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Afghanistan Central Bank Reserves

According to the United Nations, Afghanistan has been “descending into the worst humanitarian crisis in the world” since the Taliban’s August 2021 return to power. A U.S. hold on assets of the Afghan central bank (Da Afghanistan Bank, or DAB) deposited in the United States has attracted particular scrutiny from some observers who describe this as one of the most important factors impacting the humanitarian and economic situations in Afghanistan. Members of Congress have expressed a range of views on how to proceed with the assets, including whether to continue holding or utilizing them for economic assistance or other purposes. In February 2022, the House considered, but rejected, a measure that would have required the Administration to submit an assessment to Congress on the humanitarian impact in Afghanistan of both sanctions and the U.S. hold on DAB assets.

According to the International Monetary Fund (IMF), total international DAB reserves are \$9.76 billion, as of the end of 2020, the most recent data available. Of this amount, \$2 billion is deposited in financial institutions in the United Kingdom, Germany, Switzerland, and the United Arab Emirates. The remaining funds are deposited at the Federal Reserve Bank of New York.

On February 11, 2022, President Biden signed Executive Order 14064 to block U.S.-held Afghanistan central bank reserves, and stated his intention to disburse \$3.5 billion of the \$7 billion currently held in the U.S. Federal Reserve Bank “for the benefit of the Afghan people.” The Biden Administration is currently exploring possible avenues, including humanitarian relief efforts, possibly through a separate trust fund or by providing support through the United Nations or some other enabling organization. Alternatively, the \$3.5 billion could contribute toward “the potential recapitalization of a future central bank [in Afghanistan] that is recognized and the recapitalization of a financial system,” according to Tom West, the State Department’s Special Representative for Afghanistan.

E.O. 14064 comes in the context of ongoing litigation brought by some victims of the September 11, 2001 (9/11) terrorist attacks to use the Afghan assets to satisfy their judgments against the Taliban. Many of the Afghan assets held in the Fed are subject to writs of attachment by the plaintiffs in these cases, who would be able to seize the assets, if a U.S. court grants permission. After setting aside half of the Afghan assets for humanitarian or economic assistance, E.O. 14064 would leave the remaining \$3.5 billion unavailable until these legal challenges are resolved.

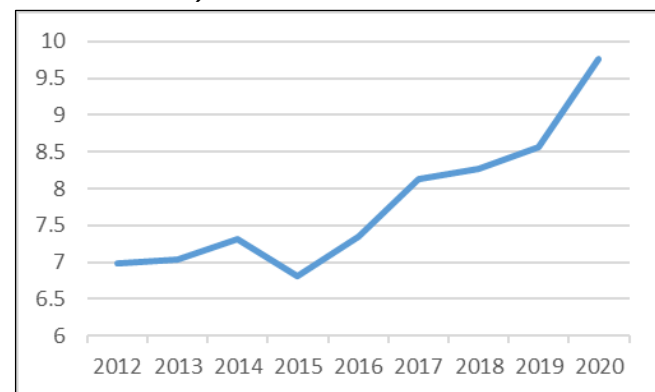
Economic Impact in Afghanistan

Afghanistan’s economy has been hamstrung by a number of factors, including a lack of natural resources, rampant

corruption, and decades of conflict. The country’s economy has contracted sharply since the Taliban’s August 2021 takeover, exacerbating the humanitarian situation. Along with other factors, including the cessation of international development assistance and U.S. and international sanctions on the Taliban, the U.S. hold on Afghanistan’s central bank assets has arguably contributed to the economic breakdown.

The former U.S.-backed government relied heavily on international development assistance. Foreign donors financed more than half of the government’s \$6 billion annual budget and as much as 80% of total public expenditures. Between 2002 and 2021, the United States provided over \$17 billion to the Afghan government in on-budget assistance—funds that went directly, or indirectly through multilateral trust funds, to Afghan government entities. That aid and other support for Afghanistan helped raise the country’s per capita gross domestic product (GDP) from \$179 in 2002 to \$508 in 2020. Afghanistan’s central bank reserves grew from just under \$7 billion in 2013 to \$9.8 billion at the end of 2020 (**Figure 1**).

Figure 1. Afghanistan Central Bank Reserves (Billions of current USD)



Source: International Monetary Fund.

The United States held the DAB assets days after the Taliban entered Kabul, to prevent the group from accessing the bank’s resources. That decision has contributed to instability in Afghanistan’s currency, the *afghani* (which has lost considerable value since August 2021), and a severe liquidity crisis. Afghanistan is a highly cash-dependent society; according to the World Bank, 85% of Afghans did not have a bank account as of 2020. Moreover, Afghanistan does not have the technical capability to print its own currency. In at least some parts of the country, food is available, but many Afghans can’t pay for it, illustrating the impact of the country’s financial crisis on the broader humanitarian and economic conditions.

Taliban and International Response

The Taliban appear to view the U.S. hold on DAB assets as one of their most pressing policy priorities and have sought to marshal domestic Afghan and international pressure on the United States to get the funds released. In a November 2021 open letter to Congress, the Taliban's acting foreign minister wrote, "Currently the fundamental challenge of our people is financial security and the roots of this concern lead back to the freezing of assets of our people by the American government," calling on the United States both to lift the hold on DAB assets and end sanctions on the Taliban. The Taliban also allowed a December 2021 march in Kabul, at which protesters called for the release of DAB assets. A number of regional states with which the Taliban have relations, including U.S. adversaries China, Russia, and Iran, as well as U.S. partners Uzbekistan and Pakistan, have also called on the United States to release the assets.

Potential Impact of 9/11 Litigation on U.S.-Held DAB Assets

Several groups of 9/11 victims—including those injured, the estates of those killed, and spouses and other family members of victims—who have or are seeking judgments against the Taliban for their role in supporting the 2001 terrorist attacks are reportedly vying for access to the frozen Afghan government assets in order to collect damages. One group, known as the *Havlish* plaintiffs, have a default judgment against the Taliban and other defendants, worth approximately \$7 billion. The U.S. government filed a statement of interest in the *Havlish* case arguing that a portion of the DAB funds will be set aside for humanitarian uses and is not blocked within the meaning of the Terrorism Risk Insurance Act (TRIA, 28 U.S.C. § 1610 note), making it unavailable for attachment under that statute.

The United States notified the court that TRIA permits attachment only to satisfy compensatory and not punitive damages, and approximately \$4.5 billion of the *Havlish* judgment represents punitive damages. Under the Foreign Sovereign Immunities Act (FSIA, 28 U.S.C. §§1602–1611), foreign sovereign central bank assets in the United States are immune from attachment to satisfy judgments against the foreign sovereign. Because the U.S. government does not recognize the Taliban as the government of Afghanistan, the U.S. government argued that the court must decide whether the DAB assets under U.S. jurisdiction belong to the Taliban and are attachable to satisfy its debts pursuant to TRIA and notwithstanding the FSIA provisions.

The United States advised the court that the *Havlish* plaintiffs should have an opportunity to make their case that they are entitled to a portion of the DAB assets, but that they "must establish a theory of ownership by the Taliban that would not require [the court]—either expressly or by implication—to make its own determination as to the identity of Afghanistan's government or to make its own determination as to whether Afghanistan is a state sponsor of terrorism," and urged the court to weigh the "risk of reciprocal challenges to American property abroad."

U.S. Policy and Issues for Congress

U.S. policymakers have grappled with the question of what to do with the U.S.-based assets of governments in flux

before, as the ultimate disposition of assets may serve as leverage to influence the behavior of foreign actors. Several Presidents and Congresses have each at times determined the ownership of and rights to assets to further foreign policy goals. Presidents have used frozen foreign assets as a bargaining tool during foreign policy crises, in some instances, by returning the assets to the sanctioned foreign government, or by channeling them to successor governments, as occurred after the break-up of Yugoslavia. In some cases, a President has made frozen assets available to opposition governments, as occurred in the case of Panama and Venezuela. Sometimes a portion of frozen assets has serviced the debts of the foreign government. In the case of Iraq after the First Gulf War, a President has directed some blocked assets toward humanitarian relief or to finance the United Nations Compensation Commission. The United States retained the remaining Iraqi assets until vesting (taking title to) them in 2003 to provide humanitarian assistance and to assist in reconstruction. Congress has in some cases directed that frozen foreign assets be used to pay terrorism judgments owed by a foreign government designated under U.S. law as a state sponsor of terrorism, including Cuba and Iran.

Members of Congress have expressed a range of views. Some Members contend that the assets represent one of few remaining points of U.S. leverage over the Taliban, and that the United States should not release them without securing concessions from the Taliban with regard to the role and security of women or other issues. Some Biden Administration officials appear to agree with this position, arguing that the situation in Afghanistan is a direct consequence of Taliban actions. In October 2021 testimony, Deputy Treasury Secretary Wally Adeyemo said "I see no situation under which we would allow the Taliban to have access to the reserves." Other Members have advocated for their release: in December 2020, 46 Members wrote to President Biden urging him to consider allowing the DAB to access U.S.-based reserves, evidently without conditions, arguing that "pragmatic U.S. engagement with the de facto authorities" is necessary to avert further humanitarian suffering. Congressional reaction to the February 2022 Executive Order appears mixed and relatively muted.

Many Members appear to be balancing addressing the humanitarian and economic crises in Afghanistan with the risk of buttressing a Taliban government viewed as hostile to U.S. interests, as well as a desire to secure compensation for 9/11 victims. Releasing the assets conditionally or in small, monitored tranches may minimize (though likely not eliminate) the risk of the Taliban having access to additional financial resources. Applying the assets solely to humanitarian relief might help stave off mass suffering in the short term, but might not be sufficient to address the currency liquidity and broader economic crises that underlay the humanitarian emergency.

Martin A. Weiss, Coordinator, Specialist in International Trade and Finance

Clayton Thomas, Analyst in Middle Eastern Affairs

Jennifer K. Elsea, Legislative Attorney

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