

THE WHITE HOUSE IS BENDING THE LAW ON SYRIA SANCTIONS

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“Let us resolve to put the strength of democracies into action to thwart ... the designs of autocracy. Let us remember that the test of this moment is the test of all time.” – President Joe Biden, Warsaw, March 26, 2022

Russian blasts are reducing Ukrainian cities to rubble, the same way they once devastated Aleppo and other Syrian cities. “Swift and punishing costs are the only things that are going to get Russia to change its course,” President Joe Biden asserted in Warsaw as he laid out U.S. policy toward the Kremlin.¹ The same logic should apply to the Syrian regime led by Bashar al-Assad, which has survived thanks only to the patronage of Moscow and Tehran. Yet the Biden administration has quietly signaled to its Arab allies that it supports their engagement with Damascus.² The White House has facilitated this process by supporting the Assad regime’s inclusion in a pair of nearly completed regional energy deals. The deals’ total value is \$550 million to \$600 million, of which Damascus would pocket \$40 million to \$50 million.

The regime’s inclusion in these energy agreements would require Washington to declare the deals do not violate U.S. sanctions, especially those authorized by the Caesar Syria Civilian Protection Act of 2019. Even though the Assad regime would receive payments worth tens of millions of dollars, senior Biden administration officials have repeatedly insisted the agreements would not violate the Caesar Act.³ This memo examines the four rationales the administration uses to justify its assertion that sanctions are not applicable. None hold water.

If Biden wanted, he could sweep away legal objections to the two energy deals by issuing a sanctions waiver on national security grounds. Yet doing so would contradict Secretary of State Antony Blinken’s vow not to “lift a single sanction on Syria” until there is “irreversible progress” toward resolution of the country’s civil war.⁴ Despite

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1. President Joe Biden, The White House, “Remarks by President Biden on the United Efforts of the Free World to Support the People of Ukraine,” *Speech at the Royal Castle in Warsaw*, March 26, 2022. (<https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/26/remarks-by-president-biden-on-the-united-efforts-of-the-free-world-to-support-the-people-of-ukraine>)

2. David Adesnik, “Blinken Affirms Softening of U.S. Policy Toward Assad Regime,” *Foundation for Defense of Democracies*, October 14, 2021. (<https://www.fdd.org/analysis/2021/10/14/blinken-affirms-softening-of-us-policy-toward-assad-regime>)

3. Senior Advisor for Global Energy Security Amos Hochstein, U.S. Embassy in Lebanon, “Interview with Senior Advisor for Global Energy Security Amos Hochstein,” *Interview With LBCI*, February 9, 2021. (<https://lb.usembassy.gov/interview-amos-hochstein-lbci>)

4. Secretary of State Antony Blinken, U.S. Department of State, “Secretary Antony J. Blinken and Israeli Alternate Prime Minister and Foreign Minister Yair Lapid and United Arab Emirates Foreign Minister Sheikh Abdullah Bin Zayed Al Nahyan at a Joint Press Availability,” *Remarks to the Press*, October 13, 2021. (<https://www.state.gov/secretary-antony-j-blinken-and-israeli-alternate-prime-minister-and-foreign-minister-yair-lapid-and-united-arab-emirates-foreign-minister-sheikh-abdullah-bin-zayed-al-nahyan-at-a-joint-press-availab>)

its tacit approval of Arab engagement with Damascus, the administration does not want to acknowledge it has downgraded human rights in its policy toward Syria.⁵ Since a waiver would constitute such an admission, the administration is trying instead to bend the law, an approach that is politically expedient but paves the way for both Biden and future presidents to ignore congressional intent regarding sanctions.

In Syria, fighting has diminished since the onset of the COVID-19 pandemic, yet Damascus continues to perpetrate atrocities against the Syrian people.⁶ The regime maintains a vast prison system, where political opponents endure torture and sexual violence. Regime forces deliberately bombard civilian targets while withholding humanitarian aid from populations Damascus considers disloyal.⁷

The Caesar Act is designed to hold the Assad regime accountable for a decade of grave offenses. The administration should enforce the law as Congress intended. If the president believes doing so would not serve the national interest, he should issue a waiver and explain why. If the administration evades its responsibilities under the Caesar Act, Congress should conduct oversight hearings and adopt remedial legislation compelling the administration to implement the law.

KEY FEATURES OF THE PROPOSED ENERGY DEALS

Lebanon's electrical generation capacity has fallen sharply amid a severe economic crisis, increasing the frequency and duration of blackouts that were already occurring daily before the crisis began in the fall of 2019.⁸ The Biden administration has justifiably looked for ways to help. However, it appears to be intent on violating U.S. law to do so.

In August 2021, the U.S. ambassador in Beirut, Dorothy Shea, informed President Michel Aoun that the United States would support a plan to bring Jordanian electricity to Lebanon via Syria. Shea also conveyed U.S. support for a plan to bring Egyptian gas to Lebanon via Jordan and Syria; the gas would enable Lebanon to increase production at its Deir Ammar power plant.⁹ When a journalist asked Shea about the compatibility of the two deals with U.S. sanctions on Syria, the ambassador responded that she had conferred with the White House and the Treasury Department, both of which supported the agreements.¹⁰ According to Shea, "the United States has been helping to facilitate — and encourage" — the deals.¹¹ Yet the administration has not publicly shared its assessment of what features might violate the Caesar Act or other sanctions.

5. Josh Rogin, "Biden is tacitly endorsing Assad's normalization," *The Washington Post*, October 7, 2021. (<https://www.washingtonpost.com/opinions/2021/10/07/biden-is-tacitly-endorsing-assads-normalization>)

6. UN General Assembly, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," A/HRC/49/77, February 8, 2022. (<https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/documentation>)

7. Natasha Hall, "Rescuing Aid in Syria," *Center for Strategic and International Studies*, February 2022. (https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/220214_Hall_Rescuing_Aid_Syria.pdf?hG4dKipxCaBNDRDaezmDvn2lHVmr8937)

8. Nafisa Eltahir and Issam Abdallah, "Life grinds to a halt in Lebanon's blackouts," *Reuters*, August 13, 2021. (<https://www.reuters.com/world/middle-east/life-grinds-halt-lebanons-blackouts-2021-08-13>)

9. Lebanon Presidency, Press Release, "President Aoun received a phone call from the US Ambassador, and was informed of the US administration's decision to assist Lebanon in extracting electrical energy from Jordan, via Syria, through Egyptian gas," August 19, 2021. (<http://www.presidency.gov.lb/English/News/Pages/Details.aspx?nid=26670>)

10. Joseph Haboush, "US talking to Egypt, Jordan to help Lebanon's fuel, energy needs: Senior US diplomat," *Al Arabiya* (UAE), August 19, 2021. (<https://english.alarabiya.net/News/middle-east/2021/08/19/US-to-help-Lebanon-with-electricity-Lebanese-presidency>)

11. Ambassador Dorothy C. Shea, U.S. Embassy in Lebanon, Press Statement, "Ambassador Dorothy C. Shea Statement at the Grand Serail," January 14, 2022. (<https://lb.usembassy.gov/ambassador-dorothy-c-shea-statement-at-the-grand-serail>)

Five months passed between Shea's announcement of U.S. support and the January 2022 signing of the Jordan-Syria-Lebanon electricity deal. The agreement would bring 250 megawatts (MW) of Jordanian power to Lebanon per day, enough to provide two additional hours of daily electricity to customers through Beirut's national utility, Electricite du Liban (EDL). Currently, the EDL grid provides as little as two hours of daily power. Last October, the grid shut down entirely for several days.¹²

Corruption and mismanagement are to blame both for Lebanon's blackouts and for EDL's average losses of more than \$1 billion per year — an immense amount for a country of Lebanon's size.¹³ The World Bank has called for "comprehensive electricity sector reform," but the Lebanese government would prefer to sidestep such reform.¹⁴

The World Bank's regional director, Saroj Kumar Jha, said Lebanon had applied for \$250 million to finance the aforementioned deal. Syrian Energy Minister Ghassan al-Zamel said his government would receive 8 percent of the power Lebanon purchases from Jordan.¹⁵ This compensation in kind would amount to \$20 million if the deal itself is worth \$250 million. The terms of the natural gas agreement are not yet final.

In January, a Lebanese media outlet published a letter from the U.S. Treasury Department to the director general of EDL indicating that Egypt would provide an additional 60 million cubic feet of natural gas per day to Lebanon "passing through Jordan and Syria via the Arab Gas Pipeline." Egypt will further "provide 'in-kind' gas payments to the Syrian General Petroleum Corporation in exchange for transit through Syria."¹⁶ Lebanese Energy Minister Walid Fayad estimated the value of the gas deal to be \$300 million, with Syria receiving \$0.75 per British thermal unit of gas, or somewhere between 7 and 10 percent of the sale price.¹⁷ If those figures are correct, total Syrian compensation would be \$20 million to \$30 million.

In January 2022, Treasury said its Office of Foreign Assets Control (OFAC) "will not consider Lebanon's negotiations and engagements regarding the electricity supply and gas proposal to be subject to sanctions under the Syrian Sanctions Regulations or the 2019 Caesar Civilian Protection Act."¹⁸ The letter did not specify the statutory basis

12. Sarah El Deeb, "Lebanon's 2 main state power plants shut down, out of fuel," *Associated Press*, October 9, 2021. (<https://apnews.com/article/business-lebanon-middle-east-7fd70591b6c73752aa40ae37606786cf>); Bassem Mroue, "Turkish company halts power supplies to crisis-hit Lebanon," *Associated Press*, October 1, 2021. (<https://apnews.com/article/business-middle-east-lebanon-beirut-07429c4a33c544bd6994a749c745834d>)

13. Ali Ahmad, Neil McCulloch, Muzna Al-Masri, and Marc Ayoub, "From dysfunctional to functional corruption: The politics of reform in Lebanon's electricity sector," *Anti-Corruption Evidence*, December 2020. (<https://ace.soas.ac.uk/wp-content/uploads/2020/12/ACE-WorkingPaper030-DysfunctionalToFunctional-201214.pdf>); World Bank Group, "Lebanon Power Sector Emergency Action Plan," 2020. (<https://documents1.worldbank.org/curated/en/500281593636676732/pdf/Lebanon-Power-Sector-Emergency-Action-Plan.pdf>)

14. Abby Sewell and Wael Taleb, "Jordanian, Syrian and Lebanese officials sign electricity deal, but details remain unclear," *L'Orient Today* (Lebanon), January 26, 2022. (<https://today.lorientlejour.com/article/1288817/jordanian-and-lebanese-officials-sign-deal-to-import-electricity-to-lebanon-via-syria-but-the-plans-details-remain-unclear.html>)

15. Alina Ramos Martin, "Syria to obtain 8% of electricity transferred to Lebanon," *Prensa Latina* (Cuba), January 27, 2022. (<https://www.plenglish.com/news/2022/01/27/syria-to-obtain-8-of-electricity-transferred-to-lebanon>)

16. Ambassador Shea confirmed the delivery of the letter from Treasury but has not commented on the authenticity of the text published by Lebanese media. "نص رسالة أميركية حول الغاز والكهرباء: 9 طلبات من لبنان لمنع العقوبات," *Al-Akhbar* (Lebanon), January 17, 2022. (<https://al-akhbar.com/Politics/328064>)

17. Sunniva Rose, "Lebanon's deal for extra power could be worth \$600m," *The National* (UAE), November 30, 2021. (<https://www.thenationalnews.com/mena/lebanon/2021/11/30/lebanon-to-request-600m-loan-for-regional-energy-deal-minister-says>)

18. "نص رسالة أميركية حول الغاز والكهرباء: 9 طلبات من لبنان لمنع العقوبات," *Al-Akhbar* (Lebanon), January 17, 2022. (<https://al-akhbar.com/Politics/328064>)

for this conclusion but did offer to advise Beirut on how to avoid potential conflicts between U.S. sanctions and yet-to-be-finalized aspects of the agreements.

FOUR RATIONALES FOR EXEMPTION

The text of the Caesar Act demonstrates its applicability to the gas and energy deals under consideration. Section 7412(a)(2)(A)(i) directs the president to impose sanctions on any foreign person who “knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with ... the Government of Syria (including any entity owned or controlled by the Government of Syria) or a senior political figure of the Government of Syria.”

The term “financial, material, or technological support” has a clear definition in U.S. sanctions law. It includes any property, “tangible or intangible,” as well as a range of services and the broad category of “goods.”¹⁹ Thus, the Caesar Act applies regardless of the form of compensation Damascus would receive for transmitting gas and electric power to Lebanon. The law also applies to the full range of partners with whom Damascus might do business. For statutory purposes, the term “person” includes both natural persons as well as entities, which federal regulations broadly define as a “partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.”²⁰

Congress deliberately chose to make Caesar sanctions mandatory. The law says the president “shall” impose the sanctions authorized by the Caesar Act, meaning he has a legal obligation to designate all violators. Only a presidential waiver can grant an exception. Even so, State Department officials have consistently asserted the gas and power agreements are exempt from sanctions, meaning the administration can bypass the Caesar Act without a waiver.

In defense of this claim, these officials have provided only cursory and evolving rationales. The first rationale is that the agreements are humanitarian in nature. The second and third rationales are intertwined. The former disputes whether the energy deals constitute a “significant transaction” for statutory purposes. The latter asserts that the Caesar Act does not apply to payments in kind, as opposed to cash, even though the text of the law prohibits all forms of material support. Finally, the fourth rationale extends UN agencies’ exemption from sanctions on Syria to cover the gas and power agreements.

Utilizing any of these four rationales to evade Caesar sanctions would establish a troubling precedent not only for Syria sanctions enforcement but also for sanctions on Russia and other hostile governments.

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¹⁹ Financial, Material or Technological Support, 31 CFR §525.304. (<https://www.ecfr.gov/on/2021-11-26/title-31/subtitle-B/chapter-V/part-542/subpart-C/section-542.304>)

²⁰ Caesar Syria Civilian Protection Act of 2019, Pub. L. 116-92, 133 Stat. 2291. (https://home.treasury.gov/system/files/126/caesar_act.pdf); Entity, 31 CFR §542.303. (<https://www.ecfr.gov/on/2021-11-26/title-31/subtitle-B/chapter-V/part-542/subpart-C/section-542.303>)

THE HUMANITARIAN EXEMPTION

U.S. law requires all sanctions to include exemptions for humanitarian trade to limit unintended impacts on civilians. During a mid-October visit to Beirut, Under Secretary of State for Political Affairs Victoria Nuland, the department's third-ranking official, argued that "because [energy] falls under the humanitarian category, no sanctions waiver would be required in this instance."²¹ A week later, Amos Hochstein, the department's senior advisor for global energy security, also in Beirut, hesitated to confirm definitively that the gas and electricity agreements were exempt from sanctions. He stated, "[T]his kind of a transaction could be, likely is not ... covered by the sanctions."²² Hochstein did not elaborate why it was only "likely" that sanctions do not apply.

The Treasury Department does not have an all-purpose definition of what qualifies as humanitarian trade. To determine its meaning in the context of a particular sanctions regime, one should consult portions of the Code of Federal Regulations (CFR) that govern implementation. Specifically, one should examine material related to OFAC licenses, which authorize particular exemptions. Regarding Syria, OFAC issued a general license allowing non-governmental organizations (NGOs) to engage in not-for-profit activities such as "humanitarian projects to meet basic human needs in Syria, including, but not limited to, drought relief, assistance to refugees, internally displaced persons, and conflict victims, food and medicine distribution, and the provision of health services."²³ This definition emphasizes "basic human needs" such as the distribution of food, water, medical care, and temporary shelter. None of the examples given remotely resemble a multi-country commercial arrangement worth hundreds of millions of dollars.

In November 2021, the Biden administration revised the general license for NGOs to include permission for "new investment" related to not-for-profit activities. Guidance from OFAC explains that this revision authorizes NGOs to engage in "early recovery activities," such as the rehabilitation of schools, health clinics, water systems, and bakeries.²⁴ This update significantly broadens the general license but still comes nowhere close to allowing for an international energy agreement. Furthermore, the general license for NGOs permits them to engage in activities that support humanitarian efforts "in Syria," not in Lebanon or any other country.

Finally, if the president wants to approve humanitarian or other select activities that go beyond the scope of the general license for NGO operations, Section 7432(c) of the Caesar Act authorizes him to grant long-term waivers for individual NGOs or groups of NGOs. Since none of the participants in the two energy deals are NGOs, the president cannot employ Section 7432(c) to insulate them from sanctions.

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21. Under Secretary of State for Political Affairs Victoria Nuland, U.S. Embassy in Lebanon, "Media Availability with Under Secretary of State for Political Affairs Victoria Nuland," *Remarks to the Press*, October 14, 2021. (<https://lb.usembassy.gov/media-availability-with-under-secretary-of-state-for-political-affairs-victoria-nuland>)

22. Senior Advisor for Global Energy Security Amos Hochstein, U.S. Embassy in Lebanon, "Senior Advisor for Global Energy Security Amos Hochstein's Interview with Al Arabiya Al Hadath," *Interview With Al Arabiya Al Hadath*, October 21, 2021. (https://lb.usembassy.gov/amos-hochstein-interview-al-arabiya-al-hadath/?_ga=2.46443236.2142539765.1644505759-708375487.1642777216)

23. Certain services in support of nongovernmental organizations' activities authorized, 31 CFR §542.516. (<https://www.ecfr.gov/on/2021-11-26/title-31/section-542.516>)

24. U.S. Department of the Treasury, Frequently Asked Questions, Syria Sanctions, "938. What early-recovery-related transactions and activities are nongovernmental organizations (NGOs) authorized to engage in pursuant to the general license (GL) at §542.516 of the Syrian Sanctions Regulations (SySR), as amended on November 26, 2021?" November 24, 2021. (<https://home.treasury.gov/policy-issues/financial-sanctions/faqs/938>)

SIGNIFICANT TRANSACTIONS AND IN-KIND PAYMENTS

The Caesar Act prohibits “significant transactions” with the government of Syria but does not define what is significant. However, OFAC has defined the term very specifically and very consistently regarding sanctions on Iran, Hezbollah, and Russia.²⁵ The OFAC definitions reserve considerable discretion for the executive branch, yet it has limits.

Several factors typically determine whether a transaction is “significant,” with the most relevant being “the size, number, and frequency of the transaction(s),” the “nexus between the transaction(s) and a blocked person,” “the impact of the transaction(s) on statutory objectives,” and “other factors that the secretary of the Treasury deems relevant.”²⁶

With a multi-year agreement worth hundreds of millions of dollars, the proposed transactions clearly meet the first criterion. Sanctioned entities would be parties to the transaction, so the nexus is clear, too. By generating ample benefits for the Assad regime, the transactions would directly contravene the Caesar Act’s objectives of holding the regime accountable and depriving it of the means to commit further atrocities. While the secretary has latitude to consider additional factors, it is difficult to see what aspect of these transactions would make them any less “significant.”

The purpose of the secretary’s discretion is to ensure reasonable application of the significance standard rather than requiring the application of sanctions for every transaction. It is also not meant to serve as a blank check for authorizing transactions an administration considers beneficial from a policy perspective. While the administration may assert that the energy agreements would mitigate the current crisis in Lebanon, that is a national security consideration properly addressed by a presidential waiver.

Regarding significance, a review of Syria-related law enforcement actions may be illustrative. Admittedly, the Department of Justice (DOJ) has its own criteria for bringing charges. Still, in 2018, the DOJ indicted eight individuals for violating U.S. sanctions on Syria along with other offenses. The indictment lists numerous illicit transactions, some less than \$100,000. Others had a value of less than \$1,000,000.²⁷ While sanctions and indictments are distinct actions, common sense indicates that if a \$100,000 transaction that benefits the Assad regime is a crime, deals worth hundreds of millions of dollars are clearly significant.

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25. Significant transaction or transactions; significant financial services; significant financial transaction, 31 CFR §561.404. (<https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-561/subpart-D/section-561.404>); Significant transactions; significant financial services, 31 U.S.C. §566.404. (<https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-566/subpart-D/section-566.404>); U.S. Department of the Treasury, Frequently Asked Questions, Ukraine-/Russia-Related Sanctions, “542. How does OFAC interpret the following terms as used in section 5 of UFSA, as amended by section 226 of CAATSA: ‘significant transaction,’ ‘significant financial transaction,’ and ‘facilitated?’” April 6, 2018. (<https://home.treasury.gov/policy-issues/financial-sanctions/faqs/542>). The State Department’s Bureau of International Security and Nonproliferation has also defined what counts as a significant transaction regarding sanctions on Russia’s defense and intelligence sectors. Its definition is substantially similar to OFAC’s. See: U.S. Department of State, Bureau of International Security and Nonproliferation, “Public Guidance on Sanctions with Respect to Russia’s Defense and Intelligence Sectors Under Section 231 of the Countering America’s Adversaries Through Sanctions Act of 2017,” November 26, 2018. (<https://www.state.gov/countering-americas-adversaries-through-sanctions-act/public-guidance-frequently-asked-questions>)

26. U.S. Department of the Treasury, Frequently Asked Questions, Ukraine-/Russia-Related Sanctions, “542. How does OFAC interpret the following terms as used in section 5 of UFSA, as amended by section 226 of CAATSA: ‘significant transaction,’ ‘significant financial transaction,’ and ‘facilitated?’” April 6, 2018. (<https://home.treasury.gov/policy-issues/financial-sanctions/faqs/542>). The Iran- and Hezbollah-related sections of the Code of Federal Regulations contain virtually identical language.

27. Indictment, *United States v. Okorokov*, 1:18-cr-00179 (D.D.C. 2018). (<https://www.justice.gov/opa/press-release/file/1071116/download>)

NOTHING TO SEE HERE

A bolder alternative to claiming the absence of a significant transaction is to claim the absence of any transaction at all. Amos Hochstein, the State Department's energy envoy, told Lebanon's LBCI that Caesar sanctions do not apply to the gas component of the deal because "there is no transaction with Syria. The transaction is between Egypt and Lebanon." Yet Hochstein acknowledged the Syrian government would receive compensation for allowing the gas to cross through its territory. He explained that the agreement "will allow Syria to keep some of the gas — a small percentage of the gas in Syria, for electricity for Syrian people, in exchange — as a payment for the tariff, for the gas to go through Syria."²⁸

If the receipt of gas constitutes a form of "payment," as Hochstein said, then a transaction is taking place. What remains unclear is the identity of the Syrian government's counterparty. Will the agreement between the governments of Lebanon, Syria, Jordan, and Egypt include a provision stipulating that the Syrian government will receive compensation in-kind? If so, the other three governments would be counterparties despite Hochstein's insistence that there is no transaction. If the deal's main text does not address this issue, will there be a separate agreement that sets the terms for Syria's compensation? If there is a separate agreement, who will sign it?

Another interpretation of Hochstein's comments is that no transaction is taking place because Syria will receive payment in-kind rather than cash. This interpretation is consistent with comments by a Democratic congressional staffer familiar with the deal, who told Lebanon's *L'Orient Today* that "[n]o Caesar Act sanctions are triggered" because neither the gas nor the electricity agreement entails "any direct payments to the Assad regime."²⁹

Yet the Caesar Act, like other legislation, anticipates and precludes such narrow interpretations. Specifically, Caesar authorizes mandatory sanctions on persons who either engage in a "significant transaction" or provide "significant financial, material, or technological support." Even if one granted the premise that in-kind payments are not transactions, this would hardly matter. The text of the statute applies both to "support" and to "transactions," and both gas and electricity meet the legal definition of support, since they are goods.

Finally, if OFAC were to rule that in-kind payment or bartering does not constitute a transaction, the office would be setting a precedent for similar exemptions from sanctions on Russia, Iran, and others. New channels for illicit finance would open across the globe.

THE UN AGENCY EXEMPTION

In addition to a general license for NGO activities, the Syrian Sanctions Regulations include an exemption for the various organizations under the UN umbrella, including the World Bank. Specifically, this general license applies to "the conduct of official business" with the Syrian government, leading observers to suggest the Biden administration would rely on the bank's financing of the gas and power agreements as grounds for exemption

28. Senior Advisor for Global Energy Security Amos Hochstein, U.S. Embassy in Lebanon, "Interview with Senior Advisor for Global Energy Security Amos Hochstein," *Interview With LBCI*, February 9, 2021. (<https://lb.usembassy.gov/interview-amos-hochstein-lbci>)

29. Abby Sewell and Wael Taleb, "Thorny politics surround Lebanon's Egyptian-Syrian-Jordanian gas deal," *L'Orient Today* (Lebanon), January 17, 2022. (<https://today.lorientlejour.com/article/1287832/thorny-politics-surround-lebanons-egyptian-syrian-jordanian-gas-deal.html>)

from the Caesar Act.³⁰ Yet doing so would require an implausibly broad interpretation of what counts as the bank's official business.

The World Bank is not a party to the electricity deal that the energy ministers of Lebanon, Syria, and Jordan signed in late January. World Bank officials have also stated unequivocally that their board of directors has not yet considered, let alone approved, the Lebanese request to finance its energy imports. Furthermore, Saroj Kumar Jha, the organization's regional director, said the proposal would not go to the board for approval until the Lebanese Cabinet adopts comprehensive reforms for the electricity sector.³¹

It is possible that the United States and other countries that sit on the World Bank's board have privately agreed to support the Lebanese request. This would explain the claim by Fayad, the Lebanese energy minister, that Lebanon has already secured \$300 million of World Bank financing.³² Regardless, a private agreement does not change the fact that the bank, as an institution, is not a party to the electricity deal. The matter therefore does not constitute official bank business.

POLICY RECOMMENDATIONS

For the executive branch to grant an exemption from sanctions in the absence of a sound rationale amounts to open defiance of the law. In this instance, it is a statute that both the Senate and the House of Representatives passed with overwhelming bipartisan support less than three years ago. The two proper courses of action available to the Biden administration are to reverse its position or to issue a sanctions waiver on national security grounds, as the Caesar Act allows. Should the administration do neither, Congress should proceed as follows:

1. **Hold public hearings on the two energy agreements, during which senior administration officials must fully explain their rationale for exempting the agreements from sanctions.** The hearings should also address whether the administration has made commitments to support World Bank financing and what reforms to the Lebanese electricity sector the administration would consider sufficient.
2. **Absent a more compelling rationale, senior lawmakers from both parties should inform the White House that they consider its exemption invalid.** This may not change the administration's policy, but it would likely compel the Egyptian, Jordanian, and Lebanese governments to re-evaluate the risk that a future U.S. administration may treat the deals as sanctionable. Currently, Cairo and Amman continue to press the Biden administration for stronger assurances it will protect them from sanctions.³³

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30. Sam Heller, "Lights on in Lebanon: Limiting the Fallout from U.S. Sanctions on Syria," *War on the Rocks*, November 10, 2021. (<https://warontherocks.com/2021/11/lights-on-in-lebanon-limiting-the-fallout-from-u-s-sanctions-on-syria>)

31. Abby Sewell and Wael Taleb, "Jordanian, Syrian and Lebanese officials sign electricity deal, but details remain unclear," *L'Orient Today* (Lebanon), January 26, 2022. (<https://today.lorientlejour.com/article/1288817/jordanian-and-lebanese-officials-sign-deal-to-import-electricity-to-lebanon-via-syria-but-the-plans-details-remain-unclear.html>)

32. Abby Sewell and Wael Taleb, "Jordanian, Syrian and Lebanese officials sign electricity deal, but details remain unclear," *L'Orient Today* (Lebanon), January 26, 2022. (<https://today.lorientlejour.com/article/1288817/jordanian-and-lebanese-officials-sign-deal-to-import-electricity-to-lebanon-via-syria-but-the-plans-details-remain-unclear.html>). At the signing ceremony in January, despite his earlier claim, Fayad said discussions with the World Bank were still ongoing. See: Sarah El Deeb, "Lebanon to receive Jordan electricity via Syria, deal signed," *Associated Press*, January 26, 2022. (<https://apnews.com/article/business-middle-east-syria-lebanon-world-bank-bbc460af921a872c540fb579114f6705>)

33. Bryant Harris and Joyce Karam, "Arab states get cold feet over Egypt-to-Lebanon gas deal," *The National* (UAE), February 22, 2022. (<https://www.thenationalnews.com/world/us-news/2022/02/22/arab-states-get-cold-feet-over-egypt-to-lebanon-gas-deal>)

3. **Pass amendments to the Caesar Act further clarifying the criteria for exemption. The original text is clear, yet amendments could deter further efforts to bend the law for political purposes.** The proposal and passage of amendments would also constitute a clear signal of congressional resolve to the Egyptian, Jordanian, and Lebanese governments.

CONCLUSION

The executive branch should have discretion in applying the Caesar Act, yet in this instance it is defying both the plain meaning of the text as well as the intent of Congress. The White House is likely counting on congressional passivity and partisan divisions to prevent a coordinated response. If lawmakers confound that expectation by acting in a unified and proactive manner, they can steer the White House back into compliance. If lawmakers remain passive, they will affirm the administration's blueprint for evading its statutory obligations. The United States should help Lebanon to mitigate its power shortages but should do so without violating the law or enriching Assad.

Foundation for Defense of Democracies (FDD)

FDD is a Washington, DC-based nonpartisan research institute focusing on national security and foreign policy.

FDD's Center on Economic and Financial Power (CEFP)

FDD's Center on Economic and Financial Power studies national economic security, with a focus on how the U.S. can leverage its economic and financial power to achieve its national security objectives. CEFP promotes greater understanding of how the U.S. government can employ its economic and financial authorities to best counter its adversaries.

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