

An Unfinished Agenda: Carving Out Space for Humanitarian Action in the UN Security Council's Counterterrorism Resolutions and Related Sanctions

AGATHE SARFATI



Cover Photo: A UNHCR supply associate oversees the arrival of the third planeload of emergency supplies for displaced and vulnerable Afghans at the Hamid Karzai International Airport in Kabul, Afghanistan, on December 20, 2021. (UNHCR/Tony Aseh.)

Disclaimer: The views expressed in this paper represent those of the author and not necessarily those of the International Peace Institute. IPI welcomes consideration of a wide range of perspectives in the pursuit of a well-informed debate on critical policies and issues in international affairs.

IPI Publications

Albert Trithart, *Editor and Research Fellow*

Anna Sattler, *Editorial Intern*

Suggested Citation:

Agathe Sarfati, "An Unfinished Agenda: Carving Out Space for Humanitarian Action in the UN Security Council's Counterterrorism Resolutions and Related Sanctions," International Peace Institute, March 2022.

ABOUT THE AUTHOR

AGATHE SARFATI is a Policy Analyst at IPI.

Email: sarfati@ipinst.org

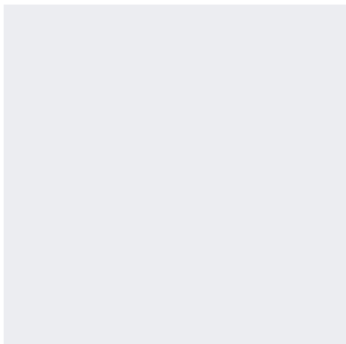
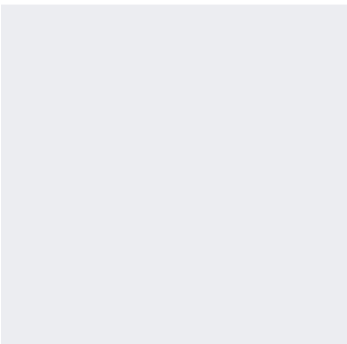
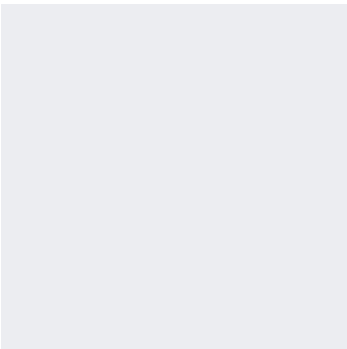
ACKNOWLEDGEMENTS

The author would like to thank Sue Eckert for her guidance and partnership throughout the project. The author is also very grateful to Krisztina Huszti-Orban, Christopher Harland, Naureen Chowdhury Fink, Adam Lupel, Jenna Russo, and the anonymous reviewers for their advice and review of earlier drafts of this paper. The author would also like to thank all the representatives of member states, UN officials, representatives of humanitarian organizations, and independent experts who were consulted as part of this research. The author thanks Luciana Vosniak, Laura McCreedy, and Stefan Bakumenko for their valuable research assistance, as well as Albert Trithart and Anna Sattler for the revision and finalization of the report.

IPI is grateful to the governments of Germany and Canada for funding this research and publication.

© by International Peace Institute, 2022
All Rights Reserved

www.ipinst.org



CONTENTS

Abbreviations	iii
Executive Summary	v
Introduction.....	1
United Nations Counterterrorism Requirements and Related Sanctions Measures	2
Resolution 1267 Sanctions Regime against the Taliban and ISIL/al-Qaida.....	2
Resolution 1373 and Subsequent Resolutions	3
The Negative Impact of Counterterrorism Measures and Related Sanctions Regimes on Humanitarian Action	4
The Evolution of Efforts to Reduce the Humanitarian Impact of Sanctions and Counterterrorism Measures from 2001 to 2020	6
Resolution 1373, Subsequent Resolutions, and Their Subsidiary Bodies	7
The 1267 Sanctions Committee and Its Monitoring Team.....	9
A Confluence of Counterterrorism Decisions in December 2021: Progress and Gaps	10
Resolution 2615 on Afghanistan: A New Humanitarian Exception	11
Resolution 2610 on the ISIL/al-Qaida Sanctions Regime: Stronger Language on IHL and Humanitarian Action.....	13
Resolution 2617 on CTED's Mandate Renewal: No New Humanitarian Language.....	14
Conclusion and Recommendations	15
Annex: Evolution of Language Related to IHL or Humanitarian Action in UN Sanctions Regimes	18

ABBREVIATIONS

A3+1	Three African members and one Caribbean member of the UN Security Council
CAR	Central African Republic
CTED	UN Security Council Counter-Terrorism Committee Executive Directorate
CTC	UN Security Council Counter-Terrorism Committee
DRC	Democratic Republic of the Congo
IHL	International humanitarian law
IS(IL)	Islamic State (of Iraq and the Levant)
OCHA	UN Office for the Coordination of Humanitarian Affairs

Executive Summary

Since the attacks of September 11th, 2001, the UN Security Council has developed two main streams of work related to counterterrorism: the sanctions regime established by Resolution 1267, which was later split into two sanctions regimes (one for the Taliban and one for al-Qaida and the Islamic State (IS) and their affiliates); and a series of measures under Resolution 1373 and subsequent resolutions. However, these counterterrorism resolutions and related sanctions regimes have been criticized for failing to safeguard and facilitate impartial humanitarian action. In response, the council has progressively incorporated language that better takes into consideration international humanitarian law (IHL) and humanitarian principles. For instance, in 2019, Resolution 2462 on countering the financing of terrorism included several provisions related to compliance with IHL and humanitarian action. Some sanctions regimes have seen the addition of “intent clauses” clarifying that their measures do not intend to negatively impact the humanitarian situation and, in some exceptional cases, humanitarian carve-outs. In the case of the UN Security Council Counter-Terrorism Committee Executive Directorate (CTED), the Security Council has authorized it to focus on IHL and humanitarian action through the lens of its mandate.

Despite these incremental efforts, humanitarian organizations have continued to criticize counterterrorism resolutions and related sanctions regimes for inhibiting humanitarian activities. In particular, two provisions—the asset freeze in the sanctions regime against IS and al-Qaida and the criminalization of economic support “for any purpose”—have greatly impacted humanitarian activities, especially in areas controlled by listed entities. Together with other UN counterterrorism measures, this has, among other things, had a “chilling effect,” whereby humanitarian organizations self-regulate beyond what is legally required; prompted financial intermediaries to engage in “de-risking,” whereby they delay or refuse to facilitate transactions to sanctioned areas; and led member states to deny access to humanitarian organizations. The humanitarian impact of the UN sanctions regime against the Taliban following its

takeover of Afghanistan in August 2021 has also been striking, leading financial institutions, private companies, and humanitarian organizations to pull back their operations for fear of violating UN and unilateral sanctions.

In light of these shortcomings, two counterterrorism-related resolutions adopted by the Security Council in December 2021 demonstrate incremental progress on safeguarding humanitarian action. Specifically, the council added a “humanitarian exception” to the Taliban sanctions regime and adopted an “intent clause” as part of the ISIL/al-Qaida sanctions regime. However, gaps in counterterrorism resolutions and the counterterrorism architecture still exist and must be addressed to better safeguard humanitarian action. To ensure continued progress, the Security Council, other UN member states, relevant UN entities, humanitarian organizations, relevant civil society groups, and independent experts could consider the following recommendations.

For humanitarian organizations, relevant civil society groups and UN entities, and independent experts:

- Advocate to keep humanitarian action high on the Security Council agenda;
- Monitor the implementation of the humanitarian exception for Afghanistan; and
- Issue independent opinions on advisable forms of humanitarian carve-outs.

For the UN Security Council and other UN member states:

- Reinforce implementation and monitoring of provisions in Security Council resolutions pertaining to IHL and humanitarian action;
- Provide adequate resources to monitor the impact of UN counterterrorism measures and related sanctions on humanitarian action;
- Amend language in UN counterterrorism resolutions and related sanctions regimes to facilitate humanitarian action; and
- Empower elected members of the Security Council to be agents of change.

Introduction

Twenty years after the terrorist attacks of September 11th, 2001, the UN Security Council still considers terrorism to be “one of the most serious threats to international peace and security,” and counterterrorism remains a high priority for its members.¹ However, Resolution 1373 and subsequent resolutions, along with related sanctions regimes—in particular the sanctions regime against the Islamic State (IS) and al-Qaida—have been criticized for failing to safeguard and facilitate impartial humanitarian action.² Humanitarian organizations and civil society groups, with the support of some member states, have become more vocal about the negative impact of these measures on humanitarian activities. In particular, they have reported the “chilling effect” of these measures on impartial humanitarian activities as well as their impact on financial services, which can delay or impede humanitarian organizations from operating efficiently and through a needs-based approach.

In response, the Security Council has progressively incorporated language that better considers international humanitarian law (IHL) and humanitarian principles, including stronger language on respect for IHL and, in exceptional cases, humanitarian “carve-outs” in some sanctions regimes. Most recently, two of the four counterterrorism resolutions adopted in December 2021 demonstrate the Security Council’s incremental progress in safeguarding humanitarian action. Specifically, the council included a “humanitarian exception” in the Taliban sanctions regime and an “intent clause” in the ISIL/al-Qaida sanctions

regime clarifying that it is not intended to negatively impact the humanitarian situation. Despite this progress, gaps in the design and implementation of Security Council counterterrorism resolutions and sanctions regimes continue to prevent the effective safeguarding and facilitation of impartial humanitarian action.

This policy paper considers how the Security Council’s counterterrorism resolutions and related sanctions regimes can continue making progress to better protect humanitarian action. It begins by describing the council’s main streams of work on counterterrorism, focusing on the 1267 sanctions regime and Resolution 1373 and subsequent resolutions, as well as their subsidiary organs. The

Gaps in the design and implementation of Security Council counterterrorism resolutions and sanctions regimes continue to prevent the effective safeguarding and facilitation of impartial humanitarian action.

second section discusses the impact of these counterterrorism measures on impartial humanitarian activities. The third section then reviews the incremental steps taken by the Security Council from 2001 to 2020 to incorporate language relevant to IHL and humanitarian affairs into these

measures.

Based on this historical overview, the fourth section analyzes the four counterterrorism-related resolutions adopted by the Security Council in December 2021, particularly the humanitarian exception in the Taliban sanctions regime and the intent clause in the ISIL/al-Qaida sanctions regime.³ The paper concludes with policy recommendations for the UN Security Council, other UN member states, relevant UN entities, humanitarian organizations, relevant civil society groups, and independent experts to better safeguard humanitarian action under counterterrorism resolutions and related sanctions regimes.

¹ The prioritization of counterterrorism can be seen in several ways. First, counterterrorism is a thematic area of consensus for the Security Council (only one draft counterterrorism resolution on repatriation of “foreign terrorist fighters” failed to be adopted, in August 2020). See: Security Council Report, “Counter-Terrorism: Vote on Draft Resolution,” August 30, 2020. Second, the Security Council established the Counter-Terrorism Committee (CTC) as a subsidiary organ in 2001 to “bolster the ability of the UN member states to prevent terrorist acts within their borders and across regions.” Apart from the 1540 Committee on non-proliferation, the CTC is the only Security Council committee focused on a thematic issue. Third, the Security Council has repeatedly qualified terrorism as “one of the most serious threats to international peace and security.” See, for instance: UN Security Council Resolution 2462 (March 28, 2019), UN Doc. S/RES/2462; and UN Security Council, *Statement Made by the President of the Security Council*, UN Doc. S/PRST/2021/1, January 12, 2021.

² Unilateral sanctions regimes have also been criticized but are not the focus of this paper.

³ Resolutions 2610 and 2611 extended the sanctions regimes against ISIL/al-Qaida and the Taliban, respectively, and renewed the mandate of the 1267 Monitoring Team; Resolution 2615 provides a humanitarian exception in the Taliban sanctions regime; and Resolution 2617 renewed the mandate of the Counter-Terrorism Committee Executive Directorate (CTED).

United Nations Counter-terrorism Requirements and Related Sanctions Measures

The UN Security Council has two main streams of work related to counterterrorism: (1) the sanctions regime outlined in Resolution 1267, which was later split into two sanctions regimes, one against the Taliban and the other against IS and al-Qaida; and (2) Resolution 1373 and subsequent resolutions.⁴

Resolution 1267 Sanctions Regime against the Taliban and ISIL/al-Qaida

Prior to the 9/11 attacks, the Security Council had only taken occasional steps to respond to specific acts of terrorism.⁵ The council's approach began to shift in 1999, when Resolution 1267 imposed targeted sanctions on the Taliban for "the provision of sanctuary and training for international terrorists and their organizations."⁶ This marked the first time the Security Council adopted sanctions against an armed group for its involvement in terrorism-related activities. At the time, the Taliban controlled some parts of Afghanistan, and al-Qaida, led by Osama bin Laden, had been present in the country since 1996.⁷ Resolution 1267 linked the Taliban and al-Qaida, "[deploring] the fact that the Taliban continues to provide safe haven to Usama bin Laden."⁸ The sanctions regime initially imposed an air embargo and an asset freeze on the Taliban and created a new subsidiary body, the 1267 Committee,

to review the implementation of these measures.⁹ In 2002, the Security Council expanded the sanctions regime to include individual members of al-Qaida and imposed new measures such as a travel ban and an arms embargo while also terminating the air embargo.¹⁰ This resolution remains the basis for the current sanctions regimes against the Taliban and ISIL/al-Qaida.

As the dynamics of the threat posed by the Taliban and al-Qaida evolved, the Security Council made two major decisions to alter the 1267 sanctions regime.¹¹ First, in 2011, the council split the regime into two sanctions regimes with separate committees, one applying to the Taliban and the other to al-Qaida.¹² This allowed the council to address the situation in Afghanistan and incentivize the Taliban to join negotiations while focusing separately on international terrorist threats.¹³ Both regimes include the three main components of the original 1267 regime: a travel ban, an asset freeze, and an arms embargo. Both sanctions committees are also supported by the Analytical Support and Sanctions Monitoring Team (hereafter, the Monitoring Team).¹⁴

Second, in 2015, with the emergence and rapid spread of the Islamic State in Syria and Iraq, the Security Council expanded the listing criteria under the al-Qaida sanctions regime to include individuals, groups, undertakings, and entities associated with IS.¹⁵ The sanctions regime has since been known as the Islamic State in Iraq and the Levant (Da'esh) and al-Qaida (ISIL/al-Qaida) sanctions regime. This global regime currently applies to 89

4 The Taliban sanctions regime is not regarded as part of the UN counterterrorism agenda, but it is addressed here within the framework of the 1267 sanctions regime for historical and contextual reasons. Other UN sanctions regimes are mentioned in the paper (e.g., the sanctions regimes applying to Yemen pursuant to Resolution 2140 and Somalia pursuant to Resolution 751), but the analytical scope of the paper remains centered on the ISIL/al-Qaida and Taliban sanctions regimes. On humanitarian action under other sanctions regimes, see: Rebecca Brubaker and Sophie Huvé, "Conflict-Related UN Sanctions Regimes and Humanitarian Action: A Policy Research Overview," *International Review of the Red Cross*, no. 916–917 (February 2022).

5 These included the 1992 sanctions against Libya after the bombing of Pan Am flight 103 and against Sudan in 1996 for harboring suspected terrorists. The Security Council also adopted resolutions condemning international terrorism related to the 1998 bombings of the US embassies in Nairobi and Dar es Salaam. See: Jake Sherman and Agathe Sarfati, "Reflecting on the UN's Role in Counterterrorism Twenty Years After 9/11," *IPI Global Observatory*, June 1, 2021.

6 UN Security Council Resolution 1267 (October 15, 1999), UN Doc. S/RES/1267, para. 1.

7 Gilles Kepel, *Away from Chaos: The Middle East and the Challenge to the West* (New York: Columbia University Press, 2020).

8 UN Doc. S/RES/1267, preambular para. 6.

9 Ibid.

10 UN Security Council Resolution 1390 (January 28, 2002), UN Doc. S/RES/1390.

11 See: The Soufan Center, "Diminished but Not Defeated: The Evolution of al-Qaeda since September 11, 2001," September 2021.

12 UN Security Council Resolution 1989 (June 17, 2011), UN Doc. S/RES/1989; and UN Security Council Resolution 1988 (June 17, 2011), UN Doc. S/RES/1988. Another important decision taken by the Security Council with the adoption of Resolution 1989 was the strengthening of the Ombudsperson's Office to establish a review and appeal process for listing and delisting. This procedural change enabled the council to better align with human rights principles, although some concerns remain.

13 Brian O'Toole, "They Aren't Listed, but Make No Mistake: The UN Has Sanctions on the Taliban," Atlantic Council, August 23, 2021.

14 This is in accordance with Resolutions 1526 and 2253. Established in 2004, the Monitoring Team reports on the implementation of sanctions as well as the threats posed by the Taliban, al-Qaida, and, most recently, IS. UN Security Council Resolution 2368 (July 20, 2017), UN Doc. S/RES/2368, para. 94, Annex I.

15 UN Security Council Resolution 2253 (December 17, 2015), UN Doc. S/RES/2253.

entities and 261 individuals considered to be members of IS and al-Qaida or associated individuals, groups, undertakings, and entities.¹⁶

Resolution 1373 and Subsequent Resolutions

After 9/11, the UN Security Council recognized terrorist acts as “threats to international peace and security” and expressed “its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001.”¹⁷ This was a turning point for the Security Council, with counterterrorism becoming one of its highest priorities. In the ensuing years, the council adopted dozens of resolutions on counterterrorism that went beyond sanctions.¹⁸ In response to emerging and evolving threats, these resolutions have created a broad framework for international cooperation on counterterrorism across several areas: preventing recruitment and radicalization; bringing alleged terrorists to justice; developing rehabilitation strategies; restricting the movement of “foreign terrorist fighters” and securing borders; countering the misuse of the Internet and new technologies; halting and suppressing the financing of terrorism; and imposing targeted sanctions on individuals and groups supporting terrorism.¹⁹ The Security Council also took a quasi-lawmaking role in adopting Resolutions 1373, 2178, and 2462, which identify “terrorist” and ancillary acts as serious criminal offenses under the domestic laws and regulations of all UN member states.²⁰ Some of the mandatory provisions contained in these resolutions—in particular the requirement to criminalize

forms of support to terrorist organizations—may constitute an obstacle to the facilitation of impartial humanitarian activities.

The first of these resolutions, Resolution 1373, was adopted just two weeks after the 9/11 attacks. It requires member states to “criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.”²¹ The resolution also reiterates that “any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations.”²²

In addition to adopting Resolution 1373, the Security Council also established the Counter-Terrorism Committee (CTC), a subsidiary body to monitor the implementation of the resolution and to develop technical recommendations and guiding principles to facilitate its implementation at the national level.²³ In 2004, the Counter-Terrorism Committee Executive Directorate (CTED) was created as a unique special political mission based in New York to support the CTC.²⁴

In 2019, the Security Council adopted Resolution 2462 to counter the financing of terrorism.²⁵ The resolution reaffirms provisions in previous resolutions that established criminal offenses for the direct

16 See: UN Security Council, “United Nations Security Council Consolidated List,” available at www.un.org/securitycouncil/content/un-sc-consolidated-list.

17 UN Security Council Resolution 1368 (September 12, 2001), UN Doc. S/RES/1368.

18 This has led some to question their necessity and impact. See, for instance: Eric Rosand and Alistair Millar, “Twenty Years After 9/11, A Need to Adapt Counterterrorism Approaches at Security Council,” *IPI Global Observatory*, June 3, 2021. See also the website of the Securing the Future Initiative, an independent review and assessment of the UN Security Council’s counterterrorism decisions launched by the Fourth Freedom Forum and The Soufan Center, available at <https://sfi-ct.org/>.

19 Sherman and Sarfati, “Reflecting on the UN’s Role in Counterterrorism Twenty Years After 9/11.”

20 See, for instance: Luis Miguel Hinojosa Martínez, “The Legislative Role of the Security Council in Its Fight against Terrorism: Legal, Political and Practical Limits,” *International and Comparative Law Quarterly* 57, no. 2 (April 2008); Nigel D. White, “The United Nations and Counter-Terrorism,” in *Counter-Terrorism: International Law and Practice*, Ana María Salinas de Frías, Katja Samuel, and Nigel D. White, eds. (Oxford: Oxford University Press, 2012), p. 81; and Titilopemi Ogunlade, “The UN Security Council as Legislator: A Critical Analysis” (Master’s thesis, Université de Genève, 2014).

21 UN Security Council Resolution 1373 (September 28, 2001), UN Doc. S/RES/1373, para. 1 (b).

22 Ibid., para. 2 (e). This is also reiterated in UN Security Council Resolutions 2178 (September 24, 2014), UN Doc. S/RES/2178, para. 6; 2396 (December 21, 2017), UN Doc. S/RES/2396, para. 17; and UN Doc. S/RES/2462, para. 2.

23 Under Resolution 1373, the Security Council created the CTC “to monitor implementation of this resolution” and called on member states to report to the committee on “steps they have taken to implement this resolution.” UN Doc. S/RES/1373, para. 6. See: CTED, “Security Council Guiding Principles on Foreign Terrorist Fighters: The 2015 Madrid Guiding Principles and 2018 Addendum,” UN Docs. S/2015/939 and S/2018/1177, 2019; and UN Security Council, *Letter Dated 27 December 2019 from the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism Addressed to the President of the Security Council*, UN Doc. S/2019/998, December 21, 2019, Annex (“Technical Guide to the Implementation of Security Council Resolution 1373 (2001) and Other Relevant Resolutions”).

24 UN Security Council Resolution 1535 (March 26, 2004), UN Doc. S/RES/1535.

25 UN Doc. S/RES/2462.

and indirect financing of terrorism and “the travel, recruitment and financing of foreign terrorist fighters.” However, it goes further than previous resolutions by requesting that states establish serious criminal offenses for the “wilful provision or collection of funds, financial assets or economic resources or financial or other related services... to be used for the benefit of terrorist organizations or individual terrorists *for any purpose*... even in the absence of a link to a specific terrorist act” (emphasis added).²⁶ By removing the link to a specific terrorist act, which was initially present in Resolution 1373, this extends the criminalization requirement to any economic contact with terrorist organizations or individuals, regardless of intention and without any link to a terrorist act. As discussed in the following section, this provision is particularly concerning for impartial humanitarian organizations.

At the global level, the 1267 sanctions regime against ISIL/al-Qaida and their affiliates is the measure with the biggest impact on humanitarian action.

activities, including by undermining the ability of humanitarian organizations to operate in a needs-based, neutral, and impartial manner.²⁷ Most recently, a report published by CTED stated that “counter-terrorism measures may negatively impact on the ability of humanitarian actors to operate and, by extension, on persons in need of humanitarian assistance.”²⁸ This section focuses on how states’ implementation of the UN counterterrorism provisions and related sanctions measures can affect impartial humanitarian action.²⁹

In the 1267 sanctions regime targeting ISIL/al-Qaida and their affiliates, it is the listing of entities that has the biggest impact on humanitarian action, particularly when these entities control or have a significant presence in areas with populations in need of assistance.³⁰ For example, IS used to control parts of Iraq and Syria, and several listed groups remain in control of territory, including al-Nusrah Front in northwestern Syria, al-Qaida in the Arabian Peninsula and Maghreb, Boko Haram in northern Nigeria, and IS in parts of Yemen, the Sahel, and eastern Afghanistan. In all of these areas, impartial humanitarian actors face obstacles, including due to counterterrorism and sanctions measures.³¹

The component of the ISIL/al-Qaida sanctions regime that is the most problematic for humanitarian organizations is the asset freeze. The asset freeze has a broad reach so as to deny listed individuals and entities the means to engage in criminal

The Negative Impact of Counterterrorism Measures and Related Sanctions Regimes on Humanitarian Action

There is extensive evidence that counterterrorism measures and related sanctions regimes have a negative impact on populations and humanitarian

²⁶ Ibid., paras. 2, 5.

²⁷ See: Alice Debarre, “Safeguarding Medical Care and Humanitarian Action in the UN Counterterrorism Framework,” International Peace Institute, September 2018; Alice Debarre, “Making Sanctions Smarter: Safeguarding Humanitarian Action,” International Peace Institute, December 2019; Rebecca Brubaker and Sophie Huvé, “UN Sanctions and Humanitarian Action: Review of Past Research and Proposals for Future Investigation,” United Nations University Centre for Policy Research, January 2021; Lindsay Hamsik and Lissette Almanza, “Detrimental Impacts: How Counter-Terrorism Measures Impede Humanitarian Action—A Review of Available Evidence,” InterAction, April 2021; Gillian McCarthy, “Adding to the Evidence: The Impacts of Sanctions and Restrictive Measures on Humanitarian Action,” VOICE, March 2021; “Understanding the Operational Impacts of Sanctions on Syria II: Damascus-Based INGOs and Bank De-Risking,” April 2021; Emanuela-Chiara Gillard, “IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions,” Chatham House, September 3, 2021; Médecins Sans Frontières, “Adding Salt to the Wound: The Experience of MSF Frontline Workers Providing Impartial Healthcare in Counter-Terrorism Environments,” October 2021; Erica Moret, “Life and Death: NGO Access to Financial Services in Afghanistan,” Norwegian Refugee Council, January 2022. See also the special double edition of the *International Review of the Red Cross*: “Counterterrorism, Sanctions and War,” *International Review of the Red Cross* 103, no. 916–917, February 2022.

²⁸ CTED, “The Interrelationship between Counter-Terrorism Frameworks and International Humanitarian Law,” January 2022, p. 6.

²⁹ While the UN Security Council resolutions are the core focus of this section, it should be noted that it is difficult to isolate the impact of Security Council measures on humanitarian impact given the many additional contributing factors. These include unilateral sanctions and the ways in which national authorities and financial institutions implement sanctions.

³⁰ Gillard, “IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions.” The eighty-nine entities included on the 1267 list have had some presence or operated in more than fifty countries. They are especially concentrated in Pakistan (twenty-one entities), Afghanistan (nineteen entities), Syria (sixteen entities), Libya (thirteen entities), Iraq (ten entities), Algeria (eight entities), Indonesia (eight entities), and Mali (eight entities).

³¹ The listing of armed groups in other sanctions regimes with similar asset freezes, such as the Yemen sanctions regimes against the Houthi rebels, may create similar difficulties for humanitarian organizations.

activities.³² It has two main requirements for member states: (1) freezing the funds, financial assets, and economic resources of all listed individuals and groups; and (2) ensuring that no funds are “made available, directly or indirectly for such [designated] persons’ benefit or by their nationals or persons within a state’s territory.”³³ It applies not only to funds and financial assets but also to economic resources, including land, equipment, office furniture, Internet hosting, and “any other assets,” essentially prohibiting all economic contact.³⁴ This clause applies to all nationals and persons within a state’s territory. This directly impacts humanitarian activities, as it can deter financial intermediaries and donors from making funds available to humanitarian actors in territories controlled by listed entities or can lead humanitarian organizations themselves to restrict their operations for fear of violating sanctions.

These challenges are further exacerbated by the interplay between the ISIL/al-Qaida sanctions regime and Resolution 2462, which requires states to criminalize economic support to listed individuals and entities “for any purpose,” even when there is no link to terrorist acts. Finally, as noted in the CTED report, counterterrorism measures “[are] at times interpreted in such a way as to hinder the ability of humanitarian organizations to carry out humanitarian activities efficiently and based on needs alone as foreseen by international humanitarian law, and in accordance with humanitarian principles.”³⁵

The interplay between UN counterterrorism measures and the sanctions against ISIL/al-Qaida, as well as their interpretation and implementation by member states and financial institutions, has negatively impacted humanitarian organizations in several ways:

- **Chilling effect:** To mitigate the risk of violating sanctions measures or national counterterrorism laws pursuant to Security Council resolutions, some humanitarian organizations have self-regulated beyond what is legally required. As a result, some have avoided operations or activities they deem too risky instead of making decisions based on humanitarian needs.
- **Financial “de-risking”:** Financial intermediaries engage in de-risking when they delay or refuse to facilitate transactions with humanitarian actors operating in areas they view as high-risk. De-risking practices have impeded the financial transactions of humanitarian organizations in parts of Syria, Afghanistan, Pakistan, and other areas controlled by 1267-listed entities. In some cases, delayed or denied payments have prevented humanitarian organizations from paying salaries or funding programs, forcing them to change or halt their operations.³⁶
- **Restrictive clauses in donor contracts:** Donors may restrict humanitarian organizations from providing services in areas controlled by entities listed under the 1267 sanctions regime despite the needs of the civilian population. For example, donor contracts have prevented humanitarian activities such as the delivery of medical services and equipment in Idlib, Syria. Donors may also impose vetting requirements that violate the principle of neutrality of humanitarian activities. As a result, some humanitarian organizations have been forced to forego funding and restrict their activities.³⁷
- **Denial of humanitarian access by host states:** Some states may deny humanitarian organizations access to territories controlled by 1267-

32 UN Security Council Resolution 2610 (December 17, 2021), UN Doc. S/RES/2610, para. 1. The asset freeze includes an exemption, however, for “funds and other financial assets or economic resources that the Committee determines to be necessary for basic expenses... [and] extraordinary expenses.” This provision allows listed individuals, groups, undertakings, and entities to request an exemption to the asset freeze measure from the committee (through a focal point) under certain conditions. See: *Ibid.*, paras. 84–87.

33 The asset freeze applies not only to funds of listed individuals and groups but also “to the funds that derive from property that they own or control, directly or indirectly, or that are owned or controlled by persons acting on their behalf or at their direction.” See also: UN Security Council Al-Qaida Sanctions Committee, “Assets Freeze: Explanation of Terms,” February 24, 2015.

34 According to the al-Qaida Sanctions Committee, economic resources include “assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which potentially may be used to obtain funds, goods or services.” For additional examples, see: UN Security Council Al-Qaida Sanctions Committee, “Assets Freeze: Explanation of Terms.”

35 CTED, “Counter-Terrorism Frameworks and International Humanitarian Law,” p. 18.

36 *Ibid.*, pp. 19–21. On de-risking, see: Sue Eckert, “Counterterrorism, Sanctions and Financial Access Challenges: Course Corrections to Safeguard Humanitarian Action,” *International Review of the Red Cross* 103, no. 916–917 (February 2022).

37 Consultations with humanitarian organizations, October 2021.

listed entities or prohibit them from engaging with such entities.³⁸

- **Legal liability for violations:** Humanitarian organizations may inadvertently violate asset freezes and be liable to prosecution or fines by operating in areas controlled by listed entities or where they have a significant presence. Such violations could include not only cases of aid diversion, incidental transactions, or the payment of taxation for humanitarian access but also the rehabilitation of properties, water supplies, or other forms of assistance that benefit listed entities.³⁹ While this risk still exists in some jurisdictions, it is extremely unlikely that impartial humanitarian actors would be listed by the Security Council. Further, some national authorities have officially stated that they would not be focusing their prosecutorial strategies on humanitarian organizations.⁴⁰

Compared to the ISIL/al-Qaida sanctions regime and other counterterrorism measures that have had a global impact, the UN sanctions regime against the Taliban has been limited to

Afghanistan. However, it has had a major impact within that country, especially since the Taliban's takeover in August 2021.⁴¹ As most of the de facto national authorities were suddenly subject to asset freezes under both the UN and other national and regional sanctions regimes, the transfer of funds and economic resources became a legal and logistical conundrum.⁴² Questions arose, for instance, as to whether entire ministries led by these individuals were also subject to sanctions.

It became evident that the Taliban sanctions regime was no longer fit for purpose and urgently needed to be reconceptualized.

These uncertainties led some financial institutions, private companies, and humanitarian organizations to pull back their operations in the country, even as humanitarian organizations advocated for stepping up their work to respond to growing humanitarian needs.⁴³ As the impact of the sanctions quickly escalated, it became evident that they were no longer fit for purpose and urgently needed to be reconceptualized.⁴⁴

The Evolution of Efforts to Reduce the Humanitarian Impact of Sanctions and Counterterrorism Measures from 2001 to 2020

Since 2001, the Security Council has continued to take a harsh, risk-averse approach to counter-

terrorism. At the same time, awareness of the adverse humanitarian impacts of counterterrorism and sanctions measures has grown.

Humanitarian organizations, legal experts, and some governments have also increasingly advocated for these measures to be in line with IHL, including to enable impartial humanitarian action. As a result, despite pushback from some states, the Security Council has incrementally adopted language that addresses these concerns.

The Security Council has taken different approaches to protecting humanitarian action in each of its streams of work on counterterrorism. As

38 CTED, "Counter-Terrorism Frameworks and International Humanitarian Law," pp. 19-21.

39 See, for instance: *Holder v. Humanitarian Law Project*, 561 US 1 (2010). The US Supreme Court ruled that training, expert advice, or assistance for designated individuals and entities falls within the US prohibition on material support to terrorism. For more on *Holder* and its implications, see: Charity & Security Network, "Holder v. Humanitarian Law Project," September 3, 2020, available at <https://charityandsecurity.org/litigation/hlp/>.

40 See, for instance: French Ministry of Justice, "Circular on the Fight against Attacks on Humanitarian Workers Abroad and the Specificity of the Missions of Organizations Carrying Out Humanitarian Activities" ("Circular relative à la lutte contre les atteintes portées aux travailleurs humanitaires à l'étranger et à la spécificité des missions des organisations exerçant des activités humanitaires"), July 27, 2021.

41 For more on the UN Security Council's Taliban sanctions after 2001, see: Graduate Institute Geneva, "UN Targeted Sanctions: Qualitative Database," June 2014, pp. 2-7, 104-106.

42 For more on unilateral coercive measures, see: "Unilateral Coercive Measures, IHL and Impartial Humanitarian Action: An Interview with Alena Douhan," interview by Bruno Demeyere for *International Review of the Red Cross* 103, no. 916-917 (February 2022). On sanctions in Afghanistan, see: International Crisis Group, "Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe," December 6, 2021.

43 See: Sue Eckert, "Afghanistan's Future: Assessing the National Security, Humanitarian and Economic Implications of the Taliban Takeover," statement before the US Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC, October 5, 2021; "Afghanistan: Humanitarians Call for Greater Support as Winter Approaches," UN News, October 6, 2021.

44 International Crisis Group, "Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe"; Kelly Kimball, "Afghanistan's Aid Infrastructure Is Unraveling," *Foreign Policy*, December 22, 2021; Erica Moret, "The Role of Sanctions in Afghanistan's Humanitarian Crisis," *IPI Global Observatory*, October 14, 2021.

a result, progress has been uneven. By 2020, the resolutions stemming from Resolution 1373 had come the furthest in taking humanitarian action into consideration, while the 1267 sanctions regime did not mention it at all and the Monitoring Team did not dedicate resources to monitoring impact; and the CTC and CTED had only just started to focus more on it. While these streams of work are politically and legally relevant to one another, this institutional division has given the council the flexibility to address evolving situations and different counterterrorism contexts while juggling procedural and political prerogatives.

Resolution 1373, Subsequent Resolutions, and Their Subsidiary Bodies

The first gap that needed to be filled was the absence of language on international law in early Security Council resolutions on counterterrorism.⁴⁵ It was only in 2003 that the council began to systematically refer to the need to comply with international law in these resolutions.⁴⁶ Since then, all counterterrorism resolutions have reaffirmed that threats from terrorist groups must be combatted in accordance with international law, including IHL and international human rights law.⁴⁷

In the mid-2010s, member states began discussing more specific language on safeguarding humanitarian action in the UN's counterterrorism architecture. These debates first took place in the General Assembly during the periodic reviews of

the Global Counter-Terrorism Strategy.⁴⁸ The first time humanitarian language was included in the strategy was during the fifth review, in 2016.⁴⁹ Additional humanitarian language was added during the sixth review and was subsequently reinforced in the seventh review.⁵⁰ This paved the way for similar negotiations in the Security Council.

In March 2019, the Security Council adopted Resolution 2462—a consolidated resolution on countering the financing of terrorism—which included several provisions related to compliance with IHL and humanitarian action. These provisions were the result of intensive humanitarian diplomacy by some member states, humanitarian organizations, and independent experts in New York.⁵¹ The resolution calls for domestic frameworks that criminalize terrorist financing to be “consistent with their obligations under international law, including international humanitarian law.” It also “demands that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of terrorism... comply with their obligations under international law, including international humanitarian law.”⁵² While this is not new language, it marks the first time the Security Council has demanded compliance with IHL as a general provision in an operative paragraph within counterterrorism measures. Resolution 2462 also

urges states, when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those

45 This gap contrasts with previous international conventions on counterterrorism, which referred specifically to IHL and provided a carve-out. See, for instance: Article 21 of the 1999 International Convention for the Suppression of the Financing of Terrorism; and Article 4 of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

46 Note, however, that Security Council Resolution 1269 emphasizes “the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the UN... and norms of international law, including respect for international humanitarian law and human rights” in a preambular paragraph. This paragraph was not included in subsequent resolutions until 2003, however. UN Security Council Resolution 1269 (October 19, 1999), UN Doc. S/RES/1269, preambular para. 4.

47 See, for example: UN Security Council Resolutions 2560 (December 29, 2020), UN Doc. S/RES/2560, preambular para. 7; UN Doc. S/RES/2368, preambular para. 11; UN Doc. S/RES/2253, preambular para. 8; and UN Doc. S/RES/1989, preambular para. 5.

48 The Global Counter-Terrorism Strategy was first adopted by the UN General Assembly in 2006. It is a common framework approved by and for UN member states on countering terrorism. For more, see: Eelco Kessels and Melissa Lefas, “What the Review of the UN Global Counter-Terrorism Strategy Tells Us About How Far We Have Come Since 9/11,” *Just Security*, July 27, 2021; and Melissa Lefas, Junko Nozawa, and Eelco Kessels, “Blue Sky V: An Independent Analysis of UN Counterterrorism Efforts,” Global Center on Cooperative Security, November 2020.

49 During the fifth mandate renewal of the Global Counterterrorism Strategy in 2016, the General Assembly first adopted language pertaining to humanitarian activities. The resolution “urges States to ensure, in accordance with their obligations under international law and national regulations, and whenever international humanitarian law is applicable, that counter-terrorism legislation and measures do not impede humanitarian and medical activities or engagement with all relevant actors as foreseen by international humanitarian law.” UN General Assembly Resolution 70/291 (July 19, 2016), UN Doc. A/RES/70/291, para. 22.

50 In particular, see: UN General Assembly Resolutions 72/284 (June 26, 2018), UN Doc. A/RES/72/284, paras. 78–80; and 75/291 (July 2, 2021), UN Doc. A/RES/75/291, paras. 109, 110.

51 See: Security Council Report, “Combatting Financing of Terrorism Open Debate,” March 27, 2019.

52 UN Doc. S/RES/2462, paras. 5, 6.

measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.⁵³

Later that year, Resolution 2482 broadened this language from “measures to counter the financing of terrorism” to “counterterrorism measures.”⁵⁴

Though the inclusion of such language was a step in the right direction, by June 2020, only a minority of member states reported having “taken into consideration the impact of countering the financing of terrorism on humanitarian action.” Measures by member states also varied widely: some had included “general references to constitutional guarantees,” others had conducted multi-stakeholder dialogues, and a handful had adopted a humanitarian carve-out in relevant legislation.⁵⁵

The inconsistency of the provision’s implementation stems in part from its lack of operational clarity and the lack of a common understanding of what “taking into consideration” should entail. This lack of clarity can be attributed to disagreements among Security Council members on the relationship between domestic counterterrorism frameworks and humanitarian action. While legal experts have proposed ways forward, it remains to be seen how this provision will be further implemented by UN member states.⁵⁶

As part of their mandate to monitor and facilitate

the implementation of the counterterrorism resolutions, the CTC and CTED have also started focusing on IHL and humanitarian action. With CTED’s support, the CTC has updated its Technical Assistance Guide with basic guidance around IHL and respect for impartial humanitarian activities.⁵⁷ The CTC also held briefings in 2015, 2019, and 2021 that focused on the interplay between IHL and counterterrorism. In January 2022, CTED published a report on the relationship between counterterrorism frameworks and IHL.⁵⁸

As the number of Security Council resolutions on counterterrorism has multiplied, CTED’s mandate has grown to include additional functional tasks and thematic areas.⁵⁹ In particular, with the adoption of Resolutions 2462 and 2482, the CTC has interpreted CTED’s mandate as extending to monitoring the implementation of operative paragraphs on compliance with IHL and taking into account the impact of measures to counter the financing of terrorism on humanitarian action.⁶⁰ With support from extra-budgetary resources, CTED has thus strived to mainstream IHL in its work. For example, it has incorporated questions around general respect for IHL when implementing counterterrorism measures and on ways that states “take into account the potential effect of measures” on humanitarian activities into the newly developed Electronic Detailed Implementation Survey (e-DIS) and country-assessment visits.⁶¹

53 Note that Security Council Resolution 2482 contains broader language targeting all “counter-terrorism measures” in operative paragraph 16. This resolution, however, was not adopted under Chapter VII of the UN Charter. The same provision was part of a draft Chapter VII resolution that the Security Council failed to adopt in 2020. Paragraph 13 of the draft resolution “urges Member States to ensure that all measures taken to counter terrorism comply with their obligations under international law, including humanitarian law, international human rights law and international refugee law, and urges States to take into account the potential effects of counterterrorism measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.” UN Security Council, *Indonesia: Draft Resolution*, UN Doc. S/2020/852, August 31, 2020.

54 UN Security Council Resolution 2482 (July 19, 2019), UN Doc. S/RES/2482.

55 UN Security Council, *Letter Dated 3 June 2020 from the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism and the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council*, UN Doc. S/2020/493, June 3, 2020, Annex (“Joint Report of the Counter-Terrorism Committee Executive Directorate and the Analytical Support and Sanctions Monitoring Team”), p. 24.

56 For instance, see: Dustin A. Lewis and Naz K. Modirzadeh, “Taking Into Account the Potential Effects of Counterterrorism Measures on Humanitarian and Medical Activities: Elements of an Analytical Framework for States Grounded in Respect for International Law,” Harvard Law School Program on International Law and Armed Conflict (PILAC), May 2021.

57 UN Doc. S/2019/998, Annex.

58 See: CTED, “The Interrelationship between Counter-Terrorism Frameworks and International Humanitarian Law.”

59 For more on the evolution of CTED’s mandate, see: Annabelle Bonnefont, Agathe Sarfati, and Jason Ipe, “Continuity Amid Change: The 2021 Mandate Renewal of the UN Counter-Terrorism Committee Executive Directorate,” Global Center on Cooperative Security and International Peace Institute, November 2021.

60 These include, for example, operative paragraphs 5, 6, and 24 of Resolution 2462. See: UN Security Council, *Letter Dated 21 July 2020 from the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism Addressed to the President of the Security Council*, UN Doc. S/2020/731, July 21, 2020, Annex (“Framework Document for Counter-Terrorism Committee Visits to Member States Aimed at Monitoring, Promoting and Facilitating the Implementation of Security Council Resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017), 2462 (2019) and 2482 (2019) and Other Relevant Council Resolutions”); and UN Doc. S/2019/998, Annex.

61 CTED, “The Interrelationship between Counter-Terrorism Frameworks and International Humanitarian Law,” p. 43.

While CTED's mandate was recently renewed, stakeholders have debated the extent to which it should continue to have a mandate related to IHL.⁶² Some external commentators argue for the added value of mandatory communication on IHL with host states during country visits. Others, however, are concerned that IHL could be weakened if it is interpreted by a body that is subject to Security Council oversight.

The 1267 Sanctions Committee and Its Monitoring Team

In contrast to Resolution 1373 and subsequent resolutions like 2462, by 2020, the ISIL/al-Qaida sanctions regime still made no references to humanitarian action. This had not always been the case, however. In 1999, when the 1267 sanctions regime only covered the Taliban, it included a provision that could be considered a precursor to humanitarian carve-outs.⁶³ The resolution allowed an exemption to the no-fly zone if “the particular flight has been approved in advance by the Committee on the grounds of humanitarian need.”⁶⁴ This exemption was removed once the air embargo was terminated in 2002.⁶⁵ It was not until 2008 that Resolution 1267 again included preambular paragraphs on the need to comply with IHL.⁶⁶ The Security Council later incorporated

more specific language in 2017, calling on member states to “protect non-profit organizations from terrorist abuse, using a risk-based approach, while working to mitigate the impact on legitimate activities,” but it did not mention humanitarian action.⁶⁷

This gap in the sanctions regime against ISIL/al-Qaida has persisted in part because some member states lack the political will to introduce nuances that could be seen as “weakening” the counter-terrorism regime. Some member states also continue not to acknowledge that these measures can in fact impede humanitarian action.

This approach contrasts with other UN sanctions regimes where the Security Council has given more consideration to humanitarian action. Most notably, the council has included various forms of humanitarian carve-outs (exemptions and exceptions) in some other sanctions regimes, albeit rarely.⁶⁸ Among the fourteen current sanctions regimes, three included a humanitarian exception or exemption in 2020: the sanctions regime against al-Shabaab in Somalia, which includes a limited humanitarian exception;⁶⁹ and the sanctions regimes against the Democratic People's Republic of Korea and Yemen, both of which have exemptions by request for humanitarian purposes.⁷⁰

62 See: Dustin A. Lewis, Naz K. Modirzadeh, and Jessica S. Burniske, “The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law: Preliminary Considerations for States,” Harvard Law School PILAC, March 2020.

63 The Security Council had also previously adopted forms of humanitarian exemptions for the sanctions regimes in Southern Rhodesia (1968), Iraq (1990), the Former Yugoslavia (1992), Libya (1992), and Haiti (1993). None of these sanctions regimes are still in place.

64 See: UN Doc. S/RES/1267, para. 4. Pursuant to this provision, the committee produced a list of organizations that were allowed to land aircraft despite the air embargo. See: United Nations, “Approved List of Humanitarian Relief Providers for Afghanistan,” press release, UN Doc. AFG/123-SC/6994, January 19, 2001.

65 See: UN Doc. S/RES/1267, paras. 4 (a–b) and 6 (c); UN Security Council Resolution 1333 (December 19, 2000), UN Doc. S/RES/1333, preambular paras. 5, 16 and paras. 11, 12, 14, 15 (d), 25.

66 The first occurrence appears in UN Security Council Resolution 1822 (June 30, 2008), UN Doc. S/RES/1822, preambular para. 3.

67 UN Doc. S/RES/2368, para. 22.

68 A humanitarian exception (also sometimes referred to as a standing humanitarian exemption) is “a provision that carves out legal space for humanitarian actors, activities, or goods within sanctions measures without any prior approval needed.” Debarre, “Making Sanctions Smarter,” p. 5. In this case, impartial humanitarian organizations do not need to request authorization from the committee. In contrast, humanitarian exemptions require some action by a humanitarian organization (or member state). There are two types of exemptions: an “exemption by notification” exempts an activity from the scope of sanctions upon notification and acknowledgment by the committee (or, in some cases, when the committee does not object within a number of working days; and an “exemption by request” requires a humanitarian organization (or member state) to request the committee and receive authorization to operate within sanctions jurisdictions. For more on the existing forms of humanitarian exemptions, see: Rebecca Brubaker and Sophie Huvé, “Humanitarian Exemptions in UN Sanctions Regimes,” United Nations University Centre for Policy Research, forthcoming.

69 The humanitarian exception in Somalia was initially adopted in 2010 under Resolution 1916 and was last renewed in 2021 by Resolution 2607. Resolution 2607 “reaffirms that without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of its resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plan for Somalia.” See: UN Security Council Resolution 2607 (November 15, 2021), UN Doc. S/RES/2607, para. 37.

70 The humanitarian exemption in the North Korea sanctions regime was adopted in 2006 and last renewed in 2021. See: UN Security Council Resolutions 1718 (October 14, 2006), UN Doc. S/RES/1718; and 2569 (March 26, 2021), UN Doc. S/RES/2569. The humanitarian exemption in the Yemen sanctions regime was first adopted in 2020 and last renewed in 2021. See: UN Security Council Resolutions 2511 (February 25, 2020), UN Doc. S/RES/2511; and 2564 (February 25, 2021), UN Doc. S/RES/2564.

The 1267 Monitoring Team currently does not focus on humanitarian action, though it has done so in the past. In 2015, due to the expansion of the 1267 regime to cover IS and at the recommendation of the Monitoring Team itself, the Security Council mandated the Monitoring Team to report on the regime's "unexpected challenges and unintended consequences."⁷¹ This prompted the Monitoring Team to engage with the humanitarian sector and report on financial de-risking in its 2016 and 2017 reports.⁷² The Security Council has renewed this mandate in subsequent resolutions.⁷³

However, the Monitoring Team does not systematically cover all aspects of its mandate in each report and has recently focused more on threat assessments related to IS and al-Qaida's global affiliates as directed by the ISIL/al-Qaida Sanctions Committee.⁷⁴

By 2021, years of advocacy and humanitarian diplomacy had brought growing attention within the Security Council to the humanitarian impact of sanctions and other counterterrorism measures.

A Confluence of Counterterrorism Decisions in December 2021: Progress and Gaps

Despite these incremental efforts by the Security Council to consider the impact of sanctions and other counterterrorism measures on humanitarian action, humanitarian organizations still saw much

room for improvement. By 2021, years of advocacy and humanitarian diplomacy had brought growing attention to the issue within the Security Council. As a result, it was the subject of multiple discussions throughout 2021 in the Security Council and beyond. Notably, France led an open debate on "Protection of Civilians in Armed Conflict: Preserving Humanitarian Space," and the CTC held a closed briefing on the relationship between counterterrorism measures and IHL.⁷⁵ Kenya also hosted an Arria-formula meeting on humanitarian action in counterterrorism contexts, and the European Union

and six member states organized a discussion series on "Ensuring the Protection, Safety, and Security of Humanitarian Workers and Medical Personnel in Armed Conflicts."⁷⁶

In addition, the Security Council indicated its willingness to include language on IHL in sanctions regimes. Starting in 2021, council members agreed to include an intent clause clarifying that "measures imposed by this resolution are not intended to have adverse humanitarian consequences for civilian populations" and stronger language on compliance with IHL in some sanctions regimes. These changes were reflected in the renewal of the sanctions regimes in Mali, the Democratic Republic of the Congo (DRC), and the Central African Republic (CAR).⁷⁷

⁷¹ See: UN Security Council Resolution 2199 (February 12, 2015), UN Doc. S/RES/2199, para. 30; and UN Doc. S/RES/2253, Annex 1.

⁷² As Emanuela-Chiara Gillard writes, "The ISIL/Al-Qaida Sanction panel of experts has taken the initiative in proactively engaging with humanitarians, asking for information on the adverse impact of the sanctions. The panel has also indicated its concern that asset freezes, and banks' consequent restriction of services to humanitarian organizations with operations in areas where designated entities are based, has led some organizations to resort to informal and unregulated channels to transfer the funds necessary to operate. This makes it more difficult to monitor such funds and increases the risk of the very abuse the sanctions are trying to prevent. Humanitarian organizations may have found an unexpected ally in the ISIL/Al-Qaida panel of experts in advocating for exemption for humanitarian action to be included in the asset freeze." "Recommendations for Reducing Tensions in the Interplay Between Sanctions, Counterterrorism Measures and Humanitarian Action," Chatham House, August 2017. See also: UN Security Council, *Letter Dated 19 July 2016 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council*, UN Doc. S/2016/629, July 19, 2016; and *Letter Dated 11 January 2017 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council*, UN Doc. S/2017/35, January 13, 2017.

⁷³ See: UN Doc. S/RES/2368, Annex I.

⁷⁴ See: UN Security Council, *Twenty-Seventh Report of the Analytical Support and Sanctions Monitoring Team Submitted Pursuant to Resolution 2368 (2017) ISIL (Da'esh), Al-Qaida and Associated Individuals and Entities*, UN Doc. S/2021/68, February 3, 2021.

⁷⁵ See: UN Security Council, "Protection of Civilians in Armed Conflict: Preserving Humanitarian Space—Security Council, 8822nd Meeting," July 16, 2021, available at <https://media.un.org/en/asset/k1n/k1nzi96to4>.

⁷⁶ See: Security Council Report, "Arria-Formula Meeting on Overcoming Challenges to Humanitarian Action in Situations of Armed Conflict and Counterterrorism Operations," August 10, 2021; Delegation of the European Union to the United Nations—New York, "Discussion Series on Ensuring the Protection, Safety, and Security of Humanitarian Workers and Medical Personnel in Armed Conflicts," October 6, 2021.

⁷⁷ UN Security Council Resolutions 2588 (July 29, 2021), UN Doc. S/RES/2588; 2582 (June 29, 2021), UN Doc. S/RES/2582; and 2590 (August 30, 2021), UN Doc. S/RES/2590. Prior to this, such language existed only in the North Korea sanctions regime.

These developments helped prepare the Security Council for an important confluence of counterterrorism decisions scheduled for December 2021, including the mandate renewals of the Monitoring Team for the Taliban and ISIL/al-Qaida sanctions regimes and CTED. These mandate renewals were influenced by the rapidly evolving situation in Afghanistan following the departure of US forces and other international actors. The Taliban's subsequent takeover of the country quickly reshuffled the priorities of member states due to the worsening humanitarian crisis and led them to consider another resolution to include a humanitarian exception in the Taliban sanctions regime—a step the Security Council has only rarely taken.

The mandate renewals were also influenced by Security Council members (particularly elected members) that had become “champions” of humanitarian action and IHL and had prioritized these issues during their time on the council.⁷⁸ But while elected members have been important agents of change, their two-year terms are often too short for them to take full ownership over an issue. In addition, the permanent members of the Security Council tend to negotiate resolutions among themselves and only circulate drafts to the elected members at a later stage, by which point they are essentially *faits accomplis* with little room for negotiation. This challenge reemerged during the negotiations of the four counterterrorism resolutions in December 2021.⁷⁹ It was further exacerbated by the fact that some of these negotiations took place simultaneously, constricting the timeframe for seriously considering proposals.

Despite these difficulties, the four resolutions were adopted unanimously by the Security Council by the

end of the year: Resolutions 2610 and 2611, which extended the sanctions regime against ISIL/al-Qaida and against the Taliban, respectively, and renewed the mandate of the Monitoring Team; Resolution 2615, which provides a humanitarian exception for the Taliban sanctions regime; and Resolution 2617, which renews the mandate of CTED.

Resolution 2615 on Afghanistan: A New Humanitarian Exception

The most important outcome in terms of humanitarian action was the adoption of Resolution 2615, which the Security Council adopted following difficult negotiations and amid mounting pressure to alleviate the humanitarian catastrophe in Afghanistan. The resolution creates a humanitarian exception for the Taliban sanctions regime.⁸⁰ In the beginning of the first operative paragraph of the resolution the council

decides that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of paragraph 1 (a) of resolution 2255 (2015), and that the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are permitted.

In the past twenty years, this is only the second humanitarian exception adopted by the Security Council, the first being the exception in the Somalia sanctions regime. Because of compromises between council members, however, the carve-out for Afghanistan is different from the humanitarian exception for Somalia for several reasons.⁸¹

⁷⁸ Elected members often define specific priorities for their terms on the Security Council and have “championed” particular issues to advance various policy outcomes, including outcomes related to counterterrorism. For example, Jordan spearheaded the youth, peace, and security agenda in 2015, and Peru addressed the links between organized crime and terrorism in 2019. See also: Adam Lupel and Lauri Mälksoo, “A Necessary Voice: Small States, International Law, and the UN Security Council,” International Peace Institute, April 2019.

⁷⁹ See: Government of Mexico, “Explicación de Posición de México, Adopción de la resolución sobre la renovación del mandato de CTED” (on file with author), December 30, 2021. See also: UN Security Council, *Letter Dated 8 February 2021 from the Permanent Representative of Finland to the United Nations Addressed to the President of the Security Council*, UN Doc. S/2020/130, February 11, 2021, Annex, (“Hitting the Ground Running”: Eighteenth Annual Workshop for Newly Elected Members of the Security Council, Held on 12 and 13 November 2020 in New York”), p. 8.

⁸⁰ Resolution 2611 was adopted on the same day as Resolution 2610, with the objective of renewing the mandate of the Monitoring Team that covers both sanctions regimes (for the Taliban and ISIL/al-Qaida). Resolution 2611 was thus adopted separately from and prior to the humanitarian exception for the Taliban sanctions regime. The reason is mainly procedural; the mandate of the Monitoring Team had to be renewed prior to its expiration on December 17, 2021. See also: Helen Durham and Christopher Harland, “Carve-Out in Kabul: Hard Won Resolution Lifts Humanitarian Roadblock in Afghanistan,” International Committee of the Red Cross Humanitarian Law & Policy blog, February 3, 2022.

⁸¹ Resolution 2607 on the sanctions regime in Somalia “reaffirms that without prejudice to humanitarian assistance programmes conducted elsewhere, the measure imposed by paragraph 3 of its resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plan for Somalia.” UN Security Council Resolution 2607 (November 15, 2021), UN Doc. S/RES/2607, para. 37.

First, the humanitarian exception of Resolution 2615 does not state that the sanctions measures “*shall not apply* to the payment of funds, other financial assets, or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance,” but rather that they “*are permitted*” (emphases added). This is intended to convey clarification rather than a decision and to imply that these payments had never been a violation of the sanctions regime.⁸²

Second, the scope of the humanitarian exception extends beyond “humanitarian assistance” to “other activities that support basic human needs.”⁸³ Although definitions of “basic human needs” differ, this gives the impression that some activities beyond strict humanitarian assistance, including those that may touch on the development sphere, might be permitted in certain circumstances. However, what exactly is permitted will depend on member states’ interpretations and legal definitions of “basic human needs.”⁸⁴

Following difficult negotiations and amid mounting pressure to alleviate the humanitarian catastrophe in Afghanistan, Resolution 2615 creates a humanitarian exception for the Taliban sanctions regime.

Finally, the humanitarian exception for Afghanistan is not limited to “the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners.” It is thus broader than its precedent in Somalia.

The humanitarian exception was difficult for members of the Security Council to agree upon despite the worsening humanitarian situation in Afghanistan. There were at least two main sticking points during the negotiations: whether the exception should be timebound; and its reporting

mechanism and the frequency of reporting. These two issues reflect the concerns of some member states over possible aid diversion to listed individuals.

To address these concerns, Resolution 2615 provides for the review of the exception within one year of its adoption.⁸⁵ Council members’ views diverge regarding the scope of the review process. Some member states favored a more frequent review process along with a six- or twelve-month expiration date for the humanitarian exception. This proposal appeared to cross a red line for other permanent members, leading to the compromise reflected in the resolution’s current language.⁸⁶ In addition to the review requirement, the resolution requests the “Emergency Relief Coordinator to brief the Security Council every six months” about the delivery of humanitarian assistance in Afghanistan and the implementation of the exception. This reporting will likely inform the Security Council’s review of the exception in 2022.

These provisions may provide a strong incentive for humanitarian organizations to report extensively on their operations in Afghanistan, including on the due-diligence efforts they have in place, and to demonstrate that their aid is not being diverted to listed members of the Taliban. However, the special rapporteur on counterterrorism and human rights commented that the provision to review the exception within a year “severely hampers, among other things, long-term investment in humanitarian aid and the structures required to deliver it.”⁸⁷ Indeed, long-term investment would require an open-ended timeline, as humanitarian program cycles span a full year.⁸⁸ The issues of monitoring and reporting on this humani-

82 One of the contentious issues during the negotiations was whether a humanitarian exception was necessary since IHL already requires states to facilitate the delivery of humanitarian assistance. See statement of member-state positions: UN Security Council, 8941st Meeting, UN Doc. S/PV.8941, December 22, 2021, pp. 3–7.

83 UN Security Council Resolution 2615 (December 22, 2021), UN Doc. S/RES/2615, para. 1.

84 Views vary widely on the issue, including among the permanent members of the Security Council. For instance, during its statement of position, the representative from France made explicit that “this humanitarian exemption excludes development activities. It covers only humanitarian assistance and other activities supporting basic human needs.” See: Permanent Mission of France to the United Nations in New York, “Afghanistan: The Security Council Must Ensure That the Taliban Will Guarantee Security,” December 22, 2021, <https://onu.delegfrance.org/afghanistan-the-security-council-must-ensure-that-the-taliban-will-guarantee>.

85 UN Doc. S/RES/2615, para. 1.

86 See statement of member-state permissions: UN Doc. S/PV.8941, pp. 3–7.

87 See: Fionnuala Ní Aoláin, “Afghanistan: The Humanitarian Catastrophe is the Security Threat,” *Just Security*, January 3, 2022.

88 UN Office for the Coordination of Humanitarian Affairs (OCHA), “Afghanistan: Humanitarian Response Plan,” January 2022.

tarian exception, as well as the question of whether humanitarian exemptions should be timebound, will likely remain at the core of the Security Council's discussions.

Beyond these contentions over the way the exception is designed, it remains to be seen how it will be implemented in practice. Member states will play a crucial role in its implementation, and some have already started translating it into domestic and regional legislation and policies.⁸⁹ Implementation will also depend on the actions of financial institutions.⁹⁰

While beyond the scope of this paper, unilateral sanctions also remain a concern in Afghanistan.⁹¹ The UN Office for the Coordination of Humanitarian Affairs (OCHA) has noted that “sanctions regimes of individual donor countries continue to complicate efforts to provide neutral assistance,” and the secretary-general has called for “general licenses covering transactions necessary to all humanitarian activities.”⁹² OCHA has shared guidance for the implementing partners of the humanitarian response plan in Afghanistan to help them navigate the complex landscape of multilateral and unilateral sanctions and their applicable humanitarian carve-outs.⁹³

Despite these challenges, Resolution 2615 represents progress toward mitigating the humanitarian impact of the Taliban sanctions regime. As the International Committee of the Red Cross has noted, it “is a step in the right direction toward striking the proper balance between sanctions and humanitarian action, and it has the potential to lay the groundwork for further progress in this area. Other Security Council sanctions and counterterrorism frameworks would benefit from similar treatment.”⁹⁴

Resolution 2610 on the ISIL/al-Qaida Sanctions Regime: Stronger Language on IHL and Humanitarian Action

Compared to the humanitarian exception granted under the Taliban sanctions regime, Resolution 2610 on the ISIL/al-Qaida sanctions regime made more limited progress in addressing humanitarian impact. Instead of a broad humanitarian exception, it included the same language that appeared in earlier mandate renewals of non-counterterrorism sanctions regimes (i.e., in the DRC, CAR, and Mali): an “intent clause” and stronger language on compliance with IHL.⁹⁵ While less ambitious than a humanitarian exception, this still demonstrates gradual progress. This progress is especially notable considering the lack of political will among Security Council members to make any compromise that could be seen as “weakening” the counterterrorism regime, which made the negotiations more difficult.

For the first time, however, council members discussed including a humanitarian carve-out in the sanctions regime. The proposal came from the A3+1 coalition (the three African members and one Caribbean member of the council) with support from three other elected members. It was motivated by the A3+1's desire to list al-Shabaab (currently listed only under the Somalia sanctions regime) under the ISIL/al-Qaida sanctions regime.⁹⁶ Although the sanctions measures under the two regimes are the same, Kenya hoped that also listing al-Shabaab under the ISIL/al-Qaida sanctions regime would send a strong political message and ensure that this regime was fit for addressing regional threats. When a similar

89 See: US Department of State, “Issuance of Additional General Licenses and Guidance in Support of Assistance to Afghanistan,” press statement, December 22, 2021; UK Parliament, “The Afghanistan (Sanctions) (EU Exit) (Amendment) Regulations 2022, UK Doc. SI 2022/65, January 28, 2022; European Council Regulation 2022/148 (February 3, 2022), EU Doc. ST/5283/2022/INIT.

90 On this, see: Moret, “Life and Death: NGO Access to Financial Services in Afghanistan.”

91 See: Security Council Report, “Debate on ‘General Issues Relating to Sanctions,’” February 6, 2022.

92 OCHA, “Afghanistan: Humanitarian Response Plan,” p. 33; UN Secretary-General, “Secretary-General's Remarks to the Security Council—On Afghanistan,” January 26, 2022, available at www.un.org/sg/en/node/261605.

93 Written correspondence with UN official, March 2022.

94 Durham and Harland, “Carve-Out in Kabul.”

95 UN Doc. S/RES/2610, preambular para. 17 and para. 20.

96 The A3+1 group was composed of Kenya, Tunisia, Niger, and Saint Vincent and the Grenadines. The idea of a humanitarian carve-out was also supported by Norway, Ireland, and Mexico. See also: Security Council Report, “ISIL (Da'esh) and Al-Qaida Sanctions Regime: Vote on Draft Resolution,” December 17, 2021.

proposal was made in 2019, six Security Council members rejected it due to concerns that listing al-Shabaab would nullify the humanitarian exception in the Somalia sanctions regime.⁹⁷ To address these concerns, the A3+1 proposed also including a humanitarian exception in the ISIL/al-Qaida sanctions regime in the latest resolution, but the five permanent members rejected such a broad humanitarian carve-out. As a compromise, the A3+1 proposed including a humanitarian exception for certain listed entities only (potentially at some point including al-Shabaab). While this idea did not make it into the final text, it may be considered in future Security Council negotiations.⁹⁸ It is thus important for humanitarian organizations and legal experts to consider the benefits and drawbacks of humanitarian carve-outs that only apply to some listed entities.

Another coalition of elected council members led by Ireland, Mexico, and Norway proposed strengthening the language from calling on states “to take into account the potential effect of measures” to calling on states “to take steps to mitigate the potential effects of measures” (emphases added).⁹⁹ This proposed language, however, was not accepted by other members of the council on the grounds that past agreed language could not be “cherry picked” and reopened to negotiations in this context.¹⁰⁰ Nonetheless, it is likely that this amendment will resurface in upcoming discussions related to counterterrorism.

Finally, proposed language to prioritize the Monitoring Team’s mandate to monitor the adverse impact of the sanctions regime on humanitarian action was also discarded during the negotiations. Though CTED has started to consider the potential impact of the implementation of UN counterterrorism measures by member states on

humanitarian activities, no UN body is currently mandated to systematically evaluate the humanitarian impact of sanctions regimes, including the ISIL/al-Qaida regime.

Altogether, the new language included in the ISIL/al-Qaida regime is not groundbreaking, but the discussions surrounding Resolution 2610 have brought forth helpful proposals that could be revisited. Furthermore, it remains to be seen whether the adopted amendments will have a positive impact on the operations of humanitarian organizations and what UN channel, if any, will be used to monitor and address the adverse impacts of the sanctions regime.

Resolution 2617 on CTED’s Mandate Renewal: No New Humanitarian Language

The new language included in the ISIL/al-Qaida sanctions regime is not groundbreaking, but the discussions surrounding Resolution 2610 have brought forth helpful proposals that could be revisited.

Resolution 2617, which renews CTED’s mandate, includes no new language related to IHL or humanitarian action. CTED’s updated mandate also does not ask it to take up additional tasks, which CTED could have used as a justification for additional

resources, expertise, or staff under its regular budget. This implies that CTED will continue to operate under its current framework regarding IHL and humanitarian action (based on Resolutions 2462 and 2482) and that any work on the impact of counterterrorism sanctions regimes on humanitarian action will continue to be done using existing or extra-budgetary resources. It is unclear how CTED will lead future conversations with member states regarding IHL and humanitarian action. The direction of these conversations may ultimately depend on dynamics in the CTC, the willingness of CTED’s new leadership to prioritize this issue, and the CTC’s follow-up on CTED’s most recent publication on the interrelationship between counterterrorism frameworks and IHL.¹⁰¹

⁹⁷ Debarre, “Making Sanctions Smarter,” p. 17.

⁹⁸ For instance, during the Security Council negotiations on the Yemen sanctions regime in February 2022, a humanitarian carve-out for the Houthis was proposed.

⁹⁹ UN Doc. S/RES/2462, para. 24.

¹⁰⁰ See: Security Council Report, “ISIL (Da’esh) and Al-Qaida Sanctions Regime: Vote on Draft Resolution.”

¹⁰¹ For this publication, see: CTED, “The Interrelationship between Counter-Terrorism Frameworks and International Humanitarian Law.”

Conclusion and Recommendations

Twenty years since the advent of the UN counterterrorism architecture, gradual progress has been made to safeguard humanitarian action in counterterrorism contexts. Two of the four major counterterrorism resolutions adopted in December 2021 included notable improvements: the humanitarian exception for the Taliban sanctions regime in Afghanistan; and an intent clause and stronger language on compliance with IHL in the ISIL/al-Qaida sanctions regime. In parallel, the CTC and CTED have increasingly turned their attention to the links between counterterrorism and IHL, including through the mainstreaming of IHL in their assessment activities and the recent report by CTED on the issue. As a result of dedicated humanitarian diplomacy, member states have also become more assertive about the need to ensure that humanitarian activities reach counterterrorism contexts and that all counterterrorism measures comply with international law, including IHL and international human rights law.¹⁰²

Counterterrorism remains a top priority for the five permanent members of the council, both domestically and internationally, and they continue to approach it in a high-stakes, risk-averse manner with strict red lines. They also remain hesitant to reopen negotiations on any previously agreed humanitarian or IHL-related language, even in light of the mounting evidence that counterterrorism measures pose challenges to impartial humanitarian action. While some elected council members have become strong champions of IHL and humanitarian action, their advocacy efforts have faced structural and procedural limitations.

Going forward, the questions that will increasingly be at the heart of Security Council discussions include what type of humanitarian carve-outs are most appropriate for a sanctions regime, whether a middle ground exists between a humanitarian exemption and a humanitarian exception, whether to incorporate a “standing exception” for some

entities but not others, and whether humanitarian carve-outs should be timebound. The possibility of including a humanitarian carve out in any sanctions regimes and particularly in counterterrorism resolutions will likely remain limited to severe humanitarian emergencies (like in Somalia and Afghanistan), and negotiations will remain challenging even in these cases.

To better safeguard humanitarian action in Security Council counterterrorism resolutions and related sanctions regimes, the Security Council, other UN member states, relevant UN entities, humanitarian organizations, relevant civil society groups, and independent experts could consider the following recommendations:

Recommendations for humanitarian organizations, relevant civil society groups and UN entities, and independent experts:

- **Advocate to keep humanitarian action high on the UN Security Council’s agenda:** Humanitarian organizations and relevant civil society actors should continue engaging with the Security Council to keep humanitarian action high on its agenda. The Inter-Agency Standing Committee’s Results Group 3 focusing on collective advocacy, along with legal and policy experts, have proven to be effective at such engagement in the past.¹⁰³ To engage effectively going forward, humanitarian organizations and relevant civil society actors will need to continue to monitor, identify, and report on the adverse impact of counterterrorism resolutions and relevant sanctions on their humanitarian activities. They will also need to keep abreast of upcoming Security Council resolutions on counterterrorism and related sanctions and other opportunities for engagement. Engagement could take place through briefings to the CTC and regular exchanges with CTED, as well as with relevant sanctions committees and their panels of experts. It could also take the form of common advocacy efforts with member states’ permanent missions in New York, and when

¹⁰² See, in particular: UN Doc. S/PV.8941, December 22, 2021; as well as UN Security Council, 8962nd Meeting, UN Doc. S/PV.8962, February 7, 2022.

¹⁰³ The Inter-Agency Standing Committee (IASC) is the humanitarian coordination forum of the UN system. For more on the IASC and Results Group 3, see: IASC, “Collective Advocacy,” available at <https://interagencystandingcommittee.org/results-group-3-collective-advocacy>.

appropriate, with their capitals before and during negotiations on relevant Security Council resolutions.

- **Monitor implementation of the UN humanitarian exception for Afghanistan:** Humanitarian organizations, OCHA, civil society, and member states should closely monitor the implementation of the standing humanitarian exception for Afghanistan, including how it is translated in national legislation and regulations, how it is applied in donor agreements, and how financial institutions react to it. Humanitarian organizations should also cooperate with OCHA to prepare for the one-year review, which could be an opportunity to course-correct and make the humanitarian exception more effective.
- **Issue independent opinions on advisable forms of humanitarian carve-outs:** Humanitarian carve-outs will remain a difficult issue for the Security Council. Legal and policy experts, along with humanitarian organizations, should address emerging questions around these carve-outs that will remain at the core of the council's discussions on humanitarian action and counterterrorism. These include questions around the different forms of humanitarian exemptions and exceptions; the benefits and drawbacks of incorporating a standing exemption for some entities (but not others) within the same sanctions regime; timebound exemptions; and reporting mechanisms. Independent advice will help inform Security Council negotiations and decisions on these questions, as well as decisions on national implementation, to ensure humanitarian carve-outs improve the delivery of impartial humanitarian assistance.

Recommendations for the UN Security Council and other UN member states:

- **Reinforce implementation and monitoring of provisions in Security Council resolutions pertaining to IHL and humanitarian action:** Member states should adhere to their obligation to implement all binding Security Council

provisions pertaining to IHL and humanitarian action in contexts covered by counterterrorism and sanctions regimes. These include the humanitarian exception in the Taliban sanctions regime, the provision on compliance with IHL in the ISIL/al-Qaida sanctions regime, and the provisions on IHL and humanitarian action in Resolution 2462 on countering terrorist financing.¹⁰⁴

Regarding Resolution 2462, the CTC, with the assistance of CTED, will play an important role in monitoring implementation, and CTED's new leadership should continue to focus on these provisions. Further, CTED and the Monitoring Team could be tasked with writing another joint report on the implementation of Resolution 2462, in particular to assess the improvement states have made in operationalizing these provisions. It will also be important for states, UN entities, and independent experts to continue informing debates on the operability of the provision on "taking into account the potential effect of those measures on exclusively humanitarian activities." For instance, when implementing this provision, states could initiate or strengthen national-level multi-stakeholder dialogues to promote engagement between national authorities, financial institutions, and the humanitarian sector; pass legislation to ensure impartial humanitarian activities are not criminalized in counterterrorism contexts; and ensure all counterterrorism measures align with their obligations under IHL. Donors should also avoid using contractual agreements with humanitarian organizations that go beyond what is expected by UN sanctions and counterterrorism resolutions.

- **Provide adequate resources to monitor the impact of UN counterterrorism measures and related sanctions on humanitarian action:** While CTED has started to turn its attention to the impact of UN counterterrorism measures on humanitarian action, there is no UN body mandated to systematically evaluate the humanitarian impact of UN

¹⁰⁴ UN Doc. S/RES/2615, para. 1; UN Doc. S/RES/2610, para. 20; UN Doc S/RES/2462, paras., 5, 6, 24.

sanctions regimes. UN Security Council members should take action to fill this gap. The 1267 Committee could ask the Monitoring Team to reprioritize this part of its mandate. The Security Council could also request the Monitoring Team, in cooperation to CTED, to produce a comprehensive report on the humanitarian impact of UN counterterrorism measures and the 1267 sanctions regimes. Ultimately, the Monitoring Team, CTED, and other relevant bodies will require additional resources and expertise to engage on this issue in the long term. Another option would be to reconstitute the General Working Group on Sanctions, which was first created in the early 2000s, to develop recommendations on how sanctions can fulfill their objectives more effectively without unintended consequences.¹⁰⁵

- **Amend language in UN counterterrorism resolutions and related sanctions regimes to facilitate humanitarian action:** Eventually, the Security Council could amend language that inhibits humanitarian activities. This

includes the broad language used for the asset freeze in the ISIL/al-Qaida sanctions regime, as well as related sanctions regimes in Yemen and Afghanistan, as well as the request to criminalize all forms of economic support “for any purpose” and with no direct link to a terrorist act.

- **Empower elected members of the Security Council to be agents of change:** Relevant UN entities and civil society actors should raise awareness among new elected members of the Security Council about the challenges faced by humanitarian organizations in counterterrorism contexts. They should also train elected members about the tools at the disposal of Security Council to better safeguard humanitarian action and how they can effectively bring about change during their time on the council. Further, the permanent members of the Security Council should strive to involve the elected members earlier in negotiations to maximize their chances of constructively influencing negotiations.

¹⁰⁵ This was suggested in the open debate on general issues related to sanctions. See: UN Doc. S/PV.8962.

Annex: Evolution of Language Related to IHL or Humanitarian Action in UN Sanctions Regimes

Target Group/Country	Security Council Resolution	Year	Language Related to IHL or Humanitarian Action
1267 ISIL/al-Qaida and Taliban Sanctions Regimes			
Taliban	2615	2021	<ul style="list-style-type: none"> • Humanitarian Exception: “Decides that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of paragraph 1 (a) of resolution 2255 (2015), and that the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are permitted.” (para. 1)
ISIL/al-Qaida	2610	2021	<ul style="list-style-type: none"> • Intent Clause: “Stressing that the measures imposed by this resolution are not intended to have adverse humanitarian consequences for civilian populations.” (preambular para. 17) • IHL Language: “Demands that Member States ensure that all measures taken to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.” (para. 20)
Other Sanctions Regimes			
Mali	2590	2021	<ul style="list-style-type: none"> • Intent Clause: “Stressing that the measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of Mali.” (preambular para. 9) • IHL Language: “Recalling the need for States to ensure that all measures taken by them to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.” (preambular para. 10)
CAR	2588	2021	<ul style="list-style-type: none"> • Intent Clause: “Stressing that the measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of the CAR.” (preambular para. 12) • IHL Language: “Recalling the need for States to ensure that all measures taken by them to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.” (preambular para. 13)

Target Group/Country	Security Council Resolution	Year	Language Related to IHL or Humanitarian Action
DRC	2582	2021	<ul style="list-style-type: none"> • Intent Clause: “Stressing that the measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of the DRC.” (preambular para. 7) • IHL Language: “Demands that States ensure that all measures taken by them to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.” (para. 4)
Yemen	2511 ¹⁰⁶	2020	<ul style="list-style-type: none"> • IHL Language: “Reaffirming the need for all parties to comply with their obligations under international law, including international humanitarian law and international human rights law as applicable.” (preambular para. 6) • Humanitarian Exemption: “Emphasising the importance of facilitating humanitarian assistance, decides that the Committee established in paragraph 19 of resolution 2140 (2014) (hereafter, the “Committee”) may, on a case-by-case basis, exempt any activity from the sanctions measures imposed by the Security Council in resolutions 2140 (2014) and 2216 (2015) if the Committee determines that such an exemption is necessary to facilitate the work of the United Nations and other humanitarian organisations in Yemen or for any other purpose consistent with the objectives of these resolutions.” (para. 3)

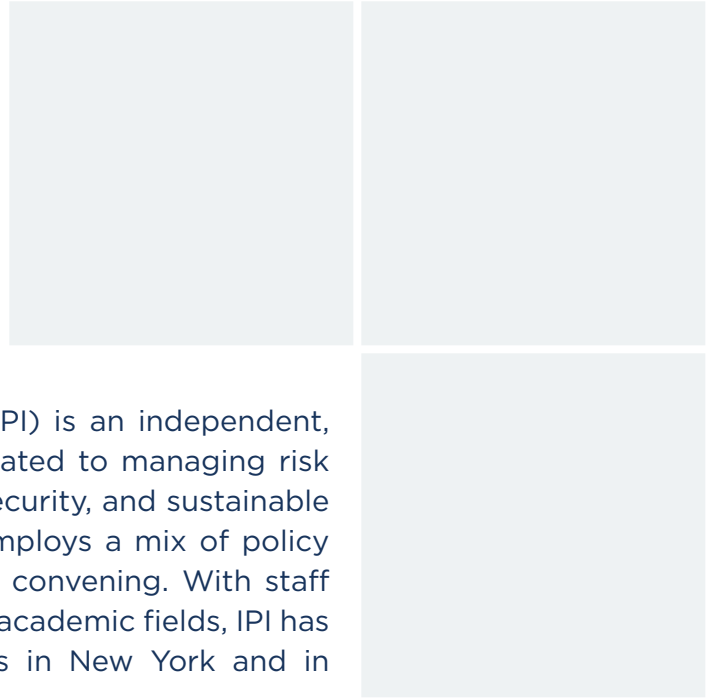
106 For the most recent renewal of this provision, see: UN Doc. S/RES/2564, para. 4.

Target Group/Country	Security Council Resolution	Year	Language Related to IHL or Humanitarian Action
Somalia	1916 ¹⁰⁷	2010	<ul style="list-style-type: none"> • Humanitarian Exception: “Decides that for a period of twelve months from the date of this resolution, and without prejudice to humanitarian assistance programmes conducted elsewhere, the obligations imposed on Member States in paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners, and decides to review the effects of this paragraph every 120 days based on all available information, including the report of the Humanitarian Aid Coordinator submitted under paragraph 11 below.” (para. 5)
North Korea	1874 ¹⁰⁸	2009	<ul style="list-style-type: none"> • Intent Clause: “Underlining also that measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of the DPRK.” (preamble para. 7)
	1718 ¹⁰⁹	2006	<ul style="list-style-type: none"> • Humanitarian Exemption: “Decides that the measures imposed by paragraph 8 (e) above shall not apply where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would otherwise further the objectives of the present resolution.” (para. 10)

¹⁰⁷ For the most recent renewal of this provision, see: UN Doc. S/RES/2607, para. 37.

¹⁰⁸ For the most recent renewal of this provision, see: UN Doc. S/RES/2560.

¹⁰⁹ Ibid.



The **INTERNATIONAL PEACE INSTITUTE** (IPI) is an independent, international not-for-profit think tank dedicated to managing risk and building resilience to promote peace, security, and sustainable development. To achieve its purpose, IPI employs a mix of policy research, strategic analysis, publishing, and convening. With staff from around the world and a broad range of academic fields, IPI has offices facing United Nations headquarters in New York and in Manama.

www.ipinst.org

www.theglobalobservatory.org



777 United Nations Plaza
New York, NY 10017-3521
USA
TEL +1-212-687-4300
FAX +1-212-983-8246

51-52 Harbour House
Bahrain Financial Harbour
P.O. Box 1467
Manama, Bahrain
TEL +973-1721-1344