Central Bank Reserves Management: Lessons Learned from Afghanistan’s Central Bank

Ajmal Ahmady
Harvard Kennedy School

June 2023

M-RCBG Associate Working Paper Series | No. 208

The views expressed in the M-RCBG Associate Working Paper Series are those of the author(s) and do not necessarily reflect those of the Mossavar-Rahmani Center for Business & Government or of Harvard University. The papers in this series have not undergone formal review and approval; they are presented to elicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s). Papers may be downloaded for personal use only.
Central Bank Reserves Management

Lessons Learned from Afghanistan’s Central Bank

Ajmal Ahmady
M-RCBG Senior Fellow
Harvard Kennedy School
June 2023
Central Bank Reserves Management
Lessons Learned from Afghanistan’s Central Bank

Abstract
This paper reviews the international reserves management strategy of Afghanistan’s central bank (DAB). We also review the sanctions and legal issues pertaining to DAB’s reserves upon the fall of the previous government. While international reserves of other countries have previously been frozen, this is one of the few global cases where international funds were confiscated. We use this as a case study, and conclude with recommendations for (1) reserves management in developing economies, and (2) a framework for the use of confiscated funds.

INTRODUCTION
Afghanistan is currently facing an economic and humanitarian crisis. The country had high levels of poverty, even before the Taliban takeover on August 15, 2021. The country now has almost universal poverty levels, with 24.4 million people projected to be in humanitarian need. The country context, with existing sanctions on the Taliban regime, makes the provision of economic and humanitarian assistance challenging.

During the past decade in Afghanistan, I worked in senior economic positions in the Government of Afghanistan – as Economic Advisor to the President, Minister of Industry and Commerce, and Central Bank Governor. I returned to the country to serve in these positions after more than a decade working in economic development and as an emerging markets investor.

As Central Bank Governor of Afghanistan, I was able to keep inflation at close to 2%, improve the reserves management function, and introduce a modern payments system, among other achievements. DAB itself was by law an independent institution with close to 1,500 staff. The organization was overseen by a board of directors and managed by a management committee (see full organizational structure in annex), and had a single mandate of price stability. Leading in Afghanistan had its own unique challenges - including dealing with significant amounts of misinformation.

1 UNDP (January 2022) “United Nations Transitional Engagement Framework (TEF) for Afghanistan”
I hope to write about these central bank achievements in a series of papers to provide accurate information of what happened and to draw lessons that could be applied to Afghanistan now and to similar developing countries. This third paper will review the performance of international reserves policy at the central bank. I review the composition of assets, changes in investment strategy that reduced risk to central bank assets, discuss legal issues related to the freezing and confiscation of reserve assets, and provide recommendations for similar cases that may arise.

INTERNATIONAL RESERVES: DAB MANAGEMENT

In June 2020, Afghanistan had approximately $9.1 billion of international reserve assets. This amount represented close to 50% of GDP and more than 17 months import coverage – both amongst the highest levels in the world. In another paper (“Monetary Policy at DAB”), we delved into these reserve adequacy measures. For the purposes of this paper, we review the assets held in greater detail.

In terms of composition, almost $4.0 billion of this amount were held as bank deposits in international banks, another approximately $3.0 billion were with external managers such as the Federal Reserve Bank of New York (FRBNY), the Bank for International Settlements (BIS), or the World Bank RAMP program, and slightly more than $1.0 billion held as monetary gold at the FRBNY or BIS. Smaller amounts were held in our domestic vaults, as current accounts, or as IMF Special Drawing Rights (SDRs).

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount ($bn)</th>
<th>%</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Deposits</td>
<td>3.8</td>
<td>41.8</td>
<td>Held at global and regional commercial banks</td>
</tr>
<tr>
<td>External Managers</td>
<td>2.9</td>
<td>31.9</td>
<td>Federal Reserve, BIS, WB RAMP</td>
</tr>
<tr>
<td>Gold</td>
<td>1.2</td>
<td>13.1</td>
<td>Monetary gold held at Federal Reserve &amp; BIS</td>
</tr>
<tr>
<td>DAB Vaults</td>
<td>0.8</td>
<td>8.8</td>
<td>Held at center and provinces</td>
</tr>
<tr>
<td>Current Accounts</td>
<td>0.4</td>
<td>4.4</td>
<td>Held at global and regional commercial banks</td>
</tr>
<tr>
<td>Total</td>
<td>9.1</td>
<td>100.0</td>
<td></td>
</tr>
</tbody>
</table>

Note: DAB data as of June 2020

Upon taking management at DAB, and as someone who spent close to a decade at large fixed income investment firms, I immediately saw the high-risk profile with DAB’s existing portfolio. Namely, the existing portfolio exposed DAB to high levels of unnecessary credit and sovereign risk due to large amounts placed as bank deposits ($3.8 billion, or almost 42% of the portfolio). Although most deposits were placed with highly-rated banks, relatively large amounts were placed with lower rated commercial banks, some at the lowest level of investment grade debt. This created significant credit risk. For example, there were rumors were that some regional central banks had placed large deposits at Lebanese banks, the accounts of which were subsequently frozen when Lebanon defaulted on their debt and limited deposit withdrawals beginning in 2019.
As a result, I began a process to implement modern portfolio construction principles for Afghanistan’s international reserves. This included three main steps. First, I first mandated that strategic investment documents such as an Investment Policy Statement (IPS) and Strategic Asset Allocation (SAA) be created. I mandated the market operations department to develop an IPS that would determine the long-term investment priorities of the central bank, which was completed in November 2020. With this broad framework in place, I requested that they also produce a SAA which would determine DAB’s investment plans over the next year, which was also completed around the same time in November 2020.

Second, with this framework in place, I began an education process, and taught my staff the tradeoffs implicit in DAB’s portfolio at the time. At the outset, the DAB market operations department (MOD) argued that bank deposits paid higher interest rates than risk-free instruments such as U.S. treasuries. While this was in fact true, the MOD team did not appropriately calculate risk-adjusted returns by adjusting the bank deposit return by risk and duration. For example, they did not consider that holding $500 million in a BBB-rated bank that paid an 50bps above treasuries was not an adequate pricing of such credit risk.

Third, modern portfolio theory, which most central bank implement, stipulates that reserves should be held in liquid assets with minimal credit risk. Globally, U.S. debt instruments, such as U.S. T-bills and treasuries comprise the majority of assets for most central banks. In line with such international best practices, I began to shift DAB’s international reserves from bank deposits to U.S. Treasury holdings.

We therefore agreed that the primary goal should be to reduce all bank deposit holdings to close to zero. And over the next year, DAB was indeed able to reduce such holdings, by a total of $2.4 billion – reducing DAB’s exposure to credit risk from 42% to 15% of DAB’s portfolio. This reallocation occurred during the second half of 2020 and during most of 2021.

### DAB PORTFOLIO SUMMARY: CHANGES DURING 2021 & 2022

<table>
<thead>
<tr>
<th>Type</th>
<th>Amounts ($bn)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>June 2020</td>
<td>July 2021</td>
</tr>
<tr>
<td>U.S. Treasuries</td>
<td>--</td>
<td>3.2</td>
</tr>
<tr>
<td>External Managers</td>
<td>2.9</td>
<td>2.8</td>
</tr>
<tr>
<td>Bank Deposits</td>
<td>3.8</td>
<td>1.4</td>
</tr>
<tr>
<td>Gold</td>
<td>1.2</td>
<td>1.3</td>
</tr>
<tr>
<td>DAB Vaults</td>
<td>0.8</td>
<td>0.4</td>
</tr>
<tr>
<td>Current Accounts</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>9.1</td>
<td>9.5</td>
</tr>
</tbody>
</table>

Note: DAB data as of July 12, 2021. Amounts differ due to rounding

For the remaining $1.4 billion held as bank deposits, a portion was held in dollars (approximately $155 million) and the remainder were in euros or gilts ($1.25 billion). For the dollar deposits, DAB planned to continue to invest these in treasuries as the time deposits matured. For the euros/gilt deposits, we began the process of opening DAB custody account at
the Bank of England and Bundesbank, but had not yet completed the process by the time of the Taliban takeover. We therefore retained the bank deposits to stick to our asset allocation strategy, which included target currency allocations.

Next, and because the DAB market operations staff had no previous experience with duration management, DAB shifted most of the amounts to short-duration (i.e. one to three month) T-bills. Over time, this treasury portfolio increased to $3.2 billion. The change in the composition of DAB’s international reserves can be seen in the table below.

With this new portfolio in place, and as the market operations department began to become more comfortable with managing U.S. Treasury holdings, DAB began to increase the average duration of the portfolio. A fixed income portfolio’s duration is a measure of the interest rate sensitivity of the portfolio. DAB set targets to increase the average portfolio duration from only two months to approximately two years over a period of two years.

At the conclusion of this entire process, DAB was able to significantly reduce the credit risk of DAB’s international reserves holdings significantly and align our reserves management practices with international best practice.

In addition to this large shift from bank deposits to U.S. Treasuries, DAB sought to formalize the external managers review process. Up to this point, DAB’s external fund managers included the WB RAMP program and BIS programs. I asked our market operations team to review the returns and costs associated with each program. I then requested a proposal from Citibank to manage some of our external assets, which they provided just prior to the Taliban takeover (but which was never acted upon).

By August 2021, the amount of DAB assets held at the FRBNY amounted to almost exactly $7.0 billion, including $3.2 billion in treasuries and T-bills, $2.4 billion in RAMP holdings, and $1.3 billion in gold holdings. When the Taliban took over the country on August 15, 2021, all DAB international reserves were then frozen by the U.S. government. These includes reserves held both in the United States (the $7.0 billion), as well as held in other countries (approximately $2.5 billion). Please also note that total amount was set to increase further, as DAB was set to receive close to $400 million in additional funds from a SDR allocation that was to be disbursed on August 24, 2021 (but which never credited due to the Taliban takeover).

**INTERNATIONAL RESERVES: ASSESSMENT OF SOLVENCY & LIQUIDITY**

In this section, I provide a brief assessment regarding the adequacy and liquidity of DAB’s international reserves. Arslan and Cantu of the BIS provide a review of common reserve adequacy measures, including import coverage, reserves to short-term external debt, reserves to broad money, Wijnholds & Kapteyn indicator, ARA metric, Jeanne & Ranciere, and other measures.²

² [https://www.bis.org/publ/bppdf/bispap104a_rh.pdf](https://www.bis.org/publ/bppdf/bispap104a_rh.pdf)
Given that Afghanistan had low levels of external debt, we utilize the two most common metrics: (1) international reserves as a percentage of GDP, and (2) the import coverage ratio. As a percentage of GDP, Afghanistan’s $9.5 billion represents 47% of GDP. This is one of the highest rates in the world. For comparison purposes, I compare Afghanistan’s reserves as a percentage of GDP to some regional and other countries.

**DAB RESERVES: ADEQUACY MEASURES**

<table>
<thead>
<tr>
<th>Country</th>
<th>Reserve Adequacy Measure</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>50.0</td>
<td>Amongst highest levels in world</td>
</tr>
<tr>
<td>Russia</td>
<td>26.3</td>
<td>High level due to oil exports</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>18.5</td>
<td>--</td>
</tr>
<tr>
<td>Turkey</td>
<td>7.0</td>
<td>--</td>
</tr>
<tr>
<td>Pakistan</td>
<td>5.0</td>
<td>Relatively low coverage levels</td>
</tr>
<tr>
<td>India</td>
<td>4.5</td>
<td>3</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>4.4</td>
<td>7</td>
</tr>
</tbody>
</table>

**DAB INTERNATIONAL RESERVES (2012-2021) RESERVES AS % OF GDP (2012-2021)**

**IMPOR COVERAGE RATIO (MONTHS) RESERVES AS % OF GDP ACROSS COUNTRIES**

Source: DAB data (as of 8/2/21), CEIC and World Bank data as of June 2022

---

3 Or even close $10.0 billion including the expected IMF SDR allocation

4 Based on a 2020 GDP of approximately $20 billion
INTERNATIONAL RESERVES: POST AUGUST 2021 LEGAL DYNAMICS

Next, let us review the legal issues pertaining to DAB’s reserves upon the overthrow of the Islamic Republic. After August 15, 2021, a series of events commenced that would affect the status of Afghanistan’s approximately $9.5 billion of international reserves. In this section, I will describe these legal events pertaining to these reserves and their implications for Afghanistan and perhaps other countries.

This part of the story begins in 2011. At that time, family members of a subset of victims of the September 11th attacks in the United States (“the Havlish plaintiffs”) filed a claim against a number of defendants, including the Taliban Government. The claims were brought by forty-seven decedents (“Estate Plaintiffs”) as well as individually on behalf of 111 family members of fifty-nine victims of the attacks (“Individual Plaintiffs”).

The plaintiffs sued according the Foreign Sovereign Immunities Act (FSIA) section 1605A (“Terrorism exception to the jurisdictional immunity of a foreign state”), which created a terrorism exception to sovereign immunity. FSIA was passed in 1976 to legislate the principle of sovereign immunity. Only later in 2008 was FSIA section 1605A enacted to deal with terrorism issues. It is important to note that the section also applied retroactively against foreign states that had been designated as state sponsors of terrorism by the time the suits were filed.

Based on this legal basis, on December 22, 2011, Judge Maas of the United States of the Southern District of New York decided in favor of the plaintiffs. The decision was a default judgement against a broad range of defendants, including the Taliban and Al-Qaeda. Then on October 3, 2012, U.S. District Judge Daniels provided the award judgment for a total of $7.0 billion, consisting of $6.0 billion in damages and pre-judgement interest of almost $1.0 billion.

The details of default judgment are provided in the table below. However, the default judgment was largely symbolic. Not many people expected these sums to be collected, and most lawyers on the case worked pro-bono and agreed to receive payment only if the award was eventually collected.

HAVLISH FINANCIAL JUDGMENT SUMMARY

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount ($M)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punitive damages</td>
<td>4,686</td>
<td>Based on compensatory damages &amp; 3.44 multiplier</td>
</tr>
<tr>
<td>Prejudgment interest</td>
<td>968</td>
<td>Held at global and regional commercial banks</td>
</tr>
<tr>
<td>Solatium</td>
<td>874</td>
<td>Based on relationship to victim &amp; Heiser framework</td>
</tr>
<tr>
<td>Economic damages</td>
<td>394</td>
<td>Based on calculations of future lifetime earnings</td>
</tr>
<tr>
<td>Pain &amp; suffering</td>
<td>94</td>
<td>$2 million per decedent based on prior FSIA cases</td>
</tr>
<tr>
<td>Total</td>
<td>7,000</td>
<td></td>
</tr>
</tbody>
</table>

Source: Daniels 2012

---

5 Daniels (2011)
6 Mass (2011)
7 Daniels (2012)
However, as it turned out, almost exactly ten years later in 2021 upon the fall of the Islamic Republic of Afghanistan, the Havlish plaintiffs filed a Writ of Execution to attach $7.0 billion of DAB’s reserves held at the Federal Reserve Bank of New York to their existing judgment.\(^8\)

The Writ of Execution stated that “On or about August 19, 2021, the Taliban declared itself the government of Afghanistan and changed the name of the country to the Islamic Emirate of Afghanistan, which is also the name of the Taliban... The Taliban claims ownership of, and control over, all property, property interests, and all rights belonging to the former government including all assets belonging to the central bank of Afghanistan, Da Afghanistan Bank. As a result, the judgment entered against the Taliban can now be enforced against any and all assets, including any assets held at the Federal Reserve Bank in the name, for the benefit, or on the account Da Afghanistan Bank, the central bank of Afghanistan.”

As soon as this Writ of Execution for the Havlish plaintiffs was filed, a number of other September 11th victims also filed suit. Meanwhile, the Taliban and their backers advocated for the release of these international reserves back to DAB. The economic situation in Afghanistan continued to deteriorate over the course of 2021 and winter was fast approaching.

### Havlish Court Case Timeline & Key Documents

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/22/11</td>
<td>Havlish default judgment by Judge Daniels</td>
</tr>
<tr>
<td>07/30/12</td>
<td>Recommendations for amount of default judgment by Judge Maas</td>
</tr>
<tr>
<td>10/03/12</td>
<td>Default judgement amount of $7 billion confirmed by Judge Daniels</td>
</tr>
<tr>
<td>09/30/19</td>
<td>A common benefit fund is granted for Havlish Plaintiffs</td>
</tr>
<tr>
<td>08/27/21</td>
<td>Havlish plaintiffs file Emergency Motion Writ of Execution to attach DAB assets</td>
</tr>
<tr>
<td>09/13/21</td>
<td>DoJ Marshals Service delivers Writ of Execution to FRBNY</td>
</tr>
<tr>
<td>09/16/21</td>
<td>DoJ notifies court that it may file a Statement of Interest</td>
</tr>
<tr>
<td>02/11/22</td>
<td>White House Executive Order #14064 on preservation of DAB assets</td>
</tr>
<tr>
<td>02/11/22</td>
<td>DoJ files Statement of Interest</td>
</tr>
<tr>
<td>03/08/22</td>
<td>Memo in support of plaintiff emergency motion for order of attachment</td>
</tr>
<tr>
<td>04/27/22</td>
<td>Filing of amicus brief by four entities</td>
</tr>
<tr>
<td>04/29/22</td>
<td>Filing of amended amicus brief from Afghan Ambassador to UN Faiq</td>
</tr>
<tr>
<td>08/26/22</td>
<td>Judge Netburn provides opinion that reserves shouldn’t be used for 9/11 victims</td>
</tr>
<tr>
<td>09/14/22</td>
<td>Establishment of Fund for the People of Afghanistan</td>
</tr>
</tbody>
</table>

Just three days after the Havlish Writ of Execution was filed, the U.S. Department of Justice (DoJ) requested a stay until they would be able to file a Statement of Interest due to the national security implications of the court proceedings.\(^9\) This stay was extended three times. Finally, on February 11, 2022, the White House finally submitted a brief, and President Biden released an executive order on the matter.\(^10\)

\(^8\) Sozio (2021)  
\(^9\) Strauss (2021)  
\(^10\) Biden (2022)
In sum, the executive order split the $7 billion of international reserves held at the Federal Reserve Bank of New York (FRBNY) equally between (1) a fund to be set aside as collateral until a final verdict is made regarding the Havlish and other September 11th victims, and (2) a fund to provide humanitarian relief for Afghans. It was not made clear whether this fund would be used to recapitalize the central bank or to fund international organizations such as the United Nations.

A great deal of media attention focused on this decision. The editorial boards at both the New York Times11 and Washington Post12 both released op-eds with titles such as “Let Innocent Afghans Have Their Money” and “Afghanistan’s Money Belongs to Afghans” advocating for the release of the international reserves. Bloomberg published an op-ed called “Joe Biden’s $7 Billion Betrayal of Afghanistan.”13 The International Rescue Committee stated that the current humanitarian crisis could lead to more deaths than twenty years of war.14 Although the humanitarian situation was deteriorating, there was also quite a bit of hyperbole and exaggeration in such statements.

The September 11th victims filed another brief in March 2022 stating that the multiple groups that had filed for compensation (including the original Havlish plaintiffs) had come to terms to split the $3.5 billion amongst themselves so as to preclude a protracted legal battle. In regards to the $3.5 billion allocated for Afghan humanitarian support, additional legal hurdles had to be resolved.

The U.S. Treasury publicly stated that they would not provide funding directly to the Taliban government. But Afghanistan’s central bank, now under the Taliban, demanded that the reserves be released to them. They argued that the central bank was an independent organization, separate from the Taliban government. They cited the central bank law which mandated an independent central bank as evidence. One DAB board member that had been on the board since 2001 publicly took this stance. Others argued that it would be a mistake to consider DAB as independent from the Taliban governing structure. Although by law DAB was independent, DAB could not be considered operationally independent.

The U.S. Treasury did provide a number of sanctions exemptions so as to not exacerbate the humanitarian issues in Afghanistan. On December 22, 2021, OFAC issued three general Licenses. These include ones that authorized all transactions and activities involving the Taliban or the Haqqani Network that are for the conduct of the official business of the United States Government (General License GL 17), international organizations (GL 18), and NGOs (GL 19).

11 New York Times Editorial Board (2022)
12 Washington Post Editorial Board (2022)
13 Pollard (2022)
14 Human Rights Watch (2022)
In regards to the $3.5 billion allocated for Afghan humanitarian support, the final decision regarding the fund was taken on September 14, 2022, when the U.S. Treasury Department and Department of State announced the creation of the Establishment of Fund for the People of Afghanistan.\textsuperscript{15} This Afghan Fund would maintain its bank account with the Bank for International Settlements (BIS) in Switzerland.

The press release notes that disbursements from the Afghan Fund could include “keeping Afghanistan current on its debt payments to international financial institutions, which would preserve their eligibility for development assistance, and paying for critical imports, such as electricity.”

The funds would not be returned to DAB until it “demonstrates that it has the expertise, capacity, and independence to responsibly perform the duties of a central bank. To move toward that goal, DAB must demonstrate that it is free from political interference, has appropriate AML/CFT controls in place, and has undertaken a third-party needs assessment and onboarded a third-party monitor.”

Finally, in terms of governance, the Afghan Fund has a Board of Trustees oversees the fund. The Board currently consists of two Afghan economists, a U.S. government representative, and a Swiss government representative. They are only able to make decisions by consensus.

\textbf{OTHER RELEVANT CASES}

There have been other cases of international reserves haven been frozen. This includes Russia, Iran, Iraq, Libya, and North Korea. The most and most significant recent case is the case of Russia, where approximately $300 billion in assets have been frozen. The summary of this and other cases are provided in the table below.

\begin{table}[h]
\begin{center}
\begin{tabular}{|l|c|p{15cm}|}
\hline
\textbf{Country} & \textbf{Amount ($m)} & \textbf{Summary} \\
\hline
Afghanistan & 217.0 & \textit{During first Taliban regime in the 1990s} \\
Russia & 300 & \textit{Upon invasion of Ukraine. Some have called for confiscation} \\
Iran & 23.3 & \textit{First frozen in 1979 after Iranian Revolution} \\
Iraq & 2,100.0 & \textit{Executive Orders 12722, 12724, and 13315} \\
Libya & 1,250.0 & \textit{Executive Order 12543} \\
Haiti & 121.0 & \textit{Executive Orders 12775, 12853, 12917, and 12920} \\
\hline
\multicolumn{3}{|l|}{\textit{Sources: https://www.gao.gov/assets/a244164.html. All under International Emergency Economic Powers Act}}
\end{tabular}
\end{center}
\end{table}

However, there has been no other case where reserves have been confiscated. Under FSIA, reserves can only be confiscated if the country were designated a state sponsor of terrorism. This is the reason why proponents of using Russian central bank reserves to pay for reconstruction in Ukraine could only be implemented if the United States designates Russia a state sponsor of terrorism, a step the U.S. has thus far been unwilling to take. However,

\textsuperscript{15} U.S. Department of State (2022)
individuals have previously utilized the Terrorism Risk Insurance Act (TRIA) to enforce terrorism-related judgments for compensatory judgments.

CONCLUSION
The above summary provided a summary of DAB’s international reserves investment strategy, as well as the legal issues surrounding the freezing and confiscation of the reserves. Although this was not the first time that a nation’s international reserves have been frozen, it is one of the few times that such international reserves were confiscated.

The case study for Afghanistan is instructive for a few reasons. First, in terms of investment management, it is important for developing market central banks to develop the infrastructure of modern investment management. This includes at a minimum developing key policy documents such as an Investment Policy Statement (IPS) and Strategic Asset Allocation (SAA), forming an investment committee to decide on appropriate investments, placing assets only in safe liquid instruments such as U.S. T-bills and Treasuries, and developing a process to review external managers.

Second, in regards to the freezing and confiscating of Afghanistan’s international reserves, there are lessons to be learned. The freezing of central bank assets is not without precedent - the international reserves of Iran, Libya, Cuba, and more recently Russia have been frozen. Rarer is the legal case of the September 11th victims versus the Taliban and the legal process for confiscating funds.

Here, the only two legal justifications for the U.S. government to confiscate a country’s international reserves is under Foreign Sovereign Immunities Act (FSIA) section 1605, which creates an exception to sovereign immunity or the Terrorism Risk Insurance Act of 2002 (extended in 2005). In particular, FSIA section 1605 allows confiscation of foreign state assets that have been designated as state sponsors of terrorism by the time the suits were filed.

There is also the United Nations legal basis for such actions, including Resolution 1267, which called on all member states to freeze the assets of the Taliban regime. In response to the attacks of September 11, 2001, the Security Council adopted Resolution 1373 in September 2001, requiring all U.N. member states to freeze funds and other financial assets or economic resources of persons who commit, attempt to commit, participate in or facilitate terrorist acts.16

Third, in such cases where international reserves are frozen according to FSIA section 1605 or TRIA, and it becomes necessary to provide humanitarian aid to that same country (e.g. Afghanistan, North Korea, etc), I recommend that a common framework should be developed for the use of such funds – rather than ad-hoc structures.

---

16 https://www.gao.gov/assets/a244164.html
In fact, during the writing of this paper, this is exactly what has occurred. In particular, in October 2021, the U.S. Treasury Department conducted a review of all its sanctions programs. Based at least partially on this report, the U.S. introduced Resolution 2664 to the United Nations Security Council (UNSC), and it was passed in December 2022. This resolution established a humanitarian carveout across UN sanctions.

And finally, to provide humanitarian support in UN sanctioned jurisdictions, I recommend donors to provide support utilizing a trust fund structure, which should be audited on a quarterly basis, and with board members consisting of donor country representatives, development experts, and functional experts. All trust fund funding should only be used for use by United Nations agencies, and the trust fund should demand impact and accounting reports from such agencies. In such a way, the international can fund social programs in such countries without supporting the regime being sanctioned.

Such structures also have precedents. In Afghanistan, the Afghanistan Reconstruction Trust Fund (ARTF) was used as a common fund structure to pool international aid contributions from donor countries. Thus far, in the case of Afghanistan, donor countries have provided direct support to UN agencies without utilizing a trust fund structure. As a result, UN agencies have provided little public reporting regarding the use of funds it has received. This has resulted in a lack of accountability in such UN agencies, as well as a host of questions that have arisen asking how donor funds have been utilized in Afghanistan. Greater trust could be achieved between stakeholders when there is a common trust fund and reporting is increased.

Taken together, these four lessons can support both frontier market central banks manage their reserves better, as well as can support the international community to better manage frozen assets. The ultimate goal is to ensure that any international reserves, even in a sanctioned country, can benefit the people of that country.
BIBLIOGRAPHY


