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National Agenda for the Future of Syria

Humanitarian Impact of Syria-Related Unilateral Restrictive Measures



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Study on Humanitarian Impact of Syria-Related Unilateral Restrictive Measures

A report prepared for the
United Nations (UN) Economic & Social Commission
for Western Asia (ESCWA)
“National Agenda for the Future of Syria”

The study has primarily set out to understand sanctions issues encountered by those delivering humanitarian aid into Syria. The study also reviewed whether a better balance needs to be struck between the delivery of humanitarian and development aid and the application of unilateral sanctions.

The views expressed are entirely those of the author and should not be considered to constitute any official statement.

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I Executive Summary

The continuing conflict in Syria, which is now in its fifth year, has created a devastating humanitarian crisis in the region. The magnitude of humanitarian needs is overwhelming in all parts of the country.

The conflict is the world’s largest humanitarian crisis since World War II. In Syria, the estimated number of people in need of humanitarian assistance is over 13 million, more than two-thirds of pre-war population. Out of those, over 4 million are in hard to reach, and/or besieged areas, and over 6 million people are internally displaced.¹ The humanitarian situation and the weakening of state structures have fuelled a combustible environment, which has contributed to the refugee and migration crisis and the rise of so-called Islamic State of Iraq and the Levant (ISIL), also known as Da’esh.

“The 2016 UN inter-agency appeals for the Syrian crisis are an estimated U.S. \$7.73 billion”²

In parallel to the unfolding humanitarian situation sits a complex network of non-UN “economic sanctions” targeted towards the Government of Syria, plus certain entities and individuals which have been deemed to have engaged in ongoing violence and human rights abuses. Prohibitions are wide ranging and vary between individual sanctions regimes and competent authorities. European Union (EU) sanctions and export controls include asset freezes and considerable restrictions on the types of financial services which EU banks can offer in Syria. They may also prohibit the export into Syria of certain “dual use” goods, as well as impose a requirement to obtain prior authorisation in certain situations.

The U.S. programme extends beyond that of the EU, by imposing a blanket export embargo and broader financial measures. Activities of U.S. and non-U.S. persons and entities are also restricted, with respect to items subject to U.S. jurisdiction. Because the U.S. has designated Syria as a State Sponsor of Terrorism, there is an export ban against Syria for almost all U.S.-origin items, wherever located. The ban includes foreign-produced items, in which U.S. content accounts for 10% or more of the value of the finished product.

In totality, the U.S. and EU sanctions on Syria are some of the most complicated and far-reaching sanctions regimes ever imposed. The report acknowledges that within the UN there is no consensus of opinion on whether the use of such unilateral, coercive, economic measures are achieving their desired impact.³ Evidently, whilst sanctions have not caused the conflict, discussion on whether unilateral measures are appropriate, is a politically sensitive and highly emotive subject, and is therefore outside of the scope of this report. Instead, the study’s mandate is solely focused on identifying whether potential unintended consequences are arising from the implementation of unilateral measures, and has put forth recommendations that could facilitate the delivery of rapid and legitimate humanitarian aid.

The report recognises that in differing ways both the U.S. and EU sanctions frameworks make specific allowances to permit activities in the context of humanitarian work. However, it further finds that the practical application of navigating these permissions, when combined with wider regulatory risks, can at times be far removed from the policy commitment of limiting the impact on the local civilian population, and those carrying out legitimate activities. In short, those involved in delivering humanitarian projects consistently report that the nature of prohibitions, licensing framework, export control requirements and associated due diligence, risk management expectations are complex to understand, often require costly legal analysis and act as an impediment in the smooth and rapid delivery of humanitarian aid.

Further compounding the stringent nature of Syrian sanctions is the complex terrorist dimension, which presents a different type of sanctions enforcement challenge. ISIL, which is designated as a terrorist entity by the UN, continues to control populations in significant parts of Syria. The al-Qaeda-linked Al-Nusra Front also maintains a presence in Syria.⁴ It is only too apparent that terrorist ideologies have been energised by the ongoing conflict within Syria. The wave of Western foreign terrorist fighters travelling to join violent extremists is but one dimension.

The combined effect of comprehensive, unilateral sanctions, terrorist concerns and the ongoing security environment have created immense hurdles for those engaged in delivering immediate humanitarian aid and wider stabilization programmes. Despite international legal obligations and the demands of the Security Council, all parties to the conflict have been noted as obstructing humanitarian assistance to those most in need. In cases where humanitarian access and delivery is viable, non-governmental organizations (NGOs) report significant impediments in moving associated financial transactions and goods into Syria. Perhaps the two most tangible aspects identified relate to the procurement of goods and an inability to process funds via the formal financial sector into Syria.

It is clear that governments imposing sanctions must improve the execution of how these policies are implemented and understood by non-sanctions experts and the wider community. The strategy must also rebalance the sanctions and regulatory environment towards a more pragmatic and permissive framework that enables delivery of humanitarian aid by trusted actors. The realities of promoting humanitarian aid in a country savaged by ongoing conflict must therefore be fully understood.

Primarily this paper has set out to understand sanctions issues encountered by those delivering humanitarian aid into Syria. This is illustrated by case studies. It has further asked whether a better balance could be struck between the delivery of humanitarian aid and the application of unilateral sanctions. Our findings have shown that although delivering humanitarian aid is both encouraged and permitted under unilateral measures, particularly the U.S. and EU sanctions regimes, practical steps to balance and align objectives of these policies so they do not overly inhibit delivery of humanitarian aid is a key issue for Syria. Within this there are eight general areas of concern.

1. **Minimal un-sanctioned banking channels are available to those delivering humanitarian aid:** The capabilities of the Syrian banking industry to facilitate international payments have been severely eroded by both the conflict and imposition of sanctions. The U.S., EU and other countries have sanctioned the largest banks in Syria, resulting in minimal remaining un-sanctioned banking channels. This in turn has significantly reduced the ability for humanitarian actors to process funds into Syria therefore creating an inability to pay local staff, suppliers and operate programmes.
2. **Risk of using remittance and informal payment channels for humanitarian aid:** The inability to make straight-line, direct bank-to-bank payments via the global correspondent bank network into Syria means humanitarian and development funds are increasingly being transmitted via remittance and informal payment channels. The rapid growth of Hawala in Syria presents a new risk management landscape which is still being assessed and understood. Moreover, the risk of benefit to those evading sanctions, including UN-sanctioned terrorist groups can only be deemed greater via this method, versus the movement of funds via the formal banking channel.
3. **Private sector entities (particularly banks and exporters) are reluctant to support humanitarian activity – ‘chilling effect’:** There is perilous reluctance among western suppliers and banks to offer humanitarian goods and related finance, in part, for fear of sanctions issues, such as fines for inadvertent technical violations.
4. **Licence application process for humanitarian support, beyond the allowable food and certain medicine, overly inhibits the delivery of humanitarian aid:** The licensing framework is reported to be lengthy, difficult to navigate and ill-prepared to respond to the needs of humanitarian actors and their related programmes.
5. **Provision of available general licences and humanitarian exemptions are too limited:** Despite special exemptions for UN and NGO organizations many elements of humanitarian delivery fall outside of the scope of these exceptions and therefore limit their usefulness.
6. **The export of many medical devices and software to Syria requires a licence:** Medical treatment is one of the primary needs for those affected by the crises in Syria. Medical devices and related software require licenses for export. In recognition that many medical devices are inoperable without software updates and patches, the licensing requirement is particularly debilitating.
7. **There are separate licensing processes within countries and across the U.S. and EU:** Often dual applications are required across varying competent authorities within a given country and between countries, further extending licensing process timelines and complexity.
8. **Immense levels of infrastructure destruction have created an urgent need for development and reconstruction aid, without delay:** E.g., transport, communications, hospitals, water, energy infrastructures and housing stock. This has included the need for mass purchasing of new technologies, dual use goods and related services/investment – many of which are subject to some element of sanctions.

“In March 2016, United Nations humanitarian agencies and partners continued to reach millions of people in need through all modalities from within the Syrian Arab Republic and across borders, pursuant to resolutions 2165 (2014), 2191 (2014) and 2258 (2015).”⁵

Beyond immediate humanitarian relief the scale of stabilization and reconstruction requirements are immense. There is, therefore, a critical need for sanction authorities to ‘lean forward’ to address the immediate civilian need to repair electricity infrastructure, health care facilities, access to fuel, the transport network and wider reconstruction. Moreover, there is unlikely to be an exact day when Syria as a whole moves from war to peace. Consequently the sanctions ecosystem will need to demonstrate a much greater degree of responsiveness in how it responds to the Syrian crises. Unless addressed now, the impact of sanctions will last well after the sanctions are either removed or modified and may create a new catastrophe in terms of crippling economic and humanitarian effects.

It is therefore recommended that a number of technical changes be considered in relation to how policy, licensing and outreach are implemented across both U.S. and EU governments. We further propose that a commitment to engage in an immediate strategic review by the U.S. and EU, in conjunction with UN and other stakeholders, is undertaken to ensure sanctions and related regulatory environments do not overly inhibit the delivery of humanitarian aid and planned reconstruction efforts within Syria. This is both timely and necessary when considering wider efforts to secure political agreement regarding addressing the conflict, the level of humanitarian need and that donors’ are already focusing attention towards development and reconstruction planning.

II Introduction

Structure of Report:

The report first considers the use of targeted sanctions and envisaged humanitarian exemptions. It then goes on to set out the challenge of why sanctions are creating unintended hurdles in the delivery of humanitarian assistance by giving a detailed analysis of the U.S. economic sanctions and export control framework.

We consider how the U.S. and EU sanctions frameworks can more effectively use their instruments to deliver their political objectives, whilst minimising impediments to the delivery of legitimate humanitarian aid. We conclude with a number of specific recommendations. Throughout the report we support our recommendations by providing case studies drawn from real-life scenarios encountered by those delivering humanitarian aid on the ground in Syria and neighbouring countries.

We hope this report will make a significant contribution to the process of strategic reflection and planning within Syria. We make this report available to the international community for their debate.

Background to the Study:

On 7-8 July 2015, a closed-door, informal roundtable discussion was held at United Nations Economic and Social Commission for Western Asia (UN ESCWA) to discuss unintended negative humanitarian impacts of Syria-related unilateral economic and trade measures (otherwise known as sanctions). The attendees at the roundtable included international organisations, UN agencies, a wide range of European and international government representatives plus a selected group of private sector stakeholders.

During the meeting attendees raised concerns regarding the challenges of moving humanitarian funds and restricted goods into Syria, whilst ensuring compliance with sanctions. At the close of the roundtable, meeting attendees agreed to commission an independent and technical research study to assess whether potential unintended humanitarian consequences are arising from application of unilateral sanctions.

A draft of this report was presented to a second UN ESCWA convened roundtable of international stakeholders on the 29th March, in Beirut. Where possible the final report has incorporated a number of additional elements raised at the March roundtable.

Scope of the Study:

The overall effectiveness of unilateral sanctions instruments was not included in the scope of the study. Rather, specific emphasis was given to the humanitarian exemptions framework within unilateral sanction regimes, how these exemptions work in practice, and whether associated frameworks promote rapid and safe delivery of humanitarian aid. The project further examined current humanitarian delivery needs, and also longer-term humanitarian plans, including future reconstruction requirements.

Agreed objectives of the study, were to:

- Identify how humanitarian activity and humanitarian licences work in practice. Specifically, the types of sanctions challenges encountered when delivering humanitarian aid to the country's populations.
- Identify how U.S., EU and other sanction regimes could more effectively deliver humanitarian aid to the Syrian population.
- Put forth recommendations to facilitate rapid and secure delivery of humanitarian aid and other key 'humanitarian needs' (i.e., power supply parts, water pumps, water purification). Recommendations are to alleviate humanitarian suffering of the Syrian people.

Adopted methodology included:

A desk review of The National Agenda for the Future of Syria programme documents including unilateral restrictive measures and associated legislation pertinent to the context of the Syrian conflict.

Qualitative face-to-face and telephone interviews with relevant international and Syrian humanitarian agencies, private sector, government officials and international bodies, between January and early May 2016.

A roundtable hosted during the Supporting Syria Region Civil Society conference on 3 February in London. A call for evidence was issued to NGOs via the ‘attorneys for aid network’⁶ and through wider informal NGO network groupings.

Evidence gathered and presented through an array of case studies drawn from real life scenarios encountered by those delivering humanitarian aid on the ground in Syria and neighbouring countries.

Terminology of Humanitarian, Development and Stabilization

In undertaking this study the author has been asked on numerous occasions whether the report is solely focused on ‘humanitarian assistance’ i.e. meaning the aid and immediate action designed to save lives and alleviate suffering. What constitutes the compartmentalization of ‘aid’ between humanitarian, stabilization, reconstruction and development is not addressed within this study.

Bridging the gap within Syria between emergency humanitarian assistance and longer-term reconstruction and development is clearly a growing priority for the international community. As such this study has drawn upon the reality of sanction issues faced by those implementing projects on behalf of the UN, donor community or individual governments. As a result, case studies utilized go beyond immediate short term emergency relief and span into wider areas such as access to fuel, electricity and reconstruction.

III Unfolding Humanitarian Situation – A Brief Overview

Here we provide a short summary of the humanitarian situation within Syria. Understanding the scale of the disaster is important. Firstly, when compared to other scenarios (e.g., Iran) where sanctions have been applied the scale of devastation and level of humanitarian need makes it an unprecedented situation. This in turn requires a more thoughtful sanctions response putting humanitarian needs at the very core of how sanctions legislation is drafted and applied.

Additionally, we anticipate many will agree – or at least partially agree – with our recommendations. However, identifying the correct people to effectuate change is less straightforward. We, therefore, hope those reading this report will feel compelled to engage in the debate on how to limit unintended consequences arising from sanctions implementation relating to humanitarian impacts.

As described by António Guterres, the UN High Commissioner for Refugees, the humanitarian situation has become “the great tragedy of this century”.⁷ In response, governments around the world have pledged significant aid commitments. The 2016 UN inter-agency appeals for the Syrian crisis is an estimated U.S. \$7.73 billion.⁸ U.S. humanitarian assistance alone, in response to this conflict, stands at more than U.S. \$5.1 billion.⁹ The recent ‘Supporting Syria’ conference in February 2016 saw more than U.S. \$11 billion in pledges received – U.S. \$5.8 billion for 2016 and a further U.S. \$5.4 billion for 2017-20, enabling organisations to plan for the future.¹⁰

Such large scale pledges have enabled the UN and partners to deliver assistance to millions of people in need, from within Syria and across borders, pursuant to resolutions 2139 (2014), 2165 (2014), 2191 (2014) and 2258 (2015). For example, in 2015, the UN and its partners delivered, on average, on a monthly basis, food assistance for 6 million people, safe drinking water for more than 8 million people, non-food items for in excess of 4.8 million people and health interventions for some 14 million people. NGOs, including pro-opposition organisations, and the government continued to provide basic services in various parts of the country.¹¹ The number of national NGOs authorized to partner with United Nations organisations increased from 141 to 142 in March 2016. Authorized national NGOs continue to operate under complex procedures in partnering with United Nations agencies.¹²

A total of 16 international NGOs are authorized to operate in Syria. As of April 2016 three more such organisations have applications for approval by the Government of the Syrian Arab Republic pending.¹³

The Syrian conflict is not only one of the largest but also one of the most complex humanitarian emergencies. As reported by regional experts, the most challenging aspects in mobilising humanitarian aid for people in Syria is gaining access into afflicted areas, and then mobilising funds, medicine and other necessities for life, including food, water, shelter, machinery and other items.¹⁴ Providing solutions to both these challenges is therefore of primary importance, and fundamental in enabling humanitarian assistance where it is most needed.

As the conflict continues many have been left without access to basic medical care. Destruction of health care facilities and a lack of essential medicines and health care workers is commonplace. Over half the country’s public hospitals have been damaged or destroyed.¹⁵ British doctors working in Aleppo have indicated that over 80% of those requiring urgent medical treatment die as a result of their injuries, or lack of basic care, medicine and equipment.¹⁶

In areas left without basic medical care there is also an increased risk of infectious disease outbreaks. This is due to disruptions in vaccination programmes, overcrowding in public shelters from high levels of internal displacement, damage to water and sanitation infrastructure and lack of waste management systems. Starvation and famine are also regularly reported. Power blackouts are common across the major cities. The price of power has become too expensive for most Syrians, and many live without electricity, as they cannot afford this ‘luxury’.¹⁷

The Secretary-General of the United Nations’ (UNSG) report from December 2015 on the implementation of Security Council (SC) resolutions 2139, 2165 and 2191 sets out how the conflict is making it more difficult for humanitarian aid to reach conflict affected people, either under the control of government or opposition forces.¹⁸ Negotiating humanitarian corridors and cease-fires to enable delivery of humanitarian aid remains an urgent priority for the UN and international community. In paragraph 12 of

resolution 2254 (2015), the Security Council called upon the Syrian parties to immediately allow humanitarian agencies access throughout the Syrian Arab Republic.

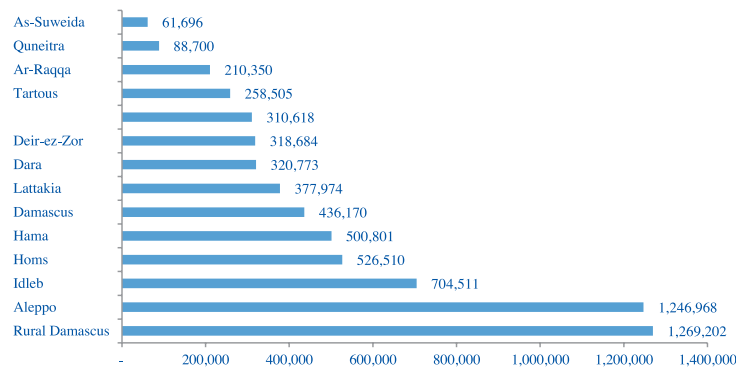
In February 2016 a cessation of hostilities had begun to be implemented by applicable parties and has offered enhanced opportunities to deliver humanitarian aid to those in desperate need. As of late April the cessation of hostilities outlined in Security Council resolution 2268 (2016), were by and large considered to be holding.¹⁹ As a result March saw an overall decrease in the number of military operations. At the time of finalising this report the transition to a longer term political solution, whilst exceedingly fragile, remains ongoing. In certain areas, such as Aleppo city, fighting has continued between Syrian government forces, their allies, non-state armed opposition groups and ISIL. In May 2016 the Security Council expressed outrage at all recent attacks in Syria directed against civilians and civilian objects including medical facilities.²⁰

To date the conflict has been characterised by deliberate interference and restrictions by the parties on the ground in Syria to prevent the delivery of aid. In January 2016, it was reported that the administrative requirements imposed by the Syrian government related to the delivery of humanitarian assistance had not improved, and continued to limit and delay the delivery of aid by the UN and its partners.²¹

As reported in February 2016, the UN World Food Programme continued to be unable to reach people in need in ISIL-controlled areas of the country, owing to the inability to work independently and to monitor activities.²² As a result of either security concerns or access factors, the UN agencies and partners have reached only 32 of the 154 hard-to-reach locations (21 per cent).²³ Nearly half of the people in hard-to-reach localities are in ISIL-controlled areas, where the UN has extremely limited access. However, some more recent success has been noted.²⁴

There are many situations where humanitarian assistance is possible, in such cases the main priorities are: treating and evacuating the wounded; providing food and water; sanitation and hygiene; health care and shelter. Prices of basic commodities continue to rise and availability of food stocks in many parts of Syria remains low.²⁵ With over 11 million people having fled their homes both inside Syria and to the neighbouring countries, shelter requirements are high. Children, women and the elderly are most at risk.²⁶ Approximately 1.7 million internally displaced are within refugee camps inside Syria. See figure 1.²⁷

Figure 1: Internally Displaced Population (by Governorate, 2015)



Source: UNICEF (2016)²⁸

There can be no doubt that the magnitude of humanitarian needs throughout Syria is overwhelming. As set out in UNSC Resolution 2254, “The Security Council is alarmed that the Syrian crisis has become the largest humanitarian emergency crisis in the world today, threatening peace and security in the region with diverse implications on the neighbouring countries and the displacement of millions of Syrians into those countries, and calls to address further spill-over of the conflict in Syria into the neighbouring countries.”

A ‘human train’ is leaving Syria, initially heading towards neighbouring countries, and now into Europe. Families are struggling to survive inside Syria, or make a new home in neighbouring countries. As a result, increasing numbers are risking their lives to ‘start a new life’ in Europe. As underscored by UNSC Resolution 2254, there is now a critical need to build conditions for the safe and voluntary return of refugees and internally displaced persons to their home areas. Rehabilitation of areas affected by the crises is seen as a critical component. As such, international donors and the UN have begun to focus their attention towards development and reconstruction planning.

IV The Use of Targeted Sanctions and Humanitarian Exemptions

Governments typically apply targeted sanctions – also referred to as restrictive measures – either as part of an international, European or unilateral response to put pressure on target groups or regimes. Sanctions are normally used by states, or the international community, for one or more of the following reasons:

- To encourage a change in behaviour of a target country or regime.
- To apply pressure on a target country or regime to comply with set objectives.
- As an enforcement tool when international peace and security have been threatened and diplomatic efforts have failed.
- To prevent and suppress financing of terrorists and terrorist acts.²⁹

The U.S. first designated Syria as a state sponsor of terrorism in 1979, subsequent sanctions were further imposed in 2004 following Lebanon's political crises. However, the most recent set of international sanctions were implemented in response to the Arab Spring and ensuing civil war that broke out in 2011. Since then targeted sanctions against the Syrian government have been imposed by the U.S., Arab League, EU, Turkey, Australia, Canada and other individual countries. These countries place a myriad of sanctions on Syrian businesses, sectors, individuals and entities that are government controlled or associated with the government. Whilst the sanctions are not uniform in their design or scope, among those targeted include: the Central Bank of Syria, the largest state-owned banks and the Syrian petroleum industry.

Varying prohibitions also exist in the provision of certain financial services, including correspondent banking, currency services for the Syrian government and the direct or indirect sale, purchase or brokering of gold, precious metals and diamonds. There are wide-ranging bans on certain types of investment into critical industries and sectors. Prohibitions also exist on the export of certain 'dual use' items, and in the U.S.' case, there is a blanket embargo on export of both services and goods to Syria. In 2013, the EU eased various trade restrictions in order to assist the opposition forces.

Targeted sanctions normally include a clause to minimise adverse consequences for those 'not' responsible for such policies and actions, in particular, the local civilian population and those carrying out legitimate activities in, or with, the country concerned.³⁰ The policy intent of targeted sanctions does not usually seek to interrupt, for example, the export of medicines, foodstuffs or other humanitarian goods to countries against which financial sanctions may be in effect

Where financial sanctions and other trade restrictions are in place, the more developed sanctions programmes generally provide certain exemptions for the export of humanitarian goods, medicines, etc. These may be permitted by either a 'general licence' or 'specific licence'. A general licence will automatically apply if the activity falls within the scope of the set parameters of that licence.

On a case-by-case basis, government authorities can consider applications for 'specific licences' to authorise transactions, neither exempt nor covered by a general licence. The decision on whether to give approval or refusal will depend on a range of factors. For instance, in the case of export controls, the nature of the goods and other policy aspects will be considered. The factors that will determine whether a licence will be granted can be expected to include: nature of the goods due to be exported; destination within Syria; ultimate end use of the goods; the risk of diversion; and whether a good could be used for an alternative use. Competent authorities approving Syrian related licences indicate that the risk of diversion (i.e., goods will be stolen or sold for profit) is of particular concern.

It is important to note that in certain instances humanitarian related goods may fall out of the scope of any applicable sanctions regime, and consequently, no licence or prior authorisation may be required. What is and isn't permitted without requiring a licence, and/or prior authorisation, can vary considerably across those countries imposing sanctions. The next section examines how humanitarian exemptions work in the context of applying U.S. and EU sanctions.

V Case Study Evidence - How Sanctions are Creating Unintended Hurdles in the Delivery of Humanitarian Assistance

This section aims to give a sense of the types of challenges experienced by those engaged in the delivery of humanitarian aid, and whilst not exhaustive, they are illustrative of the day-to-day scenarios faced.

Navigating the Licensing System:

Whilst current U.S. and EU sanctions regimes specifically envisage the possibility of licences to allow otherwise sanctioned activities in the context of humanitarian work, these licences are often reported as complicated to obtain and apply. NGOs repeatedly conveyed difficulties in navigating the legal framework, as well as lack of knowledge on which competent authorities they should approach. Moreover, NGOs reported the view that government authorities offered little guidance as to the criteria to be followed when applying for a licence and the criteria the government authorities use when considering whether to grant a licence. The resulting impact was that separate competent authorities offered different – and at times contradictory – messages as to what would be approved. During the course of this study the following experiences were expressed:

Major EU International NGO (INGO) on Application Procedures: *“There is a deep problem with regard to procedures surrounding licence applications. Applications have to be submitted through national state structures. In certain EU countries there appears to be ‘no’ internal procedures within government as to what criteria should be applied when considering a licence application. The result is that each department pursues its own obsession and interests and they often run counter to each other.”*

Major EU INGO on Licence Feedback: *“There is often ‘no’ feedback to your licence request, just ongoing questions. Given shortage of staff [within government licensing teams,] it can take weeks to process one set of questions.”*

Major EU INGO on Legal Costs: *“Legal costs associated with each licence can outweigh the value of the good. For example, seeking U.S. approval for a computer which is destined to Syria can cost three times as much as the actual computer.”*

Those involved in humanitarian and stabilization initiatives may under certain circumstance require a specific licence to move goods into Syria. For instance, EU sanctions and export controls prohibit the export into Syria of a range of ‘dual use’ items. Therefore, drilling equipment or pipes associated with water and sanitization projects are likely to require a specific EU licence. The related provision of financing and brokering services in support of such exports of are also prohibited by EU regulations.

The EU export control regime is extremely broad and provides for common EU control rules, a common EU list of dual-use items as well as coordination and cooperation to support consistent implementation and enforcement throughout the EU. Dual-use export controls essentially affect research and development (R&D), production and trade of typically high-tech, advanced products across a wide-range of industries – e.g. energy, aerospace, defence and security, telecommunications and information security, life sciences, chemical and pharmaceutical industries, material-processing equipment, electronics, semiconductor and computing industries, lasers and navigation. Consequently many projects delivered by the UN, INGO’s, and their implementing partners in the areas of water supply, sanitation, agricultural production, power supply, reconstruction of hospitals/homes etc will all rely on access to controlled dual use goods.

In the U.S. case, exports prohibitions are much broader and cover both export and re-export, sale or supply, whether directly or indirectly from the U.S. or by a US person located anywhere in the world. In essence this means the export of any item containing more than 10% US origin will require a licence.

Case Study 1 – Major EU INGO Obtaining a Licence to Export a U.S. Origin Good: *“The export to Syria of any item containing more than 10% U.S. content requires a licence from the U.S. Bureau of Industry and Security. In 2014 we exported a small number of laptops to our programme in Syria for the personal use of staff. Although a U.S. law firm with specialist knowledge was retained to assist with the application, it took several months to obtain the licence, and the terms of the licence were strict, with regard to the end use and disposal of the laptops. We estimate that the cost of legal advice, although capped, was probably far more than the value of the laptops exported.”*

Even in instances where ‘no’ licence is required, the fear that goods or finances could be diverted to designated individuals or entities has created a ‘chilling effect’. The fear is that somehow a technical sanctions violation could occur. For this reason,

financial institutions and exporters will often go well beyond what is actually required. In essence a ‘compliance buffer zone’ is implemented. In the case of Syria, the response normally leans towards a voluntary boycott. Even where goods and finance can be licensed, the licensing costs are often higher than the value of the goods and services.

Case Study 2 – Hidden Costs of Doing Business with Syria: *“One INGO exporting a generator to Syria was required, by the transport company shipping the goods, to indemnify it for any losses it might incur in any part of the world arising from the shipping company handling the item. The INGO eventually negotiated the indemnity down to €1 million. This was to protect against any breach of EU regulations, about which the INGO had sufficient knowledge to be confident the risk would not materialize.”*

Lack of Viable Formal Banking Corridors into Syria:

Access to reliable banking platforms within Syria is highly constrained. Consequently, how to send money into Syria without violating sanctions, or local regulations of neighbouring countries, presents a very real dilemma for both international banks and those delivering humanitarian aid.

The collapse of the banking system in non-government controlled areas, and the U.S., E.U and other countries sanctioning of Syria’s government-owned banks – including Syria’s largest banks – have resulted in a situation whereby there are few, if any, reliable custodians for funds coming into Syria. The Commercial Bank of Syria (CBS), which was sanctioned in 2011, is the largest bank, not just amongst government-owned banks, but also compared to private banks in terms of operations and services across the country.

Additionally, non-sanctioned banks within Syria have typically been established as joint ventures with Syrian investors, a number of whom may be considered as government-linked. Consequently, due to ownership and control factors, even some of the non-sanctioned banks may be caught under the sanctions regime. The functioning of private, non-sanctioned banks in Syria was reported as being sporadic. As one Syrian-based NGO indicated, “When the currency is doing well the private banks in rebel held areas may open, when it is not doing well they will close”.³¹ The compound effect of sanctions and lack of alternative banks makes it extraordinarily difficult to carry out Euro or U.S. dollar-denominated transactions within Syria through the current banking system.

A rapid assessment report undertaken by Beechwood International in 2015 on the ‘Humanitarian use of Hawala in Syria: Prepared for Aid Agencies Conducting Cross-border Operations’ found the inability to make direct bank-to-bank payments into Syria resulted in funds increasingly transiting neighbouring countries. The report set out that the majority of funds from western donors are remitted to Turkey before entering Syria. When the funds are received by an INGO, they reach Turkey, Jordan, Lebanon and Iraq by bank transfer, either to their office in those countries, or directly into the account of their implementing partner.³² On the possibility of sending cash transfers into Syria the report highlighted that “INGOs use the following bases outside Syria for inward transfers to corresponding parts of the country: Turkey for north and west; Iraq for northeast; Lebanon for central; and Jordan for south and central. Humanitarians appeared most confident about their ability to transfer funds from Iraq into Al-Hasakah, whilst the systems for facilitating bulk payments from Jordan to Dara’a and from Lebanon to besieged areas were perceived to be most problematic”.³³

INGO’s interviewed for this study reported that the only viable way to transfer money to an increasingly large number of their projects operating across Syria is via informal non-bank networks. A report carried out under the guidance of the Norwegian Refugee Council found that various informal value transfer systems are used, to the virtual exclusion of the formal banking sector.³⁴ It further concluded that in the large parts of Syria outside of government control the reliance is on unregistered hawalas to cover NGOs’ operational costs and pay their suppliers, and represent the only potentially (and partially) scalable cash-out facility.³⁵

The Beechwood report sets out that money men who have emerged to fill the banking void: “despite the ambiguity surrounding their legal status, they operate openly in many areas, making use of rented shop space, mobile phone technology, and a close-knit agent network – mirroring the practices of what is termed ‘hawala’, translated simply as ‘transfer’, in Arabic-speaking countries”.³⁶

Beyond the increased expectations of due diligence oversight by humanitarian actors, one of the primary concerns is that funds are rarely transmitted directly to the ultimate beneficiary. This lack of end-to-end payment transparency is highly problematic for

both humanitarian actors and their banks as applying effective due diligence will require a wider understanding of how funds are settled, the trading companies involved and ownership/control structures.

It is likely that some of these companies utilized for remittances, or those within their supply chain, will be under sanction, and/or engaging with sanctioned terrorist or government entities. How to ensure appropriate agent assessment, due diligence and monitoring is therefore a very real concern for governments, banks transferring INGO funds to the region and humanitarian actors.

INGOs noted that payment routings viable two years ago were now looking increasingly more vulnerable. For example, transfers destined to Syria via Lebanon are often delayed due to additional compliance hurdles, which became more difficult as a result of increased U.S. restrictions imposed by the Hizballah International Financing Prevention Act of 2015.³⁷ Specifically, on April 16, the U.S. Treasury Department released regulations that provide a new basis for secondary sanctions jurisdiction over foreign (i.e., non-U.S.) financial institutions, dealing in any location or currency with Hizballah.³⁸ These sanctions, if imposed on a foreign financial institution, would prevent them from opening or maintaining correspondent or payable-through accounts with financial institutions in the United States. As a result, banks operating in the region inevitably will proceed with more caution, and increased due diligence and screening requirements may lead to delays in processing legitimate transactions.

Remittance payments via Turkey onwards into Syria were also singled out, due to enhanced local regulations on the oversight of payment service providers, i.e., those offering remittance/hawala type payment transfers.³⁹ Both international and regional NGOs indicate an inability to move funds has either delayed or prevented the delivery of development assistance in both government and besieged areas.⁴⁰

Risk Appetite of International Banks to Process Syrian-Related Payments:

For those seeking to process Syria-related transactions via international banks, they will often face an ‘exceptions only policy’. In such scenarios, banks are likely to, among other things, block or reject transactions in accordance with sanctions programmes; seek licences from relevant sanctions authorities; automatically hold transactions for further scrutiny; and/or seek greater transparency over each and every individual transaction. This can involve transactions, which are both destined for Syria and also those where there may be some obvious Syrian association (e.g., having a reference to Syria within the sending/receiving organisation’s name).

In order to process Syria-related transactions, banks are increasingly seeking reassurances from those making payments on a number of fronts, including:

- Who are the funds going to, and who will they ultimately benefit (directly or indirectly)?
- How are the funds going to reach their intended recipients (i.e., by way of a sanctioned bank or informal money remitter)?
- What will the funds ultimately be used for (e.g., reconstruction efforts, cash vouchers, exporting dual use goods or delivering in-kind assistance, such as medical supplies, tents, hygiene kits, etc.)?
- What risk assessment and due diligence has the humanitarian agency undertaken, including those conducted on delivery partners?
- What are the oversight and monitoring arrangements within the destination country?⁴¹

Where the ultimate country destination is subject to sanctions, or is within the grips of conflict, the ability of NGOs (or indeed other bodies) to provide sufficient reassurance on the above is likely to be limited. Additionally, demonstrating that adequate due diligence and risk assessment has been undertaken to the satisfaction of all banks in any one payment chain, may be near impossible to achieve.

Consequently, the increasing lack of willingness to process payments into Syria should be no surprise. Non-U.S. banks have paid billions in U.S. dollars in sanctions-related penalties, mostly to U.S. regulators. Moreover, sanctions risks do not sit in isolation, and will be viewed by banks alongside wider anti-money laundering and counter-terrorist financing requirements; anti-corruption concerns; and other factors, such as beneficial owner transparency. A prime concern may specifically include the risk that humanitarian payments may be used to disguise the movement of funds to support – directly or indirectly – terrorist activity, or are unwittingly diverted from their intended use.

Banks will not only wish to consider whether funds will benefit a designated person but also the applicable movement of restricted or embargoed goods that have been licenced for Syria.

OFAC General Licence No. 11 authorises U.S. money transmitters, depository institutions, registered brokers or dealers in securities among others, to transfer funds on behalf of NGOs (U.S. or third country) to Syria, provided that the transfer does not interact with a sanctioned entity or Specially Designated Nationals (SDN).

This general licence whilst being extremely helpful has two significant limitations. First, although financial institutions are free to transfer funds on behalf of NGOs, that permission does not extend to private-sector contractors engaged by the NGO. Because the NGOs rely on local entities to perform some duties related to the NGOs work, this seriously limits the general licence's practical effect. Second, as illustrated by the following case study, banks are hesitant to use the general licence because many have determined that the risk of engaging with a designated entity in Syria is too high from the sanctions, regulatory and reputational standpoint.

Case Study 3 – Major European Aid Agency, with Annual Turnover in Excess of U.S. \$100M, Unable to Transfer Syria Programme Funds: *“Charity Y is a major European aid agency, with annual turnover in excess of U.S. \$100M. It has a strong reputation in the aid sector, and receives funding from a variety of government sources, including from the EU. Charity Y banks with a major international bank and has been their client for many years.*

The charity planned to deliver humanitarian assistance to besieged areas inside Syria. This would have involved transferring funds to bank accounts in a neighbouring country, and from there funds would have been transmitted into Syria using hawala agents. The charity values its relationship with its bank, and decided to be transparent about the final destination of transfers it was asking the bank to make to the neighbouring country.

An extensive dialogue was held with the bank, at the end of which the bank declined to process the required transfers. The bank gave the view that Syria's status as a conflict zone, and the large number of sanctioned parties and terrorist groups operating inside Syria, meant that it was impossible to guarantee funds would not be diverted. They therefore concluded that the transfers were above their risk threshold. The planned humanitarian assistance has still not been delivered.”⁴²

As the situation has deteriorated in Syria, providing full payment transparency, whilst satisfying due diligence requirements, has become increasingly difficult. Additionally, the lack of consensus across governments, regulators, banks and charities on how best to mitigate the risk of diversion has further fuelled an intensification of reduced risk appetite.

As with any payment corridor, there are lower and higher risk routes for transferring money safely and securely. Developing a view of which corridors present a viable option would support a meaningful increase in financial compliance, whilst optimizing value for money within humanitarian aid.

The ‘chilling effect’ is not only associated to payments destined for Syria, but also on the provision of banking services to Syrian-related charities and non-Syrian destined payments.

Case Study 4 – Development and Aid Charity Delivering Services in Lebanon Were Unable to Open a Bank Account: *“A Development and Aid Charity, registered in Lebanon, experienced significant delays in opening a bank account in Lebanon. Almost a year after registration, only one bank was willing to offer services to the charity concerned, and that bank put in place stringent compliance requirements. In addition to normal due diligence requirements, the bank sought donor contract information; required copies of procurement offers before being permitted to withdrawal money; and individual receipts to account for money spent before any further draw downs. A prohibition was placed on receiving money from personal donors or online platforms. The same charity is now registered in the UK and has been unable to locate a bank willing to provide them with a UK bank account.”⁴³*

Case Study 5 – Charity Supporting Syrian-Related Civil Society Capacity Building, Based in Germany, Unable to Process Funds: *“Charity X has been officially registered in Germany since 2013, and receives donations from a number of European governments. The organisation has ‘Syria’ in its name and consistently faces major delays and blocking of related transactions. Charity X opened its current bank account in 2015. The bank concerned supports and hosts accounts of many organisations involved in humanitarian activity. The first payment (€8,700) from an association in the UK appeared three weeks later, and was only accessible after Charity X presented the project papers and registration documents. The second payment from the same association was also delayed.*

In August 2015, a transfer of U.S. \$3,000 was made to the personal account of the focal point (staff member) in Turkey and was blocked. After tracking the payment, the charity identified that the receiving bank in Turkey had blocked the payment. The subsequent return of money took more than six weeks. The account of the Turkish focal point remains blocked after the last transfer of U.S. \$365 for a salary to one of the field officers in Lebanon. The Swiss Federal Department of Foreign Affairs transferred U.S. \$20,000 to Charity X. This was returned on the first attempt at sending. It was resent by the Swiss Federal Foreign Office on January 13, 2016, but by late February had still not been credited into the bank account of Charity X.

When purchasing goods from USA-based companies, Charity X has also faced delays. PayPal blocked the account in July 2015, and Microsoft stopped a purchase of office software from a non-profit discount website. Both cases were solved in three-five weeks after presenting official documents.”⁴⁴

Case Study 6 – Opening a Bank Account in Syria – Perspective of an INGO: *“Since the beginning of the conflict, and the implementation of sanctions against individuals and entities in Syria, INGOs have attempted to open bank accounts in Syria to transfer humanitarian funds securely. Few international banks will consider such transfers. Relationship Managers do not have the authority to manage these negotiations, and INGOs report that obtaining access to relevant bank staff to negotiate the transfer is difficult. Even once access to relevant teams is obtained, it does not always mean the bank will be willing to facilitate the transfer. It took one INGO almost six months of negotiations before their bank was willing to facilitate the transfer of funds to their account in Syria. On another occasion, an INGO’s bank refused to facilitate the transfer of funds to the INGO’s partner’s account in a neighbouring country, for use in Syria. Given that few INGOs are registered in Syria, and that neighbouring countries are not always willing to register INGOs unless they have an account in that country, the options for secure transfer of humanitarian funds by INGOs are becoming more limited.”*

Case Study 7 – Delayed Payments: *“Charity Z has been officially registered in the UK since 2013 and receives donations from a number of INGOs, private partners and individuals. The organisation has ‘Syria’ in its name and consistently faces major delays and blocking of related transactions. Charity Z opened its bank account with one of the biggest UK banks a few years ago. Charity Z has an operational arm registered in Turkey as a Turkish organisation which also has the word ‘Suriye’ in the name. Over the past year-and-a-half, Charity Z has experienced transfer issues on a number of occasions which caused significant delays in the implementation of some projects. Examples of issues experienced by Charity Z:*

- *In September 2014, £100,000 were transferred from the UK bank to the Turkish bank; the amount took seven weeks to reach destination. Money was blocked by the clearing bank and the charity was requested to provide a number of documents to unlock the situation: registration certificate of the charity in the UK and in Turkey, constitutional documents, detailed explanation as to why the funds were transferred, evidence of the projects implemented contracts with the donors.*
- *In another case, a big INGO instructed four payments from £36K to £70K to Charity Z. The funds were credited to Charity Z’s bank account, but after a few days, the bank sent the money back to the donor without any notice. Charity Z had to provide a number of additional documents to have the funds re-transferred, and it took three weeks of additional work.*
- *Recently a big international organisation tried to transfer U.S. \$25,000 to Charity Z but the organisation’s bank refused the transfer because of the fact that the word ‘Syria’ was included in the name. No solution was found for this issue and the money had to be transferred to a personal account of one of the organisation’s managers.*
- *On February 3rd, Charity Z instructed a transfer of U.S. \$26,000 to its affiliate in Turkey using a forex company. As of March 7th, the money hasn’t been received.”*

Correspondent Banking Withdrawal Posing Serious Limitations on the Ability to Process Funds:

The 2015 Financial Stability Board (FSB) report to the G20 on the decline in correspondent banking relationships states that the ability ‘to make and receive international payments via correspondent banking is vital for business and individuals’.⁴⁵ In Syria’s case due to the combined risks arising from the on-going conflict, sanctions concerns and the presence of terrorist actors, international banks have dramatically reduced correspondent banking exposure to Syria. This reflects a global trend whereby bank to bank activity has considerably reduced with certain jurisdictions, i.e. countries subject to sanctions and higher risk AML environments, being especially impacted. As the 2015 FSB report further notes, ‘if withdrawals continue, this has the potential to rise to a systemic issue for the regions affected as well as to drive some payment flows underground, which would make it harder for authorities to prevent financial crime and the financing of terrorist activity.’

In defining correspondent banking there is no one universally accepted definition. The Wolfsberg Group of banks in their Correspondent Banking Paper (February 2014), describes the process as being: “Correspondent banking is the provision of a current or other liability account, and related services to another financial institution, including affiliates, used for the execution of third party payments and trade finance, as well as its own cash clearing, liquidity management and short term borrowing or investments in a particular currency. A Correspondent bank is effectively acting as its correspondent’s agent or conduit, executing and/or processing payments or other transactions for the correspondent’s customers. These customers may be individuals, legal entities or even other financial institutions.”⁴⁶

In the case of Syria the situation has occurred in that domestic banks (sanctioned and non-sanctioned) are facing a critical reduction in access to correspondent banking services. Given most international banks processing funds into Syria in support of humanitarian and stabilization projects will not have a direct physical presence payments can only be transmitted by the correspondent network. Thus the loss of such networks pose particular challenges as demonstrated by the below case study.

Case Study 8 – A major European INGO unable to carry out planned Humanitarian activity or pay salaries due to Correspondent Banking Blockages:

- *“A major EU INGO runs humanitarian programmes through Damascus, reaching beneficiaries across conflict boundaries. The programme is funded by institutional donors, including UN and Government donors. It employs 40 staff in Damascus and runs programmes of over €10m a year.*
- *A German bank previously provided correspondent banking between the INGOs initiating bank in the UK for making EUR transfers to the INGO’s bank in Damascus (Cham Bank). Since the change in internal sanctions policy at the German bank (in February 2016), the INGO has been unable to make transfers to its country office through this route.*
- *Cham Bank has suggested a middle eastern Bank to act as correspondent but EUR payments to the middle eastern bank also need to transit one of either two European banks both of whom have declined due to their sanctions policy*
- *The INGO has tried a number of other initiating banks with different routes into Damascus and has also opened bank accounts with two other banks in Damascus to expand the number of potential routes but so far without success.*
- *The inability to transfer funds means that the INGO will soon be unable to pay suppliers or staff salaries and is gradually running out of cash even though funds exist to meet its financial commitments. This means that the INGO cannot honour its debts nor can it support its humanitarian programmes in rural Damascus and Aleppo.*
- *The INGO’s primary bankers in the UK have agreed to help it make the payments but the issue of correspondents remains. The INGO has been contacted by other INGOs working in Damascus who face similar problems and whose programmes are also at risk. As of 14th May 2016 the situation had not been resolved.”*

The Financial Action Task Force (FATF) have committed to issuing clarifying regulatory expectations, including more guidance on the application of standards for anti-money laundering and combating the financing of terrorism (AML/CFT) to correspondent banking, especially on the customer due diligence expectations for correspondent banks when faced with respondent banks in “high-risk scenarios”, as well as additional work on remittances and non-profit organisations. The FATF aims to complete this work by October 2016. This exercise offers a valuable opportunity to address the particularly challenges of the Syrian context.

Due Diligence Expectations:

The primary due diligence method advocated by regulators, and in turn expected by banks, is for charities to carry out screening against the counter-terrorism and sanctions lists. This is likely to involve screening a range of actors, including charity staff, partners, partner staff, banks, money agents and suppliers. Completing screening in the home country of the charity is relatively straightforward. However, carrying out screening in the field is much more challenging, especially in very high risk environments where aid agencies are often required to work.

Case Study 9 – INGO Perspective of Undertaking Due Diligence: *“In conflict zones and fragile states, it is exceptionally difficult to persuade individuals to share the personal details required for screening. Individuals are generally very cautious about the information they share, and with whom, for obvious safety reasons. In certain environments, association with a western INGO can carry significant risks, up to and including ‘threat to life’. As a result, there is a particular reluctance to share personal details with INGOs, or their partners, out of fear it could fall into the wrong hands, and identify an individual’s association with a particular organisation. In reality, we cannot guarantee any personal information shared would be completely secure. Even where information is shared, the likelihood of obtaining documentation to verify the information is extremely low.*

There are other things we can do to provide significant assurance that funds will be used for their intended humanitarian purpose. This includes working with our partners to build their capacity and awareness around managing diversion risks, project monitoring, evaluation of beneficiary selection processes, and putting in place whistle-blowing mechanisms. However, the challenge is persuading banks that these types of safeguards are a valid alternative to screening”.

At the practical level, INGOs are expected to abide by those sanction regimes which relate to their own domestic jurisdiction (i.e., those that affect their bank’s view of risk, and those that affect their contractors). INGOs also must comply with restrictions related to the use of U.S. dollars in Syria. INGOs, therefore, need to consider who they partner with, who they deliver services to, which jurisdictional rules apply given the transaction and who they access services from.

Case Study 10 – Inadvertent Sanctions Breaches, INGO Working in Syria Accessing Mobile Phone Networks: *“INGOs working in Syria need access to mobile phone networks, and in particular, networks which are reliable and have good coverage. The main supplier within Syria is subject to sanctions, which makes over-the-counter purchases of their products, a potential violation of sanctions. One INGO inadvertently purchased mobile phones and sim cards for a network provider via a retail outlet in Syria. The breach was reported to the relevant authorities and an alternative supplier found. However, this had an impact on the coverage and reliability of service”.*

Inability to Effectively Procure both Essential Medical Equipment and Pharmaceutical Products:

A World Health Organization (WHO) study to review available health data and assess secondary care in selected governorates between October - December 2015 identified that of the 113 assessed public hospitals, 43% (49) were fully functioning, 31% (35) were partially functioning, while 26% (29) were reported to be non-functioning.⁴⁷ The report further found that the health care system is challenged both by the destruction of buildings, the lack of medical device maintenance and spare parts, and the loss of human resources.

Access to medicines and medical equipment is a particularly poignant example. Prior to the conflict, Syria was known for being relatively self-sufficient in domestically-produced medicines. Today, the majority of pharmaceutical factories are reported as either non-operational or destroyed. In the small number of instances where domestic production is still possible, major difficulties in procuring raw materials required for local production of medicines have been reported. The resulting impact is now a reliance to import necessary medical equipment, medicines and pharmaceutical products.

Prioritized medicines and goods have been identified by WHO in conjunction with the Syrian health ministry. These include the ‘Syrian Essential Medicines List 2016’, which runs to some 11 pages with a total estimated budget cost of US\$ 90,390,932. The Syrian ‘Hospital Supplies and Equipment List 2016’ is equally extensive with an estimated funding need of US \$ 100,000,000. The Syrian ‘Supplementary Medicines Requirement List 2016’ for anti-cancer drugs with a required budget of over \$12,000,000.

Of the thousands of items and medicines identified by WHO many are subject to some level of EU export control or U.S. sanctions embargo. As demonstrated in the following case study consistent challenges are reported in procuring items listed on both the ‘Essential Medicines List’ 2016 or the ‘Syrian Hospital Supplies and Equipment List’ 2016.

Case Study 11 – Experience of WHO in procuring medicines and medical devices for use in Syria: *“WHO has assisted Syria in making necessary medicines available in the country. Procurement of medicines is according to generic names and not brands. As a result, WHO procure generic medicines from different approved certified GMP sources in Europe, North Africa, Asia and others. Brand US products cannot be procured due to the embargo situation. The sanctions and its impact is obvious on medical supplies. For example, most of the requested lab test kits and consumables which are usually requested by the Public Health Labs are required from manufacturers who reject any purchase order for Syria due to US embargo, such as the following:*

- *PIPETTE MECHANICAL (Eppendorf Reference) , 0.5 -10 ul, 1 channel, var. – Manufacturer|: SIGMA*
- *TRYPsin, 100 g, from porcine pancreas lyophilized powder, suitable for cell culture - Manufacturer|: SIGMA*
- *PIPETTE TIP FILTER (Pipetman diamond) , 10 - 100 ul, ster., box-960 – Manufacturer: Gilson*
- *Lab reagents manufactured by Life Technologies & OXOID AG*

In addition, WHO had been importing Anesthesia Machine and Monitor/Draeger Fabius Plus 860800 – CoO: Germany. However, as a part of this device, some accessories such as EtCO₂ Module Opto-electronic gas sensor for measuring concentrations of carbon dioxide with electronic components, and CO₂ Airway adapter for positioning of opto-electronic gas sensors. These accessories require an End User Certificate for the US government to approve exporting these items. The license and approval takes several months.”

Difficulties in paying for materials, as well as suppliers’ hesitancy to send materials to Syria for fear of breaching sanctions were commonly cited, an example of views expressed include:

- European Doctor operating in Syria, “Even though in theory it should be possible to procure medical equipment, the indirect effects of sanctions, especially the challenges it creates for Syrians to access banks accounts, makes the import of medical instruments and other medical supplies immensely difficult, nearly impossible. It also makes it far more expensive”.⁴⁸
- European Doctor operating in Syria, “We often source medical equipment from neighbouring countries without always disclosing a Syria link. When we do say Syria is the destination country, the good ends up costing a lot more, and will often be subject to lengthy delays”.⁴⁹
- U.S./Syrian Doctor operating in Syria, “It becomes difficult to access medical up-grades, i.e., software updates, as these are not included on the U.S. list of allowed goods”.⁵⁰

Energy and Electricity Sector – Avoiding Large Scale Blackouts:

The electricity sector has seen blackouts and a dramatic reduction in electricity generation due to damages arising from the conflict that have impacted power plants, transmission and distribution, plus a lack of maintenance.

Industry experts assessing options to ensure remaining power generation facilities remain functional report an urgent need for: (1) standard maintenance, (2) modernisation and upgrades and (3) implementation of critical servicing.⁵¹ Undertaking these tasks will require the provision of spare parts supply, re-commissioning of equipment and purchasing new technologies. Financial investment and the ability to procure western goods and technology, including U.S. manufactured goods, will be critical.

Western suppliers of required technology have expressed a high concern regarding the capacity to provide such goods, services and related financing. In cases where external donors (in conjunction with the United Nations) have attempted to deliver parts to both government and non-government held areas, significant obstacles have been encountered.

Interviewees expressed two consistent themes:

- Barriers to supplying spare parts, which in many instances require special U.S. and EU approval (the U.S. context was flagged as posing a particular barrier to procurement).
- U.S. and EU financial restrictions resulting in an unwillingness to process transactions for related goods.

In the words of one European based power sector specialist, *“negotiating with all the required EU competent authorities, and the probability of needing to secure both U.S. goods approval, and financial channel facilitation, will take months. It will involve considerable compliance and legal input for any company that may be willing to supply parts and services to Syria. Many will walk away due to the difficulties involved.”*⁵²

The reduced provision of grid electricity has resulted in a greater need for civilians to seek viable alternatives. NGOs operating in Syria indicated that the day-to-day access to fuel, including for heating, cooking and lighting, is among one the greatest challenges faced by both themselves and the civilian population.

NGOs reported that in certain provinces they were partially relying on what is called ‘filtered’ diesel, which means diesel produced in unofficial refineries that may be under ISIL control. In one case, an international NGO set out the following scenario:

Case Study 12 - Complexity of Licence Application for Supply of Fuel: *“An INGO became a sub-contractor for a UN programme involving the purchase and distribution of fuel in Syria. Whilst the importation of fuel did not require a licence under EU rules, the purchase of fuel inside Syria ‘did’ require a licence, and this had to be acquired through the INGO’s national government. The licence application, whilst being processed through one Ministry, had to be approved by a number of different Ministries, which led to prolonged negotiations and was dependent on identifying a source of fuel. The circumstances inside Syria at the time, the unreliability of private sources of fuel, and the duration of the negotiations meant that the application had to be continuously updated, which required further review within each government. Eventually the programme opportunity passed before the licence could be agreed upon. Had the relevant authorities approved the licence, the application would still have had to be circulated to all Member States, and the SNC, any one of which could have raised an objection”.*

The following NGO statement was reflected by many respondents, *“who can we buy legitimate fuel from? We either have to buy from the government or ISIL, and both are banned.”*⁵³

Case Study 13: Power Plant Case Study: European headquartered company facing exceptional power sector challenges in performing required maintenance activities within the permitted sanctions framework to enable the reliable operation of power plants (Gas Turbines, Steam Turbines, Generator and Control system) for the generation of electricity.

European Company X has traditionally provided servicing and parts to a number of Syrian power plants; these plants are now over overdue for urgent maintenance and at imminent risk of break down. Currently power can be provided for a limited period within any given day, even in some areas of Damascus power supply is around 1-2 hours per day. According to available information only one of the power plants, the Deir Ali combined cycle power plant facility is generating power for:

- More than 2 million civilians in different geographical areas (i.e. Damascus, Swieda, Daraa and Konaytra);
- For 300 pumping stations to supply portable water portable and irrigation water for 30,000 km2 of farmlands; and
- Approximately 150 hospitals.

Overall, Company X note that the power generation sector is trying to keep the power plants in operation. Due to missing maintenance power plants are operating at very low efficiency and with high fuel consumption. Low efficiency has further resulted in significantly increased emissions (carbon dioxide, sulfur, NOx, dust etc.) which have health implications for citizens living in these areas.

Challenges faced by European Company X mainly fall into following categories:

1- US goods export/European Dual Use Controls:

- Due to the U.S, sanctions, all spare parts which are of U.S, origin or having a US design can't be exported to Syria without a specific licence.
- “Dual use” parts such as the control system are not allowed to be exported to Syria without a specific EU licence.

2- Financial Factors:

- Customers (e.g. Syrian Ministry of Electricity) use their Syrian banks, which are on the sanctions list. Therefore, no service contracts can be made which are subject to the utilization/payments of these banks. (Whilst licences could be applied for this will be complex, costly and highly time consuming. Moreover western banks are unlikely and/or unable to process the funds to a sanctioned Syrian bank even if a relevant licence is forthcoming).
- Lack of funds by responsible organizations of the power plants.

3- Deployment of personnel to perform the maintenance activities due to the critical security situation in the country.

Summary of sanction considerations when supplying spare parts for the power sector:

- U.S. licence required for the good (required parts are generally US origin or design)
- EU dual use factors – licence likely to be required.
- Licence to process actual payment (almost certainly required if transmitting a major Western bank)
- Whether a payment routing will be available to process the funds
- Potential licence to insure the movement of the good from distribution into Syria
- Shipping consideration and related licence/restriction factors
- EU ban on certain investment in and related restrictive measures that ban certain services

In addition to the examples discussed above, there are many other sectors to consider in providing humanitarian relief. For instance, an analysis of food security qualitative data undertaken in 2015 by the World Food Programme found the main reasons for food insecurity to include: ‘displacement, unilateral economic sanctions, insecurity, loss of assets, limited/no access to assets, limited income generating opportunities, rocketing inflation and high food prices, which negatively impact household purchasing power and food security. International sanctions have led to a marked reduction in the availability of crop protection chemicals and other agricultural inputs, and have also contributed to higher energy and import costs⁵⁴. Syrian water authorities were further noted as having been prevented access to vital spare parts due to restrictions arising from sanctions.

VI U.S. Syria Sanctions and Export Control Framework

Given the stringent nature of the U.S. system, this section has focused primarily on how sanctions and export control framework operates in practice. It is important to note that the U.S. and EU frameworks operate within different parameters and legal structures. However, there are a number of aspects contained within the U.S. framework that are equally relevant and applicable to the EU context.

The U.S. government maintains a complex regulatory framework with regard to activities involving Syria. The framework consists of a number of U.S. statutes and executive orders, which are implemented through sanctions⁵⁵ and export control regulations.⁵⁶ Generally, the sanctions regulations govern the activities of U.S. persons and transactions within U.S. commerce; whereas the export control regulations govern the movement of goods.

Scope of the Regulations’ Prohibitions:

The U.S. government’s sanctions and export control regulations are more restrictive than similar regimes maintained by the UN, the EU and other nation states.

The sanctions regulations broadly prohibit involvement of any “U.S. person” (i.e., an individual or an entity organised under U.S. law) in any transaction involving Syria, including the provision of services. Thus, no U.S. bank can process any transaction involving Syria, unless authorised by licence to do so. In addition, U.S. persons may not facilitate transactions conducted by non-U.S. persons.

Activities of U.S. and non-U.S. persons and entities also are restricted with respect to items that are subject to U.S. export jurisdiction. Because the U.S. has designated Syria as a State Sponsor of Terrorism, there is an export ban against Syria for almost all U.S.-origin items, wherever located. The ban includes foreign-produced items in which U.S. content accounts for 10% or more of the value of the finished product.

Penalties and Enforcement:

There are some important features of U.S. government’s sanctions and export control regimes to bear in mind. First, unlike UN and EU sanctions, U.S. sanctions are often characterised as “extraterritorial” because, in addition to activities of U.S. persons, they regulate the conduct of non-U.S. parties transacting amongst themselves, where the transaction has a U.S. connection (e.g., a U.S.-origin item, or a transaction in U.S. commerce). Second, the U.S. penalties for violating these laws can be up to U.S. \$250,000 per civil violation and U.S. \$1,000,000 per criminal violation and possible jail time. Third, they are “strict liability” regimes, meaning that inadvertent or unintentional violations could result in fines.

Exceptions to the Prohibitions: General Licences, Licence Exceptions, and Specific Licencing:

While the sanctions and export control regulations contain broad prohibitions on dealings with Syria, the U.S. government makes exceptions in a number of ways:

- General licences provide waivers of the sanctions published in the regulations.
- Licence exceptions establish rules for when a licence is not required for exports.
- Specific licences provide private waivers for particular situations.

Below we discuss three exceptions that apply to the UN and NGOs under the Syria regulations.

(1) Broad Authorisation for UN Activities: The sanctions regulations contain a broad grant of authority for “all transactions and activities otherwise prohibited by [the sanctions regulations], that are for the conduct of the official business of the UN, its Spe-

cialized Agencies, Programmes, Funds, and Related Organisations by employees, contractors, or grantees thereof.”⁵⁷ The scope of this general licence is expanded by a provision that permits transactions “ordinarily incident” to the general licence dealing with the UN. This covers transportation, the processing of payments, insurance and the like.

The UN general licence is, however, limited by two important caveats:

- Contractors and/or grantees of the UN must provide the U.S. agency administering the sanctions regulations with a copy of its contract or grant before engaging in any activity authorised by the general licence.
- The general licence does not permit transactions or activities that involve persons or entities that are either on the “Specially Designated Nationals” list (i.e., “blocked”), or otherwise owned or controlled by a blocked party (a limited exception is made for the Government of Syria, which is blocked but whose involvement is recognised as necessary to effect certain transactions). The list of Specially Designated Nationals is broad and includes members of the Assad family.

(2) Authorisations for NGO Activities: With respect to NGOs, the sanctions regulations contain a general licence, but it is more limited than the UN general licence. There are two particularly important distinctions between the UN and NGO general licences:

- Actions taken by private-sector contractors engaged by NGOs are ‘not’ covered as they are with respect to those engaged by the UN, its agencies and affiliates.
- Whereas the UN licence extends to the conduct of all “official business,” the NGO licence is limited to enumerated activities that cover, most importantly for the purposes of this report, “activities to support humanitarian projects to meet basic human needs in Syria, including, but not limited to, drought relief, assistance to refugees, internally displaced persons and conflict victims, food and medicine distribution, and the provision of health services.”⁵⁸

The U.S. government has issued guidance related to the provision of humanitarian assistance by NGOs⁵⁹ and Syria-specific “Frequently Asked Questions” (“FAQs”) containing information on the U.S. government’s interpretation of the sanctions regulations.⁶⁰ These FAQs are useful supplements to the text of the regulations, particularly with regard to the scope of general licences, including those applicable to the UN and NGOs.

(3) Exception for the Export of U.S.-Origin Humanitarian Goods Destined for Syria: The UN and NGOs may export food and most medicine to Syria. In addition, the U.S. authorities have indicated that they will approve specific licences for Syria, covering:

- certain medicines, including certain vaccines
- certain medical devices⁶¹
- certain telecommunications-related items
- items intended to ensure the safety of civil aviation.

Challenges to the Provision of Humanitarian Aid, Presented by U.S. Sanctions and Export Controls:

The U.S. government generally seeks to tailor its sanctions programmes, so as to allow for the delivery of humanitarian aid. However, for Syria, the regulations currently are more restrictive than for other sanctions regimes (such as Sudan). In addition, they are difficult to navigate because they involve three different U.S. government agencies: The Departments of State, Treasury and Commerce.

Below is a non-exhaustive list of challenges currently faced by the UN and NGOs, in providing humanitarian aid in Syria, due to U.S. sanctions and export control programmes. This list is selected with a view towards identifying problems for which there are possible solutions, with recommended solutions identified in the following section. A collection of “Dos and Don’ts” for compliance with U.S. sanctions and export control regulations regarding Syria is provided in Appendix 1.

Challenge 1 - The export control regulations do not permit the UN and its representatives to export the full range of items necessary for basic human needs without specific licences: This is in contrast to the U.S. sanctions regulations, which are more permissive with respect to transactions involving Syria, conducted as UN official business, including activity of private contractors. The export control regulations grant the UN no special flexibility regarding exports. This divergence between the two regulations in how they treat the UN limits the UN’s practical range of activity, since humanitarian support often entails much more than delivery of items currently covered by export licence exceptions, for Syria (i.e., food and certain medicine). For example, items that could be necessary for the conduct of official UN business, which are not authorized under the export controls, include computers, business software, communications devices, passenger vehicles and trucks, basic office equipment and supplies, materials and equipment for construction, and emergency/rescue operation supplies.

Challenge 2 - The export control regulations do not permit NGOs to export the full range of items necessary for basic human needs without specific licences: In addition, the general licence in sanctions regulations covering the activities of NGOs does not extend to private contractors engaged by NGOs.

Challenge 3 - Unlike the Sudan sanctions, the Syria regulations do not allow for the export of medical devices without a licence: Also, the “favourable licensing policy” currently in place for medical devices does not extend to all software required to operate such devices.

Challenge 4 - Strict liability creating a ‘chilling effect’: A combination of the “strict liability” nature of the sanctions regimes, combined with large fines levied by the U.S. against U.S. and non-U.S. banks for sanctions violations, have put banks in a position where they are so reluctant to deal with sanctioned countries, that dollar-denominated humanitarian transactions permitted by general licence are refused processing even though legal. For example, as described above, recent U.S. regulatory action has further restricted the ability to get money into Syria, by cutting off foreign financial institutions from the U.S. financial system that the U.S. determines have engaged in significant transactions related to Hizballah.⁶² Because the Hizballah sanctions can reach non-dollar transactions, this likely will cause all banks to proceed with even more caution and heightened due diligence procedures in this region.

Challenge 5 - The sanctioning of Syria’s government-owned banks have resulted in few, if any, reliable custodians for the funds coming into Syria: The compound effect of the issues articulated in Challenges 4 and 5 is that it is extraordinarily difficult to carry out U.S. dollar-denominated transactions within Syria through the banking system.

Challenge 6 - Currently both sanctions and export control licensing procedures are opaque, unpredictable and time-consuming: Specifically, humanitarian aid providers are often discouraged from applying for a licence to use U.S. goods and services, even when such goods and services are subject to ‘favourable licensing policies.’ In addition, while policy goals in Syria are generally similar between the U.S. and EU, having to request authorisation from both the U.S. and European authorities, creates such a high bureaucratic burden that NGOs are discouraged from providing humanitarian relief in Syria.

Challenge 7 - There are currently no plans for export/sanctions flexibility to support the eventual reconstruction efforts: Just as there is often a long lag in the time from when humanitarian crises arise to the time at which the sanctions and export control regimes are amended to account for those crises, there are similar time lags in the transition from war to peace and eventual reconstruction.

Challenge 8 - Amending or “rolling back” sanctions regimes to make them more permissive is legally and politically difficult in the U.S.: As demonstrated by the recent amendments to the U.S. sanctions regime against Iran, easing sanctions can encounter political opposition from those in the U.S. who endorse a more hardline approach, and domestic compromises often are reached that temper the granting of sanctions relief. In the case of Cuba, although certain relief has been granted quickly through presidential executive orders, major relief is restricted by federal legislation, which would require congressional action (and which may not occur for many years depending on the evolution of the domestic and Cuban political landscapes). Further, it can be an incremental and piecemeal process – virtually all of the restrictions on U.S. persons in the Iran sanctions remain fully in force. As another example, in the case of the Burma (Myanmar) sanctions, the rollback has been accompanied by reporting requirements for investments, and by prohibiting transactions with some major companies, making the regulatory environment complex rather than providing straightforward sanctions relief. In short, comprehensive sanctions rollback can take many years, or even decades, a result of how the U.S. political process operates.

U.S. Syria Sanctions versus Other U.S. Sanctions Programmes for Provision of Humanitarian Aid:

For ease of reference, below is a summary of the key ways in which other U.S. sanctions programmes are comparatively more favourable than Syria, regarding provision of humanitarian aid. These concepts are further elaborated within the recommendations section.

- The licensing requirements under the export control regulations are more restrictive for Syria than Sudan.
- There is a long list of items used for “basic human needs” that can be used to export goods without a licence from the U.S. government to otherwise embargoed countries, such as Cuba. These same items require a licence for export to Syria.
- For Somalia, which is in a similar situation to Syria (in that a designated terrorist organisation controls certain territories), the U.S. government has issued a Frequently Asked Questions (FAQ) fact sheet, signaling an effective safe harbor against certain technical violations stemming from humanitarian aid delivery.
- In the case of the Sudan sanctions, the U.S. government has set up a system for “vetting” NGOs to ensure their reliability; no such system exists with respect to the Syria sanctions programme. However, one could certainly be useful to assuage U.S. government concerns.

VII Recommendations

Primarily this paper has set out to understand sanctions issues encountered by those delivering humanitarian aid into Syria. It has further asked whether a better balance could be struck between the delivery of humanitarian and development aid and the application of unilateral sanctions. Our findings have shown that although delivering humanitarian aid is both encouraged and permitted under unilateral measures, particularly the U.S. and EU sanctions regimes, practical steps to balance and align objectives of these policies, so they do not overly inhibit delivery of humanitarian and development aid, is an urgent issue for Syria.

Specific recommendations to be considered by relevant governments, international bodies, NGOs and the private sector, as applicable, are detailed below. The following thirteen recommendations are designed to promote a more balanced application of unilateral sanctions versus delivery of humanitarian aid and future reconstruction efforts. As underscored by UNSC Resolution 2254, there is now a critical need for the rehabilitation of areas affected by the crises. Building the conditions to ensure security and the safe and voluntary return of refugees will only be achievable if coordinated with future development and reconstruction efforts.

Promotion of Viable and Sustainable Banking and Payment Corridors into Syria

Recommendation 1: The UN together with the U.S. and EU governments should collaborate to create a viable banking payment channel into Syria for the movement of humanitarian funds.

The UN should work with the EU and U.S., to provide at least one large and dependable financial institution in Syria that is equipped to serve as a custodian for humanitarian-related inflows of capital. This may be done by reassessing the current sanctions list; establishing partnerships with one or more of the non-sanctioned, foreign financial intuitions operating in Syria; or establishing a new banking channel, with links to the international financial system generally (with capacity to process U.S. dollar-denominated transactions in particular).

Whatever method is decided upon, ensuring a commitment to realising sustainable, development goals, and creating a legitimate, secure financial corridor into Syria, should be viewed as a priority. It will also be vital in supporting the immediate post-conflict recovery and reconstruction.

Recommendation 2: The U.S. and EU governments, together with the UN, banks and NGOs should collaborate to identify appropriate informal payment channels into Syria.

Given the vast sums transmitted into Syria via these networks there is an urgent need for governments and regulators to become more engaged in a proactive dialogue dealing with the realities of operating in Syria. At the heart of this should be recognition that there is no ‘fail safe’ solution to transferring money into any conflict zone. Developing a shared view of which corridors and characteristics are deemed acceptable, and offer greatest security should be advanced at the earliest opportunity.

Recommendation 3: The U.S. and EU governments, together with banking trade associations and other stakeholders, should take steps to alleviate the ‘chilling effect’ of sanctions regulations on delivery of humanitarian aid into Syria.

Firstly, consistent with past practice, both the U.S. government and EU should issue answers to FAQs aimed at well-meaning NGOs and private sector entities (particularly banks), regarding enforcement actions arising from humanitarian transactions. This will hopefully provide more confidence that fines will not be pursued for technical violations, provided there was no intent to break the law or egregious negligence.⁶³

Secondly, to provide this comfort, the U.S. government should emphasise current enforcement guidelines for sanctions violations. Specifically, that “harm to sanctions programme objectives” is a key factor in determining whether or not to pursue enforcement action for technical violations. Also that “whether the conduct at issue was in support of a humanitarian activity” is a component of the enforcement guidelines.⁶⁴ This will clarify that there is a legal basis for declining to pursue enforcement actions for technical violations arising in the context of humanitarian transactions.

Thirdly, both the U.S. government and EU should provide outreach to NGOs operating in Syria, and their associated banks, so they understand the rules, regulations and whom to call with questions.

Lastly, there is a lack of information about which banks are willing to undertake authorised transactions in Syria. Governments, in conjunction with relevant trade associations in the U.S. and EU, could survey banks and produce a list of major international banks willing to undertake properly authorised transactions involving Syria.

Ensuring U.S. and EU Sanctions and Export Control Programmes Are Reflective of the Humanitarian Needs in Syria

Recommendation 4: The U.S. government should allow the UN and its representatives to export humanitarian goods to Syria without a licence.

To ensure U.S. sanctions and export control programmes are reflective of humanitarian needs in Syria, we recommend the following be considered by the U.S. government.

Firstly, the U.S. government should structure a UN-specific humanitarian assistance licence, with exception to export control regulations, in respect to Syria. The U.S. government has a list of items that meet “basic human needs”⁶⁵ for which no licence is required under the export control regulations for qualifying exports to all countries except Iran and Syria. The list includes, for example, equipment for the handicapped, hospital supplies, building materials for shelter, and certain clothes and household goods. The proposed UN-specific licence exception should cover the full range of the pre-existing “basic human needs” list.

Secondly, the U.S. government has a list of communications hardware, software and services that can be exported to Iran⁶⁶ and Cuba⁶⁷ without a licence. This list includes software and hardware that facilitate personal communications, such as cell phones and laptops and services that support communications. These items should be added to the list of items that can be exported to Syria without a licence.

Lastly, the U.S. government should add a “favourable licensing policy” for requests made by the UN, its agencies and their representatives, with regard to providing humanitarian, export assistance. This would include export to Syria of certain non-sensitive items that fall outside of the scope of the “basic human needs” list. Examples might include vehicles and heavy machinery needed for shelter construction, and certain search and rescue equipment.

Recommendation 5: The U.S. government, in conjunction with NGOs, should consider the need for developing a vetted, trustworthy network of NGOs, to facilitate the range of work that they can do without specific licences.

At present, the sanctions regulations are such that private contractors of NGOs cannot execute humanitarian aid-related contracts without specific licences, whereas with respect to the UN, the licence extends to private contractors. The U.S. government should consider instituting a registration process to allow certain vetted, particularly trustworthy NGOs the ability to enjoy the same flexibility as the UN under the sanctions and export control regulations. The U.S. government has such a registration system under the Sudan Sanctions Regulations.⁶⁸

Further, if NGOs are duly registered, it is recommended that their trusted, private contractors should also be afforded the same flexibility the NGOs have under the UN general licence. In addition, for export control purposes, such registration should extend NGOs the benefits of UN-specific licence exceptions discussed in Recommendation 4.

Developing such a proposal should not be viewed as restricting NGO independence, but rather as an enabling a short-term vehicle for aid delivery, especially within the most high-risk areas of Syria.

Recommendation 6: The U.S. government should allow export of medical devices, including software and related updates for those devices, to Syria without a licence.

Specifically, the U.S. government should: (1) ensure no licence is required for export of medical devices to Syria, as it has for Sudan with respect to export controls;⁶⁹ (2) in recognition that many medical devices are inoperable without software updates and patches, expand the scope of the current medical device list to include software required to operate devices; and (3) expand the scope of the current medical device list, on the advice of NGOs and UN agencies currently dealing with the Syrian crisis.

Recommendation 7: The U.S. government and EU should establish an expedited licence review system to support the flow of humanitarian assistance to Syria.

Mirroring past practices with respect to emergencies in Iraq and Afghanistan, the U.S. government and EU should establish an “expedited review” licensing procedure to support humanitarian relief for Syria. In addition, the U.S. and EU should work toward harmonisation of licensing procedures, to make applying for licences as simple as possible for the UN, NGOs and their contractors. As an interim measure, the U.S. and EU authorities should consider the establishment of a task force to consider licences, so that there is a consistent and timely response.

Recommendation 8: EU authorities should re-assess their licencing arrangements to ensure current procedures are reflective of the humanitarian situation within Syria.

Given the urgent need for humanitarian actors to access dual use products, fuel and other items currently subject to EU sanctions, relevant authorities should review existing authorizations and exemptions to ensure their suitability. A possible option may be the creation of a new EU wide Humanitarian General Licence and Export Waiver that would permit the UN, approved INGO’s/ private sector bodies and their implementing partners to export the full range of necessary dual use goods, technologies and services without applying for a specific licence. Such a general licence should also be tailored to cover necessary activities within Syria i.e. purchasing of fuel.

Developing a shared view of critical infrastructural and medical requirements

Recommendation 9: The UN, U.S., and EU should work together to identify priority infrastructure and stabilization requirements, and facilitate appropriate public-private dialogue with relevant suppliers to overcome sanctions concerns.

The immense level of infrastructure destruction (e.g. transport, communications, hospitals, water, energy infrastructures and housing stock) has created an urgent need for development and reconstruction aid. This has included the need to purchase vast quantities of new technologies, dual use goods and related services/investment, many of which are subject to some element of sanctions.

Given the level of reluctance among western suppliers to offer such goods (in part, for fear of sanctions issues), the U.S., EU and UN should work together to identify priority needs that should be shared via a public-private sector platform with relevant suppliers. Such dialogue could not only help to energise the private sectors appetite for supplying ‘dual use’ and ‘sensitive’ goods into Syria, but could also address expected issues in respect to diversion, and clarify the necessary licences available.

Recommendation 10: The UN, in conjunction with the U.S., EU and other stakeholders, should lead the creation of a fast tracked procurement/licenced channel for required medicines, pharmaceutical products and essential medical equipment into Syria.

Given the identified critical shortage of essential medicines, pharmaceutical products and medical equipment the UN (potentially WHO) should work with key stakeholders to identify viable supply channels that can be issued with a fast track licence by U.S. and EU competent authorities. Accepting that in the short term necessary finance and payment routings are unlikely to materialise the U.S. and EU competent authorities should explore the use of Syrian government sanctioned funds held in the U.S. and EU to pay manufactures directly for the supply of essential medicines, pharmaceutical products and medical equipment. Precedent for such an approach to critical medial procurement already exists with Libya and Iran.

Planning Ahead & Next Steps

Recommendation 11: The U.S. government and EU authorities should start planning to move from a conflict situation in Syria to a reconstruction phase.

The U.S. government and EU should start the planning process to modify its current sanctions and export regulations, so that new regulations are ready when it is time to support the reconstruction of Syria. The goal would be to shorten the lag time between when events occur and when regulations are promulgated. Advance planning could remove the potential for a significant delay in the regulations’ transition toward aiding humanitarian and reconstruction efforts.

Recommendation 12: Promoting transparent and accountable structures to ensure appropriate conditions for reconstruction and future stability.

The U.S., EU, together with the UN and other stakeholders, should explore appropriate mechanisms to implement the economic dimension of post-conflict reconstruction. Given the scale of funds involved and the task at hand, such oversight may involve the creation of a new structure that could assist with end-to-end transparency of major infrastructure development and related finance. Ensuring a framework that prevents the diversion of both monies and related goods will be an essential factor in promoting reconciliation, retaining stability and creating the conditions necessary for Syria’s future reconstruction.

Recommendation 13: The U.S. government and EU authorities should undertake a strategic review of future priorities and licensing processes.

A Strategic Review should be conducted to ensure sanctions and related regulatory environments do not overly inhibit delivery of humanitarian aid within Syria. This should include mapping key priorities for required international reconstruction and development efforts within Syria.

1. Appendix

Do's and Don'ts for Compliance with U.S. Export and Sanctions Laws regarding Syria:

The purpose of this appendix is to provide background information of what NGOs need to consider when complying with U.S. export and sanctions requirements.

Do:

- Send aid to Syria allowable under the U.S. regulations including, food and most medicines, and apply for specific licences where the regulations do not otherwise authorise a transaction.
- Be aware there is otherwise a near-complete ban on sending U.S.-origin items (which include items with 10 percent or more U.S. export-controlled content) to Syria, from anywhere in the world.
- Understand that the export ban regarding U.S.-origin items applies to both U.S. and foreign companies.
- Remember to check both U.S. export and sanctions regulations before engaging in a transaction.
- Screen all parties to transactions against the U.S. SDN list¹, and carry out other due diligence as appropriate.
- Special Considerations for UN Organisations - For U.S. persons who work with UN personnel/organisations, take advantage of the exception that allows employees, contractors, and grantees of the UN to engage in all transactions and activities otherwise prohibited (e.g., providing services to Syria), that are incidental to the conduct of official UN business.
- Special Considerations for NGOs - Take advantage of U.S. regulations granting NGOs some exceptions from U.S. sanctions regulations to provide aid to Syria, to support humanitarian projects, but understand that this exception is narrower than that for the UN.

Do Not:

- Send U.S.-origin goods to Syria, unless U.S. authorities have specifically authorised the transaction, or a licence exception applies (generally, food and certain medicines are authorised).
- Engage in transactions with parties who are blocked under U.S. law (i.e., have been declared Specially Designated Nationals (“SDN”). SDNs can be individuals, such as the Assad family, as well as entities, including several banks and Syriatel (Syria’s leading mobile telecommunications company).
- Interpret the UN exception too broadly. There are special considerations for UN organisations, however, transactions still that fall outside of the scope of this exception. For example, the UN exception does not allow transactions with SDNs.
- Assume that the exception applies to all NGO business or private contractors. The exception for NGOs applies only to specifically enumerated activities.

1 The U.S. SDN list is accessible at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

2. Appendix

A Summary Overview EU Restrictive Measures in Force (Relevant 15.1.2016)⁷⁰

- Embargo on certain goods which might be used for the manufacture and maintenance of products which could be used for internal repression
- Ban on provision of certain related services
- Control of export of certain other goods which might be used for the manufacture and maintenance of equipment which might be used for internal repression
- Control of provision of certain services
- Import ban on arms and related material
- Ban on provision of certain related services
- Embargo on telecommunications monitoring and interception equipment
- Ban on provision of certain services (related to such equipment)
- Import ban on crude oil and petroleum products
- Ban on provision of certain services (related to crude oil and petroleum products)
- Embargo on key equipment and technology for the oil and natural gas industries
- Ban on provision of certain services (to the oil and natural gas industries)
- Ban on provision of new Syrian banknotes and coins
- Ban on trade in gold, precious metals and diamonds with the government of Syria
- Embargo on luxury goods
- Ban on certain investment (in the oil and natural gas industries, in construction of power plants for electricity production)
- Prohibition to participate in the construction of new power plants for electricity production
- Restraint on commitments for public and private financial support for trade with Syria and ban on new long-term commitments of Member States
- Ban on new commitments for grants, financial assistance and concessional loans to the government of Syria
- Prohibition for the European Investment Bank to make certain payments
- Restrictions on issuance of and trade in certain bonds

- Restrictions on establishment of branches and subsidiaries of and cooperation with Syrian banks
- Restrictions on provision of insurance and re-insurance
- Restrictions on access to airports in the EU for certain flights
- Inspection of certain cargoes to Syria and prior information requirement on cargoes to Syria
- Restrictions on admission of certain persons
- Freezing of funds and economic resources of certain persons, entities and bodies
- Prohibition to satisfy claims made by certain persons, entities, or bodies

3. Appendix

List of Syrian Banks and Financial Institutions on U.S. SDN List:

- Real Estate Bank
- TempBank
- Agricultural Cooperative Bank
- Industrial Bank
- Saving Bank
- Popular Credit Bank
- Commercial Bank of Syria
- Syria International Islamic Bank
- Russian Financial Alliance Bank (sanctioned pursuant to Syria Sanctions Regulations)

4. Appendix

The Team:

Dr. Justine Walker draws on a diverse career, working across government, regulatory and international organisations. During her time in the UK Treasury's counter terrorist and proliferation financing branch and the UK's Financial Services Authority's financial crime she was an established member of the Financial Action Task Force. Dr. Walker has also acted as a national expert on global financial sanctions and counter-terrorist financing issues and sits on numerous international expert groups. Formerly based in Central Asia with the United Nations Office of Drugs and Crime she dealt with issues surrounding weapons/drugs trafficking, corruption and terrorist financing. She has been a 'good governance' advisor for the Organisation for Security and Cooperation in Europe (OSCE), and regularly works with international aid organisations on managing sanctions/terrorist financing risks within conflict and fragile environments. On behalf of the British Bankers' Association, Dr. Walker is contracted to run their programme on sanctions compliance, counter terrorist financing, and anti-corruption. This is a role which involves working across 200 banks operating in over 100 countries, and she is chair for the European Banking Federation Sanctions Expert Group. In addition she holds a PhD from the University of St Andrews and an MSc from the University of Edinburgh.

F. Amanda DeBusk is the chair of Hughes Hubbard's International Trade & Customs Department, where she heads the firm's export controls and sanctions practice. Her practice areas include: International Trade and Customs; Criminal Export Enforcement; and Anti-Corruption and Internal Investigations. She has a broad practice advising on U.S. international trade regulations that govern imports, exports, and trade compliance. She is a widely recognized authority in the enforcement of export controls and sanctions, drawing on her background as the former U.S. Commerce Department Assistant Secretary for Export Enforcement to handle civil and criminal enforcement matters and voluntary disclosures. Ms. DeBusk serves on the U.S. Department of State's Advisory Committee on International Economic Policy: Sanctions Subcommittee. Her clients include Fortune 500 companies, leading non-U.S. based multinationals, foreign governments, and individuals. Ms. DeBusk's practice covers a wide variety of sectors, including defense, energy, manufacturing, network systems, satellites, semiconductors, electronics, automotive, aerospace, agriculture, telecommunications, and banking.

Melissa L. Duffy is a Partner in Hughes Hubbard & Reed's International Trade and Customs Department. Her practice focuses on export controls, trade sanctions and anti-boycott laws and regulations. Ms. Duffy has worked on a number of export enforcement matters at various agencies (civil and criminal), and has also provided counselling on a wide variety of topics including: export control; encryption; anti-boycott compliance; trade sanctions; ITAR licensing issues; Commodity Jurisdiction requests; OFAC and BIS licence applications involving sanctioned/embargoed destinations; working with clients to develop compliance programmes; and conducting internal compliance investigations. She also has extensive experience working with high-tech, financial and energy sectors; Cuban, Iranian and Russian sanctions; and other matters involving the Middle East Region. Before joining Hughes Hubbard & Reed, Ms. Duffy was an attorney in the Office of General Counsel, Honors Law Graduate Programme of United States Nuclear Regulatory Commission.

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Brian M. Gatta is an Associate in Hughes Hubbard & Reed's International Trade and Customs Department. Mr. Gatta has substantial experience within a broad range of import and export related international trade issues, including: compliance with the Export Administration Regulations (EAR); International Traffic in Arms Regulations (ITAR) and sanctions administered by OFAC. Prior to joining Hughes Hubbard & Reed, Mr. Gatta worked as an Associate in the Brussels office of a boutique law firm specialising in international trade.

Scott M. Wise is an Associate in the International Trade and Customs Department of Hughes Hubbard & Reed. He focuses on export controls, sanctions, and trade remedies. Mr. Wise's experience with export controls involves work with the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) and related matters, including export enforcement, voluntary disclosures, audits, compliance programmes, licensing, commodity jurisdiction requests, investigations, and training. He also assists clients with sanctions matters before OFAC, including compliance advice and licensing issues. Prior to joining the firm, Mr. Wise was an Associate at GE, where he worked on export controls and sanctions issues.

5. Appendix

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- 29 For example see U.K. Treasury guidance on applying financial sanctions: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493592/Financial_Sanctions_FAQs_January_2016_.pdf
- 30 http://eeas.europa.eu/cfsp/sanctions/index_en.htm
- 31 Interview conducted during the 'Supporting Syria' conference civil society event, 3rd February 2016
- 32 Edwina Thompson, Technical Assessment, 'Humanitarian use of Hawala in Syria: Prepared for aid agencies conducting cross-border operations' 31 July 2015 http://documents.wfp.org/stellent/groups/public/documents/op_reports/wfp280155.pdf
- 33 Edwina Thompson, Technical Assessment, 'Humanitarian use of Hawala in Syria: Prepared for aid agencies conducting cross-border operations' 31 July 2015 http://documents.wfp.org/stellent/groups/public/documents/op_reports/wfp280155.pdf
- 34 Roger Dean, 'Remittances to Syria: What Works, Where and How', July 2015 [http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---report-final-\(1\).pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---report-final-(1).pdf)
- 35 Roger Dean, 'Remittances to Syria: What Works, Where and How', July 2015 [http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---report-final-\(1\).pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---report-final-(1).pdf)
- 36 Edwina Thompson, Technical Assessment, 'Humanitarian use of Hawala in Syria: Prepared for aid agencies conducting cross-border operations' 31 July 2015 http://documents.wfp.org/stellent/groups/public/documents/op_reports/wfp280155.pdf
- 37 In December, President Obama signed into law a new statute that requires sanctions against financial institutions that engage in "significant transactions" with Hizballah. The implementing regulations will be in place by April 18, 2016. This will likely further complicate moving funds into and out from Syria.
- 38 31 C.F.R. Part 566
- 39 In 2013, Turkey passed Law No. 6493 in order to regulate and monitor the procedures of payment service providers. The law came into effect in late June 2015, and states that any person or organisation carrying out payment services must obtain a license from the relevant Turkish authority.
- 40 During the December 2015 – February 2016 the author of this section undertook over 40 interviews with both international and local NGOs operating in Syria.

41 See Getting Aid to Syria: Sanction issues for banks and humanitarian agencies, Briefing paper prepared by the BBA, the Disasters Emergency Committee and Freshfields Bruckhaus LLP, December 2013, <https://www.bba.org.uk/policy/financial-crime/sanctions-compliance/getting-aid-to-syria/>

45 Financial Stability Board Report to the G20 on the decline in Correspondent Banking Relationships, November 2015 <http://www.fsb.org/wp-content/uploads/Correspondent-banking-report-to-G20-Summit.pdf>

46 Wolfsberg Anti-Money Laundering Principles for Correspondent Banking <http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg-Correspondent-Banking-Principles-2014.pdf>

47 WHO regional office for the Eastern Mediterranean: ‘Strategy, responsiveness and preparedness of the Syrian health care system in the short, mid and long term’, May 2015 report

48 Author interviews held during December 2015 – February 2016 with European doctors working in government and non-government held areas of Syria.

49 Author interviews held during December 2015 – February 2016 with European doctors working in government and non-government held areas of Syria

50 Telephone Interview with U.S. doctor working in Syria, February 2016

51 Interview held in Brussels with representative of major EU based multinational company offering power sector related services, February 2016

52 Interview held in Brussels with representative of major EU based multinational company offer power sector services, February 2016

53 Conference Call interview with INGO, January 2016

54 Food Security Assessment Report, Syria, October 2015, World Food Programme

55 The Syrian Sanctions Regulations (“SSR”), administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”).

56 The U.S. Export Administration Regulations (“EAR”), administered by the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”).

57 31 CFR 542.513(a).

58 31 CFR 542.516(a)(1).

59 https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ngo_humanitarian.pdf

60 https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#syria_whole

61 See https://www.bis.doc.gov/index.php/forms-documents/doc_view/711-bis-list-of-ear99-medical-devices

62 31 C.F.R. Part 566.

63 See OFAC sanctions FAQs 131 and 132, issued in connection with the Somalia sanctions regulations, which assure parties involved with the delivery of humanitarian assistance that the diversion of funds to Al-Shabaab, an SDN organization “would not be a focus for OFAC sanctions enforcement” provided that there was no reason to know that it was dealing with Al-Shabaab. Such diversion would amount to a technical violation of the regulations irrespective of the intent of the humanitarian organization, but the FAQs could be read as an unofficial but important practical exception to the strict liability nature of the sanctions regulations. See https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#somalia

64 31 CFR Part 501, Appendix A to Part 501 - Economic Sanctions Enforcement Guidelines

65 See 15 CFR Part 740, Supplement No. 2 to Part 740 of the Export Administration Regulations: “Items That May Be

Donated To Meet Basic Human Needs Under the Humanitarian License Exception”.

66 See General License D-1 to the Iranian Transactions Sanctions Regulations, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gld1.pdf

67 See the scope of the license exceptions applying to Cuba is set out at EAR sections §740.19 (Consumer Communications Devices license exception) and §740.21 (Support for the Cuban People license exception).

68 See https://www.treasury.gov/resource-center/sanctions/Documents/ngo_guide.pdf

69 “A license is not required to export or re-export to Sudan medicine or medical devices designated as EAR99”. See <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/sudan>

70 For a full overview of EU relevant sanctions and related Council Decisions and Regulations see http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf