</sup> In order to be compliant with U.S. regulations, foreign banks can only deploy the Iranian funds consistent with the “bilateral trade restrictions” in Section 504 of the TRA, “credit the funds to an account in the country with primary jurisdiction over the foreign financial institution, and do not repatriate the funds to Iran.” OFAC Frequently Asked Questions 254, 255.

This model might be promising in the Afghanistan case for two reasons. First, it would allow continued oversight and assurances of Anti-Money Laundering / Countering the Financing Terrorism (AML/CFT) obligations as well as promote sound fiscal management; and second, by allowing transactions to take place only outside of Afghanistan and limit the use of such funds to the trade of physical goods to be exported to Afghanistan, there would be reduced likelihood of spillover of hard currency and other assets into the hands of the Taliban and other sanctioned parties. In-kind goods are less easily fungible than cash.

I recognize that even deeming certain assets outside of Afghanistan to be the property of the new Afghanistan government is inextricably bound up in the question of recognition of the new government. However, I am confident that the question of political recognition can be de-linked from the question of property ownership (all the more so if the powers and prerogatives of traditional “ownership” are limited as described above). For the IMF, for instance, the body simply needs a majority of its shareholders to approve the SDR distribution – which could theoretically happen for reasons other than recognition of the Taliban. Concerning the Federal Reserve, we must of course respect the independence of our central bank, but I am aware of no regulatory restriction preventing the Administration from providing clarity on the ownership of funds while remaining silent on the question of formally recognizing the Taliban’s control of Afghanistan.

Even outside the macroeconomic issues associated with the country’s reserves are the very real challenges due to the absence of hard currency in the Afghan economy. Hawalas and informal trading networks which have historically made up a large proportion of commercial trading volumes in the country, rely on hard currency.<sup>36</sup> The Afghanistan Central Bank’s currency note printers – all located outside the country – are likely to cease providing Afghani notes;<sup>37</sup> and U.S. dollar bulk cash shipments (which derived from Afghanistan’s reserves) have also been put on hold.<sup>38</sup> The situation has been exacerbated due to the absence of any widespread digital-, tele-banking, or personal electronic payments systems in the country.

In order to prevent a widespread macro- and microeconomic collapse, the international community will need to find a way to provide hard currency into the system. This is challenging and the potential for spillover of cash to the Taliban is naturally present. However, we could use some of the structures and institutions built up over the last twenty years to assist. For example, one of the most sophisticated financial institutions in the country is the Afghanistan International Bank. That entity, which I understand remains private and as-yet not infiltrated by the Taliban could be

---

<sup>36</sup> See, e.g., S. Maimbo, “The Money Exchange Dealers of Kabul” (The World Bank, 2003), cited in Alex Zerden, “Reassessing Counter Terrorism Financing in Taliban-Controlled Afghanistan,” (*Just Security*, September 17, 2021).

<sup>37</sup> Kate Marino, “Afghanistan’s Cash Problem,” (*Axios*, September 13, 2021) (cited former Afghanistan Central Bank Governor Ajmal Ahmady). <https://www.axios.com/afghanistan-cash-currency-afghani-taliban-crisis-6166b014-f935-4328-a089-40b3356ed68b.html>

<sup>38</sup> Kate Davidson and Ian Talley, “U.S. Halted Dollar Shipments to Afghanistan to Keep Cash Out of Taliban’s Hands,” (*Wall Street Journal*, August 17, 2021). <https://www.wsj.com/articles/u-s-halted-dollar-shipments-to-afghanistan-to-keep-cash-out-of-talibans-hands-11629233621>

charged with holding dollar auctions (and housing the reserves) – and the United States (working with the UN, the G7, and potentially China and perhaps even an appropriately-incentivized Pakistan) could make it clear to the Taliban that such funds will cease if the Taliban does not live up to its obligations.

- *Enhanced Guidance*

OFAC FAQs are an important means to articulate policy priorities. Though the initial issuance of FAQs in the context of General Licenses 14 and 15 is welcome, more can be done.

One example of enhanced guidance was seen with respect to Somalia. In that context, the U.S. Government was compelled to deal with another designated terrorist group – al-Shabaab. While al-Shabaab did not assume the mantle of the Somali state as a whole it did assume control over key arteries around the country and ports of entry into Somalia. As such it had the ability to require taxes and other payments from aid agencies and others who sought access to impoverished regions.

In that case, after significant back and forth with the NGO community and within the federal interagency, it was agreed that if in the course of providing humanitarian goods incidental benefits were provided to the designated group, OFAC was unlikely to deem such transactions of enforcement interest. The agency issued two FAQs to this effect:

*FAQ 131. What if, in delivering humanitarian assistance, my organization unintentionally provides food or medicine to members of al-Shabaab?*

Due to the dangerous and highly unstable environment combined with urgent humanitarian needs in south and central Somalia, some food and/or medicine delivered in these areas may end up in the hands of al-Shabaab members. Such incidental benefits are not a focus for OFAC sanctions enforcement.<sup>39</sup>

*FAQ 132. What if, in delivering humanitarian assistance, my organization unintentionally provides cash to members of al-Shabaab?*

U.S. persons should be extremely cautious in making cash payments in areas under the control of al-Shabaab. Al-Shabaab has, in the past, demanded “taxes” and “access” payments from assistance organizations. To the extent that such a payment is made unintentionally by an organization in the conduct of its assistance activities, where the organization did not have reason to know that it was dealing with al-Shabaab, that activity would not be a focus for OFAC sanctions enforcement. To the extent that an organization is facing demands for large or repeated payments in al-Shabaab-controlled areas, it should consult with OFAC prior to proceeding with its operations.<sup>40</sup>

---

<sup>39</sup> OFAC Frequently Asked Question 131.

<sup>40</sup> OFAC Frequently Asked Question 132.

While the U.S. government needs to be very careful in pursuing such a course in Afghanistan – and at least in the near term such allowances may be imprudent unless and until the Taliban demonstrate some changed and improved behaviors – over time some similar, carefully-crafted guidance by OFAC in this context could assist U.S. policy interests while limiting any benefit to designated parties.

## Conclusion

The last time the Biden Administration faced a potential humanitarian catastrophe resulting from the designation of a terrorist group with control over a large territory it opted to de-list that group – Ansar Allah (the Houthis) in Yemen.<sup>41</sup> The reasoning the Administration provided was that because the group controlled significant parts of Yemen the designation would have severe humanitarian consequences for Yemeni citizens.

Lifting sanctions against the Taliban is a non-starter.<sup>42</sup> Sanctions will and should remain in place for the foreseeable future. Consequently, the Administration needs to leverage the flexibility and creativity of the sanctions tool in order to pursue core policy objectives including reducing sanctions’ collateral effects. Doing so is not just a moral approach, but also is critical to achieving broader foreign policy and national security aims.

Fortunately, in any effort to creatively leverage sanctions we are not starting from a blank slate. Over the last decade sanctions have developed from simple, binary measures that served to block jurisdictions, into an entire ecosystem of nuanced policy instruments that can be carefully calibrated to achieve specific policy goals. We still have the “old-fashioned” comprehensively sanctioned jurisdictions along with the targeted Specially Designated Nationals “blacklist,” but we also have, *inter alia*, “sectoral” measures focused only on dealings in new debt, equity, and certain technologies,<sup>43</sup> measures that name and shame,<sup>44</sup> and measures that allow the flexibility to impose both primary and secondary sanctions restrictions. Congress has played an important role in helping the Executive develop and implement many of these novel approaches. And, of course, OFAC has demonstrated significant flexibility and creativity with respect to licensing; the agency issues thousands of exceptions each year on specific and generalized bases, offering wind-down

---

<sup>41</sup> Humeyra Pamuk, “U.S. to Drop Houthi Terrorist Designation Due to Yemen Crisis,” (*Reuters*, February 5, 2021). <https://www.reuters.com/article/us-yemen-security-usa/u-s-to-drop-houthi-terrorist-designation-due-to-yemen-crisis-idUSKBN2A600Z>

<sup>42</sup> Secretary of State Antony J. Blinken, State of the Union (CNN), August 15, 2021.

<sup>43</sup> *See, e.g.*, Office of Foreign Assets Control, Sectoral Sanctions Identifications List and Directives 1-4. <https://home.treasury.gov/policy-issues/financial-sanctions/consolidated-sanctions-list/sectoral-sanctions-identifications-ssi-list>

<sup>44</sup> *See, e.g.*, “Treasury Releases CAATSA Reports, Including on Senior Foreign Political Leaders and Oligarchs in the Russian Federation,” U.S. Treasury – Press Release, January 29, 2018. <https://home.treasury.gov/news/press-releases/sm0271>

licenses, maintenance licenses, and limited transaction licenses, all as policy needs dictate. There are very few, if any, statutory, regulatory, or precedential restrictions limiting policy innovation with respect to sanctions.

The Administration must consider with dispatch how to hold the Taliban to account with respect to its obligations while offering direction and certainty to parties who seek to assist Afghans in line with U.S. foreign policy goals. This would be a boon to broader U.S. interests – allowing western finance, aid groups, and perhaps even eventually commercial actors to compete against opportunistic heroin syndicates and forward-leaning parties propelled by Beijing and Moscow — while providing opportunities outside the drug trade, reducing the likelihood of radicalization, and serving the needs of the Afghan people.