“Impact of U.S. Sanctions on Aid Delivery in Afghanistan”

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Jacob Kurtzer: Good afternoon. My name is Jacob Kurtzer. I’m the Director and Senior Fellow of The Humanitarian Agenda at the Center for Strategic and International Studies. Thank you, everyone, for joining us here today for our discussion on the impact of U.S. sanctions on aid delivery in Afghanistan.

As the United States’ military presence in Afghanistan ended this past week, a lot of attention has shifted not just to the question of our ongoing and enduring commitment to Afghan refugees who have left the country, but also how the United States can continue to support the humanitarian needs for the totality of the Afghan civilian population that remains. One of the most complicated and vexing questions in Afghanistan and elsewhere is how to navigate existing U.S. sanctions on the Taliban in terms of responding to the humanitarian needs, what the implications there are for nongovernmental organizations and other organizations that seek to respond to the humanitarian needs of the civilian population.

We’re very grateful to be joined today by a distinguished panel to help us unpack some of those questions. Today’s conversation is put on with the support of USAID. And we’re grateful for their funding. I wanted to also remind our viewing audience that you can submit questions via the website on which you’re watching. There’s a form that you can submit questions. And we’ll try to get to some audience questions in the context of this conversation.

To start us off, I want to turn to Basma Alloush, the policy and advocacy advisor for the Norwegian Refugee Council here in Washington, D.C. Basma, can you help us understand a little bit about what are the existing humanitarian needs in Afghanistan, as NRC sees it? And what – current challenges NRC is facing with respect to navigating the existing sanctions framework?

Basma Allouch: Thanks, Jake. And thanks to CSIS for hosting this timely event, and for inviting me to be a part of it. So in order to discuss the challenges we’re currently facing in Afghanistan, I’d like to start by laying out the context in which we’re working. So as I’m sure, you know, you in the audience know, we’re talking about more than 550,000 people that have been displaced so far by the conflict this year in Afghanistan. That’s bringing the total number of people displaced in the country to over 3.6 million.

There are over 1,000 people that have been killed or injured due to indiscriminate attacks against civilians in the last month, adding to more than 5,000 civilian casualties in the first half of the year. So there is about 4.2 million children that are out of schools, most of whom are girls. And Afghanistan remains, you know, one of the most deadliest places and most dangerous contexts to receive an education. And of course, we’re dealing with a drought and, you know, now we
– there’s about one-third of the Afghan population that are facing emergency levels of food insecurity.

So as you can imagine, it’s a context that’s really, you know, already in a very fragile or a very dire situation. The humanitarian funding is less than 40 percent – you know, the humanitarian response is less than 40 percent funded. And so against this backdrop, we now have added challenges from recent events. And so our first and kind of most important priority is to ensure that our staff are safe. And, you know, as NGOs we are committed to stay and deliver, but we have temporarily paused many of our programs until the situation stabilizes and we have a better understanding of the context we’re operating in.

And so in addition to ensuring our staff are safe, we’re also currently experiencing some challenges that we fear could get worse if not immediately addressed. And some of those – you know, as, you know, have been raised in numerous outlets and publications – is the issue of female staff. You know, making sure that the Afghan population that we’re serving is able to participate and receive the assistance that we’re providing in an inclusive manner. And that, you know, the other issues that we’re facing include local commodities. You know, the shortage of local commodities in the markets and kind of unclear NGO guidelines, and a lack of governance structures that really helps kind of standardize the process in which we work.

And really quickly, specifically to your point around sanctions, currently our major issue that we’re confronting is financial access. You know, banks have closed to corporate accounts as of August 15th, and cash is extremely limited in the markets. NGOs are exploring alternative arrangements to pay staff salaries. Now that we’re entering, you know, a new month – you know, this is September 2nd – staff salaries need to get paid soon. People can no longer access their savings. We’re, you know, hearing anecdotes from even some NGO colleagues that they’re running out of money and are struggling to feed their families.

And so even when cash is available at the ATMs, there was a limit of $200 per week, as I’m sure, you know, you’ve all heard. And so individual Afghans are only able to withdraw that limited amount. That obviously isn’t enough to sustain themselves and their families. And of course, commercial transactions are not possible right now. And we’re hearing that maybe banks might open soon, but in the meantime, we’re exploring, you know, options to resort to hawalas which, of course, come with their own sets of challenges. But you know, the banking situation is changing rapidly.

And so, you know, the other issue that I wanted to flag is the exchange rate and the fact that it’s in flux right now, and different agents are setting their own rates, which is driving, you know, prices of staple items – you know, driving those prices up and making food less accessible to many. So all of that really has been
kind of a whole array of complex challenges that we’re confronting right now in Afghanistan.

Mr. Kurtzer: Thanks, Basma. It’s a very dire picture that’s painted, and these additional complications on top of the need I think make resolving them that much more urgent. I want to turn to Adam Smith. Adam is a partner at Gibson, Dunn, & Crutcher, and previously served in Department of Treasury and the White House.

Adam, one of the challenges, I think, even for people who follow this closely, is trying to understand what some of these designations mean when we talk about a group like the Taliban being designed as a special designated global terrorist. So could you – could you draw back a little bit and sort of unpack the legal implications of that designation, what it means for organizations operating in Afghanistan.

Adam Smith: Sure. And thanks so much for having me here as well. I mean, in some cases, or in some senses, that question is actually fairly straightforward, and in others it’s very, very challenging – in this circumstance perhaps in particular. So on one side, it’s fairly straightforward because the construct of what it means to be designated under the SDGT program, it’s an executive order, 13224, that was promulgated right after 9/11 to deal with global terrorism. It’s straightforward, right? Entities or individuals that are listed under that authority are effectively blacklisted from the U.S. financial system. And in many respects the global financial system as well because the restrictions are posed with respect to U.S. persons, U.S. banks, or any sort of transactions that might traverse the United States, which includes much U.S. dollar trade around the world.

And so what it means for the Taliban to be designated is just that, that parties that are the Taliban – and I’ll talk about that in a moment, why that’s a challenging construct in the sanctions world are designated – it means that any party who wants to engage in transactions with the Taliban, if there’s a U.S. nexus, are doing so in violation of U.S. law. And the issue there is there are civil penalties and criminal penalties that are potentially at risk if parties engage in transactions that are prohibited under these rules. So that’s the clarity, right?

The lack of clarity, unfortunately, comes in the fact that we don’t know who the Taliban is, and we don’t know what the Taliban is. And I’ll go to each of those. So what’s interesting about the designation of the Taliban – the Taliban has been on this sanctions list really since almost right after 13224 was promulgated – is that the Taliban in and of itself is designated. But we have no idea what that actually means. So, for example, the group is designated. But as far as I know, no one has an ID card saying: I am a member of the Taliban. Or, maybe they do now, but they certainly didn’t.

Does that mean that if the Taliban appoints a new minister for development or for education or the central bank governor, does that mean that those ministers and
then those instruments that those ministers are now in charge of, are they also designated? The answer may be no. It may be yes. I don’t know. And that’s something that hasn’t been clear. The other piece of the who then becomes the what. What is the Taliban? And this is, in some cases, the only real threshold question that I think the government needs to answer before everything else can follow from that.

And that is: Is the Taliban now the same as Afghanistan, right? Because if it is, that means Afghanistan is actually, as a jurisdiction, sanctioned. Put another way, to sort of give you a sort of comparison, is Afghanistan now like Iran with respect to the entire jurisdiction now is imbued with certain sorts of restrictions, as a, you know, basically preemptive manner? Or is it closer to be it a Venezuela, where the government is sanctioned but the jurisdiction is not? Or even a Russia, or a China, where you’ve got lots and lots of sanctioned parties, but the entire jurisdiction is, broadly speaking, free of sanctions?

So the restrictions of becoming an SDGT are pretty clear, and what it means for parties, aid agencies and the rest. You need to trade and need to be concerned about providing, quote/unquote, “material support,” to parties who are designated for fear that they could get in trouble themselves. But what is not clear is how broadly that restriction applies because we don’t know who or what the Taliban is. And that’s actually the principal concern here. The legal question is simple. The applications is actually very complicated.

Mr. Kurtzer: Thanks, Adam. And, you know, it’s interesting because in conversations with nongovernmental organizations and parties working on the ground, that complexity becomes very clear in Afghanistan and elsewhere. It’s in some sense disheartening to recognize that even at the level of government sometimes we don’t know exactly know who the parties that are being sanctioned are. And that uncertainty then waterfalls down to those organizations that seek to do this kind of lifesaving work.

So I want to now turn to Sue Eckert, who’s newly a senior associate with The Humanitarian Agenda at CSIS, also with a distinguished career at the U.S. government in the past. So I want to put first a question that Basma alluded to about this financial access question, this idea of banks being unwilling to provide services. Can you – can you unpack this idea of financial access or bank de-risking a little bit further? You know, why, if there was an opportunity where the U.S. government said some activities were allowed, why banks may choose not to, and if there are any sort of remedies that you can speak to for that question?

Sue Eckert: Great, Jake. Thanks very much. And thanks for hosting this meeting. I think that the watchword right now, as everyone has emphasized, is uncertainty. There is a lack of clarity with regard to the situation overall. And I think what it’s caused is a lot of confusion. And I think that we have to understand that this may be with us for some time. I don’t think that the situation is going to clarify
anytime soon. But at the same time that we have this lack of clarity, we have an urgency. Humanitarian situation, as Basma has described is not only dire, it’s going to get worse. The economy is on the verge of collapse. And if we don’t get some humanitarian assistance in and give the kind of certainty that the NGOs need to provide the humanitarian assistance, we’re faced with an extremely dire situation as a country.

So uncertainty, yes. Urgency, absolutely. So there’s a couple things, I think. Clearly, as Basma pointed out, the NGOs are not certain. And as Adam amply described, it’s a really confusing situation as to whom the situation – whom the Taliban is and what do the sanctions apply. I would argue that, in Adam’s formulation, that it’s more like a situation in – you know, in which it’s not the entire territory of Afghanistan, but because Taliban controls – is the de facto government, the government. But that provides a whole set of questions in and of itself. If you’re an NGO who has provided funds to the education ministry for, you know, NGO services. So can you no longer provide those services? What does it mean for the Taliban being the head of the central bank and any kind of financial transactions going in?

So clarity for the NGOs and, what I would argue, legal certainty. It’s nice to provide guidance. And guidance is important. But guidance isn’t sufficient. They need to know what the legal basis is, and that they have the protection. But you can provide a general license. You can provide the legal protections or NGOs. But the financial institutions, if they don’t have, likewise, legal protection and certainty, are not going to transfer the funds.

And this is not a situation – you know, for the past 10 years as we, the U.S., have been Afghanistan, we have built a financial infrastructure. They have a central bank. They have banks. So it’s not like the situation in Somalia or whatever, that has relied largely on informal value transfer systems to bring the money into Afghanistan. It was a functioning banking system. And now the banks are basically in a mode where we’re not sending anything in right now because we don’t know what the situation is, and to whom we are, you know, obliged to cut off any kind of transfers.

Above and beyond that then, you know, you have also the World Bank and the IMF who have ceased all programs, right, and are holding the assets. So the financial situation on the ground is – you know, is dire. Because cash – it’s largely still a cash economy, and cash is not there. OCHA, before the U.S., had – you know, in the airport had pulled out, was hoping to get a plane with more cash in to continue their operations. So it’s a very complex situation. And banks want certainty because they are in the position of which it’s, you know, U.S. sanctions are a strict liability basis. So you can’t rely upon good statements or intentions.

And I think we also have to take a step back here and realize OFAC is in a difficult position, OK? They don’t have clarity of the situation. And I have
confidence that the public servants who are there are doing everything they possibly can. But there was, for example, in The Wall Street Journal last week an article that has then subsequently been picked up by a number of media outlets, that says that the U.S. has provided – you know, has given the green light for humanitarian assistance. That’s not what happened. It was a discussion in which the U.S. government very much was urging NPOs to stay in Afghanistan and to continue. But there was no legal certainty, there was not even a commitment for a general license with any kind of timeframe. So we have to be clear that that does not exist. NGOs have to address this lack of clarity and figure out how to act.

The other thing I would just say is there are situations in which banks, who have to manage the due diligence and have to do – you know, look at it from a risk perspective, they’re not going to go sometimes. There are places which just is not worth it, OK? And because when their examiner comes in and sit and saying: Well, why are you transferring things to North Korea or to Afghanistan? So I think we have to think in this near term, before this situation clarifies, about the creation of safe payment channels, because it’s direly important that we get money into Afghanistan to continue this work.

Mr. Kurtzer: Thanks. There are four different threads that I’d like to unpack there. And I’d like to come back to you, Adam, in a second on the overcompliance issue. But let me stay with you, Sue, for one second. You mentioned a general license. And The Wall Street Journal reported, and then it was again reported this morning, that a specific license was granted, although the details of that are yet to come out. These licenses tend to be secret, so there’s not a lot of clarity on what they entail. Can you just explain the difference in implications of a specific license versus a general license, and why a general license in this particular case would be so essential?

Ms. Eckert: Right. Well, general licenses are what most NPOs rely upon, in that you have confines of, you know, if you meet these conditions you don’t need to apply for a license. A specific license is granted with specific circumstances, right, when somebody wants additional surety. The situation, I think, with regard to the press statement yesterday has to do with – because it’s a license – and let’s be clear. This is an extremely unusual situation because there’s confidentiality around licenses. It’s not like they advertise when licenses are granted. But I think they did indicate that because it’s a license to the U.S. government, what does that mean? Likely – and I do not know for sure – but I’m interpreting it that it’s a license to AID to continue operations in Afghanistan. And then AID will be in touch with its recipients, its grantees, because the license and the protections of the license extend to the grantees.

That’s what I expect it is. I don’t know for sure. But again, it’s a situation – I think that the whole situation in Afghanistan really brings into stark relief the need for humanitarian exceptions. It’s something that exists in other legal
frameworks. In export controls, for example, food and medicine, humanitarian is statutory provision. And in fact, it is a provision in IEEPA, the legal basis upon which these sanctions are based. But it’s routinely waived. So I do think that this precipitates a broader discussion, that humanitarian actions is something which is so important and so core to U.S. foreign policy that we really need to have this broader discussion so we’re not in this crisis situation.

I will say that the Biden administration has been really supportive. And you look at what happened in terms of Ansarallah, the Houthis. The day they walked into the office the Trump administration had left the administration with the Houthis being designated a foreign terrorist organization. NPOs like Basma’s would have had to pull out. They would have no certainty about dealing – and the administration immediately issued general licenses and then came to the decision: This makes no sense for balancing these objectives. So I think the administration has been very supportive, but right now we need clarity and we need channels to get the funds in.

Mr. Kurtzer: Thanks. So just maybe to sum it up a little bit, general licenses provide broad strokes authority for this kind of humanitarian work. If your work meets these certain criteria, you can do it without applying and going through this rigorous, timely, untimed process with OFAC. Whereas specific licenses are, you know, secretive, they’re specific to an organization, they take time to do. And, as we’ve discussed already extensively, this is a pretty fast-moving, urgent situation which is deteriorating quickly.

But one of the things you said was, you know, the general licenses doesn’t necessarily address the problem that the banks face. So, Adam, I want to come back to you and then we’ll get to you, Basma, about the felt impact of some of these questions. What is the issue here with overcompliance? Why are banks over-complying? And is there a way to find either more clarity in the law or are there other mechanisms by which government can provide assurances to banks to, you know, provide these essential services to these essential organizations?

Mr. Smith: It’s a great question. And I think the reality is that OFAC and the broader sanctions sort of enforcement apparatus is a victim of its own success, right? Because at the end of the day, the reason that banks are over-complying and the reason that most parties, frankly, are overcompliance – NPOs and others as well – is because of the history of significant enforcement actions. Now, to be fair, the enforcement actions – certainly there’s large ones that we are all familiar with, or that many of us are familiar with. Billions of dollars of fines against major European institutions for example. Were a function not of accidental errors in which people sort of accidentally did foot faults, but rather pretty significant activities that had been identified and sort of prosecuted over the course of some time.
But the law is still the same, right? It’s still a strict liability regime that theoretically – and it really is theoretical, because I can’t think of any cases where this has actually happened – an accident transaction that would aid someone who is a sanctioned party, like the Taliban, could wind a party up in a lot of trouble. Civil penalties and maybe even criminal penalties, depending on what the evidence is. So based upon the potential for incredible fines, let alone reputational harm, let alone bank regulators coming in and examining and sort of kicking tires in ways that would be uncomfortable – all those sorts of downsides – the upside, which of course is moral, perhaps, or humanitarian perhaps, but certainly not financial.

Because, of course, the upside for a bank to allow a transaction into Afghanistan, they’re not making much money off this. Is you’ve got to balance that, right, as a matter of fiduciary obligations, right, with your shareholders or otherwise? And for many institutions, it just not worth it. And so that’s the reality we’re in. And this is not a moral judgement on anybody. It’s a reasonable conclusion for most of these major institutions because they’ve got too much to risk for behalf of their, again, fiduciary obligations and their other clients, right, that aren’t in Afghanistan.

So the result is that if you ask, you know, what else can be done? This issue – this overcompliance issue has bedeviled the administration – administrations, right – for a long time, really since the start of the Iran sanctions sort of relief. It’s sort of where you first really saw this, right? The idea of trying to get money into a place like Iran when the sanctions were being relieved was very, very challenging because of this concern. And the result is the same thing you’re going to see in Afghanistan, that even if you have specific licenses, even if you have general licenses, I’m not convinced you’ll find many institutions that are still – that are going to be willing to sort of engage. Certainly not major institutions. You may well have some.

And the only reason I say that is because the evidence in the Iran side is just that, right? There are explicit allowances, general licenses, explicit even processes through the Europeans and the Swiss to allow money into Iran. And very few institutions are willing to take them up on that offer because of these concerns of reputation and all the rest. And so I think the solution – and I say this very broadly because I don’t really think it’s – there’s only one solution, nor do I think this is easy to do – is something a bit more forward-leaning, right? I think there need to be some sort of comfort with respect to actual comfort letters, safe harbors, that the U.S. government has sort of nibbled around with respect to Iran.

There is a humanitarian sort of – sort of process that it sort of launched in 2019, where you could sort of – it’s not quite a whitelist system, but close to it, where you sort of provide lots and lots of information to the government and they can provide some sort of guidance as to sort of coverage and maybe the legally binding guidance with respect to if you engage in these sorts of activities, you
know, we won’t – we won’t follow you and prosecute you if things go awry. But I think – so that’s sort of what’s needed here too. There needs to be something very forward-leaning. Otherwise, I don’t think you’ll find many people who are going to be willing to sort of have an uptake on the potential, even if there are these broad general licenses. And that’s sort of my real concern, is that we can do things but unless we’re very forward-leaning I’m concerned that you’re not going to get much impact on the ground.

Ms. Eckert: Jake, can I – can I just add to that briefly? Because I do think this is incredibly important. The de-risking debate – you know, I mean, this has been around for a while. I mean, call it de-risking, call it financial access, whatever you want to call it. I think it is a situation in which there is a lack of incentives for financial institutions to take on the additional risk. And I think this is something very fundamental that has to be addressed. Treasury has tried. I mean, in other words, since 2014 OFAC has a non-enforcement policy, which basically says to NGOs: We understand you work in high-risk jurisdictions. And if something goes awry, that – you know, that’s not the basis for enforcement.

But again, one, that’s a policy. It provides no legal protection. And I think that that’s not something – you know, you ask banks, they say, well that doesn’t do it for us. That doesn’t – a nonenforcement policy is not a protection. And so I think that what we have to do now is, with this situation specifically, is taking more forward-leaning matters at hand, but then go beyond this to talk about the system structurally and how we address this systemic problem which, based on some data of Yale and a number of NGOs, has gotten worse in the past couple years. I mean, about two-thirds of all U.S. NPOs operating abroad are having financial access difficulties. And the problem is that the frequency of these problems has increased significantly by two or three times in the last year or so.

Mr. Kurtzer: Thanks, Sue, and thanks, Adam. You know, you described a victim of the success and enforcement measures against, you know, clear known actions, and a theoretical risk that banks face. And the answer lies somewhere in the middle. And then we have this longer-term challenge of really dealing with a structural, legal regime that’s extremely complicated and opaque, and a short-term challenge of how do we provide comfort to organizations and the financial service providers. I think the idea of these comfort letters and making some of this – taking some of these private conversations, and making them more explicit, and providing that comfort to banks and remittance organizations and other financial entities, is really essential at this moment.

I want to come back to you, Basma, because NRC has extensive experience navigating these challenges, not just in Afghanistan but in Yemen, and Somalia, and Iran, and elsewhere around the world. And I want to – can you – can you speak to some of the operational complexity this creates for an organization that’s taking, you know, personal – you know, practical security risk and, you know, taking on this challenge of providing assistance in these areas. How does this
increase the complexity of your operations? And if you could also speak a little bit, one of the questions that comes up is how do NGOs navigate working with some of these actors who are designated.

How do you – how do you operate? I mean, in Afghanistan there’s these joint operating principles that speak to – you know, that can provide some answers to these questions that government is concerned with. So can you unpack both how you approach operating and complex environments, and how these restrictions make your operations that much more complicated?

Ms. Alloush: Yeah, sure. Thanks, Jake. I think to start I’d like to preface what I’m about to, you know, say by stating that NRC’s position on sanctions is that, you know, we believe that states are within their rights to impose sanctions and that we don’t contest this. Our concern is just around the development and implementation, and how these sanctions mechanisms could impact civilian populations and, you know, disrupt the delivery of humanitarian aid. So with that – with that stated, sanctions obviously, and other restrictive measures, significantly complicate our operating environment, and usually require a tremendous amount of time and resources to navigate.

So NRC and other international NGOs are able to gather the resources needed and, you know, often have the networks to work – have the networks to work through these challenges. But I have to say that, you know, as Sue mentioned, this is obviously a huge challenge for us, and even more so on the local, national NGOs. And you know, the local NGOs are the ones that are typically on the front line. And they’re the ones that, you know, usually have a more nuanced understanding, being from the communities that we’re trying to serve. And they usually, you know, confront these hurdles, but don’t have the resources to navigate them. So I wanted to kind of emphasize that point.

And to your question on how the sanctions – how sanctions writ large impact on work, really in four ways. The first is, you know, as Sue mentioned, you know, limiting actions to financial services and other vital private sector goods and services. You know, we’re feeling the effects of the sanctions in Syria when banks, you know, are de-risking and refusing to transact with NGOs out of fear of violating the sanctions. And this has really forced a lot of NGOs to scale down their operations because they can’t pay staff, they can’t, you know, bring in money to fund projects.

And so at the end of the day, this is really just directly felt by Syrians that now have no access to the goods and services that they need. But not only, you know, is bank de-risking, you know, causing Syrians problems that we confront in multiple contexts, there’s also supply chain disruptions that are created, you know, with sanctions. And it causes some kind of shortages in goods when traders become more risk averse and decide to reroute their businesses elsewhere.
The second issue that we experience is direct impact on programmatic decisions. So it makes it really difficult to plan programs because you may either not get funds on time or you just don’t have the flexibility to program based on needs, because the goods and services aren’t available. And so a certain project may be perceived outside of the scope of a license, and NGOs then decide to almost self-sensor rather than take a risk to try to, you know, program in areas that are actually needed.

The third issue is around delays and confusions related to licenses and derogations. So when humanitarian exemptions are included the language is often vague and it’s difficult to understand. And it takes time and resources to comprehend the permitted operating parameters. And so some organizations may indeed violation sanctions because they just don’t have the means to – you know, to get the legal advice to understand these restrictions. Or others – you know, other organizations may just, you know, decide to close up shop, because they just don’t have the extra money or time to properly understand what’s allowed and what’s not, rather than take the risk.

And the fourth kind of way that sanctions have impacted our work is limiting humanitarian organizations’ engagements with nonstate armed groups. And I think this goes to your second question, Jake, where sanctions cause difficulties for humanitarian organizations. When we operate in areas controlled by groups or, you know, individuals that are listed, you know, we have to engage with them to be able to secure access to the populations in need. It’s not an option. I mean, principled humanitarian assistance or programs require engagement with all parties on the ground, irrespective of who they are. And so the sanctions really create those difficulties in trying to engage with these – with these actors.

And this is something that we’ve seen, you know, in Somalia, in northeast Nigeria, and in a number of other contexts. And so I think for Afghanistan specifically, I would suspect we’d see similar obstacles. And just to flag, you know, earlier this summer NRC undertook a series of workshops specifically looking at the impact of counterterrorism regulations on principled humanitarian action in Afghanistan. And during these workshops, you know, humanitarian actors, including local NGOs, expressed a lot of these same issues already, including a lack of understanding of the sanctions, and highlighted that they’ve already had chilling effects in areas that were under nongovernment control.

And so, of course, now with the shift, we’re expecting those to increase. And, you know, as donors are relocating from Kabul, we just – we’re concerned about, you know, the conditions that this – you know, the other restrictions that could come up because of this.

Mr. Kurtzer: It’s interesting, that last point, that that dialogue that has often been had that enables organizations to answer tricky questions quickly and effectively is going to be even that much more complicated in Afghanistan as elsewhere. You raised
all these points about, you know, ways in which this limits flexibility and it costs money.

And we’ve raised before, through our program, that what I find particularly vexing is that the United States government is, generally speaking, a very generous donor. These actions are authorized and appropriated by Congress, and then they run headfirst into this regulatory legal environment, which ends up actually negatively impacting the efficacy of the programs that we – that we fund and we want to have, and, you know, that ultimately negatively impacts the civilian populations, which organizations like yours seek to serve.

We have a question from our viewing audience. Jane Cronin from CARE asked about the idea that you raised, Sue, about financial channels. Is that something you can unpack a little bit more what you mean by a safe transfer of funds? Are there any examples you could point to where such a scenario has worked, to provide comfort to donors but also make sure that money can move?

Ms. Eckert: 

Well, unfortunately, I don’t think that there are a lot of examples to point to. I do think in certain circumstances I have heard in the past in a highly sanctioned jurisdiction, in order to promote humanitarian access, for example, the Fed was used as a way of getting money in. OCHA, you know, and the U.N. is another organization that potentially could be used. You know, even the World Bank. I think that this has always been something that has been on the agenda, like we need to think about this. And I think the time has come, because of the – you know, the dire circumstances.

I mean, the humanitarian organizations that Basma represents and others, they’re dealing with 400,000 people in Tigray right now on the verge of starvation. Then you have the situation in Afghanistan. And the normal kind of crises you have in Somalia, and Sudan. And it’s really rather overwhelming. And they’re still dealing with situations of lack of adequate funding. But there has been this case in which donor organizations, including official agencies, right, have – in order to comply with the law – they then place the risk on their organizations that they’re funding. And saying: You, downloading the risk, you figure out how to deal with – in this environment – with all applicable sanctions, AML/CFT requirements. And then that’s also passed onto the bank.

So it’s a situation where you need to have government, the financial sector, and the NGOs all sitting at the table, figuring out how to address this, and to share the risk. This is a very important aspect. On the – I don’t have an answer on the safe payment channels, other than that I think that we need to investigate that. And in the short term, that is something with official blessing, whether it be the U.N., the U.S., or whatever – but could potentially provide a safe mechanism to get funds in in the short term while we figure out the financial situation.
And let’s say also that it’s not just a question of banks. Informal value transfer or remittances, OK? Western Union is not sending money into Afghanistan now. And I think Basma may have mentioned, even some of the hawala, who have been used in the past, hawaladars are not sending funds into Afghanistan right now. Remittances are going to be an increasingly important issue because you have how many thousands of people coming out of Afghanistan? They may not have documentation. They’re being relocated, these refugees, in the U.S. and around the world. So how are we going to be able to provide them financial access? Remittances are an important part of supporting the economy in Afghanistan families, and things like that. So, again, that’s another aspect, financial aspect, that we haven’t addressed here today.

Mr. Kurtzer: Well, we have another question from Shabtai Gold from Devex. I’m going to put it to you, Basma.

The question is basically: What do humanitarian actors see as the best way to work in this situation? You know, do you prefer a general license? Are you asking for something else? And can you just speak as – is assistance even able to come into the country right now? So I know you can’t speak on behalf of the humanitarian community, but can you give us a sense of the conversations that are happening? Of what can the U.S. do, what steps are needed to day to support the humanitarian response?

Ms. Alloush: Sure. So the Biden administration has made public commitments to continue its support for humanitarian response in Afghanistan, right? And so part of ensuring that humanitarian aid continues is making sure that it’s protected and uninterrupted. So the Treasury Department has the responsibility to ensure that any restrictions it imposes do not violate, you know, international humanitarian law and human rights law, and that it includes the necessary carveouts for humanitarian programming, in order to ensure that aid does reach those most in need.

So the safeguards could come in various ways. But I think it’s important that any political decision by this administration does not strangle the humanitarian response. And there are really three key criteria that, you know, I would like to present, you know, for the U.S. government to consider, and to make sure are fulfilled when thinking around, you know, what fixes or what, you know, solutions they could impose or implement to address this issue. The first is around humanitarian – you know, making sure that humanitarian activities are not politicized and that, you know, principled humanitarian operations are not jeopardized. We need to be able to access those in need with the goods and services, regardless of where they’re at.

The second issue is that humanitarians can access the funds that they need to be able to pay staff. Again, just reemphasizing the importance of this financial access piece where, you know, we need to be able to procure goods and we need
to be able to cover operational costs. You know, banks and other financial institutions need to have the necessary assurances from the U.S. government to continue transacting with NGOs and to minimize any of the consequences of bank de-risking that Sue and Adam discussed, and to make sure that, you know, any – you know, that we minimize the possibility of any payments being declined to the Afghanistan response.

And the third key issue that I want to bring up is really around commercial goods and supply chains, and to make sure that they’re not disrupted to avoid any delay in the delivery of lifesaving assistance, because, you know, as we discussed, Afghanistan currently is, you know, going through an economic crisis similar to what we’re seeing around the world because of the COVID-19 pandemic. You know, the situation, as I laid out in the beginning, is pretty dire. And so any additional pressure could really cause serious collapse in the economy that we really can’t afford at this point. And more specifically, Afghans cannot really afford, given just how precious and vulnerable their situation is.

Mr. Kurtzer: Thanks, Basma. Go ahead, Adam.

Mr. Smith: Yeah, just maybe to follow on from that very excellent sort of overview about what would sort of be needed and whether it’s licenses or otherwise. What’s interesting here, I think, is that this is an unprecedented situation in one way, right? I’ve never – I’ve never known of a designated terrorist group taking over a country. You have bits and pieces of that maybe with Hezbollah, and Hamas, and al-Shabaab in the past, but never like this, without sort of the intermediation of others, to have a full – and so, even though it’s unprecedented I think it’s important that we recognize that there are some historical exemplars we can borrow from, right?

And so if you think about it from the context of – if it’s the government that’s designated and not the jurisdiction, you can look at the Venezuela context, where the government is designated and yet there are 30 general licenses that have been issued – 30-plus, actually – that I think that we could sort of learn from with respect to this jurisdiction. If we’re talking about how do we get assets or goods into the country without potentially enriching the leaders that we don’t like, from the sanctions perspective, you can learn from the Iran context, right? In the Iran context we allowed Iran to continue selling oil to places like Korea, and Japan, et cetera, and that oil funds was stuck, right? Frozen in places like Korea and Japan, and could only be used for humanitarian trade, or other sorts of approved trade.

So there are other – so there are mechanisms here that I think won’t necessarily work directly, but I think that we can learn these lessons over time. There are options here to sort of allow certain trade in and certain flows in. It’s not going to be perfect. That’s the other piece I think it’s important to recognize, is there’s going to be overflow. There’s going to be money that’s taken by the Taliban. There’s going to be assets that are potentially taken and arbitrated out by the
Taliban. That is going to be expected. And that’s what happens in Iran. You see North Korea and Cuba much the same way.

But I don’t think we can let the perfect be the enemy of the good here in a very serious way, because otherwise if allow nothing in – because that’s the only way we can prevent any activity going to the Taliban – the result for the tens of millions of Afghans I think is going to be incredibly dire in the very immediate term.

Mr. Kurtzer: Thanks. I mean, I think there are some lessons from those that you talked about. There are others, you know, from Somalia in 2010-2011, from Yemen earlier this year. And what concerns me is that in those cases we saw the USG move quite quickly and be quite open to humanitarian response when the crisis reached a level of severity. And to me, that’s not necessary, right? The organizations that do the humanitarian response know how to do this work, have proven over and over again that they’re reliable partners. And we shouldn’t have to wait for a situation to get quite so severe to then find the solutions.

We should be able to find them, you know, systematically. In this particular case, as you said, this is an unprecedented scenario. And, you know, we spoke earlier. You know, this scenario has brought into stark relief the complexity of this overall legal bureaucratic regulatory regime. And I was struck by your opening comment. You talked about 13224, imposed after 9/11, right? It’s 20 years now. And not much has changed in terms of the way that we approach these questions.

So we’re starting to – we’re running against our time. And so I want to just – if you could think of maybe one or two steps to take today to try to resolve some of these questions, what would they be? And maybe we can start with you, Adam, and then we’ll go to Sue, and Basma, and finish.

Mr. Smith: I mean, I think – I think these are very difficult policy decisions. And I don’t mean to suggest that they’re not, because they are. And I, like Sue and I’m sure Basma as well, have nothing but great respect for the political and nonpolitical folks who are in the administration trying to work this out, because I think this is very, very challenging. I think that the – I’m not going to sit here and say there’s a solution, because I don’t necessarily think there is a solution. But I like Sue’s idea of figuring out a way to have all stakeholders sitting around a table and figuring out safe passage, right? Safe passage of funds and safe passage of goods and services. I think that’s what needs to happen.

I think at the end of the day, in order to provide legal comfort, the U.S. government is going to need to be more forward-leaning and more receptive to the idea of safe harbors, and more receptive to the idea of sort of hold innocent – sort of hold harmless sort of letters. That basically parties can have them and be protected as a legal matter, that if you engage in these sorts of activities, and follow these sorts of due diligence best practices, if some of the money goes
awry, some of the funds or some of the services go awry, you will not necessarily be held liable.

I think that’s a potential solution. It may not work in all cases, but I think that—frankly, working with the NGO community and working with the banking community, I’m guessing that is what the government will find very quickly is what is not expected, but certainly desired in order to allow the free flow of funds that is critical in order to basically protect the innocents from becoming collateral damage here.

**Mr. Kurtzer:** Thanks, Adam.

Sue, you mentioned earlier the idea of humanitarian exemptions. And maybe if you have a last word or idea or key steps to be taken now.

**Ms. Eckert:** Thanks. I think this has been a really interesting discussion, and I think that it just underscores the complexity and the fact that this is something that really needs further dialogue.

One thing I would emphasize is that the treasury system is an extremely broad grant of authority. I approach this from having been in export controls many years ago. One of the things we did is we created, for example, project licenses. So, you know, when you have a particular project, you don’t need to come back and get permission each and every time you have some change, perhaps, or transfer. Treasury has this kind of broad ability to think creatively. But I think that there is somewhat—and, granted, the situations in which OFAC faces are always emergencies.

So maybe we can use this time to address the specific challenges for Afghanistan. And that is giving the legal certainty to NPOs and financial institutions, and remitters. If that’s lacking in the very, very near term, that we might find alternative means to get funds in while we give the NGOs the permission, that we start to think about then in the medium term how do we put in place a better system so we’re not always in this humanitarian crisis? It’s part of longstanding U.S. policy and law. And it’s something I think that we really need to re-institutionalize and enshrine. And I think that that’s something.

The other thing I would just say is we need an element of realism here, OK? And this takes—as Adam said, these are difficult questions. No one really wants to address these questions, right, because they’re extremely difficult. But we need political leadership. And that’s why the Biden administration so far in dealing with Yemen has demonstrated that. And so we need senior levels of U.S. government to address these questions, because otherwise interagency issues and, you know, become entrenched, and it becomes hard to move forward.
So I do think stakeholder dialogues are extremely important, of understanding various perspectives, and then working collectively to try to get to common solutions. And with that, I think that – you know, thank you for illuminating these. And hopefully CSIS will be a forum to be able to address a number of these issues as it goes forward.

Mr. Kurtzer: Thanks, Sue.

And, Basma, as representative of an organization working I want to give you the last word here. You know, add anything you want to add in terms of what’s needed or any other messages you want to share on behalf of the humanitarian community in terms of the future in Afghanistan

Ms. Alloush: Yeah. So I think that, first is that the provision of lifesaving aid is nonnegotiable. I mean, that should be the foundation for all of this, that humanitarian organizations working in Afghanistan continue doing their work. We’ve been talking to the Taliban for a long time in order to gain and maintain our humanitarian access. And we need to be able to do so. Despite the military withdrawal, the U.S. really cannot disengage from Afghanistan right now. You know, the needs are far too great, and they’re likely to just get worse. And so we actually need donors to step up and support our efforts.

The other issue that I wanted to kind of reemphasize is making sure that, you know, based on what Sue and Adam were saying, you know, making sure that the Treasury Department moves quickly to provide these assurances, and to minimize any disruptions, and really minimize the chilling effect that could result from all of this, right? As decisions take long to be developed and implemented, the chilling effect does not wait. And so the chilling effect is often what hits us the hardest. And so we really need to make sure to minimize that, and find swift, you know, quick, safe, reliable solutions for NGOs to do. Also for Treasury and State to engage, as Sue mentioned, within a targeted dialogue with banks to really dispel any rumors or misunderstandings of what, you know, is permitted and what’s not.

And then lastly, I’ll just end by saying: We really need to scale up the response now. The humanitarian response plan needs to be fully funded. And, you know, we need to be able to make sure that we’re not – we’re not backsliding on any gains that we’ve made over the past, you know, decades, to make sure that Afghans right now are not – are not neglected. We can’t have a piecemeal approach. We really need to make sure that both, you know, humanitarian actors, development, and peacebuilding actors are all working in coordination to really try to safeguard and protect Afghans from all this, you know, tumultuous situation.

So thanks again, Jake, for hosting this really timely event. I really enjoyed the discussion.
Mr. Kurtzer: Thanks, Basma. And you hit on a key point which I meant to emphasize at the beginning, that this issue set doesn’t just affect humanitarian organizations but it affects development actors and peacebuilding organizations one and the same. And the solutions that can be found can also help one and the same. And they don’t just affect the tip of the operations. They affect the foundational activities, like engagement, like communication – necessary activities for all this work. So thank you very much for your contributions.

And on behalf of The Humanitarian Agenda, thank you, again, Sue Eckert, Adam Smith, and Basma Alloush for joining us. And all our viewers today for joining us. We always welcome your feedback. And we’ll continue the conversation and highlighting the situation in Afghanistan and elsewhere in the world where these issues arise. And wish you all a great day. Thank you very much for joining us.

(END)