

The Syria Accountability and Lebanese Sovereignty Restoration Act of 2003:

Two Years On

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Articles & Testimony

On June 7, 2006, Institute senior fellow David Schenker testified before the House of Representatives Committee on International Relations Subcommittee on the Middle East and Central Asia. The following is the prepared text of his remarks.

President Bush signed the implementing order of the Syria Accountability and Lebanese Sovereignty Restoration Act (SAA) on May 11, 2004. Today, two years later, the United States still contends with nearly all of the challenges that formed the basis for this important piece of legislation. The litany of Syrian misdeeds underpinning Public Law 108-175 is well known and includes inter alia, support for terrorism, undermining stability in Iraq, continued meddling in Lebanon, and ongoing development of WMD and ballistic missile programs. Despite these sanctions and other outside pressures, aside from some minor adjustments Syria's behavior has not changed.

Syria has proven a tough nut to crack. The SAA has helped, although the Legislation itself is not sufficient to compel a change in Syrian behavior. The Bush Administration has adopted some steps, but the challenge is how to leverage the SAA in conjunction with other tools at the Administration's disposal—multilateral efforts in particular—to ratchet up the pressure on Syria to force behavioral change.

Of course, this could all change when the UN Investigative Report into the March 2005 assassination of former Lebanese prime minister Rafiq Hariri is released later this month. If Belgian prosecutor Serge Brammertz's report implicates the highest level of the Syrian government, great international pressure could be brought against Damascus and the Baathist regime of President Bashar al-Asad. Presently, the Administration and the Syrians are anxiously awaiting the Brammertz report.

To date, however, the administration has not capitalized on all available opportunities. More important, Damascus believes it has dodged the bullet. Today, two years after President Bush signed the SAA implementing order, the regime of Bashar al-Asad appears more confident than at any time since 2003.

Early Days of Administration Ambivalence

It's no secret that the Administration opposed the SAA when Congress initially sponsored the bill. This response was understandable, perhaps, given the president's desire to protect executive prerogative. The administration may have also balked at signing the legislation out of concern that the sanctions would end Syrian cooperation with the U.S. on al-Qaeda. Indeed, up to that point, Syrian cooperation was by all accounts useful. In its letter asking Congress not to move forward in April 2002, however, the administration indicated that it opposed the SAA because it would constrain the president's freedom of action. As Assistant Secretary for Legislative Affairs Paul Kelly wrote:

"If our efforts on both comprehensive peace and the war against terrorism are to succeed, the president and the secretary [of state] will need flexibility to determine what combination of incentives and disincentives will maximize cooperation and advance our goals. . . . For this reason, we do not believe this is the right time for legislative initiatives that could complicate our efforts. The imposition of new sanctions on Syria would place at risk our ability to address a range of important issues directly with the Syrian government and render more difficult our efforts to change Syrian behavior and avoid a dangerous escalation."

When President Bush did eventually sign the SAA into law December 2003, he posted the U.S. ambassador to Damascus, Ambassador Scobey, the very same week. Prior to Ambassador Scobey's appointment, the ambassador's seat in Damascus had been empty for four months. The timing of this posting no doubt sent a mixed message to the Syrians, taking some of the sting out of the law.

Five months after signing the bill, in May 2004, the administration rolled out its sanctions choices. Essentially, the administration agreed to implement the congressionally-mandated prohibition (of export of munitions and dual-use items), as well as (1) the prohibition of exports other than food or medicine to Syria, and (2) the prohibition on Syrian aircraft landing or taking off from the U.S. At the same time, the administration announced that it was imposing, albeit at a later date, Section 311 USA PATRIOT Act sanctions, and International Emergency Economic Powers Act (IEEPA) designations.

In practice, the first three of these measures resulted in some additional scrutiny of an already-constricted U.S.-Syrian trade relationship. Indeed, trade with Syria had previously been subject to controls based on its status as a state sponsor of terrorism. The IEEPA and Patriot Act sanctions were significant pressure tools, however. Regrettably, these measures were held in reserve for up to two years after the implementing executive order was signed.

IEEPA (Executive Order 13338)

When President Bush signed E.O. 13338 implementing IEEPA in May 2004, he declared "a state of emergency" regarding Syria, authorizing the Department of Treasury in consultation with Department of State, to freeze assets within U.S. jurisdiction, belonging to Syrian individuals and government entities. This authority was significant; indeed, it has been described by the 9-11 Commission as some of the "most powerful tools in the U.S. legal arsenal."

The administration first used this authority in July 2005, when it identified Ghazi Kanaan and Rustom Ghazali, then former and current Syrian intelligence chiefs in Lebanon, as special designated nationals under E.O. 13338 for directing "Syria's military and security presence in Lebanon and/or contributing to Syria's support for terrorism." More recently, in January 2006—following the preliminary findings of the Hariri investigation—the administration designated Assef Shawkat, current director of Syrian military intelligence, for directly furthering the Syria's support for terrorism and interference in the sovereignty of Lebanon.

While IEEPA designations only affect those financial accounts registered in the U.S.—and hence do not directly effect Syrian leaders, most of whom hold their accounts in Europe and the Middle East—the action can be expanded via other executive orders (such as E.O. 13224) to impose sanctions against individuals, organizations and financial institutions that service those designated persons. Hence, the designations potentially have a long reach. This did

not escape the Syrians, who were clearly rattled by the designations of these high ranking officials.

Regrettably, although the president has used other authorities (E.O. 13315) to designate a Syrian company and its proprietors (SES International owned by the Shaleesh family) for its dealings with the former Iraqi regime in 2005, to date the administration has implemented IEEPA designations against only three Syrians.

Patriot Act Section 311 Sanctions

Like IEEPA, Patriot Act Section 311 Sanctions constitute a significant arrow in the administration's sanctions quiver. Patriot Act section 311 target financial institutions deemed to be primary money laundering concerns. When implemented, the sanctions require U.S. financial institutions to sever all accounts with the targeted institution.

To date, the Administration has used this tool to great effect throughout the globe. Of note, Department of Treasury leveled these sanctions in 2005 against a Manxese Bank called Banco Delta Asia, which had been facilitating a great deal of illegal North Korean activities. According to Treasury, implementation of this sanction in 2005 helped limit the amount of dirty money going to Kim Jung Il's regime.

While Patriot Act Section 311 sanctions were cited by the administration in the May 2004 White House statement, the citation was merely a reference to an "a notice of proposed rulemaking"—one step in a lengthy process toward implementation. In fact, the sanctions against the Commercial Bank of Syria and its Lebanese subsidiary, the Syrian-Lebanese Commercial Bank were not implemented until March 2006. Why the delay?

In the two years between the initial designation and signing the final rule, Patriot Act Section 311 sanctions were first held out as a Damocles sword over Damascus—at first to convince Asad to return some \$800M in stolen Iraqi Assets. After more than a year of haggling, the Syrians grudgingly returned some \$275M to Iraq, via the Development Fund for Iraq or "DFI." The remaining \$500M or so disappeared, probably distributed to Asad regime cronies. It also disappeared from the administration's Syria radar screen.

Later, Patriot Act Section 311 sanctions were employed to pressure Syria to proceed with legislative reform of its banking system to inhibit use of its financial system for terrorist financing and money laundering. Some technical changes were eventually incorporated into Syrian legislation, but they were far too few, and there was little confidence they would be implemented. Eventually, after the Hariri assassination, the administration came to the conclusion that this avenue was exhausted, and decided to finally move ahead with the "final rule." The Section 311 sanctions were leveled two months ago.

These Patriot Act sanctions are particularly onerous, and are undoubtedly the harshest sanction the administration has leveled against the Syrians to date. Given the potential impact of this measure, it is unfortunate that the administration took so long to implement them.

Non-Congressionally Mandated Measures

In addition to the Syria Accountability Act sanctions, the administration has independently pursued a number of initiatives designed to increase pressure on Syria. The administration has done particularly well at the United Nations. Most prominently, since 2004, the administration has orchestrated a series of Security Council resolutions that have proved devastating to Syrian interests. This effort started in 2004 with the passage of UNSCR 1559—which called for an end to the decades-long Syrian presence in Lebanon and the disarming of Hezbollah—and continued with UNSCRs 1595 and 1636, which established and entrenched a U.N.-led investigation into the February 2005 assassination of former Lebanese prime minister Rafik Hariri and demanded cooperation from Syria, almost certainly a central player in the killing.

Likewise, after the Hariri murder, the administration actively started meeting with individuals and groups involved in the Syrian opposition, including one well-publicized State Department meeting between a delegation led by

Syrian Reform Party leader Farid Ghadry and a U.S.-delegation led by then Principal Deputy Assistant Secretary of State for Near East Affairs, Elizabeth Cheney, in 2005. Administration officials at State, NSC, and Defense also convened a series of less-well publicized meetings with other Syrian oppositionists. This policy was backed in February 2006 with \$5M in U.S. funding for Syrian civil society.

Policy Implementation Challenges

The administration has been extremely critical in its public pronouncements regarding Syria in recent years. After it was reported that Damascus was maintaining training camps for Iraqi insurgents in 2005, for example, American Ambassador to Iraq Zalmay Khalilzad threatened U.S. military action. "Syria has to decide what price it's willing to pay in making Iraq success difficult. And time is running out for Damascus to decide on this issue," he said. A few months earlier, President Bush singled out Syria in the State of the Union address:

"To promote peace in the broader Middle East, we must confront regimes that continue to harbor terrorists and pursue weapons of mass murder. Syria still allows its territory, and parts of Lebanon, to be used by terrorists who seek to destroy every chance of peace in the region. You have passed, and we are applying, the Syrian Accountability Act—and we expect the Syrian government to end all support for terror and open the door to freedom."

More recently, in April of this year, U.S. Ambassador to Lebanon Jeffrey Feltman condemned Damascus for "yet another cynical attempt . . . to interfere in the Lebanese political process and intimidate the Lebanese people and their political leaders."

As the administration was condemning Syria and implementing SAA sanctions to pressure the regime, Washington was sending senior level delegations to Damascus to meet with President Asad. These meetings were occurring even as Syria was contributing to rising American casualties in Iraq. Between 2003 and 2005 the Departments of State, Defense, Treasury, and the National Security Council dispatched five senior delegations to Damascus to cajole, and later to warn President Asad that there would be consequences for continued Syrian meddling in Iraq and support for terrorism.

These discussions only succeeded in alleviating pressure on the regime by delaying the imposition of tougher measures. Adding insult to injury, these trips, though the emissaries delivered blunt messages, were publicly spun by Syrian officials as "breakthroughs" in Syrian-U.S. relations.

In the interest of peace and in pursuit of U.S. policy goals, the administration has left no stone unturned and has made every effort to avoid direct confrontation with Damascus. Even in April, as the president was preparing to sign the implementing order, the administration made a last ditch effort to avoid sanctions by dispatching Ambassador Scobey to deliver a message to President Asad, urging him to "work closely with the rest of the international community to promote a stable Iraq," and to stop the flow of insurgents into Iraq. At the time, State Department spokesman Richard Boucher said that the administration decision to implement sanctions would "be affected by whatever Syria does." "I'm sure if Syria takes positive, concrete steps," he said, "those steps will be considered."

In retrospect, the Syrian eagerness to engage in a dialogue with the administration appeared to be part of President Asad's strategy to stave off more severe sanctions. At least this appears to be the case with Syria's January 2004 "peace" overture, and the September 2004 Syrian trial balloon of U.S.-Syrian joint military patrols on the Syrian-Iraqi border.

Administration Accomplishments

Despite adversity, the administration has achieved some successes in its Syria policy as a result of the SAA and other UN pressures related to the Hariri assassination.

Perhaps the most compelling development regarding Syria during this administration has been the Syrian

withdrawal from Lebanon. The March 2005 withdrawal was the product of a Lebanon unified in outrage in the wake of the Hariri assassination. But to some extent, the withdrawal was facilitated by the international context of UNSCR 1559, which among other things demanded a Syrian exit from Lebanon. Lebanon was one of the Syrian regime's crown jewels, an asset of economic, political, and military import. The loss of Lebanon has strategically weakened President Asad and is a significant accomplishment.

Among other successes has been the indefinite postponement of Syrian entry into a European Union Economic Association Agreement. If the Syrians had managed to gain entry, it would have surely decreased economic pressures on Damascus—a key leverage point against the Baathist state. What's more, U.S. diplomacy has encouraged other international donors, such as the Japanese, from moving ahead on important infrastructure development projects in Syria. The prospect of implementation of additional SAA sanctions also appears to be spooking Western investors. Just last week, Houston-based Marathon Oil indicated it would divest from its Syrian holdings, including contracts worth \$127M. This is not good news for Damascus.

Another positive development on the Syria front has been the emergence of an active and courageous Syrian reform movement. This movement has an important expatriate element, but the advent of this homegrown contingent of reformers, who are every day putting their lives on the line, is an exciting and significant occurrence. The administration cannot take credit for this development, but the president's support for democracy and freedom in Syria and elsewhere in the region, as well as the pressures on the Baathist regime, have contributed to an atmosphere in Syria where people have been more willing to take chances.

The civil society movement in Syria announced itself in 2000, and was suppressed in 2001, but has reemerged in the past two years, with the publication in October 2005 of the Damascus Declaration, which called for the establishment of a democratic government in Syria, the integration of the Kurds, an end to the emergency law. Then, last month saw the publication of the Beirut-Damascus declaration, which called for an end to Syrian meddling in Lebanon.

What is occurring today appears to be the nascent establishment of a real opposition to the Asad regime. The National Salvation Front (NSF), led by former Syrian Vice President Abdel Halim Khaddam and Syrian Muslim Brotherhood head Sadreddin Bayanouni, which met in London this past weekend is the latest iteration of this opposition. While Khaddam and Bayanouni—a Baathist and Islamist—do not represent the administration's vision for a democratic, tolerant Syria, there are signs that the Syrian-based opposition may be lending its support to this framework. This alliance in opposition to the Asad regime is no panacea, but it's an important development that has occurred, in part, due to this administration's policies.

Continued Syrian Intransigence

Regrettably, despite pressures Syria remains intransigent. Since the implementation of SAA sanctions, Syrian behavior on key issues has seen only incremental changes. On Iraq, Syria reinforced its border and modified visa-entry procedures, making jihadi transit a little more difficult. Yet, according to administration officials, insurgent leaders continue to reside in Syrian safe havens orchestrating operations in Iraq. Indeed, in February 2005, then Deputy Secretary of Defense Paul Wolfowitz testified before the Senate Armed Services Committee that the administration had a list of twelve top insurgent leaders residing in Syria. One year later, it would seem apparent that many of these people are still there.

In Lebanon, despite the withdrawal of Syrian troops, Damascus remains a significant player and is suspected of involvement in several post-Hariri political murders and attempted murders. Most prominent among these were journalist Samir Kassir, killed on June 2, 2005, former Communist Party leader George Hawi, killed June 21, 2005, and the attempted assassinations of Defense Minister Elias Murr on July 12, 2005 and new anchor May Chidiac on September 25, 2005. Syria likewise continues to support Palestinian terrorist organizations, and arms shipments

from Tehran to Hizballah via Damascus transit Syria unmolested. In March, it was widely reported that five truckloads of weapons passed into Lebanon from Syria.

Even after the withdrawal of troops, Syrian intimidation of Lebanese political figures continues. In June 2005, reports surfaced that Syria had developed a “hit list targeting key Lebanese public figures of various political and religious persuasions for assassination.” Then, in April 2006, Syria issued warrants for Lebanese MP Walid Jumblatt, his fellow anti-Syrian Druze compatriot Marwan Hamadeh, and al-Mustaqbal journalist Fares Khashan, accusing them of “inciting the U.S. administration to occupy Syria,” and ordering them to appear before a Syrian military court.

This intimidation extends to the official bilateral relationship, where Syria likewise continues to refuse to establish normalized diplomatic relations with Lebanon, including the setting up of embassies in Beirut and Damascus and the proper exchange of ambassadors. This past March, Lebanese prime minister Fouad Sinora tried to travel to Damascus to discuss this issue, but was rebuffed by President Asad. Instead, President Asad dispatched to Beirut Ahmed Jibril—the antiquated leader of the Palestinian terrorist organization Popular Front for the Liberation of Palestine-General Command (PFLP-GC) to Beirut—as his emissary.

In addition to the PFLP-GC, Syria remains an ardent supporter of Palestinian terrorist organizations Hamas and Islamic Jihad. The top leadership of these organizations continues to reside and operate from Damascus. Islamic Jihad has orchestrated several deadly attacks against Israel from this safe haven in recent months.

And finally, there is the issue of Syria’s stance on Washington’s Middle East democracy-promotion agenda. In the face of the February 2006 U.S. pledge to provide \$5 million to Syrian reformers, Syria has embarked on a crackdown against civil society, arresting dozens of reformers. One individual of whom the regime has made an example is Kamal Labwani. Labwani was arrested in November 2005 following his return from Washington, where he had met with senior administration officials responsible for democracy promotion. President Bush mentioned Labwani in a speech after his arrest. Four months later, Labwani was charged with crimes that carry the death penalty. The trial starts soon, and Labwani’s life hangs in the balance.

Conclusion

Based on this behavior, it seems that Syria has been largely unresponsive—if not unrepentant—regarding U.S. demands on the broad range of concerns. In fact, one could make an argument that President Asad and the regime are now seemingly more confident than when the sanctions were initially leveled. Of course, back in 2003 the Syrians were a little more concerned about the U.S. invasion of Iraq, the toppling of their Baathist neighbor to the East, and the prospects that they might be next.

Still, the Syrians have no reason to be sanguine. Although the Syrians claim a reasonable GDP growth rate of 5.5 percent last year and are benefiting from the high price of oil, according to the IMF, the Syrian economy is facing “daunting challenges,” including a dwindling of oil reserves, a high rate of inflation, a bloated and redundant public sector, a high unemployment rate, and a bubble of entrants into the labor market. While the Syrians have tried to engage in economic reforms, far reaching reforms will be difficult to effect, adding internal pressures on the regime.

The short term denouement of all this tension, of course, is the publication in June of the report of the International Independent Investigation Commission into the Hariri assassination. To date, the administration has encountered a number of challenges in increasing pressure on Syria to force a change in behavior. Should the report implicate senior Asad regime officials, it will provide a moment of opportunity for the administration to work with international allies to force changes. With multilateral cooperation based on UNSCRs, the administration should be able to leverage severe pressure against Syria and force some change.

There are no guarantees that this report will provide a smoking gun. If it does not, Syria may once again dodge the

bullet, and succeed in waiting out yet another administration. If the report does finger Syria, however, Congress can and should play an important role in working with the administration to create a legislative framework that will increase pressure on Syria.

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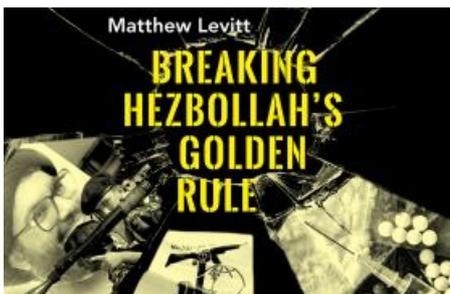
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