As described by the United Nations, the world faces a global health crisis unlike any in its 75-year history— one that is spreading human suffering, crippling the global economy and upending people’s lives. The COVID-19 outbreak was declared a Public Health Emergency of International Concern on 30 January 2020. This has resulted in unprecedented demand for medicines, vaccines, diagnostics plus wider humanitarian and medical support, all related to COVID-19.

Virtually no country is left untouched. Response strategies are particularly acute in fragile, conflict-ridden jurisdictions, subject to sanctions in which socio-economic exclusion, poor infrastructure, large numbers of displaced persons living in over-crowded camps can add a further level of complexity.

The COVID-19 pandemic is certainly fueling a debate on the extent to which sanctions may constrain emergency responses. In recent weeks we have seen a joint letter sent by eight sanctioned countries to the UN Secretary General António Guterres calling for “complete and immediate” sanctions lifting. Beyond the actual lifting of sanctions, calls are also focused around the need for ‘sanctions relief’, from the UN High Commissioner for Human Rights M. Bachelet and Hilal Elver the UN Special Rapporteur on the Right to Food. In response, the U.S. and EU have emphasized that their sanctions have a range of humanitarian and medical exceptions.

As part of a Declaration appealing for an immediate global ceasefire of armed conflict, Josep Borrell, the EU’s High Representative for Foreign Affairs, has emphasised that EU and UN sanctions regimes provide for humanitarian exceptions, and that sanctions “should not impede the delivery of essential equipment and supplies necessary to fight the coronavirus and limit its spread worldwide”. The Declaration further stated that the EU and its Member States will ensure that these sanctions do not obstruct the global fight against COVID-19, while stressing that they continue to play an indispensable role in countering breaches of international law, proliferation, staunching the flow of arms into war zones, combatting human rights abuses, and targeting spoilers of peace processes.
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No matter where you sit in this debate, it is clear that the international community will rightly need to consider all necessary steps to respond to COVID-19. This will include how best to support fragile and sanctioned jurisdictions. Whether to impose, lift, or offer sanctions relief, is absolutely a matter for governments. Needless to say, what course of action is appropriate will be subject to many different opinions and potential disagreements. However, in shaping these opinions we should not ignore the experiences of how sanctions policies are actually implemented.

Over recent years, I have had the honour of acting in an independent expert capacity to a UN/Swiss Government (and latterly European Commission) supported programme on the intersection between Syrian sanctions compliance and humanitarian activity. This has involved authoring various technical analysis reports and acting as the lead expert to a Syria compliance dialogue forum of governments, humanitarian actors and international banks. Our aim is to produce risk management guidelines for the safe and transparent movement of legitimate humanitarian transactions into and within Syria.

The first report of this project, ‘Humanitarian Impact of Syria-Related Unilateral Restrictive Measures’, was leaked in 2016 and resulted in a major TV station (within a country opposed to U.S. sanctions) headlining that sanctions were killing civilians. This was not what the report said; it is, however, illustrative of how political the issue can quickly become.

Humanitarian Exceptions within Sanction Frameworks – the Policy Intent

Now, more than ever, ensuring an informed, neutral dialogue on the extent to which the compliance community can take advantage of humanitarian exemptions is critical. This has been a consistent theme through our ACAMS AFC Under the Microscope - COVID-19 interview series.

From the outset, it should be understood that the foreign policy intent of UN, U.S. and EU sanctions do not usually seek to interrupt, for example, the export of medicines, foodstuffs, agriculture or other humanitarian activity to countries against which financial sanctions may be in effect. To ensure this, the U.S. and EU frameworks generally provide certain exceptions under their respective financial sanctions and export control frameworks; for example, the export of listed items, humanitarian goods, medicines etc., or engagement with certain designated actors.

In the U.S. context, 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. Whereas a specific licence will be granted upon a successful application to Office of Foreign Assets Control (OFAC) issued to a particular person or entity for a
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specific activity.

For the EU framework, there are two broad categories, 1) exemptions that do not require authorisation, and 2) derogations that are subject to authorisation by the EU member state’s competent authority. It is also important to note that humanitarian related goods under both the U.S. and EU framework may fall out of the scope of any applicable sanction’s 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, varies considerably across those countries imposing sanctions and across the different sanction’s regimes. Countries imposing sanctions will often issue public statements of their desire to ensure a continued flow of humanitarian goods and related services to the civilian population.

Despite such policy reassurances, those involved in delivering humanitarian projects and emergency medical responses consistently report that the overlapping nature of prohibitions, licensing framework, export control requirements and associated risk management expectations can be complex to understand. For highly sanctioned jurisdictions, there will often be costly legal analysis which may act as an impediment in the smooth and rapid delivery of humanitarian aid.

In parallel, sanctioned jurisdictions often present a wider array of risks that can compound the situation. The nature of these risks will vary from country to country. Depending on the individual sanction’s regime, associated factors may include complex terrorist dimensions (i.e. North West of Syria), weapons of mass destruction (WMD) concerns, ongoing conflict, lack of humanitarian access and divergence of humanitarian goods, concerns around governance, transparency and human rights. In short, navigating the rules of sanctions is often not the only consideration when dealing with such countries.

Those imposing sanctions rarely intend to prevent legitimate humanitarian activity. However, managing this policy intent when combined with the complex nature of multilayered sanctions for regimes, including but not limited to, Democratic People’s Republic of Korea (DPRK), Cuba, Syria, Iran and Venezuela, is undoubtedly complex and can have unintended consequences for the delivery of humanitarian operations.
Navigating the Complexity of Humanitarian Licences

How to structure emergency responses, humanitarian activity, goods movement and the processing of related funds into any highly sanctioned jurisdiction without violating sanctions or associated due diligence regulations presents a very real dilemma for both international banks, exporters, transporters and those delivering humanitarian aid.

Even in cases where ‘no’ licence is required, the fear that goods or payments could be diverted to a designated individual or entity creates a sense of nervousness. The concern is that somehow a technical sanctions violation could occur. For this reason, humanitarian actors, financial institutions and exporters will go into great detail to determine the risks posed by a particular activity.

Having worked across a range of humanitarian crises, there appear some standout challenges and limitations within how humanitarian permissions, including licences, are applied across the EU and U.S. sanctions architecture. Although each regime is unique, some general examples include:

**The frameworks, at times, do not always cover the full range of necessary activity and/or are applied in very different ways across different sanctions programmes.** For instance, for some sanctioned jurisdictions there are long lists of items used for ‘basic human needs’ that can be exported without licence, but the same items for a different sanctioned jurisdiction require a licence.

**Different variations between how UN bodies and NGOs are treated.** Differences are apparent between export control regulations and financial sanctions with many variations in how they are applied to UN bodies, versus NGO’s. Certain general licences in sanctions regulations cover the activities of NGOs but may not extend to private contractors engaged by the NGO (for instance, an NGO utilising a private contractor to install water pump and sanitisation facilities).

**Scope of upfront export control permissions.** In some scenarios, we see export control regulations not sufficiently granting the UN and other humanitarian actors the full range of required upfront permissions. Humanitarian support often entails much more than delivery of items covered by export licence exceptions, (i.e., food and certain medicines). For example, items that could be necessary for the conduct of official humanitarian business may not be subject to upfront permissions and can 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.
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Making economic resources available, directly or indirectly, to or for the benefit of a designated person. For humanitarian programmes operating in highly sanctioned jurisdictions, the concept of making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person can be one of the most challenging aspects to manage. Common scenarios often encountered that can trigger a violation (unless a permission has been given) often include activities such as: renting a building for humanitarian operations, but the owner is either directly/indirectly sanctioned; purchasing equipment required for humanitarian purposes from a non-listed company which is ultimately owned by an individual or entity on the sanctions list; needing to have access to local sanctioned infrastructure i.e. telephone networks; movement of goods through sanctioned ports which in some instances may trigger relevant import/tariffs; payment of ‘un-official’ taxes and so forth.

U.S. extraterritorial effect. There are additionally some important features of U.S. sanctions and export control regimes to bear in mind. Unlike UN and EU sanctions, U.S. sanctions are often characterised as “extra-territorial” 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).

The above challenges and limitations are not exhaustive, and not unique to the COVID-19 response. Instead, they are illustrative of the level of complexity involved in managing sanctions compliance across the breadth of humanitarian operations in sanctioned jurisdictions.

There is nonetheless a standout element within the COVID-19 situation that will require immediate attention. An excellent client alert ‘U.S. Sanctions and Iran’s Coronavirus Challenge’ by John Smith (former OFAC director), and his colleagues at Morrison and Foerster, 31 March 2020, exemplify the practical aspects of what medical equipment is permitted under U.S. sanctions to be exported to Iran and attached conditions. Of note is that not all the COVID-19 medical equipment and medical devices will qualify under the current Iran Medical General Licence. We expect to see similar challenges in other highly sanctioned jurisdictions, including Syria.

Compliance with Sanctions whilst Supporting the Global COVID-19 Pandemic Response

Building the necessary conditions for ensuring an effective pandemic response to COVID-19 for sanctioned jurisdictions will undoubtedly require a more defined position on certain implementation matters. Assuming that the debate around sanctions-lifting/sanctions-easing rumbles on,
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there are improvements that could be made within the current sanction’s framework and licensing regime. These include:

**Ensuring licensing frameworks support the rapid movement of medical and humanitarian equipment:** The UN, U.S. and EU governments could collaborate with the aim of ensuring a streamlined list of required medicines, pharmaceutical products, essential medical and humanitarian equipment that will be required for the COVID-19 response. US /EU licensing and export control frameworks could be updated accordingly to enable the movement of these goods by way of general licence or specific exception. Such permissions could further set out what interaction is permitted with government designees.

**Ensuring greater clarity on allowable activity so that humanitarian actors, NGOs and others can implement the full range of required COVID-19 support services:** The U.S./EU governments could seek to provide greater uniform definitions and clarity on allowable trade and authorizations for humanitarian actors, UN bodies, NGOs and relevant contractors to enable an expansion of relief efforts within sanctioned jurisdictions. For instance, this could include the building of hospitals, sourcing of relevant building materials, engagement with designated actors (i.e. government health authorities) or access to key infrastructure resources, including sanctioned phone networks.

**Ensuring the availability of payment channels:** Accepting that, for the most complex of sanctioned jurisdictions, the necessary payment routings are unlikely to materialize quickly, the U.S./EU governments, together with the UN, banks and NGOs could collaborate to identify appropriate and available payment channels for the movement of funds related to the COVID-19 pandemic response. This may include greater utilization of special purpose vehicles, issuance of updated general licences, FAQs or even basic statements setting out key risk-management principals associated with the movement of COVID-19 funds.

**Establishment of expedited licence review systems to support the COVID-19 response:** Mirroring past practices with respect to previous emergencies, the U.S. government and EU could look to establish an “expedited review” licensing procedure to support the COVID-19 response. Such a measure recognizes that some activities will still require authorisation.

**Importance of Messaging:** The U.S. and EU governments, together with banking trade associations, compliance bodies and other stakeholders, could take steps to alleviate the ‘chilling effect’ in order to support the movement of goods, funds and others required COVID-19 responses. Clear messaging on what is permitted will be absolutely critical.
Striking the correct balance between the delivery of critical COVID-19 humanitarian responses, whilst also ensuring necessary safeguards are in place to protect against unwanted diversion of medical equipment, fraud and remaining compliance risks, including the application of unilateral sanctions, will necessitate some realignment. Compliance, legal and regulatory frameworks will undoubtedly have a role in ensuring test kits, ventilators, masks and other essential equipment are transferred promptly. It is also evident that the response within sanctioned jurisdictions may require steps beyond pure ‘humanitarian’ activity and could expand into ‘humanitarian plus’ type activities. For instance, in Syria ensuring medical facilities are connected to the electrical grid may involve some element of infrastructure repair.

More than ever, working together to protect the most vulnerable will be key in addressing the needs arising from the pandemic. Governments, humanitarian actors, banks, exporters and regulators will clearly need to ensure open lines of communication.

Part 2 of this series will take a deeper look at permitted activity and associated risk management tools.

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