Should Syria Honor Assad-Era Debts?

By Tai-Heng Cheng and Lucas Bento

The Syrian civil war has no clear end in sight. With the civilian death toll mounting and the refugee crisis deteriorating, the international community is appropriately focused on the human cost of Syria’s internal conflict. But one question that still needs to be addressed is what will happen to Syria after Assad falls. Syria’s successor government will have to wrestle with a number of complex tasks, including making the war-torn country safer, the political environment fairer, and the economy stronger. It will also be important to decide what to do about Syria’s international commercial obligations, especially its external debt.

Syria’s external debt is close to $9 billion, of which around $2 billion is owed to the Paris Club, an informal forum of creditor nations. Another large portion of Syria’s debt is also owed to Russia. Although Russia wrote off seventy-three percent of Syria’s debt in 2008, the remainder has been structured with a $1.5 billion convertible currency payment and a further $2.1 billion to be paid over a ten-year period.

The Syrian National Council, Syria’s largest opposition group within the internationally recognized Syrian National Coalition, has declared that it “will not bear legal responsibility nor liability for any domestic or international sale or loan contracts” incurred by the Assad regime since the uprising began. Their sentiment is understandable. Since March 2011, the regime has bought $4 billion in weapons from Russia and other suppliers. Surely, it would be odious to make the oppressed pay for the costs of their oppression.

However, given the impact of any massive Syrian default on the already fragile economies of Europe and the United States, creditors should not simply accept Syria’s repudiation of its international commercial obligations. Markets need reassurance that debts will be paid. In the long term, financial institutions cannot extend development loans at reasonable rates to unstable nations, who often need them the most, if new regimes cannot be counted on to honor those loans. There is no easy solution to the


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issue of Syria’s debt as there is no treaty applicable to Syria that directly addresses the issue, and international practices are in flux.

Customarily, international law distinguishes between state and government succession. State succession refers to the creation of a new state, such as the independence of South Sudan from Sudan, and there are no binding rules about whether a new state is bound by its predecessor’s debt. In contrast, government succession refers only to the creation of a new government within an existing state, even if the change is radical, such as through revolution or civil war. Historically, in government succession, a new government remained responsible for the external debts of its predecessor.

Recently, however, U.S. courts have questioned the distinction between state and government successions. Creditors have also released successor governments from some old debt to help them recover economically and to avoid complete default. Following the fall of Saddam Hussein’s regime, Iraq’s debt was significantly reduced, with many debt obligations discounted, including an eighty percent write-off of $42.5 billion in Paris Club debt. Recently, Germany agreed to cancel Tunisia’s €60 million debt by converting it into investments in development projects, a move that has helped strengthen the countries’ bilateral relations. In practice, debts are increasingly resolved through negotiated settlements rather than outcomes dictated by predefined legal rules.

Far from being principled, the rigidity of the distinction between state and government succession ignores the context-specific balance between global order, which is arguably maintained with the continuity of commercial and financial obligations, and the basic human right to development of the people of the territory in question, which may be promoted by the termination of oppressive prior obligations.

Instead of following the strictly precedential rule, creditors should use a policy-oriented approach, such as the ones adopted for Iraq and Tunisia. Once a new government is in place, creditors should strive to quickly confirm the debts that Syria will repay in order to minimize disruptions to global order and to bolster the new government’s standing in capital markets. But creditors may also need to agree to restructure or cancel some debt to avoid a complete default and to give the people of Syria a fighting chance at repairing its economy.

A debt deal, however, will not occur overnight. As the revolution in Libya has proven, a new government has many priorities that may take precedence over debt renegotiations; and as the independence of Kosovo has shown, the earlier commercial arrangements are made, the sooner international obligations will be confirmed after succession. Market actors and policy makers need to start planning adjustments to Syria’s commercial obligations so that disruption to markets can be minimized and global order preserved. 

– Jake Nelson served as Lead Editor for this op-ed.

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