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# Sanctions and International Humanitarian Law: The Forgotten Story

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## Overview

The purpose of this brief is to:

- Map how the Security Council makes room for IHL and humanitarian action in its sanctions regimes.
- Assess how language protecting IHL and humanitarian action is used in practice.
- Illustrate areas of compatibility between sanctions regimes, IHL, and humanitarian action.

Many of the international and non-international conflicts since World War II have been characterized by their downward spiral of violence, often fuelled by serious International Humanitarian Law (IHL) violations, such as direct attacks against civilians and civilian objects.<sup>1</sup> Many of these conflicts have also been characterized with actions by the parties to the conflict deliberately obstructing humanitarian access or hindering humanitarian aid operations, by direct attacks against humanitarian and medical workers and their facilities, or by diversion and misappropriation of humanitarian assistance intended for civilians.<sup>2</sup> Overall, the humanitarian space is under threat each time State and non-State parties to a conflict deliberately ignore or violate IHL rules protecting humanitarian access, activities and personnel.

Sanctions are one tool that the Security Council has utilized to both deter violations of IHL and protect the humanitarian space in armed conflict. Upholding IHL and protecting the humanitarian space is not the primary purpose of sanctions regimes (which is to resolve the conflict in question) but it is an important and increasingly present add-on to the sanctions regimes imposed in armed conflict contexts (see Annex I). There are two main avenues which the Council is using to do so. First, sanctions regimes increasingly include explicit injunctions by the Council that parties to the conflict must comply with IHL and respect and protect the humanitarian mission (see Annex I). Second, eight of these sanctions regimes include designation criteria directly targeting those who violate IHL or threaten the humanitarian space (see Annex II). There is, however, still a gap between language and action (see Annex II). Moreover, sanctions regimes often fail to recall the IHL obligations of implementing Member States (see Annex II).

## Resolution language intended to uphold IHL and protect the humanitarian space

Seven of the ten sanctions regimes examined in this brief<sup>3</sup> include explicit injunctions by the Council that parties to the conflict must comply with their obligations under IHL. This first category is grounded in general statements expressing concerns over IHL violations and recalling the obligations of the parties to the conflict to respect and ensure respect for the laws of war.

Moreover, eight of the ten sanctions regimes include language requesting that parties to the conflict allow and facilitate the full and unhindered humanitarian access of relief personnel. This second category is composed of specific references to humanitarian access, humanitarian assistance and safety of humanitarian personnel, and aims to protect humanitarian organizations from unlawful actions and abuses of the parties to the conflict.

Calls for respect and protection of humanitarian action run through Security Council resolutions and presidential statements beyond sanctions regimes. In short, the prevalence of this language suggests that considerations for the principles of IHL and the protection, more concretely, of the humanitarian space are part of the Council's broader approach to peace and security. In other words, preservation and protection of humanitarian access and assistance is both a clear and established objective of current sanctions regimes.

## Designation criteria upholding IHL or protecting humanitarian space

The references to IHL in general, and humanitarian access, assistance, and personnel in particular are translated into action through two designation criteria on which the Security Council can act in order to prevent or put a stop to abuses and impediments to humanitarian relief. Contrary to the language described above, which focuses on the parties to the conflict, these two designation criteria are not limited to the parties and can be used to list anyone engaging in prohibited acts. Panels of Experts are invested with a mandate to provide information to Sanctions Committees on the potential designation of individuals and entities who may be engaging in the activities described in the designation criteria. Targeted sanctions measures such as asset freezes and travel bans can be imposed on individuals or groups when violations are established.

Seven of the ten sanctions regimes include designation criteria based on general violations of IHL. Violations of IHL *writ large* implicitly include violations of IHL constituted by obstructions of access, impediments to delivery of assistance, or attacks on workers. In theory, this designation criterion could be used to protect the humanitarian space, if and where the relevant Panel of Experts establish that acts threatening the humanitarian space amount to violations of IHL. In practice, this criterion is mostly used to list individuals engaging in gross violations of IHL, such as the targeting of civilians.

Six of the ten sanctions regimes include a stand-alone designation criterion based on the obstruction of or impediments to the delivery or distribution of, or access to, humanitarian assistance. Moreover, two regimes also include a criterion sanctioning attacks against humanitarian personnel. Cases of obstruction or attacks can be the basis for a listing when reported by the relevant Panel of Experts, even when they do not amount to an IHL violation.

## Bridging the gap between language and action

Designation criteria are an important first step because one of the primary purposes 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. Moreover, the more specific the signal, the greater the chance that a sanction measure will have an impact.<sup>4</sup> 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.<sup>5</sup>

A review of the narrative summaries for listings for each of the two categories illustrate a certain gap between existing language and real action. So far, across the ten sanctions regimes, 40 out of 120 individuals and 6 out of 13 entities have been listed for general violations of IHL. Moreover, 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. These numbers are rather positive. However, only three individuals in total were listed *solely* on either IHL violations or obstruction of humanitarian access (see Annex II). All the other individuals and entities were listed for other reasons as well, such as violating arms embargos, financing armed groups, or trafficking natural resources.

## IHL obligations of implementing Member States

Seven out of the ten sanctions regimes considered in this brief focus exclusively on the IHL obligations of the parties to the conflict to support humanitarian access. By contrast, six out of ten of these regimes fail to mention the obligations of third-party Member States to comply with IHL when implementing sanctions. To be clear, although conflict related regimes *do include* language protecting humanitarian action from interference by the parties to the conflict, most of these

regimes generally *do not* contain language protecting humanitarian actors who engage and conduct activities with listed individuals and non-State armed groups, nor do they contain language protecting humanitarian action from interference by third States. Yet, in the absence of clear language recalling the need to comply with IHL when implementing sanctions measures, Member States may decide to prioritize their sanctions obligations over their IHL obligations.

A few sanctions regimes, however, now include language affirming that sanctions are not intended to have adverse humanitarian impacts and recalling Member States of their obligations to comply with IHL when implementing sanctions measures. The 1988, Libya, and Somalia regimes recall the obligations of Member States regarding IHL, and the Democratic Republic of the Congo, Yemen and the Democratic People's Republic of Korea regimes also specifically mention the need for sanctions to avoid adverse humanitarian impacts. This is a welcome progress, which should be encouraged.

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## References

<sup>1</sup> See, International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts – Recommitting To Protection In Armed Conflict On The 70th Anniversary Of The Geneva Conventions* (Geneva: ICRC, 2019); The Armed Conflict Location and Event Data Project, “Fact Sheet: Civilians in Conflict,” 28 May 2019.

<sup>2</sup> “UN deputy chief warns of ‘hurricane of humanitarian crises,’” *UN News*, “16 July 2021. In 2020, deliberate attacks on humanitarian and medical workers had increase by 18%.

<sup>3</sup> This brief only explores the ten sanctions regimes applicable to situations of armed conflict where IHL applies, from 2016 to 2021. It does not include: DPRK, Guinea-Bissau, Iraq, or Lebanon.

<sup>4</sup> See, for example, on the value of stand-alone criterion for clear signaling, Rebecca Brubaker, “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>5</sup> *Ibid.*

**ANNEX 1: CONFLICT REGIMES INCLUDING PROTECTIVE LANGUAGE FOR IHL / THE HUMANITARIAN SPACE**

Regimes with language expressing concern over general IHL violations	Regimes with language requesting compliance of parties to the conflict with IHL	Regimes with language expressing specific concern for the humanitarian space	Regimes with language recalling the obligation of Member States to comply with IHL when implementing sanctions
7 of 10 (Yemen, Democratic Republic of the Congo - DRC, Mali, Sudan, Central African Republic - CAR, South Sudan, ISIL (Daesh) and al Qaeda - IDAQ)	7 of 10 (Yemen, Somalia, DRC, Mali, Libya, Sudan, 1988 Committee)	8 of 10 (Yemen, Somalia, DRC, Mali, Sudan, CAR, South Sudan, IDAQ)	4 of 10 (Somalia, DRC, Libya, IDAQ)

## ANNEX 2: USE OF DESIGNATION CRITERIA ACROSS THE REGIMES

Designation Criterion (Summarized)	Present in how many regimes? (8 total)	Utilized in how many regimes? (8 total)	In use for what percent of total listed individuals? (120 total listed individuals)	In use for what percent of total listed entities? (13 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

## ANNEX 3 – DESIGNATION CRITERIA

Regime	Designation criteria related to violations of IHL	In use?	Extent of use?	Used alone or in combination with other criteria?	Designation criteria related to humanitarian space	In use?	Extent of use?	Used alone or in combination with other criteria?
Yemen	S/RES/2140 (2014): Planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Yemen	Yes	Used for 4 individuals out of 6 listed individuals	Used in combination with other criteria in all cases	S/RES/2216 (2015): Obstructing the delivery of humanitarian assistance to Yemen or access to, or distribution of, humanitarian assistance in Yemen	No	N/A	N/A
Somalia	S/RES/2002 (2011); S/RES/2093 (2013): Violating applicable international law in Somalia involving the targeting of civilians including children and women in situations of armed conflict, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals and abduction and forced displacement	Yes	Used for 4 individuals out of 1 listed entity and 18 listed individuals	Used in combination with other criteria in all cases	S/RES/1844 (2008); S/RES/2002 (2001); S/RES/2093 (2013): Obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia	Yes	Used for 1 entity (Al-Shabaab) and 13 individuals out of 1 listed entity and 18 listed individuals	Used in combination with other criteria in all cases



Democratic Republic of Congo (DRC)	S/RES/2293 (2016); S/RES/2078 (2012); S/RES/1857 (2008): Planning, directing, or committing acts in the DRC that constitute human rights violations or abuses or violations of international humanitarian law, as applicable, including those acts involving the targeting of civilians, including killing and maiming, rape and other sexual violence, abduction, forced displacement, and attacks on schools and hospitals	Yes	Used for 3 entities and 18 individuals out of 9 listed entities and 36 listed individuals	Used alone in 2 cases  Used in combination with other criteria in 16 cases	S/RES/2293 (2016); S/RES/2078 (2012): Obstructing the access to or the distribution of humanitarian assistance in the DRC	Yes	Used for 3 entities and 16 individuals out of 9 listed entities and 36 listed individuals	Used in combination with other criteria in all cases*
Mali	S/RES/2374 (2017): Planning, directing, or committing acts in Mali that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, including those involving the targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge	Yes	Used for 1 individual (Mohamadou Ag Rhissa) out of 8 listed individuals	Used in combination with other criteria	S/RES/2374 (2017): Obstructing the delivery of humanitarian assistance to Mali, or access to, or distribution of, humanitarian assistance in Mali	Yes	Used for 1 individual (Ahmed Ag Albachar) out of 8 listed individuals	Used in combination with other criteria**

Libya	S/RES/2174 (2014); S/RES/2213 (2015): Planning, directing, or committing, acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Libya	Yes	Used for 7 individuals out of 2 listed entities and 28 listed individuals	Used in combination with other criteria in all cases	No.	N/A	N/A	N/A
Sudan	S/RES/1591 (2005): Those who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the measures implemented by Member States in accordance with paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005) as implemented by a State, or are responsible for offensive military overflights described in paragraph 6 of resolution 1591 (2005)	Yes	Used for 2 individuals out of 3 listed individuals	Used in combination with other criteria in both cases	No.	N/A	N/A	N/A

Central African Republic	S/RES/2399 (2018); S/RES/2196(2015); S/RES/2339 (2017): Involved in planning, directing, or committing acts in the CAR that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, including those involving targeting of civilians, ethnic- or religious-based attacks, attacks on civilian objects, including administrative centers, courthouses, schools and hospitals, and abduction and forced displacement	Yes	Used for 1 entity (Lord's Resistance Army) and 5 individuals out of 1 listed entity and 13 listed individuals	Used in combination with other criteria in all cases	S/RES/2399 (2018); S/RES/2196(2015); S/RES/2339 (2017): Obstructing the delivery of humanitarian assistance to the CAR, or access to, or distribution of, humanitarian assistance in the CAR  S/RES/2399 (2018): Involved in planning, directing, sponsoring, or conducting attacks against UN missions or international security presences [...] as well as against humanitarian personnel***	Yes  No	Used for 1 individual (Habib Soussou) out of 1 listed entity and 13 listed individuals  N/A	Used in combination with other criteria  N/A
South Sudan	S/RES/2521(2020): Planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in South Sudan	Yes	Used for 3 individuals out of 8 listed individuals	Used in combination with other criteria in all cases	S/RES/2521 (2020): The obstruction of the activities of international peacekeeping, diplomatic, or humanitarian missions in South Sudan, including the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism or of the delivery or distribution of, or access to, humanitarian assistance	Yes	Used for 2 individuals out of 8 listed individuals	Used in combination with other criteria in all cases

	S/RES/2521 (2020): The targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law	Yes	Used for 5 individuals out of 8 listed individuals	Used in combination with other criteria in all cases	S/RES/2521 (2020): Attacks against United Nations missions, international security presences, or other peacekeeping operations, or humanitarian personnel	No	N/A	N/A
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*Note:* Often, designation criteria related to violations of IHL and the humanitarian space are listed as subclauses under the same resolution paragraph. In many of these cases, the actor or entity is listed on the basis on the total paragraph, and not an individual subclause. Since it is not possible to determine which precise subclause drove the designation in that case, it is assumed in this table that the actor or entity listed for the whole paragraph met each of the criteria provided for in the subclauses. However, it is worth noting that in the narrative summaries for the respective actors or entities, when more detail was provided, it typically focused on violations of IHL. Reference to the humanitarian space was included only rarely.

\*In this case, obstruction of access or distribution of humanitarian assistance in the DRC was listed in combination with criteria related to IHL violations, yet not specifically referred to in the respective narrative summaries.

\*\* In contrast to the previous asterisked case, while Ahmed Ag Albachar was listed for obstruction to the access or delivery of humanitarian assistance in Mali in combination with actions taken to obstruct the implementation of Mali's Agreement on Peace and Reconciliation, he was listed as meeting the latter criterion because of his obstruction of the humanitarian space. According to the narrative summary, Albachar utilizes his "influence to control and choose which humanitarian and development projects take place in the Kidal region, who implements them, where, and when." Since Mali's Agreement "commits parties to respect the principles of humanity, neutrality, impartiality and independence which guide humanitarian action, to prevent any use of humanitarian aid for political, economic or military ends, and to facilitate access for humanitarian agencies and guarantee the security of their personnel," the Mali Sanctions Committee listed him as obstructing the implementation of the agreement. As such, this is a unique case where an individual was listed almost purely for actions that disrupt or impede humanitarian action.

\*\*\*A version of this designation criterion exists in earlier resolutions but excludes the final clause: "as well as against humanitarian personnel." Consequently, the reference to attacks on humanitarian personnel only appears in the newer resolution. On one hand, the inclusion of humanitarian personnel is welcome. However, no individual or entity has yet been listed under the newer iteration of the criterion, while several individuals were listed under the previous iterations that make no reference to humanitarian personnel.



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