



## Evaluating Mechanisms to Investigate Attacks on Healthcare

Panel of Security Council Experts Supporting  
Sanctions Regimes

Sanctions Regimes

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### ORIGINS AND SUMMARY

In accordance with its primary responsibility for the maintenance of international peace and security under the [UN Charter](#), the UN Security Council may request the secretary-general to create panels of experts (UNSC PoE)<sup>1</sup> to assist its sanctions committees in carrying out their mandate. UNSC PoE assist their respective sanctions committees by monitoring and reporting on the implementation of Security Council sanctions regimes, which in some cases includes investigating and reporting on alleged violations of international humanitarian law (IHL) and international human rights law (IHRL) for the purposes of listing entities or individuals on the basis of designation criteria that include violations of IHL/IHRL.<sup>2</sup> UNSC PoE make recommendations to their respective sanctions committee, and their findings inform further action by their committee (and the Security Council), including the imposition of sanctions on entities or individuals allegedly responsible for violations of international law.

In light of the above, several UNSC PoE have investigated and reported on attacks on healthcare to their respective sanctions committee. Under some sanctions regimes the “obstruction of the delivery of humanitarian assistance, or access to, or distribution of humanitarian assistance,” which includes medical assistance and relief operations, is specifically listed as a designation criterion in the sanctions list, leading their panels of experts to pay specific attention to and investigate specific incidents of violence against healthcare.

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### LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

#### Legal basis and framework

- Under Article 41 of the [UN Charter](#), the Security Council may adopt measures not involving the use of armed force to give effect to its decisions, and it may call upon UN member states to apply such measures. Such measures include the adoption by the council of sanctions regimes. Security Council sanctions regimes are administered by sanctions committees, which are subsidiary organs of the council established on the basis of Article 29 of the [UN Charter](#) or Rule 28 of the [Security Council Provisional Rules of Procedure](#) and composed of one representative of each council member. Under that same authority, the council may request the secretary-general to create

<sup>1</sup> For the purpose of this research project, the different panels or groups of experts or monitoring groups established by the Security Council to assist sanctions committees are collectively referred to as UNSC PoE, regardless of their individual denomination.

<sup>2</sup> Sanctions regimes usually serve one or more of the following purposes: conflict resolution, nonproliferation, counterterrorism, democratization, and the protection of civilians (including human rights). See Security Council Report, “[UN Sanctions](#),” November 2013, p. 3.

panels of experts to assist sanctions committees in carrying out their mandate. (See Security Council Report, "[UN Sanctions](#)," 2013.)

- Where UNSC PoE assists sanctions committees to identify entities or individuals that are allegedly involved in or responsible for violations of IHL/IHRL, they will investigate to establish facts and the circumstances in which these facts occurred and assess them against those bodies of law to determine whether a violation has occurred and who can be held responsible, either directly or indirectly.

### Relevant rules, guidelines, and methodology

- There seems to be no standard methodology that UNSC PoE follow. They establish their own terms of reference, in consultation with their sanctions committee.

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### SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

#### Substantive scope: type of incidents within purview of Res 2286 the mechanism can investigate

<p><b>FULL</b> <i>The mechanism can look into all incidents SCR 2286 seeks to address</i></p>		N/A
<p><b>PARTIAL</b> <i>The mechanism can only look into some but not all incidents that Res 2286 seeks to address</i></p>		N/A
<p><b>CONDITIONAL</b> <i>The mechanism can only look into incidents where a certain condition related to the mechanism's mandate is met</i></p>	✓	UNSC PoE can only investigate attacks on healthcare that amount to alleged violations of IHL/IHRL and fall within their mandate or that of their respective sanctions committee, such as attacks on healthcare that amount to violations of international law listed as designation criteria in the sanctions list.
<p><b>SINGLE INCIDENTS</b> <i>The mechanism can be activated/used to investigate single incidents within the purview of Res 2286</i></p>		N/A

#### Geographic scope

<p><b>GLOBAL</b> <i>The mechanism can be activated to look into incidents regardless of where these occurred</i></p>	✓	The Security Council can establish sanctions regimes and related UNSC PoE to address situations regardless of where they occur. However, the state or entity targeted by the sanctions regime must be on the formal agenda of the Security Council. Therefore, panels of experts investigating alleged violations of IHL/IHRL to assist a sanctions committee can only be used to investigate attacks on healthcare in the country or countries targeted by the sanctions regime.
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<b>REGION-SPECIFIC</b> <i>The mechanism can only be activated to look into incidents that occurred in a specific region</i>		N/A
<b>COUNTRY-SPECIFIC</b> <i>The mechanism can only be activated to look into incidents that occurred in a specific country</i>	✓	N/A

### Type of investigative activities

<b>MONITORING AND REPORTING</b> <i>Actively monitoring conflict to identify and report on trends/patterns of violations of IHL/IHRL</i>		✓	Where alleged violations of IHL/IHRL (general or specific) are part of the designation criteria in sanctions lists, UNSC PoE monitor and report on them and report back to their respective committees on a quarterly basis.
<b>FACT-FINDING &amp; INVESTIGATING</b>	<b>Identify possible violations</b> <i>Establishing facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i>	✓	Where alleged violation of IHL/IHRL (general or specific) are part of the designation criteria in sanctions lists, UNSC PoE investigate specific incidents of alleged violations to determine whether a violation indeed occurred.
	<b>Identify those responsible</b> <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i>	✓	Where alleged violations of IHL/IHRL (general or specific) are part of the designation criteria in sanctions lists, UNSC PoE investigate to establish entities or individuals allegedly responsible for such violations in order to inform a decision by the sanctions committee to designate such entities or individuals as sanction targets.
	<b>Identify perpetrators of crimes</b> <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i>		Sanctions listing violations of IHL/IHRL as designation criteria generally do not formulate these in terms of crimes. As such, there is no need for UNSC PoE to pronounce themselves on alleged criminal responsibility for a violation.
<b>COLLECTING EVIDENCE OF ALLEGED CRIMES</b> <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i>			As UNSC PoE do not need to establish alleged criminal responsibility for violations of IHL/IHRL listed as designation criteria in the sanctions list, they do not need to collect evidence for the purpose of establishing the commission of a crime or criminal responsibility for such a crime.
<b>ASSESSING VICTIMS' GRIEVANCES</b> <i>Identifying direct/indirect consequences of attacks and assess need for reparations</i>			UNSC PoE investigate alleged violations of IHL/IHRL for the purpose of implementing sanctions regimes and therefore do not seek to assess the needs or grievances of victims of such violations.

<b>RECOMMENDATIONS TO</b>	<p><b>Prevent future incidents</b> <i>Identify/propose corrective measures to prevent future incidents</i></p>	(✓)	<p>While the purpose of UNSC PoE is to assist sanctions committees in the implementation of sanctions regimes, occasionally their recommendations may also indirectly serve a preventive purpose, such as recommendations to undertake measures aimed to ensure the implementation of an arms embargo (e.g., <a href="#">PoE on Sudan</a>, p. 45). Moreover, the deterrent effect of certain sanctions may also indirectly contribute to preventing future violations of IHL/IHRL.</p>
	<p><b>Ensure accountability for violations of IHL/IHRL</b> <i>Identify appropriate avenues and concrete actions to ensure accountability</i></p>	(✓)	<p>Apart from contributing to the imposition or implementation of Security Council sanctions against entities and individuals allegedly responsible for violations of IHL/IHRL, UNSC PoE may also recommend other measures to ensure accountability for such violations and implementation of the sanctions regime, such as:</p> <ul style="list-style-type: none"> <li>• Establishing an international commission of inquiry to investigate violations of IHL/IHRL in a given country (e.g., <a href="#">PoE on Yemen</a>, p. 51); or</li> <li>• Encouraging relevant national authorities to carry out prompt, efficient, independent, and impartial investigations and judicial proceedings against those who have committed serious violations and abuses of IHL/IHRL (e.g., <a href="#">PoE on the Central African Republic</a>, p. 55).</li> </ul>
	<p><b>Ensure reparations and/or address victims' other grievances</b></p>		<p>UNSC PoE have not made recommendations that seek to ensure reparations or otherwise address the grievances and needs of the victims of the violations they investigate.</p>

Membership	Election/appointment	Guarantees of independence & impartiality
<p>UNSC PoE are generally composed of three to eight independent experts.</p>	<p>UNSC PoE members are selected and appointed by the secretary-general from a roster of experts maintained for that purpose. The secretary-general informs the president of the Security Council of these appointments in writing (e.g., <a href="#">secretary-general's 2017 letter on Yemen</a>).</p>	<p>As the secretary-general selects and appoints the experts on the panel from a pre-established expert roster, their independence from the influence of Security Council members should in principle be guaranteed. However, there have been cases where council members have attempted to lobby the UN Secretariat for the appointment of their nationals to specific UNSC PoE, which may compromise the actual or perceived independence of these mechanisms (Security Council Report, "<a href="#">UN Sanctions</a>," p. 7).</p> <p>Members of UNSC PoE enjoy UN privileges and immunities as experts on mission, which contributes to their capacity to carry out their functions in an independent and impartial manner.</p>

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
<p>UNSC PoE are ad hoc mechanisms created by the secretary-general at the direction of the council to support sanctions committees in carrying out their mandate.</p> <p>UNSC PoE are created pursuant to a Security Council resolution. As a substantive, rather than procedural, decision, the decision to request the secretary-general to create a UNSC PoE is subject to the veto.</p>	<p>The Security Council reviews, and usually renews, the mandate of UNSC PoE on an annual basis. As UNSC PoE are established pursuant to a Chapter VII resolution, the consent of concerned states is not required. The decision to request the secretary-general to create or renew a UNSC PoE mandate can be vetoed by Security Council permanent members or can fail to materialize if the required votes are not obtained.</p>	

	Pre-existing	To be established when activated/created
<b>Human resources</b>	<p>UNSC PoE are supported administratively by the Security Council Affairs Division (SCAD) of the Department of Political Affairs, (DPA). An official from SCAD serves as the secretary of each of the sanctions committees (and their respective PoE) established by the council.</p> <p>UNSC PoE members are selected from a pre-established <a href="#">roster of experts</a>, maintained for that purpose by SCAD in the UN Secretariat, which provides general support to Security Council sanctions committees and their PoE.</p> <p>UNSC PoE also increasingly cooperate with UN political and peacekeeping missions in the field, which can provide them with analysis on specific situations or can engage in monitoring activities.</p>	<p>Members of UNSC PoE are selected and appointed by the secretary-general as consultants with the status of experts on mission for the UN. They are subject to the UN security management system.</p>
<b>Financial resources</b>	<p>UNSC PoE are supported by the regular UN budget.</p>	N/A

<b>Confidential reporting to and dialogue with parties to the conflict</b>		N/A
<b>Public reporting to the UN and/or other international organizations</b>	(✓)	<p>UNSC PoE report to the sanctions committee they are accredited to (and thus indirectly to the Security Council). In principle, their reports are transmitted to the Security Council by the sanction committee they are accredited to and thus adopted as official Security Council documents and published as such. However, the release of UNSC PoE reports requires consensus among members of the sanctions committee, which has in some cases delayed publication or rendered it impossible (Security Council Report, "<a href="#">UN Sanctions</a>," p. 8).</p>

<b>Transmissibility to judicial mechanisms</b>	(✓)	Information and evidentiary materials gathered by UNSC PoE can, upon request, be shared with judicial mechanisms if the secretary-general deems it appropriate and in line with UN policy and practice on the release of confidential documents ( <a href="#">Convention on the Privileges and Immunities of the United Nations</a> , Section 21; Secretariat <a href="#">guidelines</a> ). The decision is made by the secretary-general or a designated official (e.g., the under-secretary general for DPA).
<b>Possible follow-up mechanisms</b>	✓	UNSC PoE reports are frequently followed by UN resolutions “expanding, eliminating or clarifying a particular sanctions regime” based on the findings in the panel’s report (Stimson Center, “ <a href="#">United Nations Mechanisms for Combating Illegal Trade in Regions of Conflict</a> ,” June 2005, pp. 7–8).
<b>Available enforcement measures</b>	✓	Established under Chapter VII of the <a href="#">UN Charter</a> , sanctions regimes are mandatory for all UN member states. The targeted sanctions that flow from the findings and recommendations of UNSC PoE and adopted by their sanctions committees must be implemented by all UN member states.

**8 PRECEDENT OF USE FOR ATTACKS ON HEALTHCARE**

Out of the thirteen sanctions committees, four have UNSC PoE with a mandate to investigate alleged violations of IHL/IHRL.

<b>Year/country</b>	<b>Investigated violations of IHL</b>	<b>Investigated alleged attacks on healthcare</b>
<a href="#">Yemen</a> (2014)	✓ Mandated to undertake investigations and document widespread violations of IHL, including the obstruction of the delivery and distribution of humanitarian assistance.	✓ In 2016 the panel <a href="#">reported</a> on obstructions to the provision of medical services, including attacks on hospitals, which also affected the delivery and distribution of humanitarian medical assistance, including the provision of medical supplies (pp. 60–61).  No specific new recommendations were made in the 2016 report, which refers back to those made in the <a href="#">2015 report</a> that the Security Council:  <ul style="list-style-type: none"> <li>“In its future resolutions and presidential statements on Yemen, make reference to Member States conducting military operations in Yemen...[and] stress their responsibility to respect and uphold international humanitarian law, in</li> </ul>

				<p>particular the principles of distinction and proportionality.”</p> <ul style="list-style-type: none"> <li>• “Consider establishing an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights in Yemen by all parties and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.”</li> <li>• “Encourage the legitimate Government of Yemen to take steps towards achieving accountability on the part of perpetrators of grave violations against children in Yemen.”</li> </ul>
<p><a href="#">Central African Republic</a> (2013)</p>	✓	<p><a href="#">Mandated</a> to investigate and document/monitor or violations of IHL.</p>	(✓)	<p>In its 2016 report, the UNSC PoE <a href="#">reported</a> on its investigations of incidents of violence against humanitarian personnel in 2016 (no explicit mention was made of medical personnel). The UNSC PoE recommended that the sanctions committee:</p> <ul style="list-style-type: none"> <li>• “Encourage the authorities of the Central African Republic to carry out prompt, efficient, independent and impartial investigations and judicial proceedings against those who have committed serious violations and abuses of human rights and violations of international humanitarian law; and to take all reasonable and legal steps to secure decisions, including rulings and sentences, proportionate and appropriate to the offense committed.”</li> </ul>
<p><a href="#">South Sudan</a> (2015)</p>	✓	<p><a href="#">Mandated</a> to provide information to the committee related to individuals and entities undermining political processes, obstructing humanitarian missions, or violating IHL/IHRL, including attacks on hospitals and other places</p>	✓	<p>In its 2017 report, the UNSC PoE <a href="#">reported</a> on acts of obstruction of humanitarian assistance and attacks against humanitarian workers that caused the state of and declaration of famine in Unity state. This included the obstruction of medical assistance through the destruction and looting of hospitals and medical supplies (pp. 25, 33–34). It made the following recommendations:</p> <ul style="list-style-type: none"> <li>• To the sanctions committee: “Designate those responsible for the actions and policies that threaten the peace, security and stability of South Sudan.”</li> <li>• To the Security Council: “Send a letter to the President of the Human Rights</li> </ul>

		where civilians seek refuge.		Council and to the United Nations High Commissioner for Human Rights requesting that that Commission receive the full legal and forensic support necessary to execute effectively its mandate to collect, preserve and analyze evidence of human rights violations and violations of international humanitarian law.”
<a href="#">Sudan</a> (2005)	✓	<a href="#">Mandated</a> to investigate violations of IHL, including attacks on civilian populations and impediments to humanitarian access (Security Council <a href="#">Resolution 2265</a> ).	(✓)	In its 2017 report, the UNSC PoE <a href="#">reported</a> on violations of IHL relating to children and reported on denial of humanitarian access and attacks against humanitarian workers (no explicit reference was made to medical access or medical personnel), even though the panel was not granted access to investigate on the ground in Darfur. It recommended that the Sanctions Committee: <ul style="list-style-type: none"> <li>• “Urge the Government of Sudan to facilitate the fulfilment of the Panel's mission in the best possible environment, including by providing multiple-entry visas for Panel members in a timely manner and granting unlimited access to Darfur.”</li> </ul>