

Navigating Humanitarian Exceptions to Sanctions Against Syria

Challenges and Recommendations

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I. Executive Summary

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.¹

While multiple factors have contributed to the current humanitarian crisis, ranging from the war to the mismanagement of resources to sanctions, research indicates that comprehensive sanctions are inhibiting the humanitarian response.²

Despite the existence of humanitarian exceptions³ to sanctions, international non-governmental organizations (INGOs) are persistently running into hurdles when trying to implement their projects.⁴

In theory, the major sanctioning entities express commitment to providing legitimate humanitarian support by issuing exceptions to sanctions, while ensuring aid does not fall into the wrong hands. In practice however, INGOs recognize that the exceptions process does not function as intended.⁵

A new humanitarian exemption framework to sanctions is urgently needed, which requires a concerted international effort. While the European Union and the United States continue to maintain a range of exceptions across their sanctions programs, there is a need to explore how sanctions exceptions are actually implemented and to remedy the obstacles the humanitarian compliance community is facing.

This paper describes the challenges faced by the humanitarian community and proposes recommendations for a new framework. The paper is based on literature and policy reviews on

¹ Mathew Hemsley and Kathryn Achilles (2019), "Aid in Limbo: Why Syrians deserve support to rebuild their lives," *Oxfam and Danish Refugee Council*, <https://www.oxfam.org/en/research/aid-limbo-why-syrians-deserve-support-rebuild-their-lives>

² Grégoire Mallard, Sabet Farzan, and Jin Sun (2020), "The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions," *Global Governance: A Review of Multilateralism and International Organizations* 26.1, 121-153, <https://doi.org/10.1163/19426720-02601003>

³ While in many publications the terms "exceptions" and "exemptions" are used interchangeably, in legal terms there is an important distinction between them. "An exemption refers to a provision allowing humanitarian actors to apply for permission to conduct their activities. An exception is a provision that carves out legal space for humanitarian actors, activities, or goods within sanctions measures without any prior approval needed." International Peace Institute (IPI) (2019), "Safeguarding Humanitarian Action in Sanctions Regimes," https://www.ipinst.org/wp-content/uploads/2019/06/1906_Sanctions-and-Humanitarian-Action.pdf

⁴ Hemsley and Achilles, "Aid in Limbo," 9

⁵ Justine Walker (2016), "Study on Humanitarian Impact of Syria-Related Unilateral Restrictive Measures," *UN Economic and Social Commission for Western Asia and Office of the UN Resident Coordinator in the Syrian Arab Republic*, <https://bit.ly/2Z648oh>

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 exceptions. The third section focuses on additional factors affecting the humanitarian response, including the impact of COVID-19 and the newly enforced Caesar Act. A final section of the paper provides a range of recommendations for an improved, streamlined and expedited humanitarian response.

I. Background and Rationale

Nine years of armed conflict have had a devastating impact on the people of Syria and the country. Widespread insecurity and destruction have uprooted half of the population, with an estimated 6.2 million people now internally displaced and 11.7 million people currently in need of humanitarian assistance. Although heavy fighting has ceased with the government of Syria (GoS) taking back large parts of the country previously under opposition control, Syrians are now facing the worst of the conflict's economic impact. Eighty-three percent of the population lives below the poverty line, and 8.7 million Syrians lack access to livelihoods and basic social services. In order to survive, Syrians are increasingly resorting to harmful coping strategies, such as reduced food consumption.⁶

In response to the outbreak of conflict in 2011, the U.S., the EU, and other countries imposed sanctions on the Syrian government, economy and individuals. The sanctioning parties hoped to hold the GoS accountable for human rights abuses and breaches of the laws of war, to force them to concede political power and to stop exacerbating the humanitarian crisis in Syria.⁷ While sanctions have failed to change the government's behavior, sanctions have significantly contributed to the impact on Syrian civilians by burdening the operations of humanitarian actors and intensifying the already dire strain on the Syrian economy.

The web of sanctions imposed on Syria by the international community seeks to isolate individuals, businesses, and banks that support the government, as well as the government itself, from foreign trade and funding. The EU and U.S. sanctions are particularly extensive, targeting entire sectors of the Syrian economy — namely Syrian oil exports and banking institutions — while isolating Syria from U.S. and EU financial institutions.⁸

⁶ United Nations (2019), "Humanitarian Needs Overview, Syrian Arab Republic," <https://bit.ly/2vktxOJ>

⁷ Julian Barnes-Dacey (2020), "Society Max: How Europe Can Help Syrians Survive Assad and Coronavirus," *European Council on Foreign Relations*, https://www.ecfr.eu/publications/summary/society_max_how_europe_can_help_syrians_survive_assad_and_coronavirus

⁸ Justine Walker (2020), "Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions," <http://files.acams.org/pdfs/2020/The-Risk-Management-Principles-Guide-for-Sending-Humanitarian-Funds-into-Syria-and-Similar-High-Risk-Jurisdictions.pdf>

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, sanctions may be the only leverage left to the international community, there is a need to recognize the unintended consequences of the punitive measures to a

⁹ Ibid, 21.

¹⁰ Aron Lund (2019), “Briefing: Just how ‘smart’ are sanctions on Syria?” *The New Humanitarian*, <https://www.thenewhumanitarian.org/analysis/2019/04/25/briefing-just-how-smart-are-sanctions-syria>

¹¹ Walker, “Risk Management Principles Guide,” 13

¹² Joseph Daher (2020), “The ‘Caesar Bill’: A step towards accountability in Syria, or a worsening economic crisis?” *Syria Untold*, <http://www.europe-solidaire.org/spip.php?article51925>

¹³ Erica S. Moret (2015), “Humanitarian impacts of economic sanctions on Iran and Syria,” *European Security*, 24:1, 120-140, <https://doi.org/10.1080/09662839.2014.893427>

¹⁴ Interviews with humanitarian representatives, May-June 2020

¹⁵ David W. Lesch and Kamal Alam (2020), “Trump Wants Something From Assad—Here’s What He Can Offer In Return,” *National Interest*, <https://nationalinterest.org/blog/middle-east-watch/trump-wants-something-assad%E2%80%94heres-what-he-can-offer-return-140762>

¹⁶ Human Rights Watch (2019), “Rigging the System: Government Policies Co-Opt Aid and Reconstruction Funding in Syria,” https://www.hrw.org/sites/default/files/report_pdf/syria0619_web4.pdf

population already ravaged by a decade of violence and instability.¹⁷ Moreover, there is no evidence that the “maximum pressure” sanctions imposed on Syria have produced or are likely to produce the intended goal: behavior change by the GoS or the elite supporting it.

II. Sanction-Related Challenges Impeding Humanitarian Response in Syria

In addition to navigating the formidable bureaucracy of the sanctions regime, humanitarian organizations have had to dissect carefully the international community’s multilayered network of sanctions or risk facing debilitating fines for violations. By restricting access to certain goods and services, financial channels, and operational partners, sanctions have altered and sometimes restricted the programs of humanitarian organizations. Organizations have struggled, for example, to find reliable substitutes for essential services, including sanctioned Syrian banks, telecommunication networks, and transportation services.¹⁸

The necessity of studying the inconsistencies of different sanction regimes and vetting operational partners in order to avoid violations, often requiring costly and time-consuming compliance efforts, impedes time-sensitive programs and diverts resources away from humanitarian projects.¹⁹

And while sanctions regimes include exceptions for humanitarian work, the process of attaining them differs by country. Moreover, organizations report that they are struggling to ensure that their projects meet the often ambiguous criteria necessary to attain these exceptions. As the spread of COVID-19 has generated a new health crisis, these roadblocks threaten to exacerbate an already vexed humanitarian response, risking Syrian lives in the process.²⁰

This section will attempt to shed light on the meaning of humanitarian exceptions in practice for the compliance community and some of the particular challenges that impede the humanitarian response, including the frustration of navigating licensing requirements, the risk of inadvertently diverting funds to a designated person, the risk of overcompliance, the financial impact of transferring funds into Syria, and the early recovery/reconstruction dilemma.

¹⁷ Le Monde (2020), “Syrie: Les Limites des Sanctions Internationales,” https://www.lemonde.fr/idees/article/2020/06/16/syrie-les-limites-des-sanctions-internationales_6043016_3232.html

¹⁸ Walker, “Risk Management Principles Guide,” 29

¹⁹ Ibid, 28

²⁰ Half of Syria (2020), “The Impact of the COVID-19 Pandemic on Syrians: an Analysis by Syrian Civil Society,” *WE exist*, <https://weexist-sy.org/wp-content/uploads/20200410-COVID19-in-Syria-Comprehensive-Briefing-3.pdf>

A. Navigating Licensing Requirements

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.”²²

While it is possible for an INGO to request licenses for otherwise sanctioned activities in the context of humanitarian work, there seems to be a significant lack of guidance on the process and a discrepancy between rhetoric and interpretation, which leads to confusion within INGOs and a perpetual back-and-forth over details. The criteria to apply for a license as well as the criteria for approving applications are not streamlined across sanctioning entities.²³ As a result, differing and even contradicting messages are given to INGOs as to what would be approved.²⁴

Within the EU structure, there are additional challenges to obtaining a license. The applications go through member state structures. Criteria for approving the applications are not streamlined across EU member states. Moreover, the application process is lengthy, and applicants do not receive feedback as to why their application is rejected. In other words, there is no reliability within the application process.

As for the U.S. sanctions framework, the export control regime is extremely broad and a number of “dual-use” items are prohibited and require a specific license.²⁵ Goods needed for project implementation in the areas of water, sanitation and hygiene (WASH), power supply, agriculture, and reconstruction of schools and hospitals fall under the category of controlled dual-use goods.²⁶ Another layer that adds to the complexity of licenses is the limited scope of “upfront export control permissions.” The scope of the export license exception is somehow limited and does not always cover the full range of activities and equipment needed, such as

²¹ Walker, “Humanitarian Impact of Syria-Related Unilateral Restrictive Measures,” 13

²² Justine Walker (2020), “Navigating Humanitarian Exceptions regarding International Sanctions,” ACAMS, <https://www.inhousecommunity.com/article/navigating-humanitarian-exceptions/>

²³ Interview with humanitarian representatives, June 5, 2020

²⁴ Walker, “Humanitarian Impact of Syria-Related Unilateral Restrictive Measures,” 14

²⁵ Alice Debarre (2019), “Making Sanctions Smarter: Safeguarding Humanitarian Action,” *International Peace Institute*, https://www.ipinst.org/wp-content/uploads/2019/12/1912_Making-Sanctions-Smarter.pdf

²⁶ Walker, “Humanitarian Impact of Syria-Related Unilateral Restrictive Measures,” 14

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 foreign policy objectives, issued an additional license guidance and factsheet in April 2020. Even though it does not go further in providing additional general licenses, this new factsheet²⁸ is a valuable document that combines in one place all of the general licenses and applicable guidance with respect to each sanctioned jurisdiction, so humanitarian organizations can check whether their scenario is covered. With the specific licenses, the guidance reiterates that the OFAC will prioritize and expedite the review of any license applications that involve humanitarian transactions, particularly those that involve the COVID-19 pandemic.

The intricacies of the licensing structures and the costly legal fees (that can go up to \$170,000 USD)²⁹ needed to navigate the framework often impede the smooth and rapid delivery of humanitarian aid, affecting INGO flexibility to respond to emergencies, particularly for INGOs with limited resources. Even when a license is not required, humanitarian operations must constantly guard against directly or indirectly benefiting a designated person.³⁰

B. Risk of Diverting Funds to a Designated Person

One of the most encountered challenges when attempting to provide aid in Syria is that “a significant proportion of internationally funded humanitarian and resilience-building efforts will involve some level of prohibited activity.”³¹ Ahead of making payments into Syria, INGOs and financial institutions must check whether the individuals or organizations that they will work with are on asset freeze lists or travel bans. They should also verify that their planned activity will not inadvertently benefit such person or organization or if the activity violates or is likely to violate sanctions. While in its most obvious form this means not providing funds or economic resources to the listed person, it can also occur indirectly, making it very hard for humanitarian actors to conduct their activities without violating these rules.

For example, renting a building, purchasing equipment, engaging with third-party suppliers, or purchasing fuel could result in a violation since organizations involved are often ultimately owned by sanctioned individuals or entities. Even when humanitarian exceptions can be navigated operationally, the challenge remains on the financial level. If an INGO can only

²⁷ Ibid, 14

²⁸ U.S. Treasury OFAC COVID Factsheet, April 2020, <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20200416.aspx>

²⁹ Damascus-based INGOs (2020), “Understanding the Operational Implications of Sanctions on Syria: Insights from Damascus-based INGOs”

³⁰ Walker, “Navigating Humanitarian Exceptions,” 4

³¹ Walker, “Risk Management Principles Guide,” 26

implement a program by traveling on a sanctioned airline like Sham Wings, this will likely satisfy the humanitarian exemption regulations. However, a bigger challenge remains if their bank refuses to pay the sanctioned airline.³² Another example that illustrates the complexity of the situation relates to the need of INGO staff to use the sanctioned mobile network provider Syriatel, particularly in remote parts of the country where Syriatel is the only provider. Staff in these cases find themselves forced to cover the fees at the risk of not being connected, which puts their life in peril and goes against duty of care.³³

It should also be noted that undertaking due diligence to determine ownership is often faced with lack of transparency and access to information needed.

C. Risk of Overcompliance

INGOs and their staff implementing humanitarian activities funded by the U.S. or EU have an obligation to comply with a wide range of financial and economic sanctions. The U.S. and EU, alongside other individual countries, impose broad restrictions on investment in or transactions with critical industries such as the Syrian petroleum industry and sectors affiliated with the Syrian government such as the Central Bank of Syria.³⁴ Sanctions can also vary depending on areas of operation. Counterterrorism and regulatory measures imposed by the UN are more relevant in non-government-controlled areas, particularly the Northwest, where INGOs face considerable operational/compliance issues and uncertainties, which also contributes to the shrinking of humanitarian space.

Thus, it can be very difficult for both humanitarian actors and financial institutions to structure humanitarian activities and process-related funds without violating sanctions. Also, the lack of clarity and uncertainty on how to comply with measures is costly and requires legal teams to navigate the process, as many of the industries are often intertwined with the government of Syria.³⁵ Shipping companies, banks, and companies selling needed goods would rather not engage with anything Syria-related. Therefore, the complexities of sanctions regimes and strict liabilities imposed on violators have created a “chilling effect,” a fear that a technical sanctions violation could occur accidentally, forcing financial institutions, donors, and aid workers to resort to a degree of self-imposed restriction³⁶ in contexts that often require flexibility. With the Caesar Act, secondary sanctions are more relevant than ever, and humanitarian organizations will need to conduct more thorough due diligence.

³² Interview with humanitarian representatives, June 5, 2020

³³ Damascus-based INGOs (2020), “Understanding the Operational Implications of Sanctions on Syria: Insights from Damascus-based INGOs”

³⁴ Walker, “Risk Management Principles Guide,” 10

³⁵ Nabih Bulos (2018), “For Many Syrians, ‘Smart’ Sanctions Are Anything But,” *Los Angeles Times*, <https://www.latimes.com/world/la-fg-syria-sanctions-20181212-story.html>

³⁶ Walker, “Humanitarian Impact of Syria-Related Unilateral Restrictive Measures,” 14-15

D. Financial Impact: Transferring Funds into Syria

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

a. The Risk Aversion of International Banks

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 extensively.³⁸ This risk aversion approach often disrupts humanitarian activities and diminishes severely the scale of humanitarian responses. Also, the de-risking practice isolates entire regions from the global banking system, which can drive illicit activity further underground.³⁹

Banks’ de-risking practices are influenced by a number of factors:

- Complexity of determining the permissibility of the humanitarian activity as well as the legitimacy of the ultimate beneficiaries;
- Overcompliance of international banks with U.S. regulations, reinforced by the fear of exorbitant fines, disciplinary actions, and “reputational damage” when risk mitigation programs are not implemented;⁴⁰
- Dependency of the banking sector on U.S. regulations due to the “centrality of the U.S. dollar to international trade”;⁴¹
- Lack of clarity of U.S. sanctions exceptions modus operandi in the midst of U.S. power to impose secondary sanctions; and

³⁷ Walker, “Risk Management Principles Guide,” 11

³⁸ Mallard, Farzan and Sun, “Humanitarian Gap in Sanctions Regime,” 132

³⁹ Walker, “Risk Management Principles Guide,” 11

⁴⁰ Debarre, “Making Sanctions Smarter,” 3; Alice Debarre (2019), “Safeguarding Humanitarian Action in Sanctions Regimes,” *International Peace Institute*, https://www.ipinst.org/wp-content/uploads/2019/06/1906_Sanctions-and-Humanitarian-Action.pdf; Stuart Gordon, Alice Robinson, Harry Goulding and Rawaad Mahyub (2018), “The impact of bank de-risking on the humanitarian response to the Syrian crisis,” *Humanitarian Forum, HPG and the London School of Economics and Political Science*, <https://bit.ly/2z3T3JI>

⁴¹ Grégoire Mallard, Sabet Farzan, and Jin Sun (2020), “The Humanitarian Gap in the Global Sanctions Regime: Assessing Causes, Effects, and Solutions,” *Global Governance: A Review of Multilateralism and International Organizations* 26.1, 121-153, <https://doi.org/10.1163/19426720-02601003>

- 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 sanctioned — as in this case the bank where funds are deposited. This makes it impossible for INGOs to obtain wheat seeds even though they are exempt from sanctions. Consequently, we can note that, despite the attempt to exempt from sanctions goods that are necessary for fulfilling basic human needs, more often than not they are nevertheless severely impacted.⁴⁴

b. Nonbanking/Informal Payment Options

Often, the low risk appetite of banks pushes humanitarian actors, especially the ones operating outside the government-controlled areas, to utilize informal payment channels such as the *Hawala* system.⁴⁵ Several INGOs reported that nonbank financial networks have become the only viable way to transfer money to their projects in Syria, especially for cash assistance programs.

The challenge for INGOs, both in and outside of government-controlled areas, is accessing money once funds arrive at a bank in Syria. The rapid depreciation of the Syrian currency and the Syrian government's prohibition on withdrawing U.S. dollars means that the value of funds significantly decreases.

⁴² Walker, "Risk Management Principles Guide," 19

⁴³ Damascus-based INGOs (2020), "Understanding the Operational Implications of Sanctions on Syria: Insights from Damascus-based INGOs"

⁴⁴ Hemsley and Achilles, "Aid in Limbo," 21

⁴⁵ Hawala is an informal method of transferring money without any physical money actually moving. Hawala is used today as an alternative remittance channel that exists outside of traditional banking systems.

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

E. The Early Recovery/Reconstruction Dilemma

The humanitarian exemption logistical difficulties, the threat of sanction violations, and political pressure to cut ties with the Syrian economy have made donors, governments, and financial institutions reluctant to offer support to humanitarian programs in Syria. The “chilling effect” of sanctions on the international community comes at a time when relative stability has shifted the needs of the Syrian people away from immediate humanitarian assistance toward early recovery projects with more sustainable outcomes, such as support for livelihoods and the restoration of basic social services like education and health care systems.⁴⁹

But early recovery projects are a particularly hard sell under current sanction regimes. While sanctions do not directly prohibit early recovery projects, humanitarian organizations worry that their attempts to support early recovery might violate broad prohibitions against reconstruction inside Syria.⁵⁰

There is an urgent need to assess aid response in light of a clear definition of what “humanitarian work” consists of and adapt this response to ensure a sustainable access of Syrians to their basic needs and livelihood.⁵¹ The very term “humanitarian work” is a fluid one, particularly when basic human needs such as water, sanitation, education and healthcare require restoration of infrastructure.⁵²

⁴⁶ Walker, “Risk Management Principles Guide,” 18

⁴⁷ Debarre, “Making Sanctions Smarter,” 3

⁴⁸ Interview with humanitarian representatives, May 27, 2020

⁴⁹ Hemsley and Achilles, “Aid in Limbo,” 2

⁵⁰ Ibid, 16

⁵¹ Ibid, 26

⁵² Basma Alloush and Alex Simon (2020), “Will More Syria Sanctions Hurt the Very Civilians They Aim to Protect?” *War on The Rocks*, <https://warontherocks.com/2020/06/will-more-syria-sanctions-hurt-the-very-civilians-they-aim-to-protect/>

While sustainable humanitarian assistance is next to impossible without aid in early recovery, this is often not recognized by donors who are reluctant to fund early recovery projects because they view them as “legitimizing the government of Syria.”⁵³ Common scenarios include donors who might be willing to fund some repairs of water networks, but are unwilling to fund the reconstruction of sewage networks, which can lead to water contamination, thus making the first project unsustainable. In some cases, if the water network is not functioning due to lack of power supply to a pumping station, the best way to increase household access to water is by restoring power stations. “An activity as simple as repairing an existing water network to ensure people get access to clean water has raised a red flag with donors questioning if that’s really humanitarian and if we are not going too far.”⁵⁴ There is also resistance toward funding repairs to electricity networks, which are necessary for reopening bakeries. Instead, the repair is replaced with bread distribution. However, it is worth mentioning that some donors have a bigger appetite, and recently the space for early recovery has stretched more and more. For example, repairing a damaged school is starting to become acceptable for donors.⁵⁵

Due to this lack of consensus between the U.S. and the EU over the scope of humanitarian exceptions, humanitarian workers are continually running into obstacles when they try to determine if their projects fall under early recovery or reconstruction. Consequently, early recovery projects might loosely be defined as “reconstruction”, hence violating sanctions.⁵⁶ This poses a risk for humanitarian actors on the ground who ultimately bear the risks despite guarantees by donors.

III. Impact of Recent Development on Humanitarian Exceptions

A. COVID-19

Since the outbreak of COVID-19 in early 2020, there has been a debate on the extent to which sanctions impact humanitarian response, with many calling on the suspension or easing of sanctions to allow for swift delivery of essential medical supplies.⁵⁷ In light of this debate, the U.S. OFAC and the EU issued guidelines on combatting COVID-19 in sanctioned countries, reiterating that these frameworks allow for humanitarian exceptions and that they will prioritize and expedite license applications that involve humanitarian transactions, particularly relating to COVID-19. Yet the process is still lengthy, and with more sanctions being imposed, there is no assurance that INGOs will not be hit with fines once the health crisis is over.⁵⁸ A guideline alone will not streamline the delivery of essential medical supplies or ensure the

⁵³ Hemsley and Achilles, “Aid in Limbo,” 26

⁵⁴ Interview with humanitarian representatives, May 27, 2020

⁵⁵ Interview with a humanitarian representative, May 19, 2020

⁵⁶ Walker, “Risk Management Principles Guide,” 26

⁵⁷ Walker, “Navigating Humanitarian Exceptions,” 5

⁵⁸ *Ibid*, 3

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 trying to send advocacy paper to different donors asking them to accelerate the process for medication and tests because people do not have access here.”⁵⁹

Syria is of particular concern given the damage inflicted on its healthcare system during years of conflict. Reports indicate that 50% of public hospitals are no longer operating; those that are operating experience shortages of supplies, resulting in increased prices for medicine, leaving many Syrians unable to tend to their medical needs.⁶⁰ While sanctions do not directly target the health sector, it has been indirectly affected by sanctions imposed on other sectors in Syria. To illustrate the indirect impact of economic sanctions on Syria’s health sector, Ziad Ghisn highlights three main factors impacting the pharmaceutical industries: increased cost of importing raw materials; delay in accessing these materials; and the inability to import certain raw materials due to Western companies’ halting exports to Syria, forcing the industry to find alternative means that are not internationally certified.⁶¹

Furthermore, the requirements set by donors for the types of humanitarian activities that are allowed must be reassessed. For instance, one of the best practices to avoid COVID-19 is washing hands thoroughly, yet in parts of the country, Syrians do not have running water. Additionally, 46 percent of Syria’s medical facilities damaged by war require infrastructure repairs in order to function.⁶² Humanitarian organizations are unable to implement such repairs due to guidelines set by donors that restrict infrastructure repair, as it falls under reconstruction.⁶³

B. Impact of the Caesar Act

In December 2019, the U.S. Congress passed the “Caesar Syria Civilian Protection Act,” expanding the reach of the U.S. to impose secondary sanctions beyond Syrian and American entities. The main characteristic of the Caesar Act is the U.S. ability to impose secondary sanctions on individuals and institutions, regardless of nationality, that are found to be violating Syria sanctions or contributing to any reconstruction efforts, targeting the energy and construction sectors.⁶⁴ The Caesar Act also requires the U.S. Treasury Department to determine whether the Central Bank of Syria is an institution of primary money laundering concern and, if

⁵⁹ Interview with humanitarian representatives, May 19, 2020

⁶⁰ Jihad Yazigi (2020), “Syria’s Growing Economic Woes: Lebanon’s Crisis, the Caesar Act and Now the Coronavirus,” *Arab Reform Initiative*, <https://www.arab-reform.net/publication/syrias-growing-economic-woes-lebanons-crisis-the-caesar-act-and-now-the-coronavirus/>

⁶¹ Ziad Ghisn (2020), “How economic sanctions negatively affect the health sector in Syria: a case study of the pharmaceutical industry,” *The London School of Economics and Political Science*, <https://blogs.lse.ac.uk/crp/2020/04/16/how-economic-sanctions-negatively-affect-the-health-sector-in-syria-a-case-study-of-the-pharmaceutical-industry/>

⁶² United Nations Office for the Coordination of Humanitarian Affairs (2020), Syria anniversary press release

⁶³ Walker, “Navigating Humanitarian Exceptions,” 6

⁶⁴ Alloush and Simon, “Will More Syria Sanctions Hurt the Very Civilians They Aim to Protect?”

so, the Treasury Department will impose regulations limiting the Central Bank's access to the U.S. financial system.⁶⁵ The Caesar Act aims to deter any investment in Syria's economy in hopes of further pressuring and isolating the government of Syria. The Caesar Act's sweeping restrictions, extended to entire sectors, could have a long-term impact on the ability for Syrians to recover and rebuild their lives.

The Caesar Act will not only discourage foreign investment in Syria's economy, but also deter any investment by the Syrian business community and diaspora. As a Damascus-based businessman stated, "Wealthy expats won't come back as long as sanctions are there. They all have business interests abroad, which they won't risk by investing in Syria."⁶⁶

While the Caesar Act provides for humanitarian exceptions, it is important to highlight that these exceptions and licenses only apply to U.S. organizations operating in Syria. In a recent interview with Syria Untold, Norwegian Refugee Council's Basma Alloush explains, "The Caesar Act is specifically targeting non-U.S. people and entities. The fact that they are putting these so-called secondary sanctions on non-U.S. persons [means that] INGOs operating in Syria that are not American cannot seek the same recourse [to exceptions]."⁶⁷ The Caesar Act does not include any language or guideline for INGOs to protect themselves from sanctions. This is problematic, as it will further exacerbate the risks associated with compliance, increase the costly bureaucratic processes, and cause further delays in humanitarian operations. INGOs are struggling already to find banks, suppliers, insurance and shipping companies willing to work in Syria and risk hefty fees. The Caesar Act will only add another layer of ambiguity and reinforce these dynamics.⁶⁸ Moreover, the Caesar Act specifically targets the construction sector, which has raised concerns among aid organizations working in small-scale infrastructural rehabilitation.⁶⁹ As one humanitarian worker confided, "We have sought legal advice to review the act and ensure our activities are covered. The biggest risk we are foreseeing right now is the escalation of bank de-risking, and this is our main concern. Currently we are in touch with OFAC representatives and we will see how it will play out."⁷⁰

The ambiguity of the Caesar Act more than likely will require legal assistance and costly delays that are beyond the capacity of medium to small aid organizations.

⁶⁵ The Carter Center (2020), "U.S. and European Sanctions on Syria"

⁶⁶ Alloush and Simon, "Will More Syria Sanctions Hurt the Very Civilians They Aim to Protect?"

⁶⁷ Madeline Edwards (2020), "A 'missing piece' in the debate: As Caesar sanctions go into effect, are ordinary Syrians protected?" *Syria Untold*, <https://syriauntold.com/2020/06/18/a-missing-piece-in-the-debate-as-caesar-sanctions-go-into-effect-are-ordinary-syrians-protected/>

⁶⁸ Daher, "The 'Caesar Bill' "

⁶⁹ Alloush and Simon, "Will More Syria Sanctions Hurt the Very Civilians They Aim to Protect?"

⁷⁰ Interview with humanitarian representatives, June 5, 2020

IV. Recommendations for an Effective Utilization of Humanitarian Exceptions

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.

A. Cross-Cutting Recommendations

- 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.

B. Sector-Specific Recommendations

Sanctions Authorities

- Insulate humanitarian activities from sanctions by providing broad exceptions for humanitarian work in sanctions resolutions.⁷³

⁷¹ Interview with humanitarian representatives, May-June, 2020

⁷² Debarre, "Making Sanctions Smarter," 26

⁷³ Ibid, 19

- 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 and space for their operations. This broad mandate should also extend to INGOs.
- For member states of regional organizations (like the EU): Coordinate the standards that members use to assess sanctions compliance, sanctions enforcement strategies, and license-issuing processes.⁷⁹
- Standardize definitions of key terms — such as “humanitarian work”, “early recovery”, and “reconstruction” — as well as the criteria used to apply these designations.
- Lift or adjust sanctions so that early recovery is not hindered.⁸⁰
- Provide incentives to institutions that support humanitarian activities in an attempt to mitigate the chilling effect.⁸¹

⁷⁴ Interview with humanitarian representatives, June 5, 2020

⁷⁵ Interview with humanitarian representatives, May-June 2020

⁷⁶ Walker, “Risk Management Principles Guide,” 30

⁷⁷ Interview with humanitarian representatives, June 5, 2020; Walker, “Risk Management Principles Guide,” 30

⁷⁸ Walker, “Risk Management Principles Guide,” 30

⁷⁹ Ibid, 30

⁸⁰ Idriss Jazairy (2018), “Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the Syrian Arab Republic,” *United Nations General Assembly Human Rights Council Thirty-Sixth Session*

⁸¹ Walker, “Risk Management Principles Guide,” 28-29

Donors (Including Governments)

- 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

Financial Institutions/Banks

- 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

Humanitarian Organizations (and Actors)

- Establish a coherent organizational framework between headquarters and local offices to ensure positions are clearly articulated to national staff/partners through regular engagement and the establishment of reporting mechanisms.
- Use general licenses and broad derogations that cover humanitarian activities whenever possible, while making sure to identify dual-use and U.S.-origin items that require targeted licenses and derogations.⁸⁷

⁸² Debarre, “Making Sanctions Smarter,” 1

⁸³ Hemsley and Achilles, “Aid in Limbo,” 29

⁸⁴ Mallard, Farzan and Sun, “Humanitarian Gap in Sanctions Regime,” 126

⁸⁵ Walker, “Risk Management Principles Guide,” 30

⁸⁶ Debarre, “Making Sanctions Smarter,” 23

⁸⁷ Walker, “Risk Management Principles Guide,” 30

- 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:
 - ✓ Summarize in an opening paragraph the projects for which licenses and derogations are being sought.
 - ✓ Describe project activities with precision and a compelling narrative, such that licensing authorities will have little uncertainty about the scope of programming.
 - ✓ Provide a specific timeline for programming and other relevant factors such as COVID-19, making sure to notify the licensing authority if an application is time sensitive.
 - ✓ Explain why it is necessary to obtain a license or derogation and why it is impossible to pursue alternatives that do not violate sanctions.
 - ✓ Describe measures taken to prevent aid diversion and sanctions violations as well as systems for monitoring for and responding to violations when they occur to the best of humanitarian workers' ability and without causing further harm to local communities they serve.

⁸⁸ Ibid, 30

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