

I. Humanitarian Exemptions in Sanctions Regimes

Introduction

Sanctions are one of the methods the Security Council uses to maintain international peace and security.⁸⁴ They are legal measures provided for in the *Charter of the United Nations* (1945), and they can target individuals, Member States, or non-state actors that the Security Council deems as threats to the peace.⁸⁵ Sanctions were first introduced in 1963 against the Apartheid regime in South Africa.⁸⁶ Yet, it was not until the end of the Cold War that the Security Council increased its overall activity and sanctions saw a surge in their use as the primary mechanism for the Security Council to resolve conflicts in a non-violent manner.⁸⁷ Since the 1960s, the Security Council has created 27 sanctions regimes, 14 of which are still currently active.⁸⁸ There are a variety of sanctions measures the Security Council has at its disposal; the most commonly used types of sanctions measures are diplomatic sanctions, travel and commodity bans, asset freezes, and arms embargoes.⁸⁹ None of these measures are used in isolation, but are always combined with one another within country-specific contexts.⁹⁰ For example, the sanctions regime against the Democratic People's Republic of Korea (DPRK) includes arms embargoes, travel bans, and asset freezes, whereas the sanctions regime against Iraq only consists of an arms embargo and asset freezes.⁹¹ It is important to note that while the Security Council is the body that imposes sanctions through binding resolutions, Member States are required to implement these sanctions in their national legislation.⁹²

Many sanctions imposed by the Security Council target countries and regions experiencing crises that require the assistance of humanitarian actors, due to a lack of state capacity to help the population.⁹³ This poses a challenge for the Security Council, whose actions could have negative consequences for civilians, when humanitarian actors are prevented from effectively providing aid and development assistance to people in need.⁹⁴ For instance, the United Nations (UN) World Food Programme (WFP) has highlighted that the economic sanctions imposed by the Security Council, which require the thorough inspection of any goods entering the country, adds an extra logistical obstacle to WFP's supply chain, and ultimately harms food security within the DPRK.⁹⁵ Likewise, when individuals under sanctions require humanitarian assistance, it is crucial that the Security Council offer them the possibility to be temporarily excluded from sanctioning measures.⁹⁶ The Security Council first introduced humanitarian exemptions to a travel ban and commodity interdictions in 1968 within the Southern Rhodesian sanctions regime.⁹⁷ Since then, most sanctions regimes have included some form of exemptions for humanitarian purposes.⁹⁸

Overall, the recent discussion on sanctions predominantly revolves around the reform of sanctions in order to enhance their effectiveness.⁹⁹ This is important, as effective sanctions would also greatly increase the legitimacy of

⁸⁴ UN Security Council, *What is the Security Council?*, 2017.

⁸⁵ UN General Assembly, *Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/RES/64/115)*, 2009, p. 5; *Charter of the United Nations*, 1945, Art. 41.

⁸⁶ Security Council Report, *Special Research Report: UN Sanctions*, 2013, p. 3.

⁸⁷ *Ibid.*

⁸⁸ UN Security Council, *Sanctions*, 2017; UN Security Council, *The situation in Mali (S/RES/2374 (2017))*, 2017.

⁸⁹ Security Council Report, *Special Research Report: UN Sanctions*, 2013, pp. 10-13.

⁹⁰ Biersteker et al., *The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, 2013, p. 7.

⁹¹ UN Security Council, *Security Council Committee established pursuant to resolution 1718 (2006)*, 2017; UN Security Council, *Security Council Committee established pursuant to resolution 1518 (2003)*, 2017.

⁹² Carisch & Rickard-Martin, *Global Threats and the Role of United Nations Sanctions*, 2011, pp. 15-16.

⁹³ UN Security Council, *Sanctions*, 2017; UN OCHA, *Somalia*; UN OCHA, *Democratic People's Republic of Korea*.

⁹⁴ King et al., *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, 2016, pp. 3-7.

⁹⁵ UN WFP, *Nutrition Support for Children and Women and Strengthening Community Capacity to Reduce Disaster Risks: Standard Project Report 2016*, 2016, p. 8; UN WFP, *Democratic People's Republic of Korea Transitional Interim Country Strategic Plan (Year 2018)*, 2017, p. 2.

⁹⁶ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 5; Wallenstein & Grussel, *Targeting the Right Targets? The UN Use of Individual Sanctions*, 2012, p. 212.

⁹⁷ UN Security Council, *Question Concerning the Situation in Southern Rhodesia (S/RES/253 (1968))*, 1968.

⁹⁸ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

⁹⁹ Security Council Report, *August 2017 Monthly Forecast: Sanctions*, 2017.

the Security Council and the UN as a whole.¹⁰⁰ Going forward, it is therefore crucial that the Security Council considers some of the current recommendations for sanctions reform regarding humanitarian exemptions, in order to ensure the effectiveness of sanctions, and to help mitigate unintended harmful humanitarian consequences.¹⁰¹

International and Regional Framework

The basis for the legal framework on humanitarian exemptions in sanction regimes is laid out in the *Charter of the United Nations*, international human rights instruments, International Humanitarian Law (IHL), and Security Council resolutions.¹⁰² The Security Council derives its powers to establish sanctions from Chapter VII of the Charter.¹⁰³ Chapter VII, Article 41, specifically grants the Security Council the authority to “decide what measures not involving the use of armed force are to be employed to give effect to its decisions.”¹⁰⁴ While Article 41 does not explicitly mention the term “sanctions,” the intention behind this article is to allow the Security Council to impose concrete measures against Member States and other actors in order to peacefully settle conflicts.¹⁰⁵

While the Charter establishes the Security Council’s power to set sanctions, sanctions themselves find their constraints in international human rights instruments and IHL.¹⁰⁶ Article 25 of the *Universal Declaration of Human Rights* (UDHR) (1948) maintains that every person has a right to adequate living standards, which includes access to medical care as well as security in cases of sickness and disability.¹⁰⁷ Similarly, IHL, in particular the *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (1949), asserts that humanitarian assistance to civilians should not be restricted.¹⁰⁸ As a consequence, humanitarian exemptions are needed in order to prevent sanctions from depriving persons of their basic human rights and the right to humanitarian assistance.¹⁰⁹ The importance of humanitarian exemptions to sanctions were further recognized by the UN in the outcome document of the 2005 World Summit, the *2005 World Summit Outcome*.¹¹⁰ While covering a broad range of humanitarian issues, it also discussed the reform of the process for individual exemptions for persons and entities on a sanctions list.¹¹¹

Security Council resolutions play the most central role in establishing humanitarian exemptions in sanctions regimes.¹¹² Through its resolutions, the Security Council creates sanctions regimes and sanction committees, and also establishes appropriate exemptions therein.¹¹³ For example, with resolution 2374 (2017) on the “The situation in Mali,” the Security Council authorized sanctions against individuals in Mali, incorporated humanitarian exemptions in paragraphs 2 and 5, and instituted the most recent sanctions committee.¹¹⁴ Since sanctions regimes are time-limited, they are in need of constant renewal through Security Council resolutions, if determined necessary.¹¹⁵ Security Council resolutions also require reporting mechanisms within sanctions regimes, which can be exemplified by the annual reports of sanctions committees, such as the 2016 report of the 2140 Sanctions Committee regarding Yemen.¹¹⁶

¹⁰⁰ UN Security Council, *General issues relating to sanctions: Enhancing the effectiveness of United Nations sanctions* (S/PV.8018), 2017, p. 16.

¹⁰¹ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 5.

¹⁰² *Ibid.*; Segall, *Economic sanctions: legal and policy constraints*, 1999; *Charter of the United Nations*, 1945.

¹⁰³ *Charter of the United Nations*, 1945, Chapter VII.

¹⁰⁴ *Ibid.*, Art. 41.

¹⁰⁵ *Ibid.*; Security Council Report, *Special Research Report: UN Sanctions*, 2013, pp. 2-3.

¹⁰⁶ Segall, *Economic sanctions: legal and policy constraints*, 1999.

¹⁰⁷ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

¹⁰⁸ *Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part)*, 1949, Art. 23.

¹⁰⁹ Segall, *Economic sanctions: legal and policy constraints*, 1999.

¹¹⁰ UN General Assembly, *2005 World Summit Outcome (A/RES/60/1)*, 2005, pp. 25-26.

¹¹¹ *Ibid.*, p. 26.

¹¹² Security Council Report, *Special Research Report: UN Sanctions*, 2013, p. 6.

¹¹³ UN Security Council, *The situation in Mali (S/RES/2374 (2017))*, 2017.

¹¹⁴ *Ibid.*

¹¹⁵ UN Security Council, *The situation in Somalia (S/RES/2317 (2016))*, 2016.

¹¹⁶ UN Security Council, *Report of the Security Council Committee established pursuant to resolution 2140 (2014) (S/2016/1122)*, 2016.

Role of the International System

Aside from the Security Council, the work within the international system regarding sanctions is led by a variety of actors.¹¹⁷ For each sanctions regime, Article 29 of the Charter enables the Security Council to create subsidiary organs to help administer the sanctions regime.¹¹⁸ These subsidiary organs are called sanctions committees, and they are usually named after the resolution that established the particular committee.¹¹⁹ Corresponding to the 14 active sanctions regimes, the Security Council currently maintains 14 different sanctions committees.¹²⁰ The actual implementation of sanctions and their measures ultimately falls upon Member States, but the committees are the sole entities responsible for monitoring this implementation and managing exemptions.¹²¹ Additionally, sanctions committees are usually supported by monitoring groups or panels of experts who assist the committees in their monitoring and reporting processes.¹²² Within the mandate provided by the Security Council, sanctions committees adopt their own rules and guidelines for administering sanctions regimes.¹²³ Sanctions committees also regularly present annual reports on their activities, including their decisions on exemption requests, to the Security Council.¹²⁴ In order to ensure that humanitarian exemptions to sanctions are implemented correctly, the work of sanctions committees is crucial.¹²⁵ For example, the 2127 Sanctions Committee, responsible for the sanctions on the Central African Republic, authorized three exemption requests to the asset freeze applied in the country in 2016.¹²⁶

Throughout the past 25 years, Member States and the Security Council itself have attempted to review and reform sanction processes.¹²⁷ In the 1990s, sanctions shifted from indiscriminate comprehensive sanctions towards individual states, to an increasingly targeted approach, in which sanctions focused predominantly on political leadership, rather than on the general population.¹²⁸ This transformation process took place primarily because comprehensive sanctions were more likely to have unintended negative consequences for civilians and humanitarian action than targeted ones.¹²⁹ All of the 14 active sanctions regimes are to some degree targeted in their approach.¹³⁰ Between 1998 and 2003, three initiatives set out to reform and develop the targeted approach of Security Council sanctions regimes: the Interlaken Process, the Bonn-Berlin Process, and the Stockholm Process.¹³¹ The main discussion points of the Interlaken Process were targeted financial sanctions and how to counteract the adverse effects they can have on humanitarian actors.¹³² One suggestion of the Interlaken Process was to create model clauses for humanitarian exemptions to financial sanctions, which were intended for the Security Council to draw upon when drafting its resolutions.¹³³ The Bonn-Berlin Process focused on arms embargoes, travel bans, and aircraft-related sanctions.¹³⁴ Within this context, the 2001 report of the Bonn-Berlin Process also recommended model clauses for humanitarian exemptions to these types of sanctions.¹³⁵ Lastly, the Stockholm Process

¹¹⁷ Carisch & Rickard-Martin, *Global Threats and the Role of United Nations Sanctions*, 2011, pp. 4-6.

¹¹⁸ *Charter of the United Nations*, 1945, Art. 29; Security Council Report, *Special Research Report: UN Sanctions*, 2013, pp. 6-7.

¹¹⁹ Security Council Report, *Special Research Report: UN Sanctions*, 2013, p. 7.

¹²⁰ UN Security Council, *Sanctions*.

¹²¹ Security Council Report, *Special Research Report: UN Sanctions*, 2013, p. 13.

¹²² *Ibid.*, p. 7.

¹²³ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, pp. 135-137.

¹²⁴ UN Security Council, *Report of the Security Council Committee established pursuant to resolution 1718 (2006) (S/2016/1094)*, 2016, pp. 4-5; UN Security Council, *Report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea (S/2016/1121)*, 2016, p. 4.

¹²⁵ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, pp. 135-137.

¹²⁶ UN Security Council, *Report of the Security Council Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (S/2016/1080)*, 2016, p. 4.

¹²⁷ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, p. 30.

¹²⁸ Security Council Report, *Special Research Report: UN Sanctions*, 2013, p. 3.

¹²⁹ *Ibid.*; Biersteker et al., *The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, 2013, p. 9.

¹³⁰ Biersteker et al., *The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium*, 2013, p. 9.

¹³¹ Bessler et al., *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions*, 2004, p. 8.

¹³² Biersteker et al., *Targeted Financial Sanctions: A Manual for Design and Implementation*, 2001.

¹³³ *Ibid.*, pp. 72-75.

¹³⁴ Brzoska, *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions: Results of the 'Bonn-Berlin Process'*, 2001.

¹³⁵ *Ibid.*, pp. 31-38.

concentrated its efforts on the implementation of targeted sanctions.¹³⁶ Some of the recommendations that emerged from this process call for a strengthened role of sanctions committees in administering sanctions regimes, and for clearer definitions of humanitarian exemptions to sanctions within Security Council resolutions.¹³⁷ The findings of the Stockholm Process were eventually presented to the Security Council in February 2003.¹³⁸ While no decisive action was taken in the aftermath of the reform processes, they did provide an impulse for reform in the procedure for exemptions.¹³⁹

Parallel to the three reform processes led by Member States, the Security Council started its own review process of sanctions in 1999, leading to the creation of the Informal Working Group on General Issues of Sanctions in 2000.¹⁴⁰ Their tasks included reviewing the working methods of sanctions committees, examining the unintended impacts of sanctions, and improving humanitarian exemptions.¹⁴¹ In its final report, the working group recommended that the Security Council use standardized language for humanitarian exemptions in all of its sanctions regimes.¹⁴² However, the only substantive outcome of the report was the creation of the Focal Point for Delisting as per Security Council resolution 1730 (2006) on “General issues relating to sanctions.”¹⁴³ The Focal Point is part of the UN Secretariat and responsible for removing designated individuals from sanctions lists.¹⁴⁴ As a central point of contact for individuals seeking to be delisted, the Focal Point’s goal was to simplify the process for delisting designated individuals.¹⁴⁵ Prior to the Focal Point, designated individuals had to initiate the delisting process through their respective Member State who then contacted the respective sanctions committee.¹⁴⁶ Still, the decision-making power on delisting remains with the sanctions committees.¹⁴⁷ Following its final report, the mandate of the informal working group ended in 2006.¹⁴⁸

More recently, the High-Level Review of Sanctions was initiated in 2014 by several Member States and intended to change the current sanctioning process.¹⁴⁹ The goal was to survey the current state of Security Council sanctions and provide recommendations in order to make them more effective.¹⁵⁰ The High-Level Review is structured into working groups, out of which Working Group 3 issued a report in 2015 on “UN Sanctions: Humanitarian Aspects and Emerging Challenges,” which made several suggestions for the reform of humanitarian exemptions.¹⁵¹ It recommended that the Security Council review all humanitarian exemptions currently in place and allow the Focal Point for Delisting to receive exemption requests directly.¹⁵² Also, the group proposed that the Security Council establish standing humanitarian exemptions for all sanctions regimes where this was applicable, and highlighted the need to make information regarding the processes for exemptions easily accessible to those who are eligible.¹⁵³ In June 2017, an assessment report of the High-Level Review presented the Security Council with templates for exemption requests to asset freezes and travel bans within the 1267 Sanctions Regime against Al-Qaida and the Islamic State of Iraq and the Levant (ISIL) and the 1988 regime against Afghanistan.¹⁵⁴ While the High-Level

¹³⁶ Wallensteen, *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options*, 2003.

¹³⁷ *Ibid.*, pp. 24-26.

¹³⁸ UN DPI, ‘*Stockholm Process*’ Findings – Year-long Study on Targeted Sanctions – Presented to Security Council (S/7672), 2003.

¹³⁹ Watson Institute for International Studies, *Background Paper on Targeted Sanctions*, 2014, pp. 8-10.

¹⁴⁰ UN Security Council, *Note by the President of the Security Council: The Work of the Sanctions Committees (S/1999/92)*, 1999; UN Security Council, *Note by the President of the Security Council (S/2000/319)*, 2000.

¹⁴¹ UN Security Council, *Note by the President of the Security Council (S/2000/319)*, 2000.

¹⁴² UN Security Council, *Report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997)*, 2006, p. 4.

¹⁴³ UN Security Council, *General issues relating to sanctions (S/RES/1730 (2006))*, 2006.

¹⁴⁴ *Ibid.*

¹⁴⁵ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, pp. 149-151.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ UN Security Council, *General issues relating to sanctions (S/RES/1732 (2006))*, 2006.

¹⁴⁹ UNIWAG, *High Level Review of UN Sanctions (2014)*, 2014.

¹⁵⁰ *Ibid.*, p. 5.

¹⁵¹ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ UN Security Council, *Assessment Report: Achievements, challenges and opportunities resulting from the recommendations of the Compendium of the High-Level Review of United Nations Sanctions (S/2017/534)*, 2017, pp. 17-22.

Review was lauded for its recommendations at the Security Council meeting on “General issues relating to sanctions” in August 2017 and the Egypt-led Arria-formula meeting of July 2017, the implementation of said recommendations is still pending due to a lack of political commitment.¹⁵⁵

Humanitarian Exemptions: A Current Overview

Two types of humanitarian exemptions exist: individual and sectoral exemptions.¹⁵⁶ There are some issues with both types of exemptions, such as unifying the processes for individual exemptions across all sanctions regimes, or communicating the exemptions and their procedures to humanitarian organizations, Member States, and listed individuals more clearly.¹⁵⁷ The most recent efforts to reform sanctions regimes focus on these specific issues.¹⁵⁸

Individual Humanitarian Exemptions

Individual humanitarian exemptions are “designed to allow listed individuals (individuals listed on a designation list of a specific sanctions regime) to receive assistance in response to specific humanitarian needs.”¹⁵⁹ This means that individuals who, for instance, would not be allowed to travel or access their bank accounts under a sanctions regime, could be temporarily excluded from these measures in order to receive humanitarian or medical assistance.¹⁶⁰

Individual humanitarian exemptions are granted on a case-by-case basis after requests for exemption have been sent to be approved by the respective sanctions committee.¹⁶¹ Depending on the guidelines of the sanctions committee, individual exemption requests, such as the lifting of travel bans, can only be transmitted by Member States, whereas exemptions to asset freezes can be requested by either a Member State or the designated individual.¹⁶² In order to attempt to communicate the process of requesting exemptions more clearly, sanctions committees have provided guidelines on what information and details formal exemption requests need to contain.¹⁶³ In the past few years, the procedure for individual humanitarian exemptions has become increasingly standardized across most sanctions committees, based on the exemption request form provided by the 1267 Sanctions Committee relating to Al-Qaida and ISIL.¹⁶⁴ Nonetheless, the templates, such as the ones presented in the annex of the assessment report of the High-Level Review of UN Sanctions from June 2017, are not yet formally incorporated into the guidelines of other committees, which presents an opportunity for further standardization.¹⁶⁵

In order to ensure fair procedures for individual exemptions, the Working Group 3 of the High-Level Review also recommended that requests for individual exemptions be received through the Focal Point for Delisting for most sanctions committees.¹⁶⁶ Initially, the Focal Point was only mandated to support sanctions committees in processing delisting requests from designated individuals.¹⁶⁷ As per resolutions 2083 (2012) and 2255 (2015) on “Threats to international peace and security caused by terrorist acts,” however, the Focal Point’s mandate now includes receiving individual exemption requests for the 1267 and 1988 Sanctions Regimes.¹⁶⁸ Yet, the remaining regimes still receive exemption requests through their sanctions committee.¹⁶⁹

¹⁵⁵ UN Security Council, *General issues relating to sanctions: Enhancing the effectiveness of United Nations sanctions (S/PV.8018)*, 2017; Security Council Report, *August 2017 Monthly Forecast: Sanctions*, 2017.

¹⁵⁶ King et al., *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, 2016, pp. 7-8.

¹⁵⁷ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, p. 5.

¹⁶⁰ King et al., *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, 2016, p. 8.

¹⁶¹ *Ibid.*

¹⁶² UN Security Council, 1267 Sanctions Committee, *Guidelines of the Committee for the Conduct of its Work*, 2016, pp. 15-18.

¹⁶³ *Ibid.*

¹⁶⁴ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 5.

¹⁶⁵ UN Security Council, *Assessment Report: Achievements, challenges and opportunities resulting from the recommendations of the Compendium of the High-Level Review of United Nations Sanctions (S/2017/534)*, 2017, p. 7.

¹⁶⁶ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁶⁷ UN Security Council, *General issues relating to sanctions (S/RES/1730(2006))*, 2006, p. 2.

¹⁶⁸ UN Security Council, *Threats to international peace and security caused by terrorist acts (S/RES/2083 (2012))*, 2012, pp. 8-9.; UN Security Council, *Threats to international peace and security caused by terrorist acts (S/RES/2255 (2015))*, 2015, pp. 6-7.

¹⁶⁹ UN Security Council, *Libya Sanctions Committee: Travel Ban*, 2017.

The only exception for the expansion of the Focal Point's mandate would be the 1267 Committee, for which the Office of the Ombudsperson would become responsible for receiving exemption requests.¹⁷⁰ The Office of the Ombudsperson was established specifically for the 1267 Sanctions Regime regarding ISIL and Al-Qaida in Security Council resolution 1904 (2009) on "Threats to international peace and security caused by terrorist acts," in order to have an independent actor within the committee responsible for the delisting process.¹⁷¹ Its mandate entails outsourcing the delisting process to an impartial person outside of the UN Secretariat.¹⁷² By allowing the Ombudsperson to receive exemption requests, the Focal Point would be completely replaced by the Ombudsperson in the case of the 1267 Sanctions Regime.¹⁷³ For now, however, the mandates of the Focal Point and the Ombudsperson are intertwined for the 1267 Sanctions Regime, as the Focal Point continues to receive exemption requests from designated individuals, while the Ombudsperson reviews their delisting requests.¹⁷⁴

Sectoral Humanitarian Exemptions

Sectoral humanitarian exemptions refer to exemptions for "humanitarian organizations and their actors [...] who constitute the sector of principled humanitarian" action.¹⁷⁵ They therefore allow humanitarian actors to be excluded from any sanctions measures in order for them to effectively deliver aid.¹⁷⁶ Sectoral exemptions are implemented through standing exemptions to sanctions regimes, i.e. exemptions that are incorporated directly into the resolution of a sanctions regime and thus do not require approval from a sanctions committee.¹⁷⁷ This can best be exemplified by the standing exemption within the sanctions regime for Somalia.¹⁷⁸ Therein, only UN humanitarian actors and humanitarian organizations that have observer status at the UN General Assembly are currently exempted from the asset freezes, as established in paragraph three of Security Council resolution 1844 (2008) on "The situation in Somalia."¹⁷⁹ However, other humanitarian organizations are not exempted.¹⁸⁰ Nonetheless, this allows some humanitarian actors in Somalia to deliver aid without any obstructions or delays resulting from sanctions.¹⁸¹ In the 2016 report of the Monitoring Group of the Somalia sanctions regime, this standing exemption was deemed effective in enabling efficient humanitarian action in areas where civilians would not otherwise receive enough humanitarian assistance due to legal constraints stemming from sanctions.¹⁸² At the High-Level Review of UN Sanctions, humanitarian actors recommended that the standing exemption be implemented in all other relevant sanctions regimes against countries in which fast and efficient humanitarian assistance is needed.¹⁸³

However, regarding the standing exemptions for humanitarian actors, one major concern is the diversion of aid.¹⁸⁴ This issue concerns the possibility that exemptions could be abused under the guise of humanitarian assistance in order to support terrorists and other actors that pose a threat to international peace.¹⁸⁵ This was at the center of a controversy between UN humanitarian actors and the Monitoring Group of the Somalia Sanctions Regime in March

¹⁷⁰ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁷¹ UN Security Council, *Threats to international peace and security caused by terrorist acts (S/RES/1904 (2009))*, 2009, pp. 5-6.

¹⁷² Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, p. 152.

¹⁷³ UN Security Council, *Threats to international peace and security caused by terrorist acts (S/RES/2255 (2015))*, 2015, pp. 6-7; High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁷⁴ UN Security Council, *Threats to international peace and security caused by terrorist acts (S/RES/2368 (2017))*, 2017.

¹⁷⁵ King et al., *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, 2016, p. 8.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9; UN Security Council, *The situation in Somalia (S/RES/2317 (2016))*, 2016.

¹⁷⁹ UN Security Council, *The situation in Somalia (S/RES/2317 (2016))*, 2016, p. 6; UN Security Council, *The situation in Somalia (S/RES/1844 (2008))*, 2008, p. 2.

¹⁸⁰ Pantuliano, *Counter-terrorism and humanitarian action: Tension, impact and ways forward*, 2011, p. 9.

¹⁸¹ UN Security Council, *Report of the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (S/2016/827)*, 2016, p. 11.

¹⁸² UN Security Council, *Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Somalia (S/2016/919)*, 2016, pp. 132-133.

¹⁸³ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 7.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

2010.¹⁸⁶ The 2010 report of the Monitoring Group highlighted several instances of diversion of aid to Al-Shabaab-related militia and businessmen.¹⁸⁷ However, according to then-UN Humanitarian Coordinator and Resident Coordinator for Somalia, Mark Bowden, these instances were merely allegations without any evidence.¹⁸⁸ When incorporating standing exemptions for humanitarian actors into other sanctions regimes, the Security Council has to consider the problem of diversion and allow for structures that prevent it from happening.¹⁸⁹

Challenges to Requesting and Following Exemptions

In general, there are two challenges regarding requesting and following exemptions.¹⁹⁰ First, there is a lack of understanding of what type of actions are allowed within the constraints of humanitarian exemptions.¹⁹¹ Second, information on the procedure for requesting exemptions is a challenge concerning both types of humanitarian exemptions, as it is often not easily accessible.¹⁹² For instance, misunderstanding the extent of humanitarian exemptions can lead to either unintentional violations of sanctions by humanitarian actors or over-compliance, that is, adhering to an overly strict interpretation of exemptions in fear of violating sanctions.¹⁹³ Thus, humanitarian actors run the risk of either being punished for violating sanctions or not being able to be as efficient as they could in delivering aid.¹⁹⁴ For example, in 2016, financial institutions, out of fear of violating sanctions, withheld funds for humanitarian organizations working in the DPRK.¹⁹⁵ Similarly, if information on the procedure and criteria for granting humanitarian exemptions was clearly transparent to sanctioned individuals, the decision-making process could be optimized, since the amount of unjustified exemption requests (requests that would evidently be rejected by sanctions committees) could be reduced.¹⁹⁶

Therefore, a possibility to prevent these problems would be a consideration by the Security Council and its sanctions committees to make information regarding exemptions widely and easily accessible to all relevant actors.¹⁹⁷ Most sanction committees are already required by their corresponding Security Council resolutions to provide access to information on exemptions and their processes.¹⁹⁸ The 1267 Sanctions Committee against ISIL and Al-Qaida can function as a role model, as it meticulously codified its committee guidelines, has provided sample forms for exemptions to asset freezes on its website, and is generally proactive in its communication with external actors, such as designated individuals or humanitarian organizations.¹⁹⁹

Conclusion

Humanitarian exemptions to sanctions are crucial in order to ensure that the work of humanitarian actors is not negatively affected by sanctions, and that individuals that have been placed on sanctions lists still have access to humanitarian assistance.²⁰⁰ While there have been many reform and review processes for sanctions that also touched upon humanitarian exemptions, the standardization of individual exemptions in sanctions regimes has not reached its

¹⁸⁶ Nebehay, Exclusive: Somalia funds dry up after aid diversion report: U.N., *Reuters*, 2010.

¹⁸⁷ UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008) (S/2010/91)*, 2010, pp. 60-64.

¹⁸⁸ Nebehay, Exclusive: Somalia funds dry up after aid diversion report: U.N., *Reuters*, 2010.

¹⁸⁹ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 7.

¹⁹⁰ *Ibid.* p. 6.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, p. 7.

¹⁹⁴ *Ibid.*

¹⁹⁵ Murphy, U.N. sanctions on North Korea hurts aid efforts, *Humanosphere*, 2016.

¹⁹⁶ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, p. 399.

¹⁹⁷ *Ibid.*, pp. 399-400.

¹⁹⁸ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

¹⁹⁹ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, pp. 399-400; UN Security Council, 1267 Sanctions Committee, *Guidelines of the Committee for the Conduct of its Work*, 2016; UN Security Council, *Assessment Report: Achievements, challenges and opportunities resulting from the recommendations of the Compendium of the High-Level Review of United Nations Sanctions (S/2017/534)*, 2017, p. 19.

²⁰⁰ King et al., *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, 2016, pp. 7-8.

full potential in ensuring fair and transparent procedures for listed individuals.²⁰¹ Similarly, incorporating standing exemptions for principled humanitarian actors across all relevant sanctions regimes could guarantee that humanitarian action is not impeded by sanctions.²⁰² Finally, a lack of adequate access to information on the availability and extent of exemptions to both listed individuals and humanitarian actors can be detrimental to the effectiveness of humanitarian exemptions.²⁰³ Thus, Security Council action to resolve these issues is necessary.

Further Research

When researching this topic, delegates should consider the following questions: Why have not all recommendations on reforming the process for sanctions been implemented by the Security Council and into relevant sanctions regimes? To what extent have the governments of Member States implemented humanitarian exemptions to sanctions into national legislation? What are best practices of national implementation of sanctions and humanitarian exemptions? What are the lessons learned from the Sanctions Regimes against Somalia, ISIL and Al-Qaida, and the DPRK? How can the processes of receiving exemption requests be streamlined? Which sanctions regimes could benefit from standing exemptions for humanitarian actors? Lastly, delegates should consider how they want to approach this complex topic: Should particular sanctions be revised or should mechanisms be implemented in general resolutions, similar to how the Ombudsperson and the Focal Point reformed the UN sanctions system?

Annotated Bibliography

Bessler, M., et al. (2004). *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions*. United Nations Inter-Agency Standing Committee. Retrieved 19 July 2017 from: <https://docs.unocha.org/sites/dms/Documents/IASCSanctionsHB2004.pdf>

This handbook for UN humanitarian actors provides interesting and foundational insights into the challenges humanitarian actors face in light of Security Council sanctions. It presents assessment models, based on comprehensive analyses of humanitarian indicators, such as health, food, and water, for identifying humanitarian risks resulting from the implementation of sanctions measures. Delegates should reference this handbook when reviewing the design and construction of sanctions regimes in order to safeguard humanitarian action, while at the same time maintaining peace and security.

High-Level Review of United Nations Sanctions. (2015). *UN Sanctions: Humanitarian Aspects and Emerging Challenges*. Retrieved 18 July 2017 from: http://www.hlr-unsanctions.org/HLR_WG3_report_final.19.1.15.pdf

This report of Working Group 3 at the High-Level Review of United Nations Sanctions addresses sanctions from a humanitarian standpoint. It is divided into four topics, which cover the challenges humanitarian actors face due to sanctions, and the need to enhance communication and information-sharing between all relevant sanctions stakeholders. This report provides concrete recommendations regarding humanitarian exemptions, such as a thorough review of all sanctions regimes concerning humanitarian exemptions, the implementation of standing exemptions for humanitarian actors, and the extension of the mandate of the Focal Point for Delisting. When developing solutions for the issue of humanitarian exemptions in sanctions regimes, delegates can draw upon these recommendations for guidance.

King, K., et al. (2016). *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*. Harvard Law School Program on International Law and Armed Conflicts. Retrieved 18 July 2017 from: http://blogs.harvard.edu/pilac/files/2016/04/Understanding_Humanitarian_Exemptions_April_2016.pdf

This briefing memorandum was part of a November 2015 workshop on humanitarian exemptions, and was designed specifically for UN agencies and NGOs as a guideline for acting within the exemptions of a Security Council sanctions regime. Its question-and-answer format covers the most important information about the inclusion of humanitarian exemptions in sanctions regimes. Some of the topics covered in this memorandum include the differentiation between individual and sectoral exemptions, and how to counteract the abuse of such exemptions. For delegates, this

²⁰¹ High-Level Review of United Nations Sanctions, *UN Sanctions: Humanitarian Aspects and Emerging Challenges*, 2015, p. 9.

²⁰² *Ibid.*

²⁰³ Dörfler, *Security Council Sanctions Committees: From power-based to rule-based decision-making?*, 2016, pp. 399-400.



memorandum serves as a clear and concise introduction to some of the most important concepts of humanitarian action in the face of Security Council sanctions.

Segall, A. (1999). Economic sanctions: legal and policy constraints. *International Review of the Red Cross*, 836. Retrieved 24 September 2017 from: <https://www.icrc.org/eng/resources/documents/article/other/57jq73.htm>

This journal article was written by a former member of the International Committee of the Red Cross Legal Division and published in 1999 in the International Review of the Red Cross. It provides an overview of the limitations of sanctions, particularly from a legal and policy-related perspective, which serve as the basis for humanitarian exemptions. In this regard, the article provides crucial insights into the framework of IHL and human rights. Delegates should read this article in order to understand how sanctions function within the framework of IHL and human rights and, by extension, also understand why humanitarian exemptions are necessary.

Security Council Report. (2013). *Special Research Report: UN Sanctions*. Retrieved 17 July 2017 from: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf

This report by Security Council Report provides a comprehensive overview of Security Council sanctions regimes. While the issue of the adverse effects of sanctions on humanitarian action is only marginally discussed in the document, it nonetheless provides delegates with a thorough introduction to the topic of sanctions. Thus, with this report, delegates will be able better grasp the background of sanctions, their purpose and functions, and the different types of sanctioning measures. In this regard, the sections on the background, objectives, and framework are particularly helpful.

Security Council Report. (2017). *August 2017 Monthly Forecast: Sanctions* [Website]. Retrieved 24 October 2017 from: http://www.securitycouncilreport.org/monthly-forecast/2017-08/sanctions_1.php

The Security Council Report initiative provides monthly forecasts on Security Council meetings and resolutions on a broad variety of topics. The forecast from August 2017 focuses solely on the topic of sanctions. It lists not only recent developments on that topic and actions that the Security Council could undertake, but also outlines a short history of sanctions and its various reform processes. For delegates wishing to have a short and very recent overview on sanctions in general, this forecast functions as an ideal starting point.

United Nations, Security Council. (2016). *Report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea (S/2016/1121)*. Retrieved 26 August 2017 from: <http://undocs.org/S/2016/1121>

This is the latest report of the Somalia Sanctions Committee to the Security Council. Aside from presenting a summary of the activities of the committee in 2016, it also dedicates a short section to exemptions and exemption requests. In order to be able to assess reform possibilities to sanctions regimes with respect to humanitarian exemptions, it is crucial that delegates understand how sanctions committees operate internally. Thus, this report can be used as a basis to understand the background and inner workings of a sanctions committee, especially since the Somalia sanctions regime is viewed as a best-case example for standing humanitarian exemptions.

United Nations, Security Council. (2017). *Assessment Report: Achievements, challenges and opportunities resulting from the recommendations of the Compendium of the High-Level Review of United Nations Sanctions (S/2017/534)*. Retrieved 22 August 2017 from: <http://undocs.org/S/2017/534>

In June 2017, the Security Council presented its assessment report of the High-Level Review of United Nations Sanctions process. The report assesses progress made since the launch of the High-Level Review, and highlights areas where further action is needed. Thus, this report provides delegates with the latest insights into the current state of sanctions regime reform. Additionally, this document also suggests further improvements to exemption processes, such as sample forms for exemption requests or standardized exemption language.

United Nations, Security Council. (2017). *Sanctions* [Website]. Retrieved 15 August 2017 from: <https://www.un.org/sc/suborg/en/sanctions/information>

This page on the Security Council's website presents a short and concise overview of sanctions. It lists all currently active sanctions regimes and highlights the institutions of the Focal Point for Delisting and the Ombudsperson. In preparation for the conference, it will be crucial for delegates to have gained an understanding of all current sanctions regimes. The website functions as an excellent starting point for delegates to research each sanctions regime and their respective committees, as the links to the websites of each Sanctions Committee can be found on this website.

United Nations, Security Council, 8007th meeting. (2017). *Threats to international peace and security caused by Terrorist Acts (S/RES/2368(2017))* [Resolution]. Retrieved 25 August 2017 from: [http://undocs.org/S/RES/2368\(2017\)](http://undocs.org/S/RES/2368(2017))

Resolution 2368 (2017) was unanimously adopted on 20 July 2017 by all Member States of the Security Council. It provides the most recent update to the Al-Qaida/ Da'esh sanctions regime. For delegates looking at a reform of the mandate of the Focal Point for Delisting and the Ombudsperson, this resolution provides important insights in paragraphs 60 to 84 into how these roles are designed and crafted in a resolution. Within the 1267 Sanctions Regime, this resolution enables delegates to contrast the Focal Point and the Ombudsperson with one another and consider any further changes to their mandates, especially across other relevant regimes.

United Nations, Security Council, Committee pursuant to resolutions 1267 (1999), 1989 (2011), and 2353 (2015) Concerning ISIL (Da'esh), Al-Qaida and Associated Individuals, Groups Undertakings and Entities. (2016). *Guidelines of the Committee for the Conduct of its Work* [Report]. Retrieved 24 August 2017 from: https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/guidelines_of_the_committee_for_the_conduct_of_its_work.pdf

These committee guidelines represent the most recent update to the rules of procedure for the 1267 Sanctions Committee. They cover all aspects that are relevant for administering the Al-Qaida/ Da'esh sanctions, ranging from the mandate of the committee to the procedure for exemption requests. Since the 1267 Sanctions Committee is regarded as a best-case example for codifying criteria for exemption requests, delegates can refer to these guidelines to understand how exemption processes can be streamlined further across all sanctions regimes.

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