

UN Security Council, Resolution 2664 on Humanitarian Exemptions to UN Sanctions Regime

This case deals with UN Security Council Resolution 2664, which seeks to strengthen the humanitarian space. In this resolution the UN Security Council affirms that the payment of funds and the provision of goods and services necessary for the delivery of humanitarian assistance are permitted and do not constitute a violation of the asset freeze measures it has imposed.

Acknowledgments

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

UN SECURITY COUNCIL RESOLUTION 2664 (2022)

[Source: Resolution of the Security Council, S/RES/2664, of 9 December 2022; available at <https://digitallibrary.un.org/record/3997259>]

Resolution 2664 (2022)

Adopted by the Security Council at its 9214th meeting, on 9 December 2022

The Security Council,

[1] Recalling its previous resolutions imposing its sanctions measures in response to threats to international peace and security,

[2] Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations and

international law, including applicable international human rights law, international refugee law, and international humanitarian law, threats to international peace and security, stressing in this regard, the important role the United Nations plays in leading and coordinating this effort, including through use of its sanctions regimes,

[3] Emphasizing that its sanctions are an important tool under the Charter of the United Nations in the maintenance and restoration of international peace and security, including in support of peace processes, countering terrorism, and promoting non-proliferation and stressing in this regard, the need for full implementation of all such measures imposed by this Council, consistent with international humanitarian law,

[4] Bearing in mind the importance of assessing potential humanitarian impacts prior to a Council decision to establish a sanctions regime, while accepting the need for the Council to act swiftly in countering threats to international peace and security,

[5] Recalling resolution 2462 (2019), which decides that all States shall, in a manner consistent with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense the willful provision or collection of funds, financial assets or economic resources or financial or other related services, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act, and urging States when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law,

[6] Recalling the need for Member States to ensure that all measures taken by them to implement sanctions, including in the context of counter-terrorism, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, as applicable, and noting, in this regard, the rules of international humanitarian law, as applicable, regarding respect for, and the protection of, humanitarian personnel and consignments for humanitarian relief operations and the non-punishment of any person for carrying out medical activities compatible with medical ethics,

[7] Emphasizing that such measures are not intended to have adverse humanitarian consequences for civilian populations nor adverse consequences for humanitarian activities or those carrying them out, and noting that humanitarian and basic human needs differ depending on the specific context,

[8] Expressing its readiness to review, adjust and terminate, when appropriate, its sanctions regimes taking

into account the evolution of the situation on the ground and the need to minimize unintended adverse humanitarian effects, underlining that sanctions measures are intended to be temporary, and acknowledging the perspectives of regional and subregional organizations in this regard,

[9] Encouraging the United Nations, where appropriate, to take an active role in coordinating humanitarian activities in situations where its sanctions are applicable, recalling the United Nations guiding principles of General Assembly Resolution 46/182 of humanitarian emergency assistance, including humanity, neutrality, impartiality and independence, and noting that the intention of this resolution is to provide clarity to ensure the continuation of humanitarian activities in the future,

[10] Reaffirming its previous determinations regarding the threats to international peace and security that prompted its imposition of all extant sanctions measures,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that without prejudice to the obligations imposed on Member States to freeze the funds and other financial assets or economic resources of individuals, groups, undertakings, and entities designated by this Council or its Sanctions Committees, the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by the United Nations, including its Programmes, Funds and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations, international organizations, humanitarian organizations having observer status with the United Nations General Assembly and members of those humanitarian organizations, or bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian “clusters,” or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities, or by appropriate others as added by any individual Committees established by this Council within and with respect to their respective mandates, are permitted and are not a violation of the asset freezes imposed by this Council or its Sanctions Committees;

2. Decides that the provisions introduced by paragraph 1 above will apply to the 1267/1989/2253 ISIL (Da’esh) and Al-Qaida sanctions regime for a period of two years from the date of adoption of this resolution, and expresses its intent to make a decision on the extension of its application to that regime prior to the date on which its application to that regime would otherwise expire, emphasizes the role of the 1267/1989/2253 Sanctions Committee in monitoring the implementation of paragraph 1 of this resolution as per paragraph 6, calls upon all States to cooperate fully with that Committee and its Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004) in the fulfillment of its tasks, including supplying such information as may be required by that Committee in that respect, and emphasizes the importance of this Council’s consideration of any information, including that provided by the Committee or Monitoring Team, regarding implementation of the measures imposed by resolution 1267 (1999) and other

relevant resolutions, including possible violations thereof, as well as briefings received from the United Nations Emergency Relief Coordinator (ERC) as per paragraph 5 of this resolution;

3. Requests that providers relying on paragraph 1 use reasonable efforts to minimize the accrual of any benefits prohibited by sanctions, whether as a result of direct or indirect provision or diversion, to individuals or entities designated by this Council or any of its Committees, including by strengthening risk management and due diligence strategies and processes;

4. Emphasizes that where paragraph 1 of this resolution conflicts with its previous resolutions, paragraph 1 shall supersede such previous resolutions to the extent of such conflict, clarifies in that regard that paragraph 1 shall supersede and replace paragraph 37 of its resolution 2607 (2021) and paragraph 10 of its resolution 2653 (2022), but that paragraph 1 of its resolution 2615 (2021) shall remain in effect, and decides that paragraph 1 of this resolution shall apply with respect to all future asset freezes imposed or renewed by this Council in the absence of an explicit decision by this Council to the contrary;

5. Requests the United Nations Emergency Relief Coordinator (ERC) to brief or arrange a briefing for each relevant Committee within its mandate 11 months from the date of adoption of this resolution and every 12 months afterwards on the delivery of humanitarian assistance and other activities that support basic human needs provided consistent with this resolution, including on any available information regarding the provision, processing or payment of funds, other financial assets or economic resources to, or for the benefit of, designated individuals or entities, any diversion of funds or economic resources by the same, risk management and due diligence processes in place, and any obstacles to the provision of such assistance or to the implementation of this resolution, further requests relevant providers to assist the ERC in the preparation of such briefings by providing information relevant thereto as expeditiously as is feasible and, in any case, within 60 days of any request from the ERC, also emphasizes the importance, in the process of preparing its briefing, of the ERC's consideration of any information provided by the 1267/1989/2253 Sanctions Committee or its Monitoring Team, acting within its mandate, regarding implementation of the measures imposed by resolution 1267 (1999) and other relevant resolutions, including possible violations thereof, and recalls the Committees' ability to engage with Member States to ensure the effective implementation of this Council's decisions, including by requesting additional information from such Member States, including with respect to providers under their jurisdiction, as needed to support such implementation;

6. Directs the Committees established by this Council with respect to sanctions implementation to assist Member States in properly understanding and fully implementing paragraph 1 of this resolution by issuing Implementation Assistance Notices to provide further guidance to give full effect to paragraph 1 that takes into account the unique context of the sanctions falling under their respective mandates, and further directs these Committees, assisted by their respective panels of experts, to monitor the implementation of paragraph 1 of this resolution, including any risk of diversion;

7. Requests that the Secretary-General issue a written report on unintended adverse humanitarian consequences of Security Council sanctions measures, including travel ban and arms embargo measures, as well as those measures that are sui generis to particular sanctions regimes, within 9 months of the adoption of this resolution, requests that such report contain recommendations on ways to minimize and mitigate such unintended adverse consequences including via the promulgation of additional standing exemptions to such measures, and expresses its intent to consider further steps as necessary, taking into account the Secretary-General's report and recommendations, to further minimize and mitigate such unintended adverse consequences; and

[...]

Discussion

I. Humanitarian action

1. (*Paras [2] and [3] of the preamble*)

1. Under what circumstances can organizations offer aid to persons affected by armed conflicts? What types of assistance may be provided? (GC I-IV, Common Art. 3; GC IV, Art. 23 and 59; P I, Arts 69 and 70; P II, Art. 18(2); CIHL, Rule 55; See Online Casebook, UN Security Council Resolution on the Conflict in Syria)
2. Who benefits from humanitarian assistance during an armed conflict? Is there a difference between food supply and medical assistance? (GC IV, Arts 23 and 55; P I, Art. 70; P II, Art. 18(2); CIHL, Rule 55)
3. Are relief actions subject to government consent and/or the consent of non-State armed groups? (P I, Art. 70; P II, Art. 18(2))
4. When can relief actions or the movement of humanitarian relief personnel be limited? (P I, Art. 70 and 71; P II, Art. 18(2); CIHL, Rules 55 and 56)

2. (*Para. [6] of the preamble*) How are humanitarian personnel or other persons carrying out medical activities protected under IHL? Under IHRL? (CIHL, Rules 31 and 32)

3. Who is responsible for providing humanitarian assistance during an armed conflict? Is it limited to the ICRC?

4. Does seeking to uphold the respect of IHRL and IHL fall into the scope of humanitarian action? Is humanitarian action limited to aid delivery?

II. Economic sanctions and IHL

5. Does IHL specifically refer to economic sanctions and their possible effects on the civilian population? If yes, in what circumstances and under which provision(s)? If not, which general rules on the protection of the civilians should be applied?

6. (*Paras [4]-[8] of the preamble*) What are possible adverse humanitarian consequences for the civilian population of sanction regimes? For those who carry out humanitarian activities? (See Online Casebook, Counterterrorism and IHL, Humanitarian Exemptions)

7.

1. Which IHL rules, either treaty law or customary rules, must be respected to establish a sanction regime that aligns with IHL in an IAC? In a NIAC? (GC I-IV, Common Art. 3; GC IV, Arts 23; P I Arts 54(1) and 70; P II, Arts 14 and 18(2); CIHL, Rules 55 and 56)
2. Which additional IHL rules need to be considered in occupied territories? (GC IV, Arts 55 and 59; P I, Art. 69(1))
3. How are humanitarian concerns regarding sanctions imposition raised and addressed during peacetime?

8. (*Paras 1 and 7*) What is the main purpose of the UN Security Council Resolution 2664? Why do you think humanitarian organizations do interpret it as a huge achievement after 10 years of raising awareness on that topic? To what kind of sanctions do humanitarian exemptions apply? Do they apply to sectoral regulations like arms embargoes or travel ban? How would you define the term "asset freezes"?

9. (*Para. 2*) Do humanitarian exemptions apply to all former and future UN sanctions resolutions? Do they apply to the special counterterrorism sanction regimes of ISIL and Al-Qaida? If yes, for how long? Does a State violate international law if it continues to cover humanitarian assistance by UN sanctions it implements?

10. (*Para. 3*) How does the Resolution address the issue of concerns regarding the exploitation of the humanitarian carve-out by terrorist groups?

11. (*Para. [9] of the preamble*) What is the role of the UN in coordinating humanitarian activities? What is the role of the ICRC in carrying out humanitarian activities?

12. (*Para. 5*) Does the UN Security Council decide how to implement the Resolution? Who is responsible for the implementation of the Resolution? What is the role of the UN Emergency Relief Coordinator (ERC)? Of the Committees established by the UN Security Council?