



INTERNATIONAL
PEACE
INSTITUTE

Safeguarding Humanitarian Action in UN Sanctions and Counterterrorism Regimes: The Impact and Implementation of Resolution 2664

DECEMBER 2023



On November 14, 2023, the International Peace Institute (IPI) and the Konrad Adenauer Foundation Office in New York held a closed-door roundtable to discuss the implementation and impact of UN Security Council Resolution 2664 (2022), including its potential application to counterterrorism measures. The roundtable brought together representatives from humanitarian organizations, the UN Secretariat, member states, and civil society organizations, as well as independent experts. This discussion was the second event held as part of IPI's project on "Bridging New York and Geneva on Humanitarian Action," which aims to bring the humanitarian perspective of Geneva to the work of the UN in New York.

This meeting note summarizes the main points raised in the roundtable discussion under the Chatham House rule of non-attribution and does not necessarily represent the views of all participants.

This project is partially funded by the Konrad Adenauer Foundation Office in New York.

Introduction

UN sanctions and counterterrorism resolutions often apply where humanitarian actors operate. As a result, these resolutions have sometimes encroached on the ability of humanitarian actors to respond to humanitarian needs efficiently and in line with humanitarian principles. Since 2001, the UN Security Council has broadened the scope of "terrorist" acts that it requires member states to criminalize, including inchoate offences such as the indirect financing of terrorism.¹ In parallel, the council has continued to adopt sanctions regimes that prohibit making resources available—directly or indirectly—to individuals and entities on UN sanctions lists, including those the Security Council designates as "terrorists." These types of council measures overlap in some contexts, and both have been criticized for failing to safeguard and facilitate impartial humanitarian action.²

Humanitarian organizations have repeatedly called attention to the challenges that counterterrorism resolutions and UN sanctions regimes can pose to humanitarian action. In response, the council has progressively incorporated language that better takes into consideration international humanitarian law (IHL), international human rights law (IHRL), humanitarian principles, and the need to protect principled humanitarian action from the potential negative consequences of sanctions and counterterrorism measures.³

Most notably, in December 2022, the UN Security Council adopted Resolution 2664, which provides a cross-cutting humanitarian exemption to asset freezes under all its sanctions regimes, including the 1267 counterterrorism regime against ISIL/al-Qaida, to safeguard the timely and effective conduct of humanitarian activities. Resolution 2664 affirms that any financial transactions or provision of resources and services necessary for the timely delivery of humanitarian assistance and other support to basic human needs by certain organizations "are permitted and not a violation of the asset freeze" measures.⁴ The resolution establishes a two-year review period for the humanitarian exemp-

1 Agathe Sarfati, "International Humanitarian Law and the Criminal Justice Response to Terrorism: From the UN Security Council to the National Courts," *International Review of the Red Cross* 916–917, February 2022.

2 See, for example: 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; Alice Debarre, "Making Sanctions Smarter: Safeguarding Humanitarian Action," International Peace Institute, December 2019.

3 For example, Resolution 2462 (2019) on countering the financing of terrorism included several provisions related to compliance with IHL, IHRL, and safeguarding humanitarian action. In 2021, the Security Council adopted Resolution 2615, which provides a humanitarian exemption to the sanctions regime established by Resolution 1988 (2011), facilitating the provision of aid in Afghanistan.

4 UN Security Council Resolution 2664 (December 9, 2022), UN Doc. S/RES/2664.

tion for the 1267 counterterrorism regime, during which the 1267 Sanctions Committee and its Analytical Support and Sanctions Monitoring Team will collect information on the resolution's implementation. By December 2024, the Security Council will decide whether to extend the exemption in the 1267 sanctions regime.

IPI and the Konrad Adenauer Foundation Office in New York hosted a closed-door, hybrid roundtable on November 14, 2023, to assess the implementation and impact of Resolution 2664, including its potential application to counterterrorism measures. This roundtable provided a platform for exchanges between humanitarian organizations, member states, the UN Secretariat, civil society organizations, and independent experts, including those based in Geneva and New York.

There was broad agreement among participants that Resolution 2664 is a milestone achievement representing a fundamental policy shift within the Security Council. The inclusion of the 1267 counterterrorism regime against ISIL/al-Qaida is particularly significant, as concerns related to aid diversion and material support to terrorist groups had previously prevented several member states from agreeing to this kind of exemption.⁵ However, the resolution does not resolve all obstacles facing humanitarian actors seeking to provide aid in contexts where sanctions from the UN and autonomous regimes, as well as counterterrorism measures, apply. Participants thus provided the following recommendations for UN entities, humanitarian actors, member states, and the private sector on how to continue to safeguard principled humanitarian action:

- Member states should incorporate the obligations of Resolution 2664 into national and regional frameworks;
- Member states should take steps to apply the humanitarian exemption to autonomous sanctions regimes and counterterrorism measures;
- Donors should streamline reporting require-

ments for humanitarian actors;

- UN entities, humanitarian actors, and member states should invest in greater guidance and capacity building on the implementation of Resolution 2664; and
- UN entities, international and local humanitarian actors, member states, and the private sector should continue to engage in inclusive, multi-stakeholder dialogues at the national and global levels on the implementation of Resolution 2664 and risk-mitigation measures.

Assessing the Implementation and Impact of Resolution 2664

Participants discussed the extent to which member states have begun to incorporate the obligations of Resolution 2664 into national and regional frameworks. Under the resolution, member states are obligated to review national, regional, and international measures that might be implicated by the provisions; adjust these measures in accordance with the resolution; and communicate those adjustments to relevant stakeholders, including the private sector.⁶ Participants identified several examples of states that have taken steps toward implementation, including the United States, the United Kingdom, Switzerland, and Canada, as well as regional organizations—namely, the European Union. However, participants noted that implementation is far from complete, even within countries that have championed the resolution, such as the United States.

While legal and policy obstacles remain, Resolution 2664 is an important step in providing humanitarian actors with the legal clarity and protection required to deliver humanitarian assistance. Participants from humanitarian organizations provided several examples of how the implementation of Resolution 2664 has already positively impacted their ability to deliver humanitarian assistance in the field, including in contexts where counterterrorism

⁵ Naureen Chowdhury Fink and Agathe Sarfati, "Milestone in the Security Council: What the New Humanitarian 'Carve-out' Means for UN Sanctions Regimes," *IPI Global Observatory*, December 16, 2022.

⁶ Radhika Kapoor, Dustin A. Lewis, and Naz K. Modirzadeh, "An Interpretive Note for UN Member States on Security Council Resolution 2664 (2022)," Harvard Law School Program on International Law and Armed Conflict, March 2023.

measures also apply. For example, in Afghanistan, one organization was able to work with local authorities to help ensure the steady supply of water to populations in both urban and rural areas. In Somalia, the same organization was able to provide support to hospitals and clinics in places where listed individuals either operate or control territory. Without the exemption, these vital humanitarian services might not have been possible.

Implementation of Humanitarian Exemptions within Autonomous Regimes and Counterterrorism Measures

Participants stated that Resolution 2664 has provided the impetus for decisions taken by the United States, the United Kingdom, the European Union, the Economic Community of West African States (ECOWAS), and others to adopt temporary humanitarian exemptions in some of their autonomous regimes (i.e., sanctions applied by states or regional organizations).

The application of the humanitarian exemption to autonomous regimes and domestic counterterrorism legislation is considered crucial for humanitarian actors, as Resolution 2664 only applies to asset-freeze measures under UN sanctions. Humanitarian actors must still navigate the challenges posed by restrictive autonomous measures, including those related to the provision of material support to groups designated as terrorists.⁷ As one participant noted, while the use of UN sanctions has plateaued, the use of autonomous sanctions, including those connected to domestic counterterrorism regimes, has grown over the last two decades. The complex legal frameworks that accompany these measures continue to have a “chilling effect” on humanitarian actors, leading some to self-regulate beyond what is legally required due to fear of violating regulations.⁸

One humanitarian actor discussed how the inclusion of humanitarian exemptions in autonomous regimes and counterterrorism measures has

already positively impacted their organization’s work in the field. For example, following the earthquake in Syria in February 2023, humanitarian exemptions within autonomous regimes enabled the organization to undertake principled humanitarian action, which would not have otherwise been possible. The participant also highlighted that ECOWAS’s decision to include a humanitarian exemption in the sanctions regime imposed on Niger following the coup in July 2023 was critical to safeguarding the humanitarian response.

However, participants also raised several ongoing concerns around autonomous sanctions regimes and domestic counterterrorism measures. For example, some states still have in place counterterrorism legislation that criminalizes humanitarian activities, qualifying acts that would otherwise be considered legal under Resolution 2664 as constituting the illicit provision of material support for groups designated as terrorists. Additionally, when humanitarian exemptions have been incorporated into autonomous regimes and domestic counterterrorism legislation, they have often been temporary and have not been applied across the full range of measures the state or regional organization has in place. These factors continue to impede principled humanitarian action. In response, some participants urged member states to continue to implement and extend the humanitarian exemption in Resolution 2664 to autonomous sanctions and domestic counterterrorism measures on a permanent and comprehensive basis.

Financial Sector De-risking and Overcompliance

Humanitarian organizations have frequently encountered challenges resulting from de-risking and overcompliance practices by financial institutions seeking to comply with sanctions and counterterrorism measures. For example, financial institutions regularly withdraw banking support or delay the transfer of funds in situations perceived as high-risk to mitigate liability.⁹ One participant noted that payment challenges for NGOs and

⁷ Caroline Crystal, “Landmark UN Humanitarian Sanctions Exemption Is a Massive Win but Needs More Support,” Carnegie Endowment for International Peace, March 2023.

⁸ Alice Debarre, “Safeguarding Humanitarian Action in Sanctions Regimes,” International Peace Institute, June 2019.

⁹ Sherine El Taraboulsi-McCarthy, “Whose Risk? Bank De-risking and the Politics of Interpretation and Vulnerability in the Middle East and North Africa,” *International Review of the Red Cross* 916–917, February 2022.

humanitarian actors have been the “number one threat to the humanitarian space.”

While Resolution 2664 does not fully rectify these concerns, participants reported dramatic decreases in the number of financial transactions that are being investigated or delayed by banks. For example, one organization reported that in 2023, following the adoption of the resolution, they saw a 44 percent reduction of payment investigations compared to the same period the previous year. Another participant noted that in Libya, some monetary transfer companies that had previously refused to support humanitarian organizations are now allowing payments to be processed.

Donor Policies and Practices

Some participants referenced an increased willingness on the part of donors to engage in humanitarian initiatives. For example, one participant noted that in the Democratic Republic of the Congo (DRC), donors are now more willing to fund projects in areas where listed individuals or entities are operating.

However, just as financial institutions have sought to mitigate risk, donors have also sought to “offload risks” onto humanitarian actors through the imposition of additional conditions and contractual obligations related to sanctions and counterterrorism measures.¹⁰ Some humanitarian organizations reported an increase in compliance reporting requests from donors since the adoption of Resolution 2664 due to donors’ fear that the resolution might increase the risk of aid diversion. However, a participant stated that there has been no evidence of systemic aid diversion since the adoption of the resolution. Furthermore, participants reported that humanitarian actors have taken more actions to mitigate risks, including through the establishment of risk-management units in Afghanistan, northwest Syria, and Somalia. Nevertheless, the risk of aid diversion—and the extent to which humanitarian actors have managed and mitigated this risk—remains a principal concern among member states and is likely to be a prominent

issue in the discussions around the review of the exemption for the 1267 regime.

Increased compliance reporting requirements have placed an additional resource burden on humanitarian actors, especially local organizations. One participant stated that ideally there would be one reporting template from donors, or at least greater harmonization of reporting requirements, to lessen the burden. Overall, participants noted the importance of not allowing the gains of Resolution 2664 to be offset by the imposition of more stringent and additional due-diligence requirements from donors.

Capacity Building and Guidance on Implementation

Participants noted that the actors involved in implementing Resolution 2664 require more guidance and greater shared capacity. Humanitarian actors, especially local-level and smaller organizations, have faced challenges understanding what the developments around the resolution mean for their work in the field and navigating the regulations attached to autonomous sanctions and counterterrorism measures.

Some toolkits for humanitarian actors to understand how to provide principled humanitarian action while managing the risks related to terrorism are currently being updated to address sanctions and exemptions.¹¹ However, efforts by international NGO fora and working groups to build the capacity of humanitarian organizations are typically under-resourced and require support from member states. Participants stressed the need for increased support to build the capacity of local-level humanitarian actors to understand compliance and due-diligence requirements. They also emphasized the potential of risk-management units to provide shared capacity.

One participant noted that at the global level, it could be helpful for humanitarian actors to have a focal point within member states who can serve as a link between the different ministries that handle sanctions, counterterrorism, and humanitarian

10 Sue E. Eckert, “Counterterrorism, Sanctions, and Financial Access Challenges: Course Corrections to Safeguard Humanitarian Action,” *International Review of the Red Cross* 916–917, February 2022.

11 See, for example: Norwegian Refugee Council, “Toolkit for Principled Humanitarian Action: Managing Counterterrorism Risks,” available at <https://www.nrc.no/shortand/stories/toolkit-for-principled-humanitarian-action/index.html>.

action. Another participant noted that Resolution 2664 directs UN sanctions committees to issue implementation assistance notices to “provide further guidance... that takes into account the unique context of the sanctions falling under their respective mandates.”¹² While these notices might be valuable tools for implementing the resolution, a participant noted that only one has been issued to date.¹³

Multi-stakeholder Dialogues on Risk Mitigation

Despite these capacity challenges, participants acknowledged that Resolution 2664 has encouraged greater dialogue on risk mitigation and management, including as they relate to aid diversion, among national governments, humanitarian organizations, UN entities, and the private sector. One participant said that the resolution has shifted the landscape from “don’t ask, don’t tell” to one where stakeholders are able to engage in transparent conversations around risk mitigation at both the national and the global level.

Participants underlined the importance of these dialogues as inclusive fora for engagement that can bring local humanitarian organizations into the discussions. At the national level, participants stressed the imperative of having representatives at the table from different sectors of the government, including the finance, judiciary, defense, interior, and foreign ministries, which all play critical roles in the creation and implementation of sanctions and counterterrorism measures. One participant noted that consideration should also be given to the inclusion of “nontraditional actors” or “de facto authorities” that might also have an influence on humanitarian operations.

Multi-stakeholder dialogues must also include financial institutions. The trisector dialogues among national government entities, humanitarian actors, and financial institutions in the United States and the United Kingdom were highlighted as examples that could be replicated in other contexts. However, one participant stressed the importance

of including not only banks but also other actors from the private sector, as overcompliance happens in every sector of the supply chain, including shipping, transportation, hardware, software, and insurance.

Participants also noted the importance of continuing discussions around safeguarding humanitarian action and the implementation of Resolution 2664 at the global level. This is particularly important given the upcoming review of the exemption for the 1267 counterterrorism regime against ISIL/al-Qaida. One participant stated that the exemption for the 1267 sanctions regime has the biggest impact on humanitarian activities and without it, Resolution 2664 would lose “a lot of its relevance.” Participants discussed the importance of fora for policymakers to hear directly from humanitarian actors about the positive impacts of the exemption, the remaining obstacles, and how stakeholders can continue to mitigate risks together.

Conclusion and Recommendations

Overall, the workshop illustrated the important role Resolution 2664 plays in safeguarding principled humanitarian action within UN sanctions regimes and the need to continue working to implement it effectively. At the same time, the resolution does not remedy all obstacles facing humanitarian actors operating in contexts where autonomous sanctions regimes and counterterrorism measures also apply. As such, UN entities, humanitarian actors, member states, and the private sector must continue to work to protect humanitarian assistance and mitigate risks. In this regard, participants shared several recommendations.

- **Member states should incorporate the obligations of Resolution 2664 into national and regional frameworks.** Participants stated that the resolution is “only as good as its implementation,” noting that member states need to incorporate its provisions into existing frame-

¹² UN Doc. S/RES/2664, para. 6.

¹³ The implementation assistance notice was issued by the Democratic People’s Republic of Korea (DPRK) sanctions committee. See: United Nations, “Security Council 1718 Sanctions Committee Approves Updates to Implementation Notice on Humanitarian Assistance Exemption Procedure for Democratic People’s Republic of Korea,” UN Doc. SC/15324, June 15, 2023.

works for the resolution's positive impact to be felt.

- **Member states should take steps to apply the humanitarian exemption to autonomous regimes and counterterrorism measures.**

When states and regional organizations adopt similar exemptions in autonomous regimes and domestic counterterrorism measures, they provide humanitarian actors with the legal clarity and protection required to provide humanitarian assistance.

- **Donors should streamline reporting requirements for humanitarian actors.** Though it might not be feasible to have one reporting template for all donors, humanitarian actors would benefit from more standardized reporting requirements to lessen the burden.
- **UN entities, humanitarian actors, and member states should invest in greater guidance and capacity building on the implementation of Resolution 2664.** Greater

resources are needed to support the capacity of local humanitarian actors to understand compliance requirements and manage risks. UN sanctions committees should also issue implementation assistance notices in accordance with the provisions of Resolution 2664.

- **UN entities, international and local humanitarian actors, member states, and the private sector should continue to engage in inclusive, multi-stakeholder dialogues at the national and global levels on the implementation of Resolution 2664 and risk-mitigation measures.** Providing humanitarian assistance and mitigating risks require coordination and communication among stakeholders across national government entities, the private sector, the UN, and the humanitarian community. Especially with the upcoming review of the exemption for the 1267 counterterrorism regime, these fora provide critical platforms for policymakers to hear directly from humanitarian actors about the impact and implementation of Resolution 2664.

The **INTERNATIONAL PEACE INSTITUTE** (IPI) is an independent, non-profit organization working to strengthen inclusive multilateralism for a more peaceful and sustainable planet. Through its research, convening, and strategic advising, IPI provides innovative recommendations for the United Nations System, member states, regional organizations, civil society, and the private sector. With staff from around the world and a broad range of academic fields, IPI has offices facing United Nations headquarters in New York and an office in Manama.



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

52-52 Harbour House, Bahrain Financial Harbour
P.O. Box 1467, Manama, Bahrain

www.ipinst.org