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Centre for Policy Research

# Enforcing UN Sanctions and Protecting Humanitarian Action

Towards a Coherent and Consistent Approach

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February 2022



Schweizerische Eidgenossenschaft  
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**Federal Department of Foreign Affairs FDFA**

This report was commissioned by the Swiss Federal Department of Foreign Affairs as part of the larger Swiss-supported project: Developing Guidance for Improved Implementation: UN Conflict-Related Sanctions and Humanitarian Action. All opinions expressed in the report are those of the authors alone.

The UN Sanctions and Humanitarian Action (UNSHA) project team would like to thank the Swiss Federal Department of Foreign Affairs for supporting and financing this research. The team would also like to acknowledge and thank the members of the UNSHA Advisory Board for their support, guidance, and advice provided throughout the project: Claudia Moser, Dr Tristan Ferraro, Mona Ali Khalil, Dr Naz Modirzadeh, Dr Thomas Biersteker and Kelvin Ong. The team would also like to thank fellow humanitarian and sanctions practitioners who have contributed to this project, including Julien Piacibello, Emma O’Leary, Françoise Bouchet-Saulnier, and Khaleel Desai. Finally, the team would like to thank Laila Ujayli, Marwan Jalani, Hye Min Yi and Summia Tora for their assistance in the research and case drafting.

ISBN: 978-92-808-6555-4 © United Nations University, 2022.

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Citation: Sophie Huvé, Dr Rebecca Brubaker, Dr Adam Day and Dr Zuzana Hudáková, Enforcing UN Sanctions and Protecting Humanitarian Action: Towards a Coherent and Consistent Approach (New York: United Nations University, 2022).

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# Executive Summary

Sanctions represent some of the most important tools at the disposal of the United Nations (UN) and are often deployed as part of the Organization's conflict prevention and management strategies. In situations of armed conflict, UN sanctions regimes coexist alongside International Humanitarian Law (IHL) and interacts with those actors tasked with providing impartial humanitarian assistance to lessen the negative impacts of war. While in principle UN sanctions and humanitarian action share common goals of helping to prevent the worst aspects of armed conflict, in practice they can come into contradiction with each other. For example, overbroad implementation of sanctions regimes can impede the ability of humanitarians to access vulnerable populations or deploy much needed resources. In turn, sanctions designers worry that humanitarian aid can sometimes be diverted or manipulated to subvert the intended goals of sanctions regimes.

This raises several important questions: (1) How can the sanctions and humanitarian communities better understand each other's respective priorities? (2) How can sanctions regimes be better designed and implemented to protect humanitarian action while still functioning effectively? (3) What specific steps could the Security Council take to improve the interplay between UN sanctions and humanitarian engagement?

Based on in-depth case studies, a wide-ranging online survey, and qualitative interviews with experts across the humanitarian and sanctions communities, this United Nations University Centre for Policy Research explores the relationship between UN sanctions and humanitarian action. Acknowledging the complex and challenging environments in which sanctions regimes are employed, the report highlights continuing gaps in knowledge across the two communities, and the need for greater understanding for how sanctions and humanitarian action could be more complementary to each other. The report offers a range of recommendations to the UN Security Council, sanctions actors, and humanitarians, including:

## For the UN Security Council:

- **Replicate the standing humanitarian exemption across all UN sanctions regimes:** Such a measure could be tailored on the model of the Somalia exemption, broadened to cover *bona fide* humanitarian actors: “as well as other impartial humanitarian organizations acting in compliance with IHL.”
- **Require States to comply with international law, including IHL, when implementing sanctions measures across all UN regimes:** Currently, this language is only present in five of them (Democratic Republic of the Congo, Central African Republic, Libya, Somalia, and the 1267 regime). Replicating this requirement across all UN sanctions regimes would address a key gap.
- **Require States to “take into account” the impact of their implementation measures on humanitarian actors:** The Security Council should use the language in paragraph 24 of resolution 2462 (2019) and replicate it in conflict-related regimes to promote awareness of the impact of sanctions implementation measures on aid delivery, service provision, the safety of humanitarian workers, and general access to areas and people in need.
- **Require States to “take steps to mitigate” the impact of their implementation measures on humanitarian actors:** Such language would put the onus on States to not only track and take note of negative impacts but would also invite them to consider remedies when negative impacts arise. It would also leave States with the flexibility and appreciation as to the type of concrete measures they would want to take, depending on the specificities of their national laws and other aspects of their national contexts.

- **Clarify that sanctions are not intended to have adverse humanitarian consequences on the civilian population:** So far, four sanctions regimes (Democratic People’s Republic of Korea, Democratic Republic of the Congo, Mali and Central African Republic) include language clarifying that sanctions “are not intended to have adverse humanitarian consequences for the civilian population” of the relevant country under the sanctions regime. This language should be reproduced across all UN sanctions regimes. Such as reaffirmation of intent would help to reclaim better effectiveness and legitimacy of sanctions.
- **Clarify that sanctions measures are not intended to impede humanitarian action:** A more ambitious approach would be to clarify that sanctions measures should not be implemented in a manner that impedes, limits, or otherwise restricts, the exclusively humanitarian activities of impartial humanitarian actors, conducted in accordance with IHL.
- **Mandate Panels of Experts to conduct impact assessments:** The Security Council should draw attention to the recommendations of the High Level Review of UN Sanctions (2015), which called upon the Panels of Experts to report on unintended consequences as may be appropriate. The Office for the Coordination of Humanitarian Affairs (OCHA) could also be mandated to conduct a pre-assessment of potential impacts of sanctions regimes.
- **Organize more frequent sanctions discussions in the Council:** The Security Council should conduct more regular discussions and consultations on the issue of sanctions and humanitarian action, with a broad range of actors (private sector actors, humanitarian actors and academia). This would allow the Council to become more familiar with IHL and the *modus operandi* of humanitarian actors, to have a continued discussion about intended and unintended consequences of its sanctions regimes and, over time, a more grounded analysis to consider potential changes in the design of its sanctions regimes.

## Other UN entities:

- **Promote greater understanding of sanctions regimes:** The Security Council Affairs Division (SCAD) should be more proactive in offering technical assistance regarding the rationale, nature and scope of sanctions regimes to humanitarian organizations. Regular engagement with the International Committee of the Red Cross (ICRC), as the “guardian of IHL,” should be prioritized. SCAD’s role as the sanctions focal point should also be more advertised, so that humanitarian organizations know where to turn for information and support on sanctions issues. Promoting better understanding of the mandate of the Panels of Experts would also be beneficial.
- **Undertake more frequent and systematic consultation with humanitarian organizations about unintended impacts of sanctions:** Panels of Experts should reach out to humanitarian organizations to gather stories and evidence about the unintended impact of sanctions on their humanitarian activities. Protection of humanitarian sources should be of paramount concern in this outreach.
- **Make recommendations to the Security Council:** In 2006, the UN Legal Counsel made a statement to the Security Council on behalf of the Secretary-General regarding due process in the UN sanctions regimes, under the topic “enhancing the efficiency and credibility of UN sanctions regimes.” This statement triggered gradual improvements to UN sanctions from the human rights perspective and resulted to the creation of the Ombudsperson’s office. A similar effort could be made for the purposes of promoting IHL in the design and implementation of UN sanctions, establishing basic principles that the UN sanctions should tend towards in order to protect humanitarian action.

- **Develop and strengthen risk management units:** the UN should develop and strengthen the risk management units to offer better support to humanitarian actors operating in contexts under sanctions. Risk management units could also partner with Office of Legal Affairs, SCAD and OCHA to offer advice on the rationale, scope and nature of sanctions regimes.

## Member States:

- **Comply with IHL when implementing sanctions:** The Security Council has made it clear that States should comply with IHL when implementing sanctions. Concretely, States should ensure that their measures to implement sanctions do not restrict, impede, delay or otherwise criminalize the humanitarian activities of impartial humanitarian actors.
- **Adopt mitigating measures at domestic level, where appropriate:** Where possible, States should adopt measures that have the potential to mitigate the unintended impact of sanctions on humanitarian action and facilitate the provision of humanitarian aid in accordance with IHL. For example, these mitigating measures could take the form of expedited exemption procedures for humanitarian actors, guidance documents, explanatory memorandum accompanying legislation, or letters of assurances.
- **Provide clear guidelines to interpret and enforce sanctions nationally:** States can play an important role in reassuring humanitarian actors and their financial and logistical partners about the risks they incur for potential sanctions violations. States should avoid imposing strict liability for violations of sanctions measures, especially considering the unavoidable risks that humanitarian actors face in all conflict settings. States should also provide clear guidance on their interpretation of sanctions prohibitions.
- **Bridge the sanctions and humanitarian communities:** It is also the role of Member States to create and strengthen partnerships between the different pillars of this topic. Some States have created tri-sector working groups (governments, financial institutions and humanitarian actors), gathering regularly to discuss sanctions. This can be a helpful tool to bridge the gap between the different communities. Other models of fora could be created, gathering academics and sanctions experts. The overarching goal should be to build the capacity of humanitarian actors to understand sanctions, and of sanctions implementers to understand humanitarian action.

## Donors:

- **Stop conditioning aid on the vetting or screening of beneficiaries, or imposing restrictions going beyond what UN sanctions require:** Donors should end the practice of requiring humanitarian actors to do more than what sanctions require (e.g. prohibiting any contact with listed groups and individuals). To the extent that donors are putting onerous restrictions on humanitarian actors, they may by default interfere or impede with the delivery of humanitarian assistance in the areas that are most vulnerable. In these cases, and while the language related to obstruction of access in sanctions resolutions is directed to parties to the conflict, donors should aim to effectuate the intent of the Security Council.
- **Fund and support compliance requirements:** Donors should not ask humanitarian actors to undertake investigative roles without providing them with adequate means to pay for sanctions databases and extra staff to undertake the tasks of screening procedures. In addition, donors should be able to provide clearer guidance and refer their grantees to specific focal points when the need arise.

## Private sector actors:

- **Invest in a better understanding of the humanitarian sector:** Private sector actors, especially banks, should improve their understanding of the humanitarian sector, which will allow them to invest with greater clarity on the impact of their investments. Private sector actors could hire consultant with humanitarian expertise or engage in regular discussions with identified focal points within the humanitarian community.
- **Adopt a risk-based over a risk-averse approach:** Private sector actors, especially banks, can tend towards a risk-averse approach. Yet, some risk needs to be incorporated into investments to allow humanitarian delivery. Having a differentiated and evidence-based understanding of risk will help avoid unnecessary impediments to humanitarian action.

## Humanitarian actors:

- **Increase sanctions knowledge:** Inadvertent violations of sanctions requirements by humanitarian actors can be avoided if they build knowledge and capacity on sanctions issues. Humanitarian actors should turn to sanctions experts to discuss sanctions-related issues, within and outside the UN.
- **Establish common red lines:** Humanitarian actors should coordinate to establish common red lines to avoid, to the extent possible, aid diversion and incidental payments and to resist undue pressure from governments, donors and private sector actors. The ICRC – or another agreed upon impartial actor – should be called upon to ensure better implementation of these red lines, so that it is not a self-regulatory mandate.
- **Continue to improve due diligence measures:** Humanitarian actors have a strong interest in preventing aid diversion and the instrumentalization of humanitarian assistance for ulterior motives, both of which require robust regulatory measures. Humanitarian actors should continue to develop due diligence internal policies as part of a deeper engagement with sanctions regimes.
- **Pool-fund resources for sanctions databases:** Where humanitarian actors are not able to finance sanctions databases, they should combine funds with other humanitarian actors. For example, networks and clusters of humanitarian organizations could invite their members to pool resources together to finance these databases.
- **Collect more data on sanctions-related issues:** Humanitarian actors should train their staff internally to systematically collect data on issues that may directly or indirectly arise from the implementation of sanctions measures. This gathering of information could be based on surveys established by independent experts and academics, for the internal uses of humanitarian organizations.
- **Work as a community:** All of the above recommendations would be even more effective if humanitarian actors could work collaboratively on them as a more cohesive community. For example, humanitarian actors with strong knowledge of sanctions and how to navigate them should take it upon themselves to train other smaller NGOs with fewer resources. Humanitarian actors with effective due diligence policies should also share their good practices with others, instead of keeping solutions internal.

# Introduction

Sanctions represent one of the most important conflict prevention and management tools at the disposal of the United Nations (UN). UN sanctions regimes can help to deter violence, inhibit the ability of conflict actors to sustain hostilities, prevent human rights violations, and send a normative message about the behaviours demanded by the international community. Ten of the current 14 UN sanctions regimes are applied in situations of armed conflict, with the goal of preventing, mitigating, and resolving conflict.<sup>1</sup>

In situations of armed conflict, UN sanctions apply alongside International Humanitarian Law (IHL), which has evolved over time to become a crucial cornerstone of the international community's attempts to lessen the negative impacts of conflict on civilian populations and to limit human suffering in war for everyone, including combatants. Well-designed and well-implemented UN sanctions regimes are applied to resolve conflict and to prevent conflict in the future. Thus, UN sanctions and IHL are generally built on separate assumptions and aimed at distinct purposes. Yet, while the primary goal of UN sanctions is to prevent conflict, to a lesser extent they have also started to focus in more recent years on reducing harm to civilians.

Thus, as will be explored later in this report, there are policy moments in which both frameworks may complement each other. In practice, UN sanctions may come into conflict with specific aspects of IHL, raising the issue of their compatibility in conflict settings, and questions of how potential areas of incompatibility could be reduced or resolved. In addition, those designing and implementing UN sanctions may not account for the unintended negative impacts of their measures on the ability of humanitarian actors to deliver swiftly and effectively to the people in need (i.e. on “humanitarian action”).

The result is a set of missed opportunities at the policy and practical levels concerning how UN sanctions and humanitarian action can coexist peacefully and productively. The siloing of the two doctrines has meant that both the sanctions and humanitarian communities have not systematically learned from cases in which the two practices have coexisted and even, at times, complemented each other.

This report does not aim to focus at length on the interplay between sanctions and IHL – the body of law governing armed conflict and humanitarian action, which have been extensively discussed in other reports.<sup>2</sup> Nor does it focus on counter-terrorism (CT) sanctions regimes and CT measures, also covered elsewhere.<sup>3</sup> Instead, the report aims to look more broadly at the interplay between UN sanctions and humanitarian action, focusing on UN sanctions regimes imposed in the context of armed conflicts (conflict-related regimes) and falling outside the pure CT space, which is the most common type of contextual setting for UN sanctions and the one in which potential compatibilities are most visible.<sup>4</sup> Moreover, it attempts to look at both the positive and negative aspects of the interplay between UN sanctions and humanitarian action, i.e. how they may contradict but also reinforce each other. As a result, this report also highlights an element of UN sanctions that is rarely discussed, how sanctions are being used in a way to better uphold IHL and protect humanitarian action.

Overall, this report aims to build an evidentiary case to address the following questions: (1) How can the sanctions and humanitarian communities better understand each other's respective priorities? (2) How can sanctions regimes be better designed and implemented to protect humanitarian action while still functioning effectively? (3) What specific steps could the Security Council take to improve the interplay between UN sanctions and humanitarian engagement?

The report is divided into six sections: (1) a brief description of methods; (2) an overview of the respective policy frameworks governing UN sanctions and IHL; (3) an overview of the contexts in which sanctions and IHL coexist,

identifying common issues arising across them; (4) common challenges in implementation; (5) negative and positive impacts of the coexistence of UN sanctions and IHL in a range of settings; and (6) recommendations for how UN sanctions can be designed to mitigate impacts on humanitarian action.

## Methods

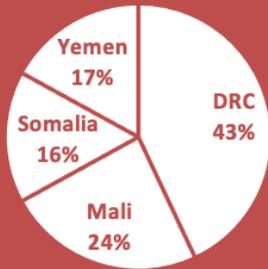
Building on the existing literature on the topic, the findings in this report are drawn from three primary sources: (1) country case studies, (2) qualitative interviews with humanitarian practitioners and sanctions experts, and (3) a qualitative online survey disseminated to humanitarian organizations. The findings are also drawn from existing literature on the topic.

First, the team completed five case studies focusing on the impacts of UN sanctions in the Democratic Republic of the Congo (DRC), Mali, Somalia, Yemen and the Democratic People's Republic of Korea (DPRK). Each of these sanctions regimes were imposed to help prevent, mitigate or resolve an armed conflict. Moreover, each of these sanctions regimes contained various elements of protection of humanitarian action, from humanitarian exemptions to mechanisms for protecting humanitarian action against the violations and abuses by the parties to the conflict, listed individuals and listed entities. Finally, these four cases also contained CT aspects, either through the imposition of United States (US) CT sanctions or through the global reach of the 1267 sanctions regime (Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities).

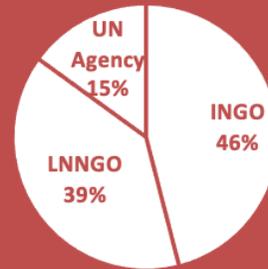
Second, the team conducted over 50 qualitative interviews with humanitarian actors and sanctions experts from January to July 2021. All humanitarian interviewees were mid- to high-level professionals with experience in the field or in legal and compliance departments. In the sanctions community, the team consulted with four penholders of the five permanent members of the UN Security Council, other Member States, as well as sanctions experts working both in and outside the UN system. These interviews provide both a general context and concrete examples of direct and indirect impacts of UN sanctions (and sometimes other sanctions) on humanitarian actors and their activities; as well as insights into how the sanctions community view these issues.

Finally, the team also designed a qualitative online survey, focusing on the impacts of UN sanctions in the DRC, Mali, Somalia and Yemen. To better understand the impacts of UN sanctions in the context of other sanctions (such as US, European Union and African Union sanctions) and other measures either related to or mistaken for sanctions (such as CT measures, country-specific legislation, etc.), questions were asked about the impacts of these intervening factors as well. The survey was disseminated to 140 humanitarian actors, clusters and networks, encompassing UN agencies, international non-governmental organizations (INGOs) and local and national non-governmental organizations (LNNGOs). The survey obtained 43 answers across the four countries (see Figure 1). INGOs and LNNGOs represented 85% of the answers combined (see Figure 2). The survey was filled out by mid to high-level humanitarian professionals with extensive experience in the field (see Figure 3 and 4). In some cases, the survey was filled out by in-country humanitarian clusters and networks. Thus, what counts as one (1) answer sometimes represents the coordinated and consolidated view of several humanitarian actors or an entire organization. While the survey does not contain a representative sample of the humanitarian sector operating in the DRC, Mali, Somalia and Yemen, it produced both significant and anecdotal results that contributed to the team's understanding of themes, challenges and types of impacts regularly discussed in both the interviews and secondary literature.

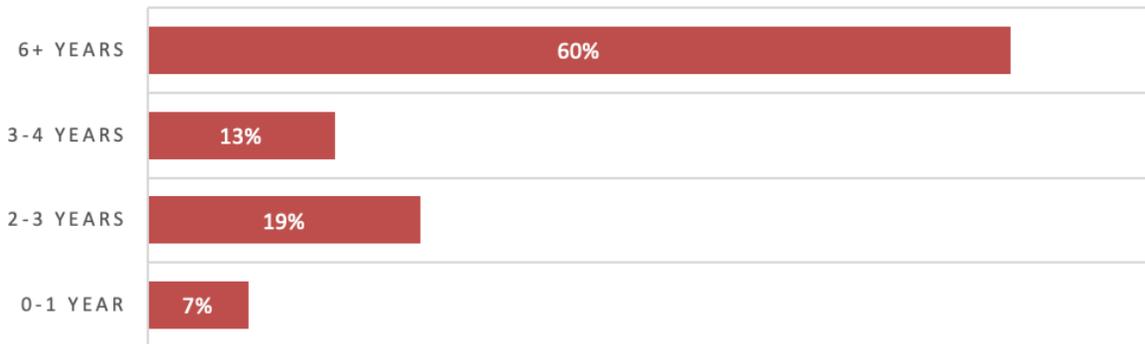
**FIGURE 1: COUNTRY OF OPERATION**



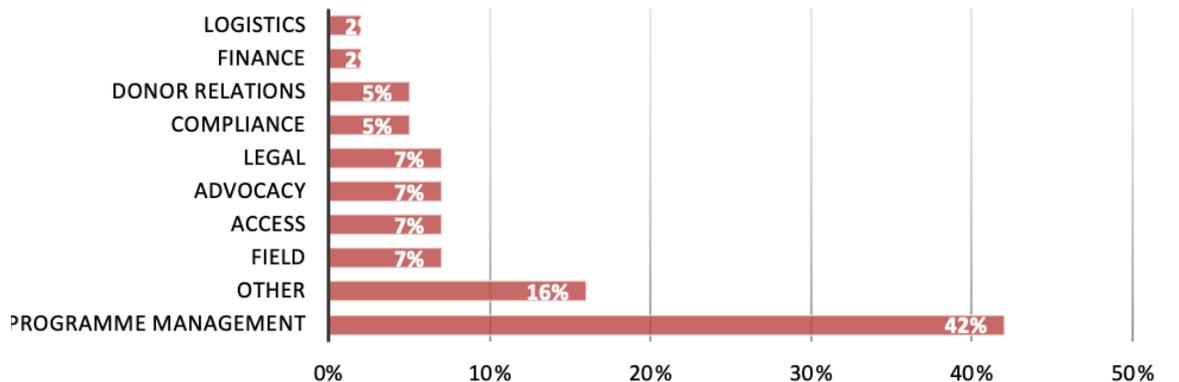
**FIGURE 2: TYPE OF ORGANIZATION**



**FIGURE 3: RESPONDENTS' PROFILES (IN-COUNTRY EXPERIENCE)**



**FIGURE 4: RESPONDENTS' PROFILES (SPECIALIZATION)**



# Policy Landscape

The policies of both the sanctions and humanitarian actors' communities have an important impact on their ability to operate in concert with each other. This section provides a brief overview of both policy realms.

## Limited knowledge of sanctions by humanitarian actors

The majority of humanitarian actors who contributed to this project reported a lack of expertise and knowledge related to UN sanctions measures imposed in armed conflict settings outside the CT and non-proliferation (NP) spheres. This lack of knowledge pertains to the types of UN sanctions measures deployed, their scope, their targets, and their exemptions procedures. The majority of humanitarian organizations consulted expressed greater concern with other sanctions regimes, deemed as much stricter, such as US sanctions.<sup>5</sup> Responses indicated a significant degree of confusion between UN sanctions, other forms of sanctions, and other measures either related to sanctions or often mistaken with sanctions, such as CT measures and country-specific legislation.

At the headquarters level for humanitarian actors, typically only a few individuals across organizations are knowledgeable about the precise nature of the UN sanctions imposed in a given conflict context, but there is generally little in-house knowledge.<sup>6</sup> Typically, these individuals have acquired deep expertise and a high degree of awareness related to sanctions in general, and UN sanctions in particular. In the field, knowledge of applicable UN sanctions is reportedly even more limited – except for directors of UN agencies, and regional directors of INGOs. UN sanctions were described by one interviewee as “alien to the daily business of humanitarian actors in the field.”<sup>7</sup> This lack of knowledge is largely explained by the fact that it is not always considered necessary or relevant for most staff to have in-depth knowledge of sanctions beyond the basics of what is required in terms of compliance. Learning is also inhibited by resources for sanctions compliance and lack of access to sanctions trainings and resources.<sup>8</sup>

Yet, a lack of knowledge and expertise regarding applicable UN sanctions may put humanitarian actors at risk of inadvertent violations.<sup>9</sup> Some inadvertent violations could be avoided if organizations were to use the different safeguarding mechanisms built into UN regimes, or simply were more aware of what is permitted or not under each regime. For example, imports of many items necessary for humanitarian uses may be allowed, even under a UN arms embargo, after notification to the relevant Sanctions Committee. Increased knowledge and use of such provisions could, to some extent, facilitate imports of a number of different categories of goods, such as vehicles or protective items, needed for the provision of humanitarian aid in sanctioned contexts. In contrast, a lack of knowledge of the scope of UN asset freezes means that many humanitarian actors may inadvertently violate sanctions regimes by offering transportation fees, per diems and lodging to conference participants designated for UN sanctions. While typically unintentional, some of these challenges also arise from the desire of humanitarian actors to “steer clear” of anything to do with sanctions.<sup>10</sup>

When the scope of the sanctions is not well understood, humanitarian actors may also “over-comply” with the measures, unnecessarily impeding humanitarian delivery. For example, humanitarian actors may refrain from operating in certain areas under the control of listed armed groups, as they fear that sanctions prohibit any type of engagement with these listed entities – which is not the case for UN sanctions.

The lack of understanding also prevents humanitarian actors from building a common position on red lines and acceptable risks, which could allow for more effective joint lobbying of UN sanctions designers. Although there are increasing cases in which humanitarian actors come together to advocate for specific language or safeguards mechanisms in sanctions regimes, this coordination tends to remain circumscribed to a small set of major INGOs and is not always inclusive of smaller actors or contradictory views.

Finally, the lack of knowledge leads to a misunderstanding of the scope and impact of UN sanctions relative to other activities. Most humanitarian actors surveyed were unable to identify direct or indirect challenges arising from UN sanctions measures and unable to distinguish between UN sanctions and those imposed by Member States.<sup>11</sup> Few respondents could point to concrete evidence of direct impacts of UN sanctions on their programme design or implementation. But roughly half of the respondents identified UN sanctions as equally restrictive on their operations as those of the US, despite not being able to articulate the differences between the two. Lacking a clear understanding of UN and other sanctions regimes may therefore create an avoidable misperception of the impacts of UN sanctions.

## Humanitarian compliance with sanctions

The research exposed a reluctance by some humanitarian actors to be seen as needing to “comply” with sanctions regimes that do not take IHL explicitly into account.<sup>12</sup> In practice, however, humanitarian organizations have evolved their own internal policies to account for a broad range of sanctions regimes, even where they appear to significantly restrict some humanitarian action. In some cases, these shifts in policy have helped to enhance the efficiency, transparency and reliability of humanitarian delivery. However, more generally the issue of sanctions compliance tends to place humanitarian organizations in an operational “grey zone,” needing to comply with a range of obligations emanating from international sanctions regimes, national measures adopted by Member States to implement sanctions, and related restrictions by donors. In these contexts, humanitarian actors reported significant difficulties in complying with interrelated international and national sanctions measures with quite different legal systems and funding requirements, a challenge made more difficult by limited resources for sanctions compliance.

The capacity of organizations to develop internal sanctions policies varies significantly. Roughly half of the organizations consulted possessed one or two staff members with sufficient sanctions knowledge. Roughly one-third had internal policies for compliance and internal mechanisms for discussion and information-sharing, and had procedures to minimize aid-diversion (for instance standard operations procedures to select and work with third parties). Less than one-third had compliance units dedicated to sanctions-related issues. Approximately one-third had no internal policies or specialized units or staff to deal with sanctions-related issues at all.

Compliance with sanctions is also strongly related to compliance with donor requirements, in particular screening requirements against sanctions databases. The majority of organizations were in the process of developing, or had already developed, protocols to screen their staff, implementing partners, contractors and vendors. Some organizations considered that they still may need to work with partners considered as “high risks” after screening processes, and were willing to take the risks associated with doing so. Moreover, according to interviews, the survey, and secondary literature, an increasing number of INGOs and UN agencies now conduct screening and/or vetting of final beneficiaries. A smaller portion of organizations have continued to push back on these requirements, refusing to screen or vet final beneficiaries on the grounds that it would violate humanitarian principles. This has resulted in some organizations turning down funding agreements in which the funding was conditioned to the screening or vetting of final beneficiaries.

## Limited knowledge of humanitarian action by sanctions stakeholders

Similar to the points above on the lack of knowledge within the humanitarian community, sanctions designers, experts and practitioners generally demonstrate a lack of knowledge of both IHL - the international legal framework applicable in armed conflict situations - and the practical impacts sanctions have on humanitarian action. Poor understanding of IHL is wide ranging, often including: the criteria to qualify as impartial humanitarian actors under IHL; which activities are humanitarian activities protected under IHL; the legal framework for humanitarian

action; and/or the fundamental principles of both IHL and humanitarian action by which humanitarian actors must abide.<sup>13</sup>

This unfamiliarity with IHL as the basis for humanitarian action has real consequences for sanctions design and implementation. It can mean that sanctions designers are not aware that they may be creating the appearance of competing legal obligations for humanitarian actors, and/or do not have a solid understanding of the negative impacts that sanctions' implementation can have on humanitarian action in conflict settings. There thus seems to be a gap between the impacts experienced by humanitarian actors and the way these impacts are perceived within the sanctions' community.

The lack of reciprocal familiarity between the sanctions and humanitarian communities is typical, given the quite different political and legal ecosystems of each community. However, given that humanitarian actors are increasingly operating in an environment shaped by large, overlapping sanctions regimes that affect both legal obligations and donor relations, the need for improved reciprocal understanding is clear. Indeed, merely stating the legal fact that sanctions regimes imposed in situations of armed conflicts must account for IHL ignores the deeper and more complex questions around how UN sanctions can be designed and implemented without inhibiting humanitarian operations in practice. As the following sections elaborate, there is room for greater coherence between the two worlds.

A poor understanding of the scope and objectives of sanctions by humanitarian actors, and reciprocally, of the IHL rules regulating humanitarian activities and the *modus operandi* of humanitarian actors by sanctions actors, may impede cooperation between the two communities, and in turn the effective implementation of sanctions as well as timely delivery of humanitarian aid. Nonetheless, as a result of advocacy efforts from key humanitarian actors and reports by humanitarian experts and academics, the issue of UN sanctions' impact on the humanitarian sector's ability to consistently access and aid communities in need has gained increased visibility in the past few years, including among the broader set of sanctions implementers and sanctions designers.

# Complementarity and Compatibility Between UN Sanctions and IHL

Most UN sanctions regimes are applied in the context of armed conflicts, where the application of IHL is unambiguous. To some extent, UN sanctions imposed to reduce or resolve conflicts and IHL can share a convergence of goals, notably the limitation of human suffering in war. There are therefore moments in time where UN sanctions, when appropriately designed and imposed, can help enforce IHL. And while the above sections have pointed to the tensions that arise when UN sanctions and humanitarian actors operate in the same contexts, this section is focused on the potential compatibility and complementarity between UN sanctions and IHL.

The issue of complementarity and compatibility is especially important considering the extensive periods of time when UN sanctions and IHL coexist. Indeed, the majority of former and active UN sanctions regimes have a lifetime ranging between one and two decades.<sup>14</sup> For conflict-related regimes, sanctions are generally imposed at the beginning stages of the conflict and often remain in place at least until its end. During a conflict, the scope and specific measures of a sanctions regime often evolves to meet changing dynamics on the ground and the priorities of sanctions designers. As a result, the potential interplay between the sanctions measures and humanitarian action is always evolving.

Indeed, protracted conflicts tend to grow in complexity, presenting deeper and more challenging settings for both sanctions and humanitarian actors. For humanitarian actors, the demand for their services often go beyond immediate relief to more structural needs. For example, large-scale destruction of infrastructure can mean humanitarian actors must deliver more than just emergency goods and medical aid. For sanctions actor, more complex and protracted conflicts require more wide-ranging and often detailed sanctions provisions, which then become harder to follow and implement.

Taken together, evolving sanctions regimes and deepening complexity of conflicts creates increased potential for friction between sanctions and humanitarian action, raising the urgency of policy solutions to advance compatibility and complementarity.

## Complementarity between UN sanctions and IHL

In some respects, UN sanctions and IHL can helpfully reinforce one another. More specifically, UN sanctions regimes are in part designed and used as a tool to uphold IHL, facilitate humanitarian access and protect humanitarian workers in conflict settings. Yet, this positive interplay between UN sanctions, IHL and humanitarian action has not been extensively researched so far. Here, two aspects of the Security Council practice are worth noting: 1) reminding the parties to the conflict of their obligations under IHL; and 2) using designation criteria to impose sanctions on those individuals and entities who violate IHL, obstruct humanitarian access, and/or attack humanitarian workers.

### 1. Language recalling the IHL obligations of the parties to the conflict

The majority of the conflict-related sanctions regimes include language intended to uphold IHL and protect the humanitarian mission from violations and abuses by parties to the conflict. Seven sanctions regimes include frequent and general statements expressing concerns over IHL and translate them into explicit injunctions that parties to the conflict must comply with their obligations under IHL (see Table 1). Eight sanctions regimes go further to include statements referring to humanitarian access, humanitarian assistance and safety of humanitarian personnel,

translated into explicit injunctions that parties to the conflict must allow and facilitate the full and unhindered humanitarian access of relief personnel and refrain from attacks against humanitarian workers (see Table 1).

**Table 1: Sanctions regimes with language on IHL and the humanitarian space**

Regimes with language expressing concern over general IHL violations	Regimes with language requesting compliance of the parties to the conflict with IHL	Regimes with language expressing specific concern for the humanitarian space
7 (Yemen, Democratic Republic of the Congo, Mali, Sudan, Central African Republic, South Sudan and the 1267)	7 (Yemen, Somalia, Democratic Republic of the Congo, Mali, Libya, Sudan and Taliban)	8 (Yemen, Somalia, Democratic Republic of the Congo, Mali, Sudan, Central African Republic, South Sudan and 1267)

## 2. Designation criteria to uphold IHL and protect the humanitarian space

Several of the conflict-related sanctions regimes support IHL and humanitarian actors through designation criteria, allowing the Council to impose sanctions on those who violate IHL, obstruct humanitarian access, or attack humanitarian workers. For example, seven UN sanctions regimes include a designation criterion based on violations of IHL (see Table 2), which has mostly been used against those engaged in violations against the civilian population. In theory, such criteria can also be used to sanction those violating the rules of IHL regulating humanitarian activities (i.e. those engaging in cases of obstruction of humanitarian access, of impediments to the delivery of humanitarian activities, or of attacks against protected personnel, if and where it is established that these acts truly amount to violations of IHL). In addition, six UN sanctions regimes include a stand-alone designation criterion based on the obstruction of humanitarian access and/or the distribution of humanitarian assistance while two regimes also include a designation criterion based on attacks against humanitarian personnel (see Table 2).

Stand-alone criteria have been used to impose sanctions on individuals and entities, even when the specific cases do not amount to a violation of IHL. For example, in Mali, individual “MLi.004” was listed based on the designation criteria of obstruction of access. The narrative summary for his listing proves a clear-cut case of obstruction and interference with humanitarian activities: “control and choose” humanitarian projects, “manipulate humanitarian action”, “influencing who benefits for the distributions”, “intimidate and extort NGOs”, “all of which results in obstruction and hindrance of aid affecting beneficiaries in need.”<sup>15</sup> While clearly against the overall goals of IHL, these acts do not necessarily amount to a clear violation of IHL, opening the possibility of more far-reaching uses for designations that support humanitarian action.

Designation criteria are an important first step, given that a primary purpose of sanctions is to signal that violations of international norms will have consequences. However, it is not sufficient that the language exists. To be of consequence, the Council’s Sanctions Committees must also apply existing language and provisions to cases where violations have been established.<sup>16</sup>

A review of the narrative summaries for listings illustrates a positive trend but still a remaining gap between language and action. So far, across the ten conflict-related sanctions regimes, 40 out of 120 individuals and 6 out of 13 entities have been listed for general violations of IHL; 33 out of 120 individuals and 4 out of 13 entities have been listed specifically for obstruction of access and delivery, or attacks against aid workers (see Table 2). Only three individuals were listed *solely* on either IHL violations or obstruction of humanitarian access. All the other individuals and entities were listed for other reasons as well, such as violating arms embargoes, financing armed groups, or

trafficking natural resources. This indicates that violations of IHL or obstruction of humanitarian access alone are usually insufficient for prompting the Security Council to apply sanctions on violators.

**Table 2: Use of the designation criteria across the conflict-related sanctions regimes**

Designation Criterion (Summarized)	Present in how many regimes?	Utilized in how many regimes?	In use for what percent of total listed individuals?	In use for what percent of total listed entities?
Planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses.	7 (Yemen, DRC, Mali, Libya, Sudan, CAR and South Sudan)	7 (Yemen, DRC, Mali, Libya, Sudan, CAR and South Sudan)	33.3% (40 of 120 listed individuals)	46.2% (6 of 13 listed entities)
Targeting civilians through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law.	2 (Somalia, South Sudan)	2 (Somalia, South Sudan)	7.5% (9 of 120 listed individuals)	7.7% (1 of 13 listed entities)
Obstructing the access to, or the delivery and distribution of, humanitarian aid to a country or in a country.	6 (Yemen, Somalia, DRC, Mali, CAR, South Sudan)	5 (Somalia, DRC, Mali, CAR, South Sudan)	27.5% (33 of 120 listed individuals)	30.8% (4 of 13 listed entities)
Planning, directing, sponsoring, or conducting attacks against humanitarian personnel.	2 (CAR, South Sudan)	0	N/A	N/A

Even if not automatically acted upon, these designation criteria can still work as a helpful deterrent. It was reported in the research that recommendations for listing by the Panels of Experts, i.e. “naming” of a particular individual in a report, would sometimes act as a deterrent to the individual, even when not resulting in an actual designation by the relevant Sanctions Committee.

Hence, despite these shortcomings, the existing language and designation criteria clearly indicate that the Security Council conceives its conflict-related sanctions regimes as a tool that can come in support of respect for IHL and humanitarian action. In other words, the Security Council considers that sanctions regimes can be used as an enforcement mechanism for IHL, and more specifically to protect humanitarian action, even if more could be done in this respect.

### 3. Views from the humanitarian sector

There is no uniform view across the humanitarian sector on the utility of sanctions in helping to uphold IHL, though research for this project exposed some common perspectives and trends. Broadly, humanitarian actors avoid public statements on the legitimacy or necessity of UN sanctions, which they recognize as a prerogative of Member States and the Security Council. This allows them to protect their neutrality and independence. However, they recognize the potential for sanctions to support implementation of IHL, improve humanitarian access and protect humanitarian workers. Recently, for example, a group of human rights and humanitarian organizations publicly called on the Security Council to impose sanctions on those obstructing humanitarian access in Yemen.

But there are limits to the willingness of humanitarian actors to call for and condone the use of sanctions to protect their work. For example, some humanitarians have refused to be a source of information for UN Panels of Experts out of concern that they might be identified by the parties to the conflict, which, in turn, would negatively affect their neutrality and the safety of their staff on the ground. For the same reasons, others humanitarian organizations have refused to contribute to databases like the annual children and armed conflict report, which tracks humanitarian obstruction, and opposed the adoption of a benchmark based on humanitarian access to justify the lifting of sanctions in South Sudan.

This can create a tension, given that sanctions elements aimed at protecting humanitarian space often rely on information provided by the humanitarian community. The imposition and the lifting of sanctions – a highly political act with enormous consequences in some settings – cannot be linked to an issue like humanitarian access without creating at least a perceived risk of politicization of the humanitarian actors operating on the ground. As one interviewee concisely noted: “it is one thing to list people for obstructing aid, and another one to have humanitarian actors reporting on it.”<sup>17</sup> In other words, what may be problematic in the view of humanitarian actors is not the use of sanctions in and of itself, but the ways in which the sanctions enforcement mechanisms may sometimes put humanitarian actors in a position where they are asked to undertake a reporting or monitoring role.

This does not mean all cooperation between sanctions actors and humanitarians is foreclosed. Indeed, some humanitarian organizations may wish to rely on Panels of Experts in order to informally discuss IHL and international human rights law (IHRL) violations. The reports of the Panel of Experts can be used indirectly by humanitarian and human rights actors as a way to raise awareness among the members of the Security Council about particular issues in conflict settings. By protecting confidentiality and informing the Security Council, the Panels of Experts can play a bridging role between the sanctions and humanitarian communities.

The existing sanctions mechanisms are valuable tools to better enforce IHL and protect humanitarian action. They may, however, need to be refined further to ensure that they do not jeopardize the perceived neutrality and independence of humanitarian actors on the ground. Finding alternative ways to share information confidentially, without risking neutrality, could broaden those bridges and improve collaboration in the future.<sup>18</sup>

### Compatibility issues

Conceptually, UN sanctions and IHL are distinct legal frameworks, expected to apply in parallel in armed conflict situations. In practice, the implementation of UN sanctions measures may sometimes create tensions with several categories of rules of IHL, such as: (1) the rules governing humanitarian activities, including the entitlement of impartial humanitarian organizations to offer their services; (2) the obligation of States to allow and facilitate humanitarian activities; (3) the rules protecting the wounded and sick, as well as persons providing medical assistance; and (4) the rules protecting humanitarian personnel. This does not mean that the overall legal regimes of IHL and

sanctions clash, but it does require work to align them in practice, and an understanding of the interplay between the laws themselves.

## 1. Clarification of the interplay between sanctions regimes and IHL

In the face of tensions between the UN sanctions regimes under Chapter VII of the UN Charter (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) and IHL, some Member States and sanctions designers have invoked Article 103 of the UN Charter (conflict between the Charter and obligations under any other international agreement) to argue that sanctions prevail over IHL in the hierarchy of norms. There is, however, no inherent conflict between sanctions and IHL.<sup>19</sup>

As already elaborated in a recent report on CT, the practice of the Security Council in the context of its UN CT measures and its UN CT sanctions seems to indicate that the Council itself requires “a coordinated interpretation, whereby CT measures are adopted, implemented and interpreted by courts and other relevant bodies so as to comply with IHL.”<sup>20</sup> As such, IHL experts argue that the resolutions of the Security Council must be interpreted and implemented to comply with IHL unless the Security Council expressly indicates its intent that sanctions deviate from IHL rules, which so far has not been the case.

Security Council practice in conflict-related sanctions regimes indicates a similar intent for sanctions to comply with IHL, and for both to coexist in a mutually reinforcing way. In this view, there is no conflict between the two sets of norms, but rather a disconnect between the instructions given by the Security Council to the Member States, on the one hand, and the implementation of sanctions measures on the other. As a result, the practical tensions arising from the implementation of sanctions by State and non-State actors should not be regarded as evidence of a conflict between of UN sanctions and IHL as a matter of intent or design.

In some instances, the Security Council has started to include explicit language to remove any inference that there is a contradiction between sanctions and other bodies of international law, including IHL. For example, the sanctions regimes on the DRC, CAR, Libya, Somalia and ISIL-Al Qaeda (1267) include language explicitly requiring Member States to ensure that their implementation measures comply with their obligations under international law, including IHL, IHRL and international refugee law, as applicable.<sup>21</sup> This is meant to clarify to States that they have to interpret, implement and enforce their UN sanctions obligations in a manner consistent with their IHL obligations.<sup>22</sup> Though currently limited to only five of its sanctions regimes, the intent of the Council appears clearly to align sanctions implementation with IHL. The inclusion of this language in five of its sanctions regimes does not mean that the obligation of States to comply with IHL is limited precisely to these regimes and would not apply in other sanctions regimes. The obligation of States to comply with customary international law, including IHL, is applicable to all sanctions regimes. Moreover, the inclusion of this language explicitly demonstrates that the Security Council wishes to remove any doubt about Member States’ obligation to respect IHL when implementing sanctions.<sup>23</sup>

The Security Council has also included a broader language in the sanctions regimes on Somalia, the Taliban and 1267, “reaffirming the need to combat by all means, in accordance with the Charter of the United Nations and international law, including applicable international human rights law, international refugee law and international humanitarian law, threats to international peace and security caused by terrorist acts.”<sup>24</sup> This can be taken as an affirmation of a general intent or principle that the Security Council considers itself bound by applicable international law, including IHL, when adopting measures under Chapter VII – at least for sanctions regimes with CT elements.

Taken together, the Security Council has demonstrated a clear intent for its sanctions-related resolutions to be implemented in accordance with IHL. While some resolutions are more specific than others in their call for alignment with IHL, the broader intent provides a helpful backdrop for Member States to design their own implementation modalities. Indeed, one of the key tasks for Member States in implementing Council resolutions should be to articulate how the privileges accorded to humanitarian actors will be protected, while also drawing attention to the limitations of those privileges (e.g. humanitarian actors may not make certain payments to listed individuals). Here, the devil is often in the detail of the terms used to empower States to ensure that humanitarian aid is not diverted or misused for non-exclusively humanitarian purposes.

While State parties to the conflict and neighbouring States have certain obligations under IHL, such States may take necessary, appropriate and reasonable measures to ensure the *bona fide* nature of the activities carried out by humanitarian actors. Indeed, *impartial* humanitarian actors are uniquely privileged under IHL, but they also are not exempt from all limitations imposed by sanctions. As such, some limitations imposed by conflict-related UN sanctions (such as the prohibition on making payments to listed individuals or entities) do not necessarily contradict the IHL rules, as will be discussed later in this report.

In addition to verifying the *bona fide* nature of the humanitarian activity and of the humanitarian actors carrying it out, there are other sanctions restrictions consistent with IHL that States can implement including measures to avoid diversion of aid, or payment of fees and/or per diem to listed individuals and entities. Under IHL, parties to the conflict, as well as States in which the humanitarian activity originates or transits are allowed to make “technical arrangements” and to undertake appropriate measures of control to ensure that the “relief consignments” are exclusively humanitarian and not for the benefit of other persons than for whom they were intended.<sup>25</sup> It is therefore consistent with IHL for States to take necessary, appropriate and reasonable measures to monitor or supervise the activities of humanitarian actors to ensure that they are legitimately provided, as long as such measures are applied in good faith, and that their nature, extent, or impact, do not prevent the rapid delivery of humanitarian relief in a principled manner.

To conclude, States can interpret, implement and enforce UN sanctions in an effective manner while remaining in compliance with IHL.

## 2. Measures to facilitate humanitarian access and aid delivery

Beyond the broad legal intent, the Security Council and States have also worked to mitigate the unintended humanitarian consequences of sanctions. Fairly recently, the Security Council has started to include language clarifying the intent of sanctions regimes and has notably used exemptions to both reconcile the tensions between sanctions and IHL and mitigate the impact of its measures on humanitarian actors.<sup>26</sup>

Through the concerted advocacy efforts from some emblematic INGOs to the Security Council, the DRC, CAR and DPRK regimes now include language explicitly stating that the sanctions measures are not intended to have adverse humanitarian consequences for the civilian population. This language is considered a helpful clarification by humanitarian actors, as it can be interpreted by Member States to ensure their implementation measures do not prevent humanitarian aid from reaching civilians. One could argue, however, that the fact that sanctions measures are not intended to be detrimental for the civilian population has been made clear by the shift from comprehensive to targeted sanctions regimes. The need to restate and clarify the intent is an indication that targeted measures may not be sufficient safeguards against the unintended effects of sanctions on civilians, especially in the larger context of overcompliance and of overlapping non-UN sanctions regimes.

The Security Council has also tested a wide range of exemptions measures to facilitate part or all humanitarian activities in conflict settings.<sup>27</sup> Exemptions have a substantive aspect (the types of acts or transactions or activities permitted, and their beneficiaries) and a procedural aspect (the process for activating the exemption). Substantially, an “exemption” is a deviation from the rule imposed by the UN sanctions regime to limit the scope of a sanctions measure by specifying to which activities or actors the prohibitions shall not apply, or which activities or actors shall be exempted from the sanctions measure. Procedurally, the term “exemption” designates a generic category encompassing three types: (1) “standing” exemptions; (2) exemptions requiring humanitarian actors to go through an application process in order to obtain prior approval by the relevant Sanctions Committee; and (3) exemptions simply requiring humanitarian actors to notify the relevant Sanctions Committee. All UN sanctions regimes include some form of exemption to facilitate humanitarian aid in the context of an arms embargo, travel ban, or assets freeze. These exemptions come in different forms and vary in scope and procedure, but they have, as their primary purpose, the facilitation of humanitarian access and aid delivery. As illustrated by the table below, an exemption to a particular measure can be “standing”, “upon request” or based on “notification”.

**Table 3: Exemptions available for humanitarian actors in UN sanctions regimes**

<p><b>Standing exemptions</b></p> <ul style="list-style-type: none"> <li>• Standing exemption to the assets freeze measure in 2 regimes (Somalia and Afghanistan):             <ul style="list-style-type: none"> <li>○ In Somalia, to ensure the “timely delivery of urgently needed humanitarian assistance in Somalia.”</li> <li>○ In the Taliban regime for “humanitarian assistance and other activities that support basic human needs in Afghanistan.”</li> </ul> </li> <li>• Standing exemptions to arms embargo measures:             <ul style="list-style-type: none"> <li>○ In 4 regimes (Somalia, Libya, CAR and South Sudan), for the “supplies of protective clothing, including flak jackets and military helmets, temporarily exported to [relevant country] by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.”</li> <li>○ In 2 regimes (Sudan and Libya), for the “supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use and related technical training and assistance.</li> </ul> </li> </ul>
<p><b>Case-by-case exemptions upon request</b></p> <ul style="list-style-type: none"> <li>• There is a comprehensive humanitarian exemption mechanism in 2 regimes (DPRK and Yemen).             <ul style="list-style-type: none"> <li>○ In the case of DPRK, the Committee may on a case-by-case basis, exempt any activity from sanctions measures if the Committee determines that such an exemption is “necessary to facilitate the work of such organizations in the DPRK or for any other purpose consistent with the objectives of these resolutions.”</li> </ul> </li> <li>• A comprehensive humanitarian exemption mechanism is also in place in Yemen, with the same language as in the DPRK. However, the Yemen exemption mechanism is <i>optional</i>, i.e. humanitarian actors can use it when facing blockades or difficulties, but they are not obligated to.</li> </ul>
<p><b>Exemption upon notification</b></p> <ul style="list-style-type: none"> <li>• Exemption upon notification to the arms embargo measure:             <ul style="list-style-type: none"> <li>○ In 4 regimes (Somalia, DRC, CAR and South Sudan), for the “delivery of non-lethal military equipment intended solely for humanitarian or protective use, and related assistance and training.”</li> <li>○ In 1 regime (DRC), for the “supplies of protective clothing, including flak jackets and military helmets, temporarily exported to the DRC by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.”</li> </ul> </li> <li>• Exemption to the assets freeze measure in Libya, with absence of negative decision by the Committee after the notification, and absence of objection by the Libyan authorities, “available for humanitarian needs; fuel, electricity and water for strictly civilian uses; resuming Libyan production and sale of hydrocarbons; establishing, operating, or strengthening institutions of civilian government and civilian public infrastructure; facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya.”</li> </ul>

# Challenges

Conflict-related UN sanctions can create challenges to humanitarian action either directly through the measures themselves, or indirectly through their implementation by States, donors, as well as international service providers, such as international vendors and financial sector actors. Our research examined four main types of sanctions-related challenges encountered by humanitarian actors: 1) legal challenges; 2) donor-related challenges; 3) financial challenges; and 4) logistical challenges. However, it is difficult to precisely establish the degree to which the challenges reported by humanitarian actors can be attributed directly to UN sanctions, as opposed to other causes, in particular in contexts where US and EU autonomous sanctions apply.

Research for this project aimed to identify the different sources of the challenges described below, wherever possible, by distinguishing between the different types of sanctions and other policy measures. The goal was not only to understand the impacts of sanctions, but also to better identify the potential solutions to the problems experienced and to understand the impact of sanctions in context (i.e. in the context of other sanctions, policy measures and conflict dynamics). This research also aimed to assess the relative importance of the sanctions-related challenges experienced. For example, some problems might appear relatively minor while constituting a significant limit on humanitarian action in practice, whereas other issues might appear very important but pose less significant impediments for humanitarian actors.

## Legal challenges resulting from UN assets freeze (financial sanctions)

There is widespread uncertainty among humanitarian actors about what is and is not allowed by the different UN sanctions regimes, and in particular asset freeze measures. For example, humanitarian actors reported confusion as to whether UN sanctions prohibit them from engaging with listed individuals and entities, or the extent to which diversion of aid by listed individuals and entities would be considered as a violation of sanctions.

Sanctions designers, in contrast, point to the clear and standardized language that exists across all UN sanctions regimes. This language was developed through extensive consultations with key actors, including the private sector, in the 2000s, in the context of Interlaken process. The result was considered a vast improvement over what had formally been blanket, sectoral sanctions provisions.

Although the language of the asset freeze measure is standardized across the different sanctions regimes, member States composing the different Sanctions Committees do not always share the same views when it comes to concrete interpretations of its scope. In some regimes, the preference of States composing the Sanctions Committees may go towards keeping a certain degree of vagueness (and thus flexibility to interpret), which contributes to the existing confusion among humanitarian actors. Moreover, the interpretation of the asset freeze measures by States - beyond the Sanctions Committees - can also vary and uncertainty regarding the necessary due diligence obligations for sanctions implementation persists. Therein lie the challenges. This section explores the legal challenges posed by UN asset freezes, and the potential consequences for sanctions violations.

### 1. Overview of humanitarian activities

UN asset freezes involve an obligation for Member States to freeze “funds, other financial assets and economic resources” that are directly or indirectly owned or controlled by individuals and entities designated by the UN Security Council or the respective UN sanctions committees, or by those “acting on their behalf or at the direction of designated individuals and entities.”<sup>28</sup> Member States are also required to ensure that such “funds, financial assets, or economic resources” are not made available by their nationals or any individuals or entities within their

territories to or for the benefit of designated individuals or entities. While the legal obligation to ensure compliance with UN sanctions rests on Member States, non-State actors – such as humanitarian organizations – are routinely involved in sanctions implementation.

Conflict-related UN sanctions do not prohibit any of the humanitarian activities of assistance and protection foreseen and protected under IHL such as, for example, the delivery of emergency services aimed at meeting the basic needs of the civilian population (food, water, medicine, shelter); the implementation of an economic security project; the work on infrastructure essential to the survival of the local population; the collection, transport and care for wounded and sick (including wounded and sick listed individuals); the material assistance to detainees (including listed individuals); first aid training, war surgery seminars, IHL training (including to listed individuals and/or listed entities); and any engagement with the parties to the conflict (including with listed individuals and/or listed entities).<sup>29</sup>

By contrast, UN and non-UN CT sanctions (and other CT measures) can contradict these humanitarian activities protected under IHL, notably through the criminalization of medical care to listed individuals, or the prohibition to provide “support”, broadly defined to sometimes include workshops and training activities. These tensions have been discussed extensively in existing research.<sup>30</sup> Other non-UN sanctions measures can also clash with these activities, as different senders of sanctions might impose more or less stringent measures. For example, workshops and trainings to listed individuals and entities might be perceived as problematic by different sanctions senders, especially where the training or assistance in question contributes to increasing the military or political strength of the actors in question.<sup>31</sup> In general, however, conflict-related UN sanctions regimes do not pose this same risk. Yet, without appropriate safeguards, there is always a risk that their scope – even if not concretely and substantially prohibiting any of the IHL-protected humanitarian activities listed above – may over time be interpreted by sanctions designers in a similar manner as in the CT sphere, especially if/when conflict-related regimes take on a CT dimension.

For now, conflict-related UN sanctions (outside the CT and NP sphere) are not necessarily in contradiction with the humanitarian activities foreseen and protected under IHL. In other words, conflict-related UN sanctions are not meant to restrict or criminalize the delivery of these activities (but the way they are implemented can restrict, impede and delay them, as will be explored later).

## 2. Provision of assistance to listed individuals

Humanitarian actors reported their concern that asset freeze measures run contrary to the rules of IHL if and where they encompass the provision of humanitarian aid to listed individuals, when these individuals also qualify as beneficiaries of humanitarian activities under IHL.

Under IHL, humanitarian activities must be directed towards all individuals in need, insofar as they belong to the civilian population or are former fighters placed *hors de combat* by their wounds, sickness, or detention. Moreover, the principle of impartiality requires humanitarian organizations to direct their proposals, priorities and decisions only on the basis of need.<sup>32</sup> In other words, only the needs of the persons affected by the conflict can determine who is or is not entitled to receive humanitarian assistance and protection, and the designation of individuals under a UN sanctions regime is irrelevant. In practice, humanitarian actors may face situations in which they have to provide humanitarian aid to listed individuals, including medical relief, food, water, sanitation.

UN asset freezes aim to constrain the access of listed individuals to funds, assets and resources of any kind, which can broadly be interpreted as encompassing financial, military, operational, political, or other forms of support.

Yet, the scope of the activities they encompass can vary depending on the regime, and the interpretation made by the different Security Council members. In the absence of sufficient guidance, UN asset freezes measures do not provide sufficient clarity to determine whether the prohibition to provide funds, assets and other resources to listed individuals extends to and encompasses the provision of humanitarian services to them.

An argument can be made on the basis of the individual exemptions on humanitarian grounds available to listed individuals. These exemptions are standard and exist for basic expenses, such as payments for food, rent, mortgage, medicines, medical treatment, taxes, public utility charges, or legal services, as well as extraordinary expenses and judicial liens. Their inclusion across 12 of the 14 sanctions regimes, including in the 1267 regime on ISIL and Al Qaeda, seems to indicate that sanctions do not aim to deprive listed individuals from the necessary items to ensure their basic needs. Thus, these provisions would indicate that humanitarian assistance (such as medical care), delivered to persons in need who are also designated on a UN sanctions list, remain in line with the underlying spirit of UN sanctions regimes.<sup>33</sup> In other words, the institutionalized system of exemptions for individuals under asset freezes creates obvious space for humanitarian services and activities delivered to the listed individuals, when they also are beneficiaries of humanitarian aid under IHL.

### 3. Engagement with listed entities, listed individuals, and those 'acting on their behalf'

Asset freezes may, however, be problematic when they are imposed on designated entities, and especially when these designated entities control territory or have a significant presence and influence in the areas where humanitarian actors conduct their activities. Indeed, it is impossible for humanitarian actors to avoid interactions with authorities – even armed groups acting as *de facto* authorities – when they control territory. Even if engagement with designated entities or individuals is not prohibited by sanctions, and therefore do not constitute sanctions violations, operating in the areas under their control means that there are risks that humanitarian actors may be required to pay taxes, fees, or that their aid will be diverted, potentially constituting a sanctions violation. This also raises questions around the difficulty of determining membership in a designated group. Armed groups can be characterized by the fluidity of their membership, with individuals loosely affiliated. Thus, where a designated group controls territory, does the designation extend to all persons working for the group, including civil servants or loosely affiliated actors, or is it a narrower designation of only the group's leadership?<sup>34</sup>

While it might be easier to avoid interactions with listed individuals, and thus potential sanctions violations, the prohibition to provide funds and economic resources to listed individuals also applies to those “acting on their behalf” or “owned and controlled” by them. However, the operational realities often demand that humanitarian organizations engage with actors who might be considered as “acting on behalf” of, or being owned or controlled by, listed individuals.<sup>35</sup> For example in Afghanistan, humanitarian actors would avoid interactions with listed Taliban individuals by going through communities' elders.<sup>36</sup> Nevertheless, before the adoption of the exemption applicable in the 1988 regime through resolution 2615 (2021), there were reported dissensions among Security Council members on whether the asset freeze imposed on listed Taliban individuals extended to the entities “owned and controlled” by them, which would include the different ministries of the *de facto* Taliban administration, including the ministries that are relevant interlocutors for humanitarian actors (e.g. health or agricultural ministries). Yemen is another example of the difficulties among Security Council members to delimit the scope of the terms “acting on behalf” or “owned or controlled”. Currently, only a few members of the Houthis are listed, but these listed individuals rarely conduct business in their name, relying instead on extensive networks of relatives and associates. This, in turn, complicates humanitarian efforts to avoid misdirecting funds, which also increases their need to continuously strengthen their due diligence efforts.

Moreover, the lack of clarity surrounding the scope of UN assets freezes also has consequences for the ability of the private sector to export necessities used by the population in the country. In particular, private sector actors may not want to risk undertaking economic activities in areas under the control of a listed group or developing economic relationships with key entities potentially “owned and controlled” by listed individuals. Private sector actors are a vital component to ensure the circulation of basic necessities, and unclear sanctions (whether the lack of clarity in their design or in how they are interpreted) may contribute to discouraging private sector actors from engaging economically in already difficult conflict contexts, with potential risks of shortage of such goods. In these cases, the ability of humanitarian actors to deliver basic necessities and humanitarian services to areas under the control of listed groups or individuals is even more important.

Such grey areas mean that humanitarian actors must make difficult balancing decisions between their need to engage with listed individuals and entities to provide life-saving support to populations in need and the risks that they may be violating sanctions.

#### 4. No “zero-risk”: the practical realities of operations in conflict settings and the risks of abuse

For humanitarian actors, the prohibition on the provision of funds, financial assets, and economic resources can include potential sanctions violations including: (1) payment of certain taxes and fees to individuals and entities subject to UN sanctions, those acting on their behalf, or at their direction; (2) payment for services, such as vehicle rentals, property rents, lodging, or food and drink service, to listed individuals, those acting on their behalf, or entities owned by such individuals; or (3) payment of per diems and reimbursement of travel expenses to listed individuals or members of groups designated for UN sanctions for their participation in workshops, trainings, conferences, or seminars; and diversion of aid to listed individuals or entities. None of the acts in this list qualify as a “humanitarian activity” in the sense of IHL and would not be exempt from restriction by a sanctions regime – unless benefiting from an exemption.

However, a tension arises because some of the acts listed above can be necessary to conduct humanitarian activities and/or are sometimes unavoidable in conflict settings. This is the case for the diversion of relief supplies, as well as incidental payments (e.g. tolls and fees) that humanitarian actors must make to listed individuals or entities to be able to reach civilians.

According to humanitarian actors, it is extraordinarily difficult – if not impossible – to operate in certain contexts without paying fees to specific armed groups that may be subject to sanctions, or without seeing part of their aid being diverted. The risk of aid diversion and taxing of humanitarian support is present in all conflict settings.<sup>37</sup> For example, the attacks on humanitarian convoys and the looting of humanitarian supplies frequently reported in the DRC all constitute aid diversion. Armed actors can also take their share of what the final beneficiaries have received from humanitarian aid.<sup>38</sup> They can put pressure on humanitarian actors at checkpoints to request them to pay taxes or fees, without which no aid would be delivered. In other words, listed individuals and entities can put an enormous amount of pressure on humanitarian organizations in the conduct of their operations, making it very difficult to fully comply with sanctions measures.

Moreover, humanitarian actors must be cognizant of unintended consequences in the medium to long term. For example, payment of fees to listed groups/individuals in order to access some communities may sometimes be unavoidable for humanitarian actors, but recurrent payments can create a vicious circle that emboldens listed actors over time. Indeed, it could create a perverse incentive for listed individuals and entities controlling territory who know how to leverage large-scale humanitarian suffering against humanitarian actors.<sup>39</sup> Crucial in such settings is

for the humanitarian organizations to develop a coordinated strategy to avoid getting caught in such circles, as was demonstrated by the successful work from the NGOs working in Houthi-controlled areas of Yemen to push against the 2 per cent tax on all humanitarian projects.

The practical reality of working and operating in the field means that there are no “zero risk” settings. Instead, sanctions and humanitarian actors must find ways to balance risks and address the inherent tensions of particular settings. One important step is to distinguish between “avoidable” risks, which can be addressed by mitigating measures, and “unavoidable” risks, which are necessary for reaching vulnerable populations at a given moment. For example, large-scale aid diversion could be addressed by determining common red lines among humanitarian actors in a particular conflict setting, whereas small-scale payments at informal roadblocks in rural areas may be difficult to address in the short term. Humanitarian actors should also be more careful about the payment of per diem or other attendance fees for listed individuals, as described in the text box below.

It is beyond the scope of this report to make these distinctions, but it is important to advance the discussion across the sanctions and humanitarian communities, also to reach a better understanding of how sanctions regimes might create unrealistic burdens on humanitarian actors.

#### **POTENTIAL VIOLATIONS OF UN ASSETS FREEZE**

In one of the case studies, sources consulted reported paying transport, housing fees, and per diems to listed individuals who attend various workshops on IHL, mediation, and other topics. The amounts vary among organizations and are usually not disclosed. A few humanitarian actors reported very high numbers: “by attending some seminars, you can earn in three days what a regular civil servant would earn in a month.”<sup>40</sup> Other sources reported that they did not provide per diem, and only covered transportation fees.<sup>41</sup> For some organizations, paying these per diems is a sure way to secure the attendance of high-level listed individuals. The invitation of listed individuals to participate in workshops and conferences is not prohibited by UN sanctions, but the monetization of this participation for listed individuals, through a per diem, clearly is. Moreover, under IHL, *bona fide* humanitarian actors are not supposed to monetize workshops or training activities. Beyond violating sanctions, paying these per diems may allow listed individuals to attend the events, but also allows them to invest these new resources as they see fit, including to buy arms, finance armed groups and any other acts that can fuel the conflict and the violence against civilians. Finally, it is also difficult to argue that paying these per diems is an absolute necessity for the conduct of the humanitarian activity at stake (a workshops or training sessions), since most humanitarian organizations refuse to do so, and yet still manage to attract high-level listed individuals to their events.

## **5. Fear of consequences of sanctions violations**

In many cases, humanitarian actors may find themselves at risk of violating sanctions measures simply because the reality of the conflict prevents full compliance. Humanitarian organizations have to embrace risks, by the very nature of their work and the areas they are working in. A “zero-risk” approach is not compatible with complex environments such as ongoing armed conflict scenarios replete with a myriad of conflict parties and numerous implementing partners, nor is it a requisite aspect of humanitarian principles or IHL.

In practice, however, humanitarian actors are often left facing a choice between strict compliance with UN sanctions that inhibits their actions but avoids diversion of aid or continuing impartial delivery but risking a violation

of sanctions. The former comes with the burden of failing to live up to the humanitarian principles guiding their work while the latter exposes them to potential criminal accountability and reputational harm.

The issue of sanctions violations is understandably highly sensitive among the humanitarian community. The survey undertaken for this project illustrates a striking result: the majority of respondents abstained from answering whether their organization had ever faced repercussions for a sanctions violation, while one-quarter of the respondents stated that they knew of another humanitarian organization that had been approached, named, designated, investigated, prosecuted or fined for alleged sanctions violations.

This finding reflects widespread concern among humanitarian organizations that violations of sanctions measures may result in civil or criminal liability, fines for the organization, or even designation on a sanctions list. At the domestic level, the implementation of sanctions also involves potential criminal liability. For many States implementing sanctions, there is the possibility to prosecute individuals, including humanitarians, who have breached a sanctions regime. More importantly, several States rely on the scope of the 1267 regime (Islamic State of Iraq and the Levant-Al Qaeda) as a basis to define their interpretation of other asset freeze measures in their domestic jurisdiction. Yet, the assets freeze of the 1267 regime has a very broad scope. The 1267 Sanctions Committees specifies that “Member States should be mindful that funds are fungible, and therefore funds raised by listed individuals, groups, undertakings and entities for seemingly legitimate purposes can be redirected to support terrorism.”<sup>42</sup> This approach implies higher risks for humanitarian actors.

Humanitarian actors also expressed concern about the reputational risks to their organizations, with repercussions on funding and their ability to use banking channels, if they were mentioned as violating sanctions.<sup>43</sup> As one interviewee put it, “NGOs are really terrified of being mentioned in Panel of Experts reports, or in news outlets, as violating sanctions. And, if they really engage in a sanctions violations, they do run the risk of being publicly named in different reports.”<sup>44</sup> This is where the main risks for humanitarian organizations may lie.

Cases implicating humanitarian actors may be investigated and reported by the Panels of Experts associated with the various Sanctions Committees. But these reported cases might lead to sanctions against individuals and entities diverting aid or taxing humanitarian actors, rather than the humanitarian actors themselves. Indeed, UN sanctions are typically about implementing a peace agreement and not about holding NGOs accountable, and UN sanctions regimes designed to resolve conflict are not intended to target humanitarian actors but those spoiling the restoration of peace. However, humanitarian, peace or development organizations, although not at risk of being actually listed themselves, may be ‘named and shamed’ through a listing and may face reputational consequences. For example, most recently, a Swedish peace organization was named in a report by the Panel of Experts in Mali for having paid a per diem to a listed individual attending their workshop in violation of the asset freeze measure (see illustrative Text Box 1 above). Panels of Experts are not necessarily keen to report humanitarian actors as violating sanctions. Unfortunately, some interviewees reported having tried to reach out to a few humanitarian organizations in these situations, without any responses. If and where a Panel of Experts reach out about alleged sanctions violations, it might seem like a safer bet for humanitarian actors to share their lack of knowledge or difficulties rather than dismiss the claim altogether.

## Donor-related challenges

The requirements and restrictions included by donors in their funding agreements remain an important challenge for the day-to-day operations of humanitarian actors, with consequences for the speed and cost of the humanitarian response. This section aims to briefly present the different types of donors’ requirements before exploring the two main ways in which they pose conceptual and practical issues.

## 1. Different types of donors' requirements

All States are obligated to comply with UN sanctions, so donors' requirements and restrictions often directly arise from sanctions regimes. Donors' requirements and restrictions can, however, also arise from their own States' obligations to comply with international CT measures (e.g. Security Council measures) as well as with their own domestic laws on CT and oversight bodies.

It is difficult to assess the extent to which restrictions and requirements by donors arise from efforts to comply with sanctions on the one hand and CT regulations on the other. Although some donor clauses specifically refer to UN sanctions,<sup>45</sup> it is not just UN sanctions but also other sanctions, laws, and CT regulations that feed donors' requirements. As a result, donors' funding agreements may go "beyond what sanctions are asking", even in contexts where a single sanctions regime is applicable.<sup>46</sup> As one interviewee put it: "it feels as if everything is put together as 'one product' without contextualizing. Some requirements linked to sanctions are now applied worldwide. More and more donors impose additional requirements just because they want to be on the safe side."<sup>47</sup>

To ensure compliance with sanctions, donors impose a range of measures to ensure that humanitarian actors prevent funds and other assets provided in the funding agreement from reaching listed individuals and entities.<sup>48</sup> Screening requirements are most common, especially the screening of suppliers/contractors, implementing partners and staff. Some donors can also conduct the verifications themselves (through "vetting") and hence request information on suppliers, contractors, partners and staff. Most problematic are the requirements to screen or vet beneficiaries, which are reported as being on the rise. This leads to mounting concerns related to the impartiality of aid, protection of beneficiary data and neutrality of humanitarian actors.<sup>49</sup>

Restrictions imposed on humanitarian actors are also reported, such as restrictions on engaging with listed individuals and entities or providing aid and services to sanctioned persons. A few actors indicated that they had already faced actual or threats of funding withdrawal based on alleged violations of donor clauses. Finally, there were also reports of another type of donor pressure outside of the formality of funding agreements. Several humanitarian actors reported having already experienced informal pressure by their donors to provide information on listed individuals and entities, as well as beneficiaries.

Most humanitarian actors agree that screening requirements – if not crossing the red line of beneficiary screening – are helpful for preventing inadvertent violations of asset freeze or material support provisions, even if rarely producing results.<sup>50</sup> However, screening requirements, and other restrictions on the nature of activities and areas of activities, can contradict with the rules of IHL regulating humanitarian activities, in particular the principle of impartiality. They are also often impractical in the realities of the contexts in which humanitarian actors operate.

## 2. Contradiction(s) between sanctions, donors' requirements, and IHL

The requirements of donors can run counter to the purposes of IHL and can potentially exceed what UN sanctions require, presenting two areas of tension.

The first relates to the overlap of categories between individuals listed under UN sanctions who also qualify as beneficiaries of humanitarian activities under IHL. For example, this would include wounded and sick combatants who are listed individually or as part of a listed armed group. To comply with and ensure compliance with UN asset freeze measures, donors require humanitarian actors to ensure that funds, assets, or other resources do not go to listed individuals and entities. In practice, donors increasingly tend to consider that this prohibition extends to and encompasses the provision of humanitarian services (assistance and protection). In these cases, there is a clear

tension between the donor clause excluding listed individuals and their qualification for aid under IHL. Moreover, this also runs counter the spirit of UN sanctions, considering the exemptions available for listed individuals, indicating that they should not be deprived of basic necessities and care.

A second area of tension occurs in the provision of training to listed individuals. Under IHL, listed individuals, even when not *hors de combat*, as well as listed armed groups, may receive training on IHL or related subjects such as war-surgery seminars. Indeed, these activities are delivered with the purpose of training and encouraging combatants to better protect civilians, detainees, and the wounded and sick. In other words, the designated individuals are not the ultimate beneficiaries; it is rather the civilians and persons *hors de combat* who will be protected in the future. These activities are not prohibited under UN sanctions provided they do not result in payment of transport, lodging, or per diem to listed individuals. Yet, it is less clear whether these activities might run counter the spirit of UN sanctions, especially in the sanctions regimes that include the provision of support to designated individuals or entities as one of the criteria for being listed.<sup>51</sup> Moreover, these activities can arguably provide visibility and legitimacy to listed individuals in cases where the sanctions specifically aim to side-line them by constraining their relevance to communities. In these particular cases, the objectives of IHL and sanctions may be contradictory.

### 3. Impracticalities of donors' requirements in the operational reality

Screening requirements often fail to consider the realities of the contexts in which humanitarian actors operate, whether they apply to vendors, partners, staff, or beneficiaries. They can result in delays, increased costs, and changes to activities.

First, screening requirements are often difficult to navigate, due to the lack of clarity regarding what exactly is expected, and a reported lack of willingness of donors to enter a detailed discussion to provide clarifications. Many humanitarian actors are left on their own with questions related to whether even small amounts of money should lead to a screening, which documents should be used to screen individuals, whether clauses requiring the screening of “individuals” should encompass “beneficiaries”, the timing and frequency of screening, what to do if a screening result is positive, and so forth.<sup>52</sup>

Second, when it comes to screening of vendors, partners and staff, extensive requirements are often not compatible with the realities of humanitarian operations. Complying with screening procedures in remote locations can be extremely complicated, when there is no internet connection, no access to computers, or no official documentation to prove the identity of the individual. In some contexts, “half of the population does not even have an official existence, let alone [identification] papers.”<sup>53</sup> Most national vendors in these contexts, especially small ones, do not have the formal identification/documents necessary to screen them against sanctions databases. Moreover, lack of official papers in many areas makes it easy for listed individuals to simply change their names or give their business to relatives, and it is not always possible or feasible for humanitarian actors to uncover these unofficial relationships with private third parties.<sup>54</sup> As working with small vendors for procurement is key for humanitarian actors to be accepted by the local communities, some humanitarian actors may take the risk of not screening them.

Third, when it comes to the screening of beneficiaries, and besides the contradiction with IHL and the concerns related to data protection, the requirements are also often impracticable. Screening of beneficiaries results in extensive delays in operations, it can run against local customs and religion, or can also be prohibited by local authorities. For example, beneficiary screening would be impracticable in the contexts of large-scale distribution activities involving thousands of individuals. Humanitarian actors who have agreed to screen beneficiaries can sometimes find themselves in unforeseen situations, for example unable to screen women beneficiaries who cover their face with a niqāb. Some actors have worked on deploying biometric systems to circumvent these issues, which is not always accepted by local authorities.

Finally, screening requirements also require humanitarian actors to change some of their activities. Several humanitarian actors reported that they had to shift from cash-based to in-kind assistance activities, because the initial activity involved financial transfers and the donor requiring the screening of beneficiaries was considered to be a red line.<sup>55</sup> The need to negotiate the nature of the activity or to change the activity entirely can result in delayed operations, which are especially problematic in emergency contexts.<sup>56</sup>

## Financial challenges

De-risking policies of financial sector actors present one of the most important and widely studied problems faced by humanitarian actors. This section confirms what has already been written, more extensively, elsewhere.

One of the main sources of caution and risk-averse approaches among financial actors lies in their obligation to comply with the different sanctions regimes and CT regulations adopted across the world. As a result of their efforts to comply with a wide range of applicable measures, financial sector actors have adopted an extensive interpretation of what is required by sanctions regimes, often in contradiction with the interpretation of humanitarian actors.<sup>57</sup>

Sources consulted in this research reported experiencing delays in processing transfers, as well as requests for additional information to process transfers. Transferring funds to some countries with an unstable or complex national banking system sometimes requires passing through intermediary banks, which, in turn, also requires additional information and justification. There are frequent anecdotal stories of funds getting stuck in these intermediary banks. Financial fees also sometimes increase to balance the risks of transferring funds to conflict contexts under sanctions, especially in Somalia and Yemen. There are a growing number of cases of drastic limits on the maximum amount of funds that can be transferred, or above which transactions are scrutinized. Humanitarian actors link these requirements, delays and restrictions to the existence of sanctions regimes (without distinguishing between UN and others) as well as CT and anti-money laundering regulations.<sup>58</sup>

While the overwhelming majority of sources consulted for this research reported delays in processing transfers, as well as requests for additional information to process them, only a few sources reported refusals or denials to do so. It appears that, even if foreign banks are often reluctant to transfer funds without guarantees, they generally do not end up refusing the transfer – at least in the contexts of the DRC, Mali, Somalia and Yemen. Some of the sources consulted for this research also explained a trend to turn to informal solutions in certain contexts in which they know that they will face a direct refusal by the bank. This results in increased security risks for humanitarian teams, who have to transport and keep cash, with associated risks of lootings.

Finally, not all humanitarian actors face the same challenges in relation to international banking. Faith-based Islamic organizations may face more challenges than others. Organizations with “Islamic” or “Muslim” in their names are particularly vulnerable to the perception that they may be more likely to facilitate terrorism financing. Thus, in contexts where CT regulations and sanctions regimes apply altogether, scrutiny around these organizations is often greater, and so is the caution to undertake their financial transfers, even to other Western and European banks. For example, an Islamic faith-based charity reported struggling to make payments in Swiss francs to an umbrella organization in Switzerland because their bank would simply not accept money from them. As a result, “some organizations are actually thinking about changing their names to not have ‘Muslim’ or ‘Islam’ in their names, and some organizations have to make difficult decisions about transparency regarding their programmes.”<sup>59</sup> This is despite the fact that the communities in which faith-based Muslim organizations are working are often themselves faith oriented. This presents a certain irony that international restrictions contribute to the need to “rely on Western, non-religious organizations that have the green light from international policy makers” but not always the green light from the local, faith-based populations.<sup>60</sup>

## Logistical challenges

Sanctions seem to contribute to logistical difficulties with regard to the procurement of items and services, as well as their transit and transportation. The issue, however, mostly manifests itself for humanitarian actors relying on international procurement rather than in-country procurement.

### 1. UN sectoral measures, and in particular arms embargoes

UN sanctions also include sectoral measures, of which arms embargoes are the most common in conflict-related regimes. UN arms embargoes prohibit the import of arms and related materiel to specific individuals, non-governmental entities, countries, or regions. These measures apply to the direct or indirect “supply, sale or transfer” of arms and arms-related materiel through Member States’ territories, by their nationals, or using their flag vessels or aircraft. Arms embargo restrictions generally relate to arms and arms-related materiel of all types (including vehicles) and apply also to the provision of any related technical, financial, or other assistance, advice and training. UN arms embargoes are occasionally limited to specific types of weapons or include restrictions on the export of arms from the targeted country. This is, for example the case in the UN sanctions regime relating to DPRK. With regards to arms embargoes, humanitarian actors can face challenges related to the import of items considered to be “dual-use”, such as jeeps, computers, or telecommunication equipment; imports of protective clothing; and imports of non-lethal military equipment and the provision of related training and assistance. Arms embargoes that include the provision of military training can also theoretically raise issues related to IHL training provided by humanitarian actors, but this situation has so far not been reported in practice.

While UN arms embargoes, like other UN sanctions, are not intended to impede humanitarian action, they can create delays in procurement of the above-mentioned items. However, materiel intended for the protective use by humanitarian and development workers and associated personnel is explicitly singled out as one of the exemptions in the UN sanctions regimes in Somalia, DRC, Sudan, Libya, CAR and South Sudan. On the other hand, a lack of knowledge related to existing arms embargo exemptions and their procedures may lead humanitarian actors to engage in inadvertent violations as well.

### 2. International vendors and international transporters

Sanctions seem to be contributing to an increasingly risk-averse approach among international vendors and transporters. The research undertaken for this project found that sanctions directly or indirectly led international vendors to increase their processing delays, to request additional information or proof of exemptions and licenses, to increase their cost of procurement, to impose additional conditions, and even to sometimes refuse to provide specific goods or services. All of these attitudes and reactions of international vendors can have consequences on the ability of humanitarian actors to procure medical equipment and drugs, training equipment and dual-use items necessary to conduct their activities in a timely manner.

In particular, it seems that the applicability of a sanctions regime often triggers a “no-go” reaction with many international vendors.<sup>61</sup> For example, one humanitarian actor reported a case where the international vendor refused to procure the items, regardless of the existence of an exemption and the fact that the organization had obtained a licence, due to the mere existence of US sanctions. Another humanitarian actor reported months of delay to secure the consent from a UK vendor before procuring demining material for the DRC, a country under UN sanctions. The UK vendor considered the demining material a “dual-use” item under the UN arms embargo, regardless of the existing UN exemption for “supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training.”<sup>62</sup> In other words, “from the moment sanctions are

applicable, many international vendors will initially consider that [humanitarian actors] are not allowed to send their items in the particular country under sanctions.”<sup>63</sup> Big INGOs, however, reported that they managed to secure approval from most vendors to procure the goods or items after negotiations. By contrast, smaller actors or Islamic faith-based organizations may be perceived as liabilities by vendors, despite their reassurances, and may thus face more refusals.

Moreover, requests for more information or additional documentation from international vendors frequently mention compliance with sanctions regimes, either in writing or in oral discussions. International vendors are also reported to have frequently required more information on the final destination of the goods and items, especially when they are dual-use items, medical items and new technologies – questions which are difficult to answer when the goods are bought by humanitarian organizations for their logistical stocks in anticipation of emergencies. Some international vendors also require that their items be reserved for a particular country or place instead of a general stock. These requests or denials have impacts on humanitarian operations, sometimes causing weeks or month-long delays, even in emergency situations. This is even more complicated when only one or two international vendors can procure specific goods, such as new technology items.

The existence of sanctions will also have consequences on the transport of goods. Several humanitarian actors reported that companies in charge of the transport of goods are reluctant to pass through certain areas or countries under sanctions. For example, Iran used to be a transit route to Afghanistan as well as to East Africa, but trade now goes through other routes due to the presence of US sanctions.

### 3. In-country procurement

Many humanitarian organizations choose to rely on in-country procurement to the extent possible, not necessarily to avoid complications due to sanctions but more broadly to avoid issues with import duties, clearance, custom exemptions, as well as to develop and sustain ties with local vendors and communities. However, sanctions and local procurement can interact in three ways.

First, the imposition of UN sanctions – but also, and perhaps mainly, US sanctions – can discourage private companies from shipping goods into a country under sanctions because of both the lack of financial incentives and the potential reputational and legal risks they incur. This, in turn, can impact the ability of local suppliers to access the items they usually resell on local markets, and translates into increased prices or risks of shortages. In this case, sanctions can contribute to affecting the ability of civilians to procure goods at affordable prices, as well as humanitarian actors. This situation was particularly reported in the case of Yemen, compounded by the armed conflict, the fuel shortages because of the blockade of Yemeni ports, the over-implementation of UN sanctions by a neighbouring State and other factors.

Second, humanitarian organizations still need to verify the origin of the items that are procured locally. For example, many Iranian goods circulate in the Iraqi market, which some humanitarian organizations choose not to buy in order to be on the safe side of sanctions. Verifying the origin of the items can be time-consuming and further complicate the tasks of humanitarian actors in already difficult contexts. Moreover, in small and closed markets, there might not always be substitute items to procure, leaving humanitarian actors to choose between procuring the good coming from a country under US sanctions, or managing without it.

Third and finally, humanitarian actors can face pressure by in-country vendors and suppliers to work with them, but these same vendors and suppliers may be linked to individuals and groups listed on UN or US sanctions lists, thus putting humanitarian actors at risk of violating sanctions. For example, in Sana’a, Yemen, interviewees report-

ed that “every vehicle used by the UN is rented locally, because the Houthis do not authorize the UN to import vehicles, and the rented vehicles are owned by companies related to the regime.”<sup>64</sup> In Mali, humanitarian actors also reported facing pressure to rent vehicles from particular vendors and security threats when refusing to contract with them. Sources consulted also reported that these vendors are often tied to radical groups operating in the north, with individuals listed either under UN or US sanctions. These examples illustrate the fact that humanitarian actors do not always have the choice as to whom they conduct business with if they want to maintain their presence in a particular area and ensure the safety of their staff.

## Impacts on Humanitarian Action

Sanctions listing, exemption procedures, and implementation requirements can all directly affect humanitarian action. Compliance (and overcompliance) with sanctions measures by States, donors, financial institutions, and other private sector actors can also affect humanitarian action.

UN sanctions do not seem to represent the main or sole cause of the various negative impacts experienced by humanitarian actors in terms of access in general, including when compared to other measures (such as US sanctions, CT measures and donors restrictions). However, UN sanctions are still reported through the interviews and the survey as a relatively important contributing factor to the complication of humanitarian work in armed conflict contexts under sanctions.

This project established six main categories of negative impacts on humanitarian responses: (1) cost and speed of the response; (2) “operational” (i.e. access to beneficiaries and quality of assistance); (3) staffing and partnerships (i.e. local staff and implementing partners); (4) perceptions (i.e. how humanitarian organizations are perceived in the areas in which they operate); (5) safety; and (6) self-restraint. The text boxes included in each of the subsections below illustrate how much the different impacts are intertwined and mutually reinforcing. This research also found several positive elements linked to UN sanctions, which are described in a final subsection 7.

### Cost and speed of the response

The vast majority of sources consulted for this research reported that sanctions directly and indirectly affect the cost and the speed of the humanitarian response. For example, sanctions directly or indirectly cause delays in the operational response due to time-consuming screening obligations and the suspension of contracts due to false positives, as well as banks de-risking and international vendors’ policies. Second, sanctions directly or indirectly contribute to increases in operational and overhead costs, decreases in organizations’ ability to raise funding, and even in a few cases, expirations of grants. UN sanctions are perceived by one-third of the participants in this research as directly or indirectly contributing to an overall increase in costs and delays.

#### **COSTS AND DELAYS RESULTING FROM SCREENING PROCEDURES**

All humanitarian actors consulted for this research reported the difficulties in estimating the total cost of compliance with sanctions requirements. It involves many different departments in each organization (legal, procurement, financial, etc.) as well as costs in both headquarters and field offices. Participants in this research, however, provided a few estimates, both in terms of financial costs and in terms of delays. For example, the cost of one screening database can be USD 10,000 or 12,000 per year. Most of the time, humanitarian actors need to resort to several different databases in order to cover all sanctions lists (UN, EU, US and individual States sanctions) with a cost estimated as high as USD 50,000 per year. In addition, there is a cost in terms of human resources: most organizations consider they would need “at least” one or two full-time staff to deal with screening and broader compliance issues. Yet, these additional costs to comply with sanctions requirements are often not covered by an increase in funding. As one interviewee puts it: “donors are asking us to reduce our costs, but they are not willing to put up resources for additional staff dealing with compliance.” These costs are also experienced differently depending on the size of the organization. Some INGOs may be in a position to afford these costs, due to their size and their funding streams, while smaller actors may not.

Sources consulted for this research also provided some estimates in terms of delays resulting directly or indirectly from compliance with sanctions requirements. For example, several actors reported experiencing “a very high number” of false positives when conducting screening of local vendors or partners due to very common names and a lack of identification papers in northern Mali, which sometimes resulted in “drastically slowing down operations.” Another organization estimated that operations that should be deployed in a matter of weeks can sometimes take more than four or five months due to the obligation to verify the information of all contractors, service providers and local partners.

## Operational

The majority of participants in this research considered that sanctions result, directly or indirectly, in a wide range of operational impacts. These impacts include limits on the areas where humanitarian actors can operate; limits on humanitarian actors’ direct engagement with or direct access to beneficiaries (with a correlated decrease in the number of beneficiaries reached); change in the humanitarian activities conducted; and a decreased ability to work with local vendors. As one interviewee put it: “because of sanctions, we are being encouraged and required to undertake more and more restrictive and onerous practices around who we deliver our humanitarian aid to. It’s very much shaping and informing decisions about where we operate.”<sup>65</sup> However, only a minority of participants in this research were able to attribute these operational impacts to UN sanctions specifically, compared to sanctions in general (including US and EU sanctions).

Sanctions regimes are also reported as a factor contributing to the outsourcing of humanitarian activities’ implementation to local actors in order to mitigate the legal, operational and security risks for INGOs and foreign staff when engaging with listed individuals and entities or operating in areas under their control. This reliance on local actors poses its own challenges, including increased risks, both in terms of personal safety and compliance with sanctions, to local actors and local staff, as well as a lack of transparency that ripples across the system stemming from a “don’t ask, don’t tell” policy.

### **ENGAGEMENT WITH LISTED ARMED GROUPS IN THE DRC AND SOMALIA**

The DRC sanctions regime has a high number of listed individuals (36) and entities (nine, including three armed groups). Additional groups, like the Allied Democratic Forces, are listed under US sanctions, including CT sanctions. Sanctions, whether UN or US, are seen as inherently creating tensions for humanitarian actors engaging with these groups or individuals. Moreover, increasing restrictions and scrutiny from donors related to sanctions compliance in the DRC has reportedly led “some humanitarian actors [to] completely withdraw to avoid issues with donors, while others continue to engage, but hidden.”<sup>66</sup> In Somalia, several humanitarian actors reported that the fear of violating sanctions, losing funding, or facing prosecution for sanctions violations often resulted in a decreased willingness to engage with specific individuals or groups or to operate in certain areas. These effects ripple outwards across the network of actors and partners delivering assistance. Consequently, one interviewee explained that decisions on aid distribution may not be made “on the basis of needs” but “in terms of access, security, or avoiding problems with donors.”<sup>67</sup>

As a result of sanctions and other operational barriers to access, more than 50 per cent of UN agencies and INGOs consulted reported that they do not engage directly with listed groups or listed individuals and/or recognized that they were delegating the risks of engagement to their local partners. In both DRC and Somalia, sanctions are not the main reason for limited engagement with listed individuals and groups, but do constitute a contributing factor, compounded by many other operational access constraints.

## Staffing and partnerships

Sanctions may be contributing to contradictory impacts on staffing and partnerships. On the one hand, many humanitarian organizations consulted for this research reported increasingly relying on local staff and partners to conduct humanitarian operations. On the other hand, these same organizations reported increasing difficulties in recruiting local staff, contracting with local organizations and paying them.

Increased reliance on local staff and partners is the result of many contributing factors, from commitments to the localization agenda to the need to secure better access with local communities. Sources consulted for this research reported that sanctions did play a part in the increased reliance on local actors, albeit indirectly – and it could be argued that this is a positive outcome. Sources reported a few cases where sanctions might contribute to increased security risks for Western and foreign staff from working on the frontlines, who can be perceived as nationals of States responsible for imposing sanctions, including UN sanctions, and thus supporting them. In parallel, sources reported that difficulties recruiting and paying local staff may also arise, although only indirectly as a result of sanctions, both through donors' screening requirements and banks' reluctance to transfer funds to certain countries.

### PASSING OF RISKS TO LOCAL ACTORS

Increased reliance on local actors translate into two main types of risks being passed downstream: 1) safety risks relating to engagement with armed actors in the conflict, and 2) risks for local actors to find themselves in violation of sanctions measures, donor clauses, or other laws and regulations.

The first risk is a necessary result of the move towards local actors. Access constraints existing in many conflict settings have resulted in the need for international organizations to increasingly operate through “remote control systems”, with INGOs concentrated in donor capitals, and implementation in the field is largely conducted by LNNGOs. Because they are more embedded into the communities, local actors may face a certain amount of pressure to evade sanctions for a particular group or for a particular person. They also may lack the ability to refuse to do so if they want to avoid threats to their or their families' safety. Some INGOs reported that certain local organizations do not have the same approach to humanitarian principles and can be “labelled as either political secretaries for this or that group, or linked to high political levels, which endangers neutrality.”<sup>68</sup> This can result in an issue of aid diversion, with consequences on impartiality: “most local NGOs are supported by parties to the conflict, so these parties will simulate the existence of beneficiaries with whom they have political ties, or community ties, rather than real beneficiaries.”<sup>69</sup>

The second risk, however, is not necessarily what local actors bargained for. Indeed, remote management makes it difficult to enforce adherence to sanctions regimes – and it may at times be in the interest of some humanitarian actors to only loosely enforce the measures. As a result, local actors or staff operating in the frontlines and engaging with listed individuals or entities may be put at risk of violating sanctions measures.

Risk is not only passed from international humanitarian actors to local actors, but also to private third parties. One interviewee explained, in the context of Somalia, that “transportation of goods and taxation of transportation is a very established Al Shabaab practice, so any humanitarian good moving in areas controlled or under the influence of Al Shabaab will be taxed. Having subcontracted the transportation of goods to third parties, you don’t want to know what is happening on the road, and the cost of transportation takes into account the taxes that need to be paid (even if that does not appear in the final invoice).”<sup>70</sup> Finally, local staff and organizations face different risks of criminal prosecution in the country of operation. Risks for local staff or organizations are, in some contexts, often linked to ethnicity and religion. Risks may also arise from the ways in which the authorities might perceive the affiliations of local staff or organizations to designated individuals and entities belonging to the same communities (yet the shared background may be, ironically, the very reasons why they were hired in the first place). In some contexts, however, engaging with a designated individual or group has reportedly been given as a ground to arrest or intimidate local staff, even if not constitutive of a sanctions violation.

## Perceptions

All sources consulted for this research agreed that it is difficult to assess how the local population and parties to the conflict perceive their impartiality, neutrality and independence. Perceptions evolve depending on a wide range of factors, such as conflict dynamics. However, participants in this research reported their sense that local interlocutors were increasingly questioning their ability to be impartial, neutral and independent, with consequences for the reputation of local staff and local partners, a decrease in acceptance by the local population and an increase in negative perceptions by the parties to the conflict. These changes in perceptions feed into one another with repercussions for safety, self-restraint, as well as staffing and partnerships. Perception issues affect INGOs and local staff or actors differently.

Sources consulted recognized that sanctions were certainly not the only main and necessary cause for this shift in perceptions but emphasized that they were a contributing factor. UN sanctions are considered by one-third of the participants as directly or indirectly affecting how humanitarian organizations are perceived in the areas in which they operate.

### PERCEPTIONS ISSUES AND REPERCUSSIONS ON LOCAL ACTORS

Participants in this research reported that Western States are often perceived by local populations, local authorities and parties to the conflict to be responsible for imposing sanctions, while often not distinguishing between the different types of international, regional and unilateral sanctions imposed. In some contexts where sanctions are imposed, sources consulted reported that Western INGOs and UN agencies may sometimes be more vulnerable to the perception that they are affiliated with Western States responsible for sanctions, or that sanctions could be a factor exacerbating the negative perceptions of Western and foreign staff. A few sources acknowledged that the fear of being perceived as supportive of sanctions or affiliated to States imposing sanctions could sometimes contribute to their decision to suspend operations in areas under control by listed groups. On the other hand, other sources emphasized that this perception does not apply to INGOs or UN agencies across the board and was experienced only rarely.

In Yemen in particular, a few INGOs felt that they were negatively perceived by the local population and conflict actors as connected to the UN and to Western States. Some were even accused of “spying” for the UN or the US. This type of assumption can be especially dangerous for local staff. Local actors in Yemen reported that they were placed under “increased pressure from the communities” and at risk of themselves being labelled as spies working for the INGOs based in Western States.<sup>71</sup> Another local staff was reportedly asked to “leave the family home, out of accusations of being a spy for Western powers.”<sup>72</sup>

The causality between how humanitarian actors are perceived and the imposition of sanctions is rather remote and difficult to establish. However, sanctions may be contributing to a diffuse atmosphere of distrust, or to exacerbating already existing barriers to access.

## Safety

Sources consulted for this research identified sanctions as sometimes directly or indirectly increasing security risks for humanitarian actors. UN sanctions in particular were perceived by one-third of the survey participants as directly or indirectly contributing to an overall decrease in the safety of humanitarian actors.

Humanitarian actors consulted reported a notable increase in security threats following the sharing of information with UN partners or groups of experts and the listing of individuals. The imposition of sanctions on armed groups or individuals belonging to these groups was also reported by a few participants as a factor contributing to increased taxations or lootings of humanitarian actors in order to compensate other loss of revenue and economic resources, especially in the contexts where listed actors cannot turn to natural resources as means of financing.

### PERCEPTION AND SAFETY ISSUES IN SOMALIA

Several humanitarian actors consulted in Somalia perceived sanctions as a factor contributing to an increase in security risks. “If you’re a Western NGO, people will think you agree with the position of Western States, including the sanctions and the CT measures,” one interviewee explained.<sup>73</sup> The fact that INGOs are not operating in Al Shabaab controlled areas is heavily linked to security concerns, but some actors reported that sanctions did play a role in their decisions to operate or not in specific territories. Sources consulted also reported that refraining to operate in specific territories contributed to potential increased security risks, with one actor describing that humanitarian organizations trying to access areas where no one goes “will be met by disgruntled communities, who feel they have been left behind, and for the workers going to these areas, the security risks will be higher because communities will have felt abandoned.”<sup>74</sup>

In Mali, the Sanctions Committee listed an individual (MLi.004) in July 2019 in a position of power in Kidal for actions obstructing humanitarian access, obstructing the delivery of humanitarian assistance, and incapacitating the legitimate local authorities in their role of focal point for humanitarian organizations (hereby also threatening the implementation of the peace agreement). Following his designation, the individual was removed from his position and was not able to interfere with humanitarian actors. This listing is an illustration of how sanctions can be used to support humanitarian organizations and facilitate their access in the field.

Although positive in its symbolic nature, this listing caused backlash against the few humanitarian actors based in Kidal in 2019, who were identified as the ones reporting the actions of the listed individual. Several humanitarian actors faced security threats and several of them had to stop their activities in Kidal for months following the listing. Activities have now resumed, without interferences from the listed individual.

## Self-restraint

All of the humanitarian actors consulted for this research reported a fear of violating sanctions and, in turn, facing legal prosecution and/or losing funding. This fear contributes to a decreased willingness to engage with specific individuals and entities or to operate in particular areas. Several humanitarian actors reported a “self-censorship” due to a lack of sanctions expertise, the complexity of the topic, or a lack of headquarter resources to support the field delegations for each of their demands pertaining to sanctions. This self-censorship manifests in discussions with banks as well as donors and informs decisions of where to operate. Some interviewees also reported that they believe humanitarian actors themselves contribute to generating this chilling effect, by “talking up the legal risks rather than talking them down.”<sup>75</sup> Finally, all humanitarian actors have different risk-aversion levels, so the chilling effect may result in different forms of self-restraint from one organization to another. It was not possible to precisely assess and quantify the impacts of this self-restraint on the different humanitarian programmes of the participants.

### THE HOUTHIS DESIGNATION BY THE US IN YEMEN

When the Trump administration threatened to designate the Houthis as a foreign terrorist organization (FTO), most INGOs working in Yemen with offices in the US coordinated to develop advocacy messages pushing against the designation. These advocacy messages emphasized the fact that such a designation “would cause all humanitarian operations in Yemen to stop entirely.”<sup>76</sup> Although this messaging paid off, it also reportedly had unintended impacts in terms of self-restraint. Indeed, a few interviewees said that smaller humanitarian actors, after hearing the advocacy message, allegedly suspended their operations even before that the US designation was official. As one interviewee puts it “that was a response to the rhetoric around the designation, that we created. We are responsible for the humanitarian effects which happened because of that designation.”<sup>77</sup> While the ultimate responsibilities lies with the US Government, this perspective brings an interesting light to the issue of self-restraint.

## Positive elements from the application of UN sanctions

As described in earlier sections, UN sanctions applied in conflict settings include the protection of humanitarian space and humanitarian workers from the violations and abuses by the parties to the conflict or other listed individuals and entities. More broadly, UN sanctions applied in conflict settings also aim to protect civilians from the atrocities of war. This project aimed to also explore the extent to which the application of UN sanctions in conflict contexts may have positive impacts on the activities of humanitarian actors, or more broadly on the context they operate in. Two-thirds of the humanitarian organizations who participated in this research were not able to point to positive impacts of UN sanctions. However, the remaining third of the participants highlighted both concrete examples of positive impacts and the potential for positive impacts that UN sanctions could have. As one interviewee put it, UN sanctions can be seen “both as challenges and opportunities.”<sup>78</sup>

For example, UN sanctions offer the possibility to raise the profile of specific humanitarian issues through the reports of Panels of Experts. Several of the Panels of Experts engage with humanitarian organizations in all countries where UN sanctions are imposed and, through their regular internal and public reports, can raise specific humanitarian issues, which not all Member States or donors are aware of, and thus provide an indirect platform in which humanitarian organizations can flag issues with the Security Council.

Moreover, UN sanctions, if properly used, can deter individuals or entities from engaging in violations and abuses of the humanitarian space, or can coerce a change in their behaviour. Indeed, Panels of Experts can report on the individuals and entities engaging in violations of IHL, cases of obstruction of access, or attacks against humanitarian workers. The political pressures coming from this naming and shaming in Panel of Experts' reports "can contribute to making the individuals and entities back down a bit and do better in terms of restrictions on access."<sup>79</sup> Moreover, these reports can sometimes lead to the designation of the individual/entity on the relevant sanctions list (even if designations are uneven and often subject to other political considerations). As a result, several sanctions experts and humanitarian actors reported that they viewed UN sanctions as having the potential to improve humanitarian access and the protection of humanitarian workers in conflict.

### **DESIGNATIONS OF SPOILERS IN THE DRC**

In the DRC, it was expressed that "UN sanctions are one of the factors bringing the belligerents to express themselves about how they welcome humanitarians, and how they don't have issues with them." In particular, a story was reported about the leader of an armed group who was designated for IHL violations in the last few years (for child recruitment and sexual violence) defended himself on social media by saying that he used to welcome humanitarian organizations and follow their IHL training. Another armed group under the threat of sanctions reportedly published a press release in early 2021 to name and shame other groups engaged in violence against humanitarian actors and warning humanitarian actors to be careful when operating in specific areas.

# Takeaways and Recommendations

## Takeaways

The findings of these report can be summarized in four main takeaways.

### 1. Unintended negative impacts of sanctions vs. intended positive impacts

Examining both the positive and negative impacts of UN sanctions regimes, there is an apparent contradiction between the objectives of conflict-related sanctions regimes, aiming in part to facilitate humanitarian action, and the reality of the unintended impediments that sanctions can create for humanitarian action in conflict contexts.

The positive impacts that language supportive of IHL and sanctions designations can have to facilitate humanitarian access and the protection of humanitarian workers appear to be limited on the ground. However, UN sanctions were reported to produce, directly and indirectly, a range of negative impacts on humanitarian action. Thus, it appears that the *intended* positive impacts of conflict-related sanctions regimes on humanitarian action remain mostly aspirational, while, by contrast, the *unintended* negative impacts are far more established.

### 2. Interplay between UN sanctions, IHL and humanitarian action

To the same extent that the UN sanctions measures in the field of CT may, but are not intended to, violate IHRL, there is no inherent contradiction between conflict-related UN sanctions and the rules of IHL regulating humanitarian activities. The prohibitions of UN asset freezes may be designed to prevent diversion of relief supplies but they can also impede humanitarian relief by penalizing incidental payments to listed individuals or entities. Implementation of due diligence guidelines or common red lines by humanitarian organizations may alleviate these tensions. However, even *bona fide* humanitarian actors cannot always avoid all situations in which they may be at risk of violating sanctions – this is simply not feasible in complex environments and conflict settings.

### 3. Design of sanctions vs. overcompliance

This research shows that the overwhelming majority of issues encountered by humanitarian actors arise *indirectly* from UN sanctions, i.e. through the way they are implemented by States, donors and private sector actors. Some overcompliance can arise from a lack of clarity in the design of sanctions measures, such as their scope and their objectives. In other circumstances, it is intentional, stemming from economic considerations or a lack of knowledge that results in a tendency to confound UN and non-UN sanctions, as well as CT and non-CT measures. Sanctions implementers tend to copy and paste their laws, donor clauses, de-risking policies, and other due-diligence processes from what is required by them in the CT field, or comply with the more stringent unilateral sanctions (such as US sanctions) in contexts where conflict-related UN sanctions apply.

### 4. The two communities are still operating in isolation

As this research underscore, information and analysis tend to become siloed within sanctions and humanitarian actors, respectively, meaning the two communities can develop very different views on the armed conflict, the needs of the victims of the armed conflict, as well as the national and regional contexts where they operate. Most importantly, the two communities can develop very different views on the positive and negative impacts of sanctions in

the conflict context on the ability of humanitarian actors to swiftly and effectively deliver aid to those who need it, and on the ability of sanctions to facilitate humanitarian action rather than impede it.

While respecting the prerogatives of humanitarian impartiality and neutrality, “humanitarian space” does not need to be equated with isolation or a rejection of sanctions regimes. As humanitarian actors often work in armed conflict settings, there could be better recognition that UN sanctions in these cases are precisely deployed to address conflict. On the other hand, sanctions designers may sometimes refer to IHL when it is useful, or when they have the space or time to do so in sanctions resolutions, but then be more reluctant to explicitly acknowledge its applicability when it is perceived as inconvenient for the effectiveness of sanctions measures.

## Recommendations

The following recommendations aim to strike a balance between the need to safeguard the ability of humanitarian actors to pursue their life-saving work, and the need to ensure effective implementation of sanctions regimes. They have been tailored to different audiences based on the following criteria: (1) protecting humanitarian actors’ impartiality, neutrality and independence; (2) ensuring that humanitarian actors can deliver their activities in compliance with IHL; (3) facilitating the effective and timely delivery of humanitarian assistance; (4) contributing to the effectiveness of sanctions; (5) political feasibility; (6) advancement of broader policy objectives in the multilateral system (e.g. sustaining peace, the localization commitments of the World Humanitarian Summit, etc.); and (7) ensuring that these solutions are flexible enough to be relevant in wide variety of contexts, from emergency crises to protracted conflicts.

Some of the recommendations aim to navigate between the core interests of humanitarian actors – to see their principles and their activities protected from interference – and of sanctions actors – to see their measures maintain their effectiveness and their legitimacy. The challenge, however, is that the preferred solutions for both communities often fail to meet the needs of the other or are seen as contradicting their respective goals. This disconnect likely explains why it has been so difficult to make progress on substantial and much needed reform in this space. Instead, many of the most viable proposals constitute what the humanitarian community would see as modest incremental steps on the road to more substantial reform. In the current political climate, however, more substantial reform appears unlikely. Therefore, these recommendations can be seen as interim steps to build confidence, with the understanding that they still fall short of the kind of transformative, strategic change that both sanctions and humanitarian actors would need to make for the two approaches to be truly mutually beneficial.

### For the UN Security Council:

- **Replicate the standing humanitarian exemption across all UN sanctions regimes:** Such a measure could be tailored on the model of the Somalia exemption, broadened to cover *bona fide* humanitarian actors: “as well as other impartial humanitarian organizations acting in compliance with IHL.”
- **Require States to comply with international law, including IHL, when implementing sanctions measures across all UN regimes:** Currently, this language is only present in five of them (Democratic Republic of the Congo, Central African Republic, Libya, Somalia and the 1267 regime). Replicating this requirement across all UN sanctions regimes would address a key gap.
- **Require States to “take into account” the impact of their implementation measures on humanitarian actors:** The Security Council should use the language in paragraph 24 of resolution 2462 (2019) and replicate it in conflict-related regimes to promote awareness of the impact of sanctions implementation measures on aid delivery, service provision, the safety of humanitarian workers and general access to areas and people in need.

- **Require States to “take steps to mitigate” the impact of their implementation measures on humanitarian actors:** Such language would put the onus on States to not only track and take note of negative impacts but would also invite them to consider remedies when negative impacts arise. It would also leave States with the flexibility and appreciation as to the type of concrete measures they would want to take, depending on the specificities of their national laws and other aspects of their national contexts.
- **Clarify that sanctions are not intended to have adverse humanitarian consequences on the civilian population:** So far, four sanctions regimes (Democratic People’s Republic of Korea, Democratic Republic of the Congo, Mali and Central African Republic) include language clarifying that sanctions “are not intended to have adverse humanitarian consequences for the civilian population” of the relevant country under the sanctions regime. This language should be reproduced across all UN sanctions regimes. Such as reaffirmation of intent would help to reclaim better effectiveness and legitimacy of sanctions.
- **Clarify that sanctions measures are not intended to impede humanitarian action:** A more ambitious approach would be to clarify that sanctions measures should not be implemented in a manner that impedes, limits, or otherwise restricts, the exclusively humanitarian activities of impartial humanitarian actors, conducted in accordance with IHL.
- **Mandate Panels of Experts to conduct impact assessments:** The Security Council should draw attention to the recommendations of the High Level Review of UN Sanctions (2015), which called upon the Panels of Experts to report on unintended consequences as may be appropriate. The Office for the Coordination of Humanitarian Affairs (OCHA) could also be mandated to conduct a pre-assessment of potential impacts of sanctions regimes.
- **Organize more frequent sanctions discussions in the Council:** The Security Council should conduct more regular discussions and consultations on the issue of sanctions and humanitarian action, with a broad range of actors (private sector actors, humanitarian actors and academia). This would allow the Council to become more familiar with IHL and the *modus operandi* of humanitarian actors, to have a continued discussion about intended and unintended consequences of its sanctions regimes and, over time, a more grounded analysis to consider potential changes in the design of its sanctions regimes.

## Other UN entities:

- **Promote greater understanding of sanctions regimes:** The Security Council Affairs Division (SCAD) should be more proactive in offering technical assistance regarding the rationale, nature and scope of sanctions regimes to humanitarian organizations. Regular engagement with the International Committee of the Red Cross (ICRC), as the “guardian of IHL,” should be prioritized. SCAD’s role as the sanctions focal point should also be more advertised, so that humanitarian organizations know where to turn for information and support on sanctions issues. Promoting better understanding of the mandate of the Panels of Experts would also be beneficial.
- **Undertake more frequent and systematic consultation with humanitarian organizations about unintended impacts of sanctions:** Panels of Experts should reach out to humanitarian organizations to gather stories and evidence about the unintended impact of sanctions on their humanitarian activities. Protection of humanitarian sources should be of paramount concern in this outreach.
- **Make recommendations to the Security Council:** In 2006, the UN Legal Counsel made a statement to the Security Council on behalf of the Secretary-General regarding due process in the UN sanctions regimes,

under the topic “enhancing the efficiency and credibility of UN sanctions regimes.” This statement triggered gradual improvements to UN sanctions from the human rights perspective and resulted to the creation of the Ombudsperson’s office. A similar effort could be made for the purposes of promoting IHL in the design and implementation of UN sanctions, establishing basic principles that the UN sanctions should tend towards in order to protect humanitarian action.

- **Develop and strengthen risk management units:** the UN should develop and strengthen the risk management units to offer better support to humanitarian actors operating in contexts under sanctions. Risk management units could also partner with Office of Legal Affairs, SCAD and OCHA to offer advice on the rationale, scope and nature of sanctions regimes.

## Member States:

- **Comply with IHL when implementing sanctions:** The Security Council has made it clear that States should comply with IHL when implementing sanctions. Concretely, States should ensure that their measures to implement sanctions do not restrict, impede, delay or otherwise criminalize the humanitarian activities of impartial humanitarian actors.
- **Adopt mitigating measures at domestic level, where appropriate:** Where possible, States should adopt measures that have the potential to mitigate the unintended impact of sanctions on humanitarian action and facilitate the provision of humanitarian aid in accordance with IHL. For example, these mitigating measures could take the form of expedited exemption procedures for humanitarian actors, guidance documents, explanatory memorandum accompanying legislation, or letters of assurances.
- **Provide clear guidelines to interpret and enforce sanctions nationally:** States can play an important role in reassuring humanitarian actors and their financial and logistical partners about the risks they incur for potential sanctions violations. States should avoid imposing strict liability for violations of sanctions measures, especially considering the unavoidable risks that humanitarian actors face in all conflict settings. States should also provide clear guidance on their interpretation of sanctions prohibitions.
- **Bridge the sanctions and humanitarian communities:** It is also the role of Member States to create and strengthen partnerships between the different pillars of this topic. Some States have created tri-sector working groups (governments, financial institutions and humanitarian actors), gathering regularly to discuss sanctions. This can be a helpful tool to bridge the gap between the different communities. Other models of fora could be created, gathering academics and sanctions experts. The overarching goal should be to build the capacity of humanitarian actors to understand sanctions, and of sanctions implementers to understand humanitarian action.

## Donors:

- **Stop conditioning aid on the vetting or screening of beneficiaries, or imposing restrictions going beyond what UN sanctions require:** Donors should end the practice of requiring humanitarian actors to do more than what sanctions require (e.g. prohibiting any contact with listed groups and individuals). To the extent that donors are putting onerous restrictions on humanitarian actors, they may by default interfere or impede with the delivery of humanitarian assistance in the areas that are most vulnerable. In these cases, and while the language related to obstruction of access in sanctions resolutions is directed to parties to the conflict, donors should aim to effectuate the intent of the Security Council.

- **Fund and support compliance requirements:** Donors should not ask humanitarian actors to undertake investigative roles without providing them with adequate means to pay for sanctions databases and extra staff to undertake the tasks of screening procedures. In addition, donors should be able to provide clearer guidance and refer their grantees to specific focal points when the need arise.

### Private sector actors:

- **Invest in a better understanding of the humanitarian sector:** Private sector actors, especially banks, should improve their understanding of the humanitarian sector, which will allow them to invest with greater clarity on the impact of their investments. Private sector actors could hire consultant with humanitarian expertise or engage in regular discussions with identified focal points within the humanitarian community.
- **Adopt a risk-based over a risk-averse approach:** Private sector actors, especially banks, can tend towards a risk-averse approach. Yet, some risk needs to be incorporated into investments to allow humanitarian delivery. Having a differentiated and evidence-based understanding of risk will help avoid unnecessary impediments to humanitarian action.

### Humanitarian actors:

- **Increase sanctions knowledge:** Inadvertent violations of sanctions requirements by humanitarian actors can be avoided if they build knowledge and capacity on sanctions issues. Humanitarian actors should turn to sanctions experts to discuss sanctions-related issues, within and outside the UN.
- **Establish common red lines:** Humanitarian actors should coordinate to establish common red lines to avoid, to the extent possible, aid diversion and incidental payments and to resist undue pressure from governments, donors and private sector actors. The ICRC – or another agreed upon impartial actor – should be called upon to ensure better implementation of these red lines, so that it is not a self-regulatory mandate.
- **Continue to improve due diligence measures:** Humanitarian actors have a strong interest in preventing aid diversion and the instrumentalization of humanitarian assistance for ulterior motives, both of which require robust regulatory measures. Humanitarian actors should continue to develop due diligence internal policies as part of a deeper engagement with sanctions regimes.
- **Pool-fund resources for sanctions databases:** Where humanitarian actors are not able to finance sanctions databases, they should combine funds with other humanitarian actors. For example, networks and clusters of humanitarian organizations could invite their members to pool resources together to finance these databases.
- **Collect more data on sanctions-related issues:** Humanitarian actors should train their staff internally to systematically collect data on issues that may directly or indirectly arise from the implementation of sanctions measures. This gathering of information could be based on surveys established by independent experts and academics, for the internal uses of humanitarian organizations.
- **Work as a community:** All of the above recommendations would be even more effective if humanitarian actors could work collaboratively on them as a more cohesive community. For example, humanitarian actors with strong knowledge of sanctions and how to navigate them should take it upon themselves to train other smaller NGOs with fewer resources. Humanitarian actors with effective due diligence policies should also share their good practices with others, instead of keeping solutions internal.

# References

<sup>1</sup> Somalia, Democratic Republic of Congo (DRC), Central African Republic (CAR), Sudan, South Sudan, Libya, Yemen, Mali, Iraq and Afghanistan (the 1988 regime on the Taliban). By contrast, the 1267 sanctions regime on ISIL and Al Qaeda also juxtaposes with situations of armed conflict in Syria, Iraq and other places, but its sole purpose is to counter terrorism, and not to prevent, mitigate or resolve armed conflict.

<sup>2</sup> See, for example: Dustin A. Lewis, Radhika Kapoor, and Naz K. Modirzadeh, *A guide for States: Advancing humanitarian commitments in connection with countering terrorism* (Cambridge, MA: Harvard Law School: 2021); Emanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021); Kosuke Onishi, “The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions,” *International Review of the Red Cross* (2021) ; Emanuela-Chiara Gillard, *Recommendations for Reducing Tensions in the Interplay Between Sanctions and Counterterrorism Measures and Humanitarian Action* (London: Chatham House, 2017); David McKeever, “International Humanitarian Law and Counter-Terrorism: Fundamental Values, Conflicting Obligations,” *Comparative Law Quarterly* 96, 1 (2019); 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* (Cambridge, MA: Harvard Law School, 2021); Dustin A. Lewis, Radhika Kapoor, and Naz K. Modirzadeh, *Advancing Humanitarian Commitments in Connection with Countering Terrorism: Exploring a Foundational Reframing concerning the Security Council* (Cambridge, MA: Harvard Law School, 2021).

<sup>3</sup> Ibid. Although CT is not the focus of this research, the authors cannot deny that the Security Council is imposing a whole set of obligations on States, under resolution 1373, to transform their domestic laws, which in turn influences the ways in which States are implementing sanctions, even non-CT UN sanctions.

<sup>4</sup> Only one of the current fourteen UN sanctions regimes has, as its primary objective, the countering of terrorism, the 1267 (ISIL and Al-Qaeda). Currently, there are ten current conflict-related sanctions regimes pertaining to armed conflict situations in Somalia, DRC, Yemen, Mali, Sudan, South Sudan, CAR, Libya, Iraq (formal occupation regime) and Afghanistan. Six out of ten cases (Iraq, Libya, Mali, Somalia, Taliban and Yemen) possess significant CT dimensions, either because of the global application of the 1267 sanctions regime on top of the armed conflict regime or because of the application of parallel regional or unilateral CT sanctions. The four remaining conflict-related regimes (CAR, DRC, South Sudan, Sudan) are either “pure” armed conflict cases or have minor CT elements. Finally, there also exist three other UN sanctions regimes (DPRK, Guinea Bissau and Lebanon), applied with a focus on non-proliferation or the context of political transitions, which were not the focus of this research.

<sup>5</sup> On the other hand, many of the humanitarian actors not based in the US or not receiving funds from the US Government or US agencies have reported deciding to only focus and comply with UN sanctions (and EU sanctions if they are based in the EU, as well as other State sanctions as relevant to their operations).

<sup>6</sup> As one interviewee put it: “We have a poor knowledge of sanctions, their impacts, and their types, even within the legal department. There is a lack of capacity of teams to identify the source of the challenges, and the consequences of sanctions.” Phone interview with humanitarian actor, January 2021.

<sup>7</sup> Phone interview with humanitarian actor, February 2021.

<sup>8</sup> As one interviewee put it: “our organization does not have a lot of capacity to keep up with what’s happening with the different sanctions regimes, particularly at the UN level. We are aware of them, but there’s just not much capacity to engage on them. [...] EU or US sanctions take more precedence, and we put a lot of time and resources to address them, and it eats up our capacity on sanctions.” Phone interview with humanitarian actor, January 2021.

<sup>9</sup> On the other hand, several humanitarian actors argue that it is difficult for them to comply with UN sanctions until UN sanctions do not effectively comply with IHL, as described in the sections below.

<sup>10</sup> To quote one interviewee: “what you do not know cannot hurt you.” Phone interview with humanitarian actor, April 2021. A few actors reported that their field staff sometimes preferred not to make known sanctions-related issues.

<sup>11</sup> To quote one interviewee: “we are never sure from where the primary sanctions are coming: is it the UN or is it an implementation measure or another sanctions [regime] put in place by another State?.” Phone interview with humanitarian actor, March 2021.

<sup>12</sup> The authors wish to be clear that this report takes no position on the legal requirements to comply with sanctions and/or IHL but is merely attempting to capture the views of respondents.

<sup>13</sup> On this point, see also the High Level Review of United Nations Sanctions, *Compendium* (New York: Watson Institute for International and Public Affairs and Compliance and Capacity Skills International, LLC, 2015): 54: “experts may lack understanding of the fundamental principles defining and governing humanitarian action, and may not always make a clear distinction between humanitarian actors and other actors, such as peacekeeping operations, special political missions, or human rights actors.”

<sup>14</sup> Most of UN regimes have been in place for around a decade, sometimes longer. For example, the regimes of Iraq, DRC and Sudan are nearing their second decades, in 2023-2024. The DPRK regime will celebrate its 15<sup>th</sup> anniversary in 2023 (imposed since 2006). The other regimes are also around a decade (CAR since 2013, Guinea Bissau since 2012, Libya since 2011). Active regimes imposed on Somalia, ISIL-Al Qaida (1267) and the Taliban have been active for more than two decades (respectively 28 years and 21 years). The regimes of Mali and Yemen are the most recent ones (imposed in 2017 and 2014 respectively). There is no perspective of lifting so far for none of the active regimes. Most of former UN regimes also lasted for at least a decade, often a little more. For example: Angola (9 years), Iran (10 – 11 years), Cote d’Ivoire (11 years), Libya (11 year), Southern Rhodesia (13 years), Sierra Leone (13 years), Rwanda (14 years). Some regimes are even older than this. Former regimes on South Africa and Liberia were particularly long (respectively 17 and 23 years). Among former UN regimes, only those imposed on Haiti and Ethiopia/Eritrea lasted for about one year. The regimes imposed on Sudan and former Yugoslavia lasted for about 5 years (and re-imposed for 3 years in the latter case).

<sup>15</sup> UN Security Council, “Ahmed Ag Albachar,” last accessed 1 February 2022, <https://www.un.org/securitycouncil/content/ahmed-ag-albachar>

<sup>16</sup> Moreover, the more specific the signal, the greater the chance that a sanction measure will have an impact. In practice, broad sanctions designations are easier to push through Sanctions Committees and are useful to ‘catch’ a wide range of prohibited behaviours. However, they also dilute the power of the signal by implying that, on their own, IHL violations, obstruction of humanitarian access, or attacks on humanitarian workers, are insufficient to warrant a sanction listing. See, for example, on the value of stand-alone criterion for clear signaling, United Nations University Centre for Policy Research, “Briefing: UN Security Council Arria Briefing: The Use of Sanctions in Addressing Sexual Violence in Conflict,” 23 October 2018, <https://cpr.unu.edu/news/impact/the-use-of-sanctions-in-addressing-sexual-violence-in-conflict.html>.

<sup>17</sup> Phone interview with humanitarian actor, July 2021

<sup>18</sup> Some humanitarian actors thus suggest continuing to use alternative solutions for information gathering, such as the use of reports from special rapporteur, news media, other forms of cross-references, or publicly available reports conducted by human rights organizations or other investigative groups. Other actors, as described above, remain quite willing to share with panel of experts but do advocate for a better protection of humanitarian sources.

<sup>19</sup> The question of the applicability of Article 103 of the UN Charter may however be contested. For a description of the debate on the use of Article 103 to address potential contradictions between sanctions and IHL, see, for example Dustin A. Lewis, Radhika Kapoor, and Naz K. Modirzadeh, *A guide for States: Advancing humanitarian commitments in connection with countering terrorism* (Cambridge, MA: Harvard Law School: 2021); Emanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021); and Kosuke Onishi, “The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions,” *International Review of the Red Cross* (2021).

<sup>20</sup> Emanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021): 18. Moreover, outside the context of the sanctions regimes per se, but when discussing CT issues, the UN Security Council has also reaffirmed in several presidential statements that “Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.” This language comes from the Pillar IV of the UN Global CT Strategy. See for example: United Nations Security Council, “Resolution 1456, adopted by the Security Council at its 4688th meeting,” United Nations, 20 January 2003, S/RES/1456; United Nations Security Council, “Resolution 1373, adopted by the Security Council at its 4385th meeting,” United Nations, 28 September 2001, S/RES/1373; United Nations Security Council, “Statement by the President of the Security Council,” United Nations, 15 January 2013, S/PRST/2013/1; United Nations Security Council, “Statement by the President of the Security Council,” United Nations, 19 November 2014, S/PRST/2014/23; United Nations Security Council, “Statement by the President of the Security Council,” United

Nations, 28 July 2015, S/PRST/2015/14; United Nations Security Council, “Statement by the President of the Security Council,” United Nations, 11 May 2016, S/PRST/2016/6; United Nations Security Council, “Statement by the President of the Security Council,” United Nations, 13 May 2016, S/PRST/2016/7; United Nations Security Council, “Statement by the President of the Security Council,” United Nations, 8 May 2018, S/PRST/2018/9.

<sup>21</sup> For a most recent example, see paragraph 4 of resolution 2582 (2021) in the DRC. However, the majority of the conflict-related regimes fail to mention the obligations of third-party Member States to comply with IHL when implementing sanctions. This language only exists in the regimes of DRC (paragraph 4 of resolution 2582), Libya (paragraph 2 of resolution 2292), Somalia (e.g. preamble of S/RES/2551, among other preambles) and in the 1267 regime. United Nations Security Council, “Resolution 2582, adopted by the Security Council at its 8807th meeting,” United Nations, 29 June 2021, S/RES/2582; United Nations Security Council, “Resolution 2292, adopted by the Security Council at its 7715th meeting,” United Nations, 14 June 2016, S/RES/2292; United Nations Security Council, “Resolution 2551, adopted by the Security Council at its 8775th meeting,” United Nations, 12 November 2020, S/RES/2551.

<sup>22</sup> Some humanitarian actors involved in the advocacy efforts to include this language in sanctions regimes have welcomed it as an important development. See also Emmanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021).

<sup>23</sup> See, Emmanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021).

<sup>24</sup> See, for example: Somalia: resolution 2385 (2017), preamble – first time that such general reference to IHL is included in the Somalia sanctions regime; Yemen, resolution 2204 (2015); Taliban, preambles of resolution 1988 (2011); resolution 2082 (2012); resolution 2160 (2014); resolution 2255 (2015); ISIL – Al Qaeda, preamble of resolution 2170 (2014); the preambles to resolution 2199 (2015) resolution 2253 (2015) and resolution 2368 (2017).

<sup>25</sup> See, International Committee of the Red Cross, “Appendix 1, as amended in 1993,” *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1993); IV, article 59, 70; International Committee of the Red Cross, “Annex I to Protocol Additional I to the Geneva Conventions of 1949: Regulations concerning identification, as amended on 30 November 1993,” *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 1993). ICRC Commentary to art 59: “Belligerents will obviously be unwilling to grant the goods free passage -- and the donors unwilling to make their contribution -- unless they are certain that the relief supplies are distributed in the way arranged, and only to those persons for whom they were intended. That is a *sine qua non* of any relief action.” ICRC Commentary to art 70 : “In fact, if relief, such as, for example, foodstuffs or tents, were to end up in the hands of the armed forces, the relief action would undoubtedly increase the military potential of the receiving Party and would be obviously unacceptable to the adverse Party which had allowed the passage of these goods, but also to a Party to the Conventions not engaged in the conflict, whose status of neutrality would be in danger of being questioned by the adverse Party of the recipient.” See also, Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict* (Oxford: Oxford University and Office for the Coordination of Humanitarian Affairs, 2016).

<sup>26</sup> United Nations University Centre for Policy Research will release a policy brief on the matter of UN humanitarian exemptions in March 2022.

<sup>27</sup> Although the terminology on exemptions used by the Security Council is consistent, there is a considerable amount of confusion around what the term “exemption” designates, both procedurally and substantially. This confusion is due to the fact that the EU, States and even academia all use different terms and definitions, from “exemption” to “exception”, “carve-out” or “licence”, and all different from the terminology employed in UN sanctions regimes.

<sup>28</sup> Twelve out of 14 of the UN sanctions regimes include asset freezes imposed on individuals and entities: Somalia, DRC, CAR, Yemen, Libya, Mali, Sudan, South Sudan, Iraq, the Taliban, 1267 (ISIL and Al-Qaeda) and DPRK.

<sup>29</sup> However, invitations to workshops and seminars can also provide legitimacy and credibility to individuals who were listed specifically for their roles as spoilers in the implementation of the peace agreement: “The political spoilers identified in 2018 and 2019 were completely side-lined: the sanctions worked. Most of the organizations working in [this country] decided to consider this as a signal, not to invite them anymore, because they were a threat to the peace. Yet, with time passing, these people went back to being invited into political meetings and workshops and gained back their relevance.” Phone interview with sanctions practitioner, July 2021. When the objectives of sanctions are to side-line political spoilers and make them lose their relevance in their communities, inviting them to participate in activities considered as essential by humanitarian actors

(e.g. trainings on IHL to ensure better respect for civilians by the listed individuals/groups) can thus contradict the objectives of sanctions.

<sup>30</sup> Ibid, 2. See also Alice Debarre, *Making Sanctions Smarter: Safeguarding Humanitarian Action* (New York: International Peace Institute, 2019); Emma O’Leary, *Principles under pressure: the impact of counterterrorism measures and preventing/ countering violent extremism on principled humanitarian action* (Oslo: Norwegian Refugee Council, 2018).

<sup>31</sup> In the US and EU interpretation (at least) these activities can be considered economic resources if they allow the listed individuals or entities to find profit from the workshop/training.

<sup>32</sup> The principle of impartiality is the cornerstone of IHL – in order to mitigate the suffering of war, aid will be provided to those who need it, even to the enemy, and humanitarian actors have to comply with it if they want to remain “impartial humanitarian actors” benefiting from special treatment and protections. In particular, the principle of impartiality requires humanitarian actors not to make any ‘discrimination as to nationality, race, religious beliefs, class or political opinions’ or any other similar criteria. Geneva Conventions, common article 3 and common articles 9/9/9/10. See in particular the 2016 ICRC Commentary on articles 3 and article 9 of the first Geneva Convention. International Committee of the Red Cross, *Basic Rules of the Geneva Conventions and Their Additional Protocols* (Geneva: ICRC, 1983); International Committee of the Red Cross, *Updated Commentary on the Geneva Conventions of August 12 1949* (Geneva: ICRC, 2016).

<sup>33</sup> See also Emanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021): 49.

<sup>34</sup> This was notably discussed in the Houthis designation by the US. Many of our interviewees in Yemen were concerned about whom would have been considered as part of “The Houthis”: everyone in Houthi control? Only military, or also civil servants? What about the civil servants paid by the UN (eg doctors, teachers)?

<sup>35</sup> “In some conflict contexts, only the people affiliated with designated individuals or acting on their behalf have the means to procure you the goods.” Phone interview with humanitarian actor, July 2021.

<sup>36</sup> For example, in Afghanistan, “you can get around the listing of Taliban individuals even in areas under their influence or control by going through the communities’ elders, who can negotiate access on your behalf.” Phone interview with humanitarian actor, July 2021.

<sup>37</sup> “Even when territory is not controlled by listed entities, you can still have aid diversion. It can happen anywhere, by local authorities or governments.” As another interviewee puts it: “the question of aid diversion is tricky, because in any context where you have humanitarian operations and armed conflicts, you have a war economy system getting in place and humanitarian aid becomes part of this war economy system.” Another interviewee talks of “the daily cost of doing business.” Phone interviews with humanitarian actor, April 2021.

<sup>38</sup> “If I take the case of Sudan between 2007 – 2008, when we were doing food distribution, families would come, get their food, and the day after we would hear or learn that the armed group operating in that area would go from family to family to take their share. As long as this was not happening in a CT context, it’s never been too much a concern or a problem, and always been accepted within the system in general, by implementing partners, donors, governments... acceptance of the phenomenon. Where it became a problem was with the designation of certain groups as terrorists.” Phone interview with humanitarian actor, April 2021.

<sup>39</sup> For example, in Yemen, experts and humanitarian actors reported a lack of coordinated strategy among the humanitarian community on how to engage with the Houthis, which in turn may feed the ability of this difficult interlocutor to pressure different humanitarian organizations separately in order to “get what they want.” NGOs without clear and strong red lines can therefore become the targets of and participants in corruption and sanctions violations schemes – in turn risking losing their ability to qualify as *bona fide* humanitarian actors.

<sup>40</sup> Phone interviews with humanitarian actors, location withheld, May 2021.

<sup>41</sup> The Government of this country also reportedly engages in payment of transport, housing, or per diem to listed individuals who participate in meetings to follow the implementation of the peace agreement. Phone interview with official from the Government, location withheld, May 2021.

<sup>42</sup> United Nations 1267 Sanctions Committee, “Assets Freeze Explanation of Terms.” approved by the Al-Qaida Sanctions Committee on 24 February 2015, [https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/eot\\_as-](https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/eot_as-)

[sets freeze - english.pdf](#). A parallel could also be made here with the reasoning of the US Supreme Court in *Holder v. Humanitarian Law Project et al.*, US Supreme Court, 561 U.S. 1, 21 June 2010. The US considers that IHL training provided to non-State armed groups listed as terrorist amounts to material support. The HLP was found guilty of providing material support to groups listed as foreign terrorist organizations under US Law when they sought to offer free legal services (training on how to peacefully resolve conflicts) to some of these groups. The US Supreme Court noted that “money is fungible”, and the gratuity of the service would enable the groups to free-up the resources to conduct terrorists activities.

<sup>43</sup> In Somalia, however, one organization confirmed that it had been publicly named as having engaged in alleged sanctions violations. Since pool funds at the country level are mostly managed by a UN agency, communities where the accused organization served – often as the only organization operating in said area – were not able to benefit from funding from UN agencies. Another organization knew of another humanitarian actor similarly accused of alleged sanctions violations which that in the temporary suspension of partnerships and programme activities.

<sup>44</sup> Phone interview with sanctions practitioner, New York City, July 2021.

<sup>45</sup> Several actors reported that their contractual agreements with donors often included references to UN sanctions regimes, with general wording requiring the organizations to “make efforts to comply with UN sanctions regimes.”

<sup>46</sup> Phone interview with humanitarian actor, January 2021.

<sup>47</sup> Phone interview with humanitarian actor, February 2021.

<sup>48</sup> Depending on the donor, this obligation can be an obligation of result, or an obligation of means. See, in particular, the detailed analysis of Emanuela Chiara Gillard, *IHL and the humanitarian impact of counterterrorism measures and sanctions* (London: Chatham House, 2021): 47.

<sup>49</sup> For example, one case was reported in which a UN agency repeatedly asked for a list of beneficiaries in order to share it with the local authorities.

<sup>50</sup> For example, several humanitarian actors reported that they had stumble upon a listed individual when conducting screening of partners or contractors, which resulted in the need to suspend the contract with or the payment to them. However, all humanitarian actors emphasize that these screenings procedures produce very few results in general, i.e. “over five years, you can count the number of positive matches on one hand.” Phone interview with humanitarian actor, July 2021.

<sup>51</sup> In the Mali, CAR, DRC, Taliban and ISIL (Da’esh)/Al-Qaida regimes. In Mali, the focus is on “supporting or financing” of listed individuals and entities; in CAR on “providing support” to a designated entity; in DRC on “providing financial, material, or technological support for, or goods or services to, or in support of a designated individual or entity.” Criteria for sanctions designation in the ISIL/Al-Qaida and the Taliban regimes are linked to “supporting acts or activities” of the groups or those associated with them, with the Taliban criteria focused specifically on acts or activities “constituting a threat to the peace, stability and security of Afghanistan.”

<sup>52</sup> As one interviewee put it, “No one never tells us very clearly what we should or should not do.” Phone interview with humanitarian actor located in Mali, May 2021.

<sup>53</sup> Phone interview with humanitarian actor located in the DRC, May 2021.

<sup>54</sup> As one interviewee put it: “If they are listed, they will change name or simply give the business to their families or relatives. We screen the contractor, but we cannot screen the unofficial contract with the new guy.” Phone interview with humanitarian actor located in Mali, July 2021.

<sup>55</sup> As one interviewee put it: “We had to turn to in-kind, or communal level work – it’s hard to say so far if it’s as effective as cash-assistance, as cash gives more flexibility for households.” Phone interview with humanitarian actor, Yemen, July 2021

<sup>56</sup> As one interviewee put it: “The donor required us to screen beneficiaries, we said no, and we had to partner with the Ministry of Education who was not subjected to the same obligation to screen beneficiaries. It was an emergency response because it was COVID, and we had six months delay.” Phone interview with humanitarian actor, February 2021. Another interviewee reported: “It took six months of negotiations with the donor for a financial transfer for a programme on a professional reintegration of young Malians, because they demand that we screen beneficiaries, which we refuse. This donor has a very strict compliance department.” Phone interview with humanitarian actor located in Mali, April 2021.

<sup>57</sup> In other words: “these sanctions regimes put pressure on the banking system. Even if you have humanitarian exemptions, some banks may get cold feet to process your transfers.” Phone interview with sanctions and financial experts located in Washington DC, May 2021.

<sup>58</sup> As one interviewee put it: “you have to prove that you are not going to finance sanctioned armed groups or terrorism, i.e. we have to prove that we are innocent rather than guilty.” Phone interview with humanitarian actor, February 2021.

<sup>59</sup> Phone interview with humanitarian actor, May 2021.

<sup>60</sup> Phone interview with humanitarian actor, May 2021.

<sup>61</sup> Phone interview with humanitarian actor, Paris, April 2021: “sometimes creates hesitation by vendors to work with us, climate of distrust, they will refuse to work with us because they are afraid.”

<sup>62</sup> Pursuant to paragraph 3 (c) of Resolution 2293 (2016) applicable in the DRC, the UN Security Council decided that other supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee in accordance with paragraph 5 of resolution 1807 (2008), were exempt from the arms embargo. See, United Nations Security Council, “Resolution 2293, adopted by the Security Council at its 7724th meeting,” United Nations, 23 June 2016, S/RES/2293; United Nations Security Council, “Resolution 1807, adopted by the Security Council at its 5861st meeting,” United Nations, 31 March 2008, S/RES/1807.

<sup>63</sup> Phone interview with humanitarian actor, March 2021.

<sup>64</sup> Phone interview with humanitarian actors, January 2021.

<sup>65</sup> Phone interview with humanitarian actor, January 2021.

<sup>66</sup> Phone interview with humanitarian actor located in DRC, January 2021.

<sup>67</sup> Phone interview with humanitarian actor located in Somalia, February 2021.

<sup>68</sup> Phone interview with humanitarian expert located in New York City, March 2021.

<sup>69</sup> Phone interview with humanitarian expert located in New York City, January 2021.

<sup>70</sup> Phone interview with humanitarian actor located in Somalia, January 2021.

<sup>71</sup> Phone interview with humanitarian actor located in Yemen, March 2021.

<sup>72</sup> Phone interview with humanitarian actor located in Yemen, February 2021.

<sup>73</sup> Interview with humanitarian actor located in Somalia, April 2021.

<sup>74</sup> Interview with humanitarian actor located in Somalia, March 2021.

<sup>75</sup> Interview with humanitarian actor located in the US, March 2021.

<sup>76</sup> Interview with humanitarian actor involved in the advocacy against the Houthis designation, US, January 2021.

<sup>77</sup> Interview with humanitarian actor involved in the advocacy against the Houthis designation, US, January 2021.

<sup>78</sup> Interview with a humanitarian actor based in France, March 2021.

<sup>79</sup> Interview with sanctions expert, March 2021.



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