

### VIII. *Bank Sanctions: The Controversial Diplomatic Tool*

#### A. Introduction

In August 2021, the United States froze nearly \$10 billion of assets that the Afghan government owned in American banks.<sup>1</sup> These bank sanctions were a consequence of the Taliban's swift takeover of Afghanistan.<sup>2</sup> The United States imposed these sanctions in fear of the Taliban, once a preeminent fundraiser and safe haven for terrorists at the turn of the new millennium, to prevent them from funding international terrorist efforts against the West.<sup>3</sup> In other words, "Afghanistan constitutes the type of high-risk jurisdiction that US authorities have conditioned [ ] banks to avoid since 9/11 through the implementation and enforcement of economic and financial sanctions."<sup>4</sup> American bank sanctions have led other international financial institutions to follow suit.<sup>5</sup> For example, the International Monetary Fund blocked the Taliban regime from accessing \$460 million in emergency aid.<sup>6</sup> Furthermore, the Bank for International Settlements held up \$700 million of

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<sup>1</sup> Keith Preble & Bryan Early, *Eliminating Sanction on the Taliban Won't Solve Afghanistan's Deepening Humanitarian Crisis*, WAR ON THE ROCKS, (Jan. 26, 2022), <https://warontherocks.com/2022/01/aid-not-sanctions-relief-eliminating-sanctions-on-the-taliban-wont-solve-afghanistans-deepening-humanitarian-crisis/> ("The Taliban's takeover, moreover, led the United States to impose sanctions associated with the Taliban on Afghanistan's national government.").

<sup>2</sup> *Id.* ("The Taliban's swift takeover of Afghanistan following the U.S. departure cut off most flows of foreign aid to the Afghan government.").

<sup>3</sup> Exec. Order No. 13224, 50 Fed. Reg. 186 (Sept. 25, 2001) [hereinafter *The Executive Order*] ("I also find that because of the pervasiveness and expansiveness of the financial foundation of foreign terrorists, financial sanctions may be appropriate [against the Taliban] that support or otherwise associate with these foreign terrorists.").

<sup>4</sup> *Id.*

<sup>5</sup> Eshe Nelson & Alan Rappeport, *U.S. and I.M.F. Apply a Financial Squeeze on the Taliban*, N.Y. TIMES, (Aug. 18, 2021), <https://www.nytimes.com/2021/08/18/business/afghan-central-bank.html> (highlighting various international financial entities that have paused money going into Afghanistan due to sanctions).

<sup>6</sup> *Id.*

Afghanistan's reserves.<sup>7</sup> Combined, these bank sanctions have virtually isolated Afghanistan from the global banking system.<sup>8</sup>

The sanctions have had a profound effect in Afghanistan. Proponents for bank sanctions argue that the sanctions have brought Taliban leaders to the negotiating table with the West.<sup>9</sup> They highlight the rhetoric that the Taliban regime has adopted, specifically the many democratic concessionary promises meant to convince the international community that the new Taliban regime wants reform.<sup>10</sup> However, opponents of sanctions reason that this rhetoric is superficial and is only being used to persuade the West to rescind its bank sanctions.<sup>11</sup> American bank sanctions on Afghanistan, and the sanctions that have followed suit from other international financial actors, have caused a humanitarian crisis.<sup>12</sup> Scholars note that economic sanctions do not affect country leaders, but have disproportionately affected the poor and other marginalized groups within the country.<sup>13</sup>

This article will discuss whether bank sanctions, using the current crisis in Afghanistan for context, have now become an ineffective American diplomatic tool that should fall out of favor. Part B will discuss the origins of bank sanctions, while providing a brief yet necessary discussion of the history of the Taliban in Afghanistan; it will also explain why the United States chose to implement bank sanctions after the Taliban took over Afghanistan. Part C will discuss the various

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<sup>7</sup> *Id.*

<sup>8</sup> Preble & Early, *supra* note 1 (“It also removed a set of diplomatic and bureaucratic protections that allowed Afghanistan to remain interconnected with the global economy ....”).

<sup>9</sup> Saleha Mohsin, *Bank-Averse Taliban Leave U.S. Struggling for Financial Edge*, BLOOMBERG (Aug. 18, 2021, 10:55 AM) (“The U.S. could bring the Taliban to the negotiating table to offer relief from economic sanctions ....”).

<sup>10</sup> *Id.* (discussing that relief from economic sanctions would be based on the Taliban keeping its promise to protect the rights of women).

<sup>11</sup> Rudra Chaudhuri, *Will the Taliban Keep Their Promises in Afghanistan?*, CARNEGIE INDIA (Aug. 17, 2021) (“Despite slick rhetoric from Taliban spokespeople, Afghanistan’s future under its new rulers is likely to be messy and uncertain.”).

<sup>12</sup> Preble & Early, *supra* note 1 (“Since the U.S. withdrawal from Afghanistan last year, the country has been mired in a severe humanitarian crisis ....”).

<sup>13</sup> Dylan O’Driscoll, *Impact of Economic Sanctions on Poverty and Economic Growth*, K4D HELPDESK REPORT, at 2 (June 14, 2017) (“Economic Sanctions lead to an increase in the poverty gap and deprived section of the population feel the most impact.”).

effects of bank sanctions in Afghanistan since the Taliban's takeover. Part D will conclude.

### 1. *The Origin of Bank Sanctions*

Bank sanctions have become a favored diplomatic tool for governments.<sup>14</sup> Specifically in the United States, the government has almost exclusively used banking sanctions as a way to punish international actors for their behavior.<sup>15</sup> In practice, bank sanctions allow one country to block assets owned by another entity held in its own banks, or restrict trade as a way to pressure state and non-state actors into behaving differently.<sup>16</sup> However, bank sanctions, at least in the United States, were not always the primary diplomatic tool to accomplish foreign policy goals.<sup>17</sup> Therefore, a brief discussion of the evolution of bank sanctions as the preferred strategic tactic in foreign diplomacy is necessary.

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<sup>14</sup> Richard N. Haass, *Economic Sanctions: Too Much of a Bad Thing*, BROOKINGS INST. (June 1, 1998), <https://www.brookings.edu/research/economic-sanctions-too-much-of-a-bad-thing/> (“Economic sanctions are increasingly being used to promote the full range of American foreign policy objectives.”).

<sup>15</sup> Daniel W. Drezner, *The United States of Sanctions: The Use and Abuse of Economic Coercion*, FOREIGN AFFAIRS, (Sept./Oct. 2021), [https://www.foreignaffairs.com/articles/united-states/2021-08-24/united-states-sanctions?check\\_logged\\_in=1&utm\\_medium=promo\\_email&utm\\_source=lo\\_flows&utm\\_campaign=registered\\_user\\_welcome&utm\\_term=email\\_1&utm\\_content=20220212](https://www.foreignaffairs.com/articles/united-states/2021-08-24/united-states-sanctions?check_logged_in=1&utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20220212) (highlighting that despite other foreign policy tools such as military might, cultural cachet, diplomatic persuasion, technological prowess, economic aid, etc., “the United States relief on one tool above all: economic sanctions”).

<sup>16</sup> U.S. DEP'T OF THE TREASURY, SANCTIONS PROGRAMS AND COUNTRY INFORMATION, (2022) <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information> (“[S]anctions can either be comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.”).

<sup>17</sup> Gary C. Hufbauer et al., *US Economic Sanctions: Their Impact on Trade, Jobs, and Wages*, PETERSON INST. FOR INT'L ECON. (Apr. 1997) (highlighting that the United States' use of bank sanctions experienced a lull where it resurfaced as the “weapon of choice to enforce ... US foreign policy goals” in the 1990s).

Economic sanctions, bank sanctions' predecessor, were first employed in the United States in 1807 with the Embargo Act (the Act).<sup>18</sup> The Act's intended purpose was to "punish Britain and France for interfering with American trade while the two major European powers were at war with each other."<sup>19</sup> It was the United States' first attempt using its nascent financial leverage to curtail the behavior of foreign actors.<sup>20</sup> The economic sanctions were a disaster because "the United States needed European markets far more than the United Kingdom and France needed a fledgling country in the New World; the [] Act cost the United States far more than it did the European great powers."<sup>21</sup> As a result, the Act was repealed in 1809.<sup>22</sup>

The key to the efficacy of American economic sanctions was the global, interconnected financial system that was built on the American dollar following World War I.<sup>23</sup> This global economic interdependence gave the United States the leverage it needed to control the behavior of foreign entities through economic means.<sup>24</sup> Concurrently, with the proliferation of weapons of mass destruction, outright war seemed futile for the United States to advance its policy objectives.<sup>25</sup>

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<sup>18</sup> Robert McNamara, *The Full Story of Thomas Jefferson's Embargo Act of 1807*, THOUGHTCO., (Aug. 5, 2019), <https://www.thoughtco.com/embargo-act-of-1807-1773316>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (discussing how the United States was trying to achieve American autarky for the first time in 1807, only a few years after the country's founding).

<sup>21</sup> Drezner, *supra* note 15.

<sup>22</sup> McNamara, *supra* note 18 ("The embargo was repealed by Congress early in 1809 ....").

<sup>23</sup> Benjamin Coates, *A Century of Sanctions*, ORIGINS: CURRENT EVENTS IN HISTORICAL PERSPECTIVES, (Dec. 2019), [https://origins.osu.edu/article/economic-sanctions-history-trump-global?language\\_content\\_entity=en](https://origins.osu.edu/article/economic-sanctions-history-trump-global?language_content_entity=en) ("On the eve of World War I, new technologies of steam and telegraphy had made the world's nations economically interdependent.").

<sup>24</sup> Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 MIT: INT'L SECURITY 42 (2019) (discussing how the United States weaponized the international system's interdependence so that it could use its financial leverage strategically).

<sup>25</sup> David C. Gompert et al., *War with China: Thinking Through the Unthinkable*, RAND CORP. 11 (2016), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1100/RR1](https://www.rand.org/content/dam/rand/pubs/research_reports/RR1100/RR1)

Bank sanctions, specifically, developed in the wake of the 9/11 attacks.<sup>26</sup> Legislative efforts gave the United States Treasury Department broad authority to penalize financial institutions that were involved with blacklisted entities connected to the attacks.<sup>27</sup> The power and influence of American bank sanctions meant violating them was an “economic death sentence.”<sup>28</sup> Since the consequences of violating sanctions were great, banks strictly adhered to them, effectively closing blacklisted entities off from the global financial system.<sup>29</sup>

## 2. *Funding of International Terrorism*

Now that we understand the general purpose and influence of American bank sanctions, we turn to why the United States sanctioned the Taliban-controlled Afghan government in 2021. When the Taliban briefly ruled Afghanistan from 1996 to 2001, it was a safe haven for al-Qaeda and used as a base “to launch terrorist attacks against [the] United States . . .”<sup>30</sup> Consequently, the United States has a justifiable fear that

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140/RAND\_RR1140.pdf (alluding that war, especially nuclear war, between nuclear states would be disastrous).

<sup>26</sup> Jonathan Masters, *What are Economic Sanctions?*, COUNCIL ON FOREIGN RELS., (Aug. 12, 2019, 8:00 AM) <https://www.cfr.org/backgrounder/what-are-economic-sanctions#chapter-title-0-6> (“The U.S. government launched an all-out effort to disrupt the financial infrastructure supporting terrorists and international criminals. This campaign focused on the gateways of the global financial system – international banks . . .”).

<sup>27</sup> *Id.* (explaining that the 9/11 attacks and the resulting legislative efforts that gave the Treasury the power “to designate foreign . . . institutions as ‘primary money laundering concerns’” without necessarily needing any evidence was a broad grant of authority).

<sup>28</sup> Coates, *supra* note 23.

<sup>29</sup> Ellen Ioanes, *US Policy is Fueling Afghanistan’s Humanitarian Crisis*, VOX, (Jan. 22, 2022, 4:47 PM), <https://www.vox.com/2022/1/22/22896235/afghanistan-poverty-famine-winter-humanitarian-crisis-sanctions> (“Banks and businesses don’t want to risk dealing with places or sectors under economic restrictions from the US, for fear they’ll violate a prohibition and be subject to sanctions themselves.”).

<sup>30</sup> Security Situation in Afghanistan: Implications for Europe, at 2 (Oct. 2021), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698771/EPRS\\_BRI\(2021\)698771\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698771/EPRS_BRI(2021)698771_EN.pdf) (highlighting that “Afghanistan also served as the logistical base for the 11 September 2001 terrorist attacks”).

a Taliban-controlled Afghanistan could again become a base for international terrorism.<sup>31</sup>

However, this does not answer why the United States used bank sanctions specifically to respond against the Taliban takeover. Especially when considering that the Afghan people rely heavily on an informal, cash-based financial system, it is peculiar that the United States would impose bank sanctions that might have minimal effects in the country.<sup>32</sup> Here, it's not the Taliban that the United States and its allies fear. "Researchers do have a high-level understanding of how the Taliban raise funds, but much less is known about how the group uses, moves, stores, manages and obscures its funds."<sup>33</sup> This lack of precise knowledge could lead to a Taliban government that seems benign but covertly funds international terrorist efforts.<sup>34</sup> Therefore, the United States has moved to sever the Taliban's financial reach through bank sanctions to prevent it from doing so.

### **B. The Effect of Bank Sanctions since the Taliban's Takeover of Afghanistan in 2021**

Currently, there is a widespread debate on whether bank sanctions effectuate their underlying policy goals in Afghanistan.<sup>35</sup>

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<sup>31</sup> Lindsay Maizland, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN REL., (Sept. 15, 2021, 11:30 AM),

<https://www.cfr.org/background/taliban-afghanistan> ("[T]he UN team that monitors the Taliban said the group still has strong ties with al-Qaeda.").

<sup>32</sup> Tate Ryan-Mosley et al., *Afghanistan Had a Plan to Free Itself from Cash. Now it Risks Running Out*, MIT TECH. REV. (Aug. 20, 2021), <https://www.technologyreview.com/2021/08/20/1032344/afghanistan-cash-crisis-digital-money/> ("Cash remains in circulation—Afghanistan has a sizeable informal banking system.").

<sup>33</sup> Jessica Davis, *The Challenges of Understanding Taliban Finance*, LAWFARE, (Aug. 23, 2021, 11:14 AM) <https://www.lawfareblog.com/challenges-understanding-taliban-finance>.

<sup>34</sup> Steve Brooking, *How to Prevent Afghan Aid Money from Reaching Terrorists*, FOREIGN POL'Y (Jan. 20, 2022, 8:10 PM), <https://foreignpolicy.com/2022/01/20/afghanistan-aid-money-taliban-terrorists/>.

<sup>35</sup> Maarten Smeets, *Can Economic Sanctions Be Effective?* 2 (Mar. 15, 2018) (unpublished manuscript) (on file with author) ("While economic sanctions may be attractive policy tools for governments wanting to express discontent with a country's behavior, it is arguable if from an economic perspective sanctions can achieve the change that is often envisaged through the punitive measures taken.").

The United States implemented sanctions in fear of the Taliban regime funding international terrorism.<sup>36</sup> Now, the Taliban is a well-funded entity.<sup>37</sup> Notably, the Taliban is considered one of the top five richest terrorist organization in the world.<sup>38</sup>

Interestingly, “[h]owever, while the Taliban appear to have raised enough money to take Afghanistan by force, there are some doubts they have sufficient funding to govern Afghanistan on their own.”<sup>39</sup> A plurality of the prior Western-backed Afghan government’s GDP came from foreign aid.<sup>40</sup> Similarly, the Taliban, notwithstanding its current cash reserves, will need to heavily rely on both foreign aid and its currently frozen assets overseas if it hopes to continue running the country.<sup>41</sup>

Though sanctions have produced rhetoric from the Taliban that closely align with democratic principles such as freedom of the press, the preservation of women’s rights, and amnesty for nationals who helped foreign organizations, the actions of the Taliban are inconsistent with their promises.<sup>42</sup> The limited effectiveness of bank sanctions to change the fundamentalistic rule of the Taliban is concomitant with the humanitarian crisis many Afghans are experiencing as a result of sanctions.<sup>43</sup> Therefore, bank sanctions’ inability to effectuate policy goals and the unintended effect of

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<sup>36</sup> *The Executive Order*, *supra* note 3

<sup>37</sup> *Id.*

<sup>38</sup> Itai Zehorai, *The Richest Terror Organizations in the World*, FORBES, (Jan. 24, 2018, 3:54 PM) (listing the Taliban as the second richest terrorist group in the world); Edtimes, *Richest Terrorist Organisations of the World*, ZEES NEWS, (Aug. 31, 2021), <https://www.zee5.com/articles/richest-terrorist-organisations-of-the-world> (listing the Taliban as the fourth richest terrorist group in the world).

<sup>39</sup> Jeff Seldin, *Where are the Taliban Getting Their Money?*, VOA NEWS, (Aug. 13, 2021, 8:44 PM), [https://www.voanews.com/a/us-afghanistan-troop-withdrawal\\_where-are-taliban-getting-their-money/6209559.html](https://www.voanews.com/a/us-afghanistan-troop-withdrawal_where-are-taliban-getting-their-money/6209559.html).

<sup>40</sup> Priyanka Boghani, *“Brink of Collapse”: How Frozen Assets & Halted Foreign Aid are Impacting the Afghan People*, PBS, (Oct. 12, 2021), <https://www.pbs.org/wgbh/frontline/article/taliban-takeover-how-frozen-assets-foreign-aid-impacts-afghanistan/> (“43% of Afghanistan’s GDP came from foreign aid . . .”).

<sup>41</sup> Seldin, *supra* note 39.

<sup>42</sup> Chaudhuri, *supra* note 11.

<sup>43</sup> Maizland, *supra* note 31 (discussing broadly that the Taliban has been able to generate multiple streams of income despite strict economic sanctions, showing that sanctions are somewhat ineffective as a diplomacy tool).

hurting the innocent masses should concern policymakers considering the continued use of bank sanctions in the Afghan context. Each will be discussed in turn.

*1. American Bank Sanctions on Taliban-Controlled Afghanistan Have Produced Empty Promises*

American bank sanctions have only produced empty promises from the Taliban. Currently, the United States is using these bank sanctions as financial leverage, arguing that they can be used to pressure the Taliban to be more in line with Western interests.<sup>44</sup> The Taliban, knowing of its dire financial needs, has shown a desire to work with the West—a sentiment corroborated by recent international visits between the Taliban and Western allies.<sup>45</sup> The Islamic group has made sweeping promises designed to convince—or rather trick—the West into thinking the group will reform.<sup>46</sup> Notably, the Taliban promised: (1) the preservation of women’s right to an education, and (2) a more collaborative and

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<sup>44</sup> Andrea Shalal, *Explainer: What Leverage Do U.S., Allies Have Over Taliban in Afghanistan?*, REUTERS, (Sept. 2, 2021), <https://www.reuters.com/world/what-leverage-do-us-allies-have-over-taliban-afghanistan-2021-09-02/> (“This was echoed by U.S. officials and other Western leaders, who believe the Taliban can be pressured into abandoning their past violence and support for terrorism with carrot and stick measures given Afghanistan’s outsized dependence on imported energy, food, and foreign aid – and its shaky economy.”).

<sup>45</sup> Agence France-Presse, *Taliban Delegation Travel to Norway for Human Rights Talks*, THE GUARDIAN, (Jan. 21, 2022, 5:42 AM), <https://www.theguardian.com/world/2022/jan/21/taliban-delegation-travel-to-norway-for-human-rights-talks> (“‘[T]he Taliban will meet representatives of the Norwegian authorities and officials from a number of allies countries,’ for talks on the humanitarian situation in Afghanistan and human rights.”).

<sup>46</sup> Madiha Afzal et. al, *Around the Halls: The Taliban Retakes Afghanistan*, BROOKINGS INST. (Aug. 16, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/08/16/around-the-halls-the-taliban-retakes-afghanistan/> (“[The Taliban] will pay lip service to human rights but its promises should be taken at face value. In violating the terms and spirit of the Doha peace talks, it has proven to be a dishonest negotiator, exploiting these talks to establish a lull in conflict that allowed it to reinforce its supply lines, organize its fighters, and prepare the staging ground for its offensive.”).



inclusive government.<sup>47</sup> Sadly, these promises have been met with a diametrically opposed reality; many in and out of the country continue to worry that the twenty years of democratization seen in Afghanistan will, in due time, be rolled back.<sup>48</sup>

First, bank sanctions have prompted the Taliban to promise that they will preserve women's right to an education.<sup>49</sup> This is an attempt to appease Western countries and international financial institutions and convince them to lift their sanctions.<sup>50</sup> For example, a senior Taliban official has said that girls will be allowed to go back to school starting March 21, 2022.<sup>51</sup> Even before this official pronouncement, “[g]irls older than grade 7 have been allowed back to classrooms in state-run schools in about a dozen of the country’s 34 provinces.”<sup>52</sup>

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<sup>47</sup> Kathy Gannon, *Afghan Women Demand Rights as Taliban Seek Recognition*, AP NEWS, (Sept. 3, 2021) (highlighting that the Taliban promised the preservation of women's right to education and work as well as “an inclusive government”).

<sup>48</sup> *Afghanistan: Taliban Takeover Worsens Rights Crisis*, HUMAN RIGHTS WATCH, (Jan 13, 2022), <https://www.hrw.org/news/2022/01/13/afghanistan-taliban-takeover-worsens-rights-crisis#> (“After the Taliban took control of the country on August 15, 2021, they rolled back women’s rights advances and media freedom—the foremost achievements of the post-2001 reconstruction effort.”).

<sup>49</sup> Fatma Tanis & Hannah Bloch, *What the Taliban Really Want From the World, In Their Own Words*, NPR, (Dec. 15, 2021, 4:28 PM), <https://www.npr.org/2021/12/15/1064001076/taliban-afghanistan-girls-education-womens-rights> (“Afghanistan’s Taliban rulers believe that women ‘must have the right to education and to work . . .’”).

<sup>50</sup> Adela Suliman & Susannah George, *Taliban Tells Kabul’s Female City Government Employees Not to Come to Work*, WASH. POST, (Oct. 21, 2021, 1:56 PM), <https://www.washingtonpost.com/world/2021/10/21/taliban-women-work-afghanistan/> (“Afghanistan is in the midst of an economic crisis, and the cash-strapped Taliban is wary of once again governing as an international pariah. Some countries that have donated billions of dollars in development and humanitarian aid are calling on the group to demonstrate progress in the areas of women’s and civil rights before resuming the flow of aid money.”).

<sup>51</sup> Moshin Khan Momand, *Taliban Says All Afghan Girls Will Be Back in School by March*, AL-JAZEERA, (Jan. 17, 2022), <https://www.aljazeera.com/news/2022/1/17/taliban-says-will-open-all-schools-for-girls-across-country>.

<sup>52</sup> *Id.*

These small concessions, however, are backdropped by contradictory evidence. There have been many reports showing, despite the Taliban's rhetoric, that only boys were asked to return to their studies while girls stayed home.<sup>53</sup> Moreover, the few messages from the Taliban that offered hope that girls would be able to go back to school were on the condition that boys and girls would be segregated in the classroom.<sup>54</sup> These reports corroborate the wider claim that Afghan women have and continue to live in fear over their rights and lives since the Taliban takeover.<sup>55</sup> Therefore, bank sanctions, though successful in pressuring the Taliban to make democratic promises, have failed to actually change the fundamentalist rule of the militia group.<sup>56</sup>

Second, in order to persuade the West to lift sanctions, the Taliban promised to establish a more collaborative and "inclusive government."<sup>57</sup> "[T]he deputy head of the Taliban political office in Qatar told [news outlets that] senior positions in the new administration would be filled by merit."<sup>58</sup> The hopeful message implied that women would have an equal chance to fill government roles in the new regime. Additionally, the Taliban promised to be open to dialogue regarding counterterrorism efforts and international security with the West.<sup>59</sup> The Taliban's pledge asserted that the

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<sup>53</sup> Victor J. Blue & David Zucchini, *A Harsh New Reality for Afghan Women and Girls in Taliban-Run Schools*, N.Y. Times, (Sept. 20, 2021) ("When schools reopened . . . , only male students were told to report for their studies.").

<sup>54</sup> Momand, *supra* note 51.

<sup>55</sup> Allia Bukhari, *Taliban's Return Has Afghan Women Living in Fear*, THE DIPLOMAT, (Aug. 17, 2021), <https://thediplomat.com/2021/08/talibans-return-has-afghan-women-living-in-fear/> (discussing broadly how women have a new sense of fear living under the Taliban because of the group's view and treatment of women).

<sup>56</sup> Mohsin, *supra* note 9 ("Many are deeply skeptical that the Taliban charm offensive represents a shift in its fundamentalist rule.").

<sup>57</sup> Gannon, *supra* note 47.

<sup>58</sup> Jon Henley, *Women Can Continue Working in Afghan Government, Say Taliban*, THE GUARDIAN, (Sept. 1, 2021, 11:21 AM), <https://www.theguardian.com/world/2021/sep/01/women-can-continue-working-in-afghan-government-say-taliban>.

<sup>59</sup> Idrees Ali et al., *After Taliban Takeover, Concerns Mount Over U.S. Counterterrorism Ability*, REUTERS, (Aug. 25, 2021, 7:35 AM), <https://www.reuters.com/world/asia-pacific/after-taliban-takeover-concerns-mount-over-us-counterterrorism-ability-2021-08-25/> (highlighting that the

regime was willing to interact as an international actor with other sovereign nations on key issues, which would weigh against the continuation of sanctions.<sup>60</sup>

Again, the Taliban proved that their promise was hollow. Scores of female government employees, journalists, and others have not returned to their respective positions, with no promise of a return date.<sup>61</sup> The all-male and mostly Pashtun cabinet currently in power bespeaks of a regime closer to its fundamentalist heritage rather than to its current, inclusive rhetoric.<sup>62</sup> Even more so, the Taliban has recently declined to cooperate with set preconditions to lift Western sanctions.<sup>63</sup>

## 2. *The Effects of Bank Sanctions Have Exacerbated the Afghan Humanitarian Crisis*

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Taliban “vow[ed] to uphold their commitment to prevent al Qaeda from plotting international attacks from Afghanistan . . .”).

<sup>60</sup> Reuters, *Taliban Says Failure to Recognize Their Government Could Have Global Effects*, REUTERS, (Oct. 30, 2021, 5:18 PM), <https://www.reuters.com/world/asia-pacific/taliban-says-failure-recognise-their-government-could-have-global-effects-2021-10-30/> (conditioning the unfreezing of Afghan government reserves by the United States on recognizing the Taliban as the rightful party in power over Afghanistan).

<sup>61</sup> *Afghanistan: Women Call on the International Community to Support Women’s Rights Amid Ongoing Taliban Suppression*, AMNESTY, (Nov. 25, 2021) <https://www.amnesty.org/en/latest/news/2021/11/afghanistan-women-call-on-the-international-community-to-support-womens-rights-amid-ongoing-taliban-suppression/> (“Since taking control of Kabul on 15 August 2021, the Taliban have imposed severe restrictions on women and girls. Apart from healthcare workers and a few other isolated exemptions, women have been told they cannot return to work or travel in public without being accompanied by a Mahram (male guardian).”).

<sup>62</sup> Kathy Gannon, *Taliban Form All-Male Afghan Government of Old Guard Members*, AP NEWS, (Sept. 7, 2021), <https://apnews.com/article/middle-east-pakistan-afghanistan-arrests-islamabad-d50b1b490d27d32eb20cc11b77c12c87> (highlighting that the new Taliban-controlled Afghan government is all-male and composed mostly of ethnic Pashtuns).

<sup>63</sup> Jessica Donati & Margherita Stancati, *Taliban Halts Further Evacuation, Rejecting U.S. Precondition for Lifting Sanctions*, THE WALL ST. J., (Feb. 28, 2022, 2:46 PM), <https://www.wsj.com/articles/taliban-halts-further-evacuations-rejecting-u-s-precondition-for-lifting-sanctions-11646077567> (“The Taliban has halted further evacuations from the country, rejecting U.S. precondition for lifting sanctions.”).

The United States' bank sanctions have worsened an ongoing "humanitarian crisis" in Afghanistan.<sup>64</sup> More than five months after the fall of Kabul, the Afghan economy is on the brink of collapse, leaving millions of people at risk of extreme poverty and starvation.<sup>65</sup> "One major culprit: the [United States' bank sanctions]."<sup>66</sup> Afghanistan, prior to the Taliban takeover, was one of the poorest countries in the world with 47.3% living below the poverty line.<sup>67</sup> American and international bank sanctions, which have further isolated the Afghan people from crucial aid, have exacerbated this crisis.<sup>68</sup> Therefore, bank sanctions have produced inadvertent effects that disproportionately and negatively affect innocent Afghans.

(a) Bank Sanctions Limit International Aid and Remittance from Entering Afghanistan

Bank sanctions have severely limited the ability of international aid efforts to reach Afghan people in need.<sup>69</sup> The lack of clarity of these sanctions has caused confusion as to whether old sanctions instituted by former President Bush apply to the current regime or to only those involved when the sanctions were originally created.<sup>70</sup> For fear of violating these sanctions, and thereby exposing themselves to sanctions by the United States, financial institutions have stepped away from providing financial access and resources to

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<sup>64</sup> Preble & Early, *supra* note 1.

<sup>65</sup> See Boghani, *supra* note 40 ("Ninety percent of Afghans lived on an income of less than \$2 a day, and an estimated 18.4 million people – nearly half the country's population – were in need of humanitarian aid.").

<sup>66</sup> Ionaes, *supra* note 29.

<sup>67</sup> POVERTY DATA: AFGHANISTAN, ASIAN DEVELOPMENT BANK (2022).

<sup>68</sup> Boghani, *supra* note 40 ("And then came [sanctions], a move intended to halt the flow of money to the Taliban that risk making collateral victims of the country's people ...").

<sup>69</sup> Jacob Kurtzer, *U.S. Sanctions Squeeze Humanitarian Assistance in Afghanistan*, CSIS, (Sept. 29, 2021) ("Limited financial access stemming from foreign assets, uncertainty over the scope of licenses granted by the Department of the Treasury, and concerns for humanitarian engagement with the Taliban are some of the [consequences of US sanctions].").

<sup>70</sup> Akmal Dawi, *Explaining US Sanctions Against Taliban*, VOA NEWS, (Feb. 5, 2022, 2:47 AM), <https://www.voanews.com/a/ready-explaining-us-sanctions-against-taliban-/6427771.html> (highlighting that former President Bush designated Taliban officials as SDGTs).

Afghan people.<sup>71</sup> Consequently, the Central Bank of Afghanistan and the country's internal banking system have been incapacitated due to low local and American dollar reserves caused by sanctions.<sup>72</sup> Similarly, overseas family members trying to send remittance payments back to Afghanistan have come across hurdles due to sanctions.<sup>73</sup> For similar reasons, international financial institutions have been hesitant to allow individuals to send money to Afghanistan in fear of violating U.S. sanctions.<sup>74</sup> In response, the Biden Administration "told financial institutions that they may process personal remittances to Afghanistan."<sup>75</sup> However, even with the blessing of the United States, financial institutions find it more of a hassle to resume transactions that could even *potentially* violate sanctions.<sup>76</sup> Many banks find it easier to play it safe—forego the reputational and compliance risk of working in Afghanistan despite the humanitarian crisis ravaging the country.<sup>77</sup> Therefore, bank sanctions in Afghanistan have negatively affected the poor in Afghanistan for the actions of the Taliban.<sup>78</sup>

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<sup>71</sup> Kurtzer, *supra* note 69 ("As the international community assesses the legitimacy of assurances by the Taliban permitting humanitarian access, a lack of clarity regarding sanctions by the United States continues to challenge the humanitarian response effort.").

<sup>72</sup> CONG. RSCH. SERV., IF12052, AFGHANISTAN CENTRAL BANK RESERVES 1-2 (2022) (discussing broadly on the economic impact of sanctions on the Afghan Central Bank's ability to function).

<sup>73</sup> Andrea Shalal, *U.S. Allows Personal Remittances to Flow to Afghanistan*, REUTERS, (Sept. 2, 2021), <https://www.reuters.com/world/us/us-treasury-allows-personal-remittances-flow-afghanistan-2021-09-02/> ("Western Union[, . . . , and MoneyGram both suspended [remittance payments] after the Taliban takeover [due to sanctions].").

<sup>74</sup> Kurtzer, *supra* note 69 (statement of Alex Zerden, Adjunct Senior Fellow) ("Now international banks are hesitant to move money into Afghanistan because of sanctions compliance concerns.").

<sup>75</sup> Shalal, *supra* note 74.

<sup>76</sup> *Id.* (discussing how the United States overly broad sanctions give financial institutions pause to resume financial services in Afghanistan over potential compliance issues).

<sup>77</sup> *Id.* ("Concerns over reputational harm, potentially invasive audits by regulators, and the rare—but possible—chance of civil and criminal penalties should a transaction direly aid the Taliban are pushing banks to avoid these risks instead of managing them.").

<sup>78</sup> *Id.* (discussing the negative impacts of sanctions on Afghan people).

### C. Conclusion

In summary, bank sanctions have shown that their unintended consequences should give policymakers pause when considering whether to employ them. Originally created as an alternative to war in forwarding international diplomacy, bank sanctions do more harm than good in certain contexts. In Afghanistan, for example, though bank sanctions have prompted the Taliban to promise democratic concessions where their fulfillment would lift the sanctions, the Taliban has continued to deprive citizens of their rights and liberties to assert control. In the same breath, bank sanctions have caused a humanitarian crisis in the country disproportionately affecting the poor and innocent. Overall, the United States should continue to look for innovative, and more tailored diplomatic tools to replace bank sanctions.

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