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PAVING PATHWAYS TO PEACE TALKS WITH SANCTIONS EXEMPTIONS?

Dr Rebecca Brubaker



Dr Rebecca Brubaker

Dr Rebecca Brubaker is Senior Policy Adviser at United Nations University Centre for Policy Research.

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INTRODUCTION

The majority of UN sanctions regimes are designed in support of a peace process or to protect an existing agreement. Most of these peace processes involve talks that take place outside the country or region in conflict. Often, however, key stakeholders in the conflict – whose participation in the talks is necessary for a credible and even a durable outcome – are under UN travel bans and asset freezes. These targeted measures are among the most frequently applied of all UN sanctions. Thus, it is often assumed that mediators face a dilemma: exclude listed individuals from talks held abroad or include them and risk violating the existing travel ban and adjoining asset freeze.

Or do they? In all but one of the existing UN sanctions regimes, there are little known and rarely used exemptions that would allow sanctioned individuals to participate in peace talks. The language varies in specificity and scope and the process for applying differs between regimes (and even within regimes). But the overall message is clear: mediators possess a formal option for requesting an exception to a sanctions measure in order to enable the successful convening of parties for peace talks.¹

The following memo will briefly outline the existing constellation of exemptions related to peace talks, examine how they are meant to work, share insights on how they actually work, discuss implications for policy practitioners, and propose actions aimed at improving these exemptions' attractiveness to mediators.

WHAT EXISTS?

All but one of the current 14 sanctions regimes possess language that either clearly or possibly allows for peace talk-related exemptions. Those that possess clear language refer to the furtherance of peace, reconciliation, or stability in the country in question.² The remaining regimes contain language that *possibly* allows for exceptions related to peace talks, through vaguer references to the “furtherance of objectives” of the given sanctions regime or resolution or a general reference to “extraordinary expenses.”³ When it comes to exemptions from the travel ban, the sanctions regime related to Afghanistan and the Taliban (known as “1988”⁴) possesses the most explicit reference to peace talks, citing “efforts [...] to promote reconciliation” and travel “necessary to participate in meetings in support of peace and reconciliation.”⁵ Regarding asset freeze exemptions, only the sanctions regime related to Mali contains explicit reference to peace and national reconciliation.⁶ The first three tables in the Annex illustrate both the clear and the possible specifications for exemptions in the current regimes over time. **Table 1** provides an overview of peace talk-related exemptions in each regime. **Table 2** highlights the language used in each regime. **Table 3** examines the evolution of the language deployed over the last two decades to demonstrate points of convergence, divergence and cross-fertilization among the sanctions regimes.

Exemptions to the Travel Ban

Among the current sanctions regimes, language around the furtherance of peace, stability, and/or reconciliation first appeared in 2000 with the Security Council updates to the regime pertaining to Afghanistan (see Table 3) and has since then manifested in all regimes except three,⁷ in slightly different forms. There is a certain degree of standardization around travel ban exemptions with, however, some regimes standing out because there is either low or high specification. For example, the sanctions regimes relating to ISIL (Da’esh), Al Qaida and Associates (known as “IDAQ”), relating to the investigation around the 2005 terrorist bombing in Lebanon (known as “1636”⁸), and the regime relating to nuclear proliferation in the Democratic People’s Republic of Korea (DPRK, known as “1718”) have the least clear language. Their resolutions and guidelines contain no explicit references to peace talk-related exemptions.⁹ This should not be surprising given the stated objective of these regimes is not the support of an ongoing peace process.

The 1988 sanctions regime, in contrast, has the most specific language as well as additional paragraphs in the resolutions and guidelines to clarify or underline the matter further.¹⁰ The purpose of this regime is clearly stated as encouraging reconciliation between the Government and the Taliban, making conflict resolution a core objective of the sanctions measures (or their lifting). The sanctions regimes related to the situations in Libya and Yemen further contain the provision (in addition to determination by the Committee) that a State can determine if entry or transit is required (through its territory, as clarified in the committee guidelines) to advance peace and stability. In this scenario, the given State is required to notify the Committee within 48 hours after making such a determination.¹¹ These regimes are also focused on either achieving or protecting existing peace agreements.

Exemptions to Assets Freezes

Initially, most attention related to participation of parties under UN sanctions in peace talks concerned exemptions to the travel ban. Frequently, the financing of proposed travel, once approved, was overlooked. Over time, and in the context again of the 1988 regime, the Analytical Support and

Sanctions Monitoring Team (“Monitoring Team”) highlighted the fact that funds being used to finance travel to talks were actually in violation of the existing asset freeze. As a result, subsequent efforts were made to either interpret existing exemptions to the asset freeze as able to apply to participation in peace talks or, as in the newest UN sanctions regime (relating to the situation in Mali), to explicitly design an exemption allowing for financing travel to and participation in talks.

As of mid-2020, existing exemptions to individual asset freezes allow, if not always explicitly, for exemptions related to participation in peace talks. Asset freeze exemptions are essentially of two kinds: basic expenses exemptions and extraordinary expenses exemptions. Basic expenses exemptions include inter alia payment for foodstuffs, rent or mortgages, medicines and medical treatment. In addition, they often cover insurance premiums and reimbursements of incurred expenses associated with the provision of legal services. In contrast, extraordinary expenses are normally considered all those expenses which do not fall under the list of basic expenses.¹² Hence, one can presume that currently an asset freeze exemption request to participate in peace talks would fall under extraordinary expenses.¹³ Mali is the only regime with specific reference to peace and national reconciliation in its assets freeze exemptions.¹⁴

There is a more onerous process, however, for applying for extraordinary expenses than for basic expenses. Some interviewees have argued for including participation in peace talks under basic expenses as a means of better streamlining the application procedure.

HOW IS IT MEANT TO WORK?

Most of the confusion around travel bans and asset freeze exemptions, when mediators are even aware of their existence, seems to stem from questions about who can apply for exemptions, what the process entails, how long it will take, and the likelihood of a positive response. As the processes vary between asset freezes and travel bans exemptions, each will be described in turn.

Applying for Travel Ban Exemptions to Attend Peace Talks¹⁵

Who can submit requests for travel ban exemptions depends on the sanctions regime.¹⁶ In all cases, the State of nationality or residence of the individual under sanctions can apply for an exemption via the relevant sanctions committee. In six of the 14 regimes, the State of destination and State of transit can also file an application for a travel ban exemption.¹⁷ In four of the current regimes, a UN agency or office can apply on a listed individual's behalf if "no central government exists."¹⁸ In the specific case of the 1988 regime, individuals can apply for exemptions directly, via the UN's Focal Point for De-listing.¹⁹ And in the cases of exemptions to the Libya, Mali and Sudan sanctions regimes, listed individuals can apply directly to the Chair of the relevant sanctions committee²⁰ or through the relevant UN office (See **Table 4** for a full breakdown).

Once the eligibility of the "applicant" is established, there is a generally consistent process for applying for the exemption. Eligible States and UN offices are invited to send their requests to the relevant sanctions committee Chair. In contrast, eligible individuals and groups are invited to send their requests to the UN Focal Point or through the relevant UN office.²¹ The request must include specific information ranging from travel details, purpose of the trip, passport info, itemized travel budget, among others.²² The majority of sanctions committees request that the applications for exemptions are received no later than 15 working days²³ before the date of the proposed travel, "except where humanitarian consideration requires a shorter period."²⁴

Upon receipt by the Committee²⁵, the committee guidelines stipulate that the sanctions committee concerned will render a decision within five to ten working days²⁶, depending on the regime in question, if a case can be made on "humanitarian grounds" for more urgent action.²⁷ The 15-member committee reaches its decision through a form of reverse consensus decision-making known as a "no-objection procedure." If no State within the committee objects within the five day period, then the exemption is granted.²⁸ The committee is not obliged to give reasons for an objection and there is no specified process of appeal.²⁹ Unsuccessful requests can, however, be resubmitted and, in theory, escalated to the Security Council.

Table 5 offers a detailed account of each of these steps in the Annex to this paper.

Applying for Asset Freeze Exemptions to Attend Peace Talks³⁰

In all regimes where asset freezes are present, Member States who "intend to authorize access to frozen funds" can submit requests for asset freeze exemptions. In the case of the 1988 sanctions regime, listed individuals and entities can also apply directly to the UN Focal Point for De-listing.³¹

When States apply for exemptions to the asset freeze, they must include specific information requested in the committee guidelines and send their request directly to the relevant sanctions committee Chair.³² Decisions are usually rendered within five to ten working days following submission.³³ In contrast, requests from individuals or entities listed under the 1988 regime and submitted via the

Focal Point for De-Listing must first be sent to the State of residence of the individual under sanctions before the Committee can consider the request.³⁴ The sanctions committee, in these particular cases, must consider the request “in consultation with States of residence and any other relevant States” also within five working days. This can pose challenges for mediators who seek to hold talks with non-State actors and when the State of residence is a party to the conflict (See **Tables 6 and 7** for a full breakdown).

Quite uniquely, the sanctions regime relating to the situation in Mali, the youngest of the UN’s regimes, possess a specific provision for exemptions relating to “reconciliation expenses.”³⁵ This is likely a reflection of a growing understanding on the part of sanctions designers that it is impractical to provide for exemptions to travel bans for peace talks if regimes do not also allow for exemptions to fund that same travel.³⁶

A Note on the Practicality of Current Measures, as Designed

It is important to note that these seemingly rigid and time-bound procedures are inconsistent with the nature of mediation, where meetings are often convened at short notice and with open-ended end dates. A 15 day lead period precludes last minute adjustments to the composition of a delegation.³⁷ A requirement, for example, to resubmit exemptions if travel is to change, would conflict with the frequent need to extend talks at short notice. Alternatively, the lack of specific provisions for keeping a granted request confidential, across all regimes, could prove problematic if convenors wish to keep the talks under the radar. Overall, mediators informally canvassed for this paper saw the existing procedures as generally “impractical” and “out of step” with their own process design needs.³⁸ They emphasized, that such “opaque” requirements were particularly “daunting” and “very cumbersome” at the early stages of a peace process when informality and flexibility are key.³⁹ Moreover, even when the UN is engaging in UN Security Council mandated support to peace talks, its senior officials are not consistently empowered to apply directly to the sanctions committee for exemptions to the sanctions measures for individuals attending talks organized by the UN under a Security Council mandate. For more on the UN as an applicant see **Text Box A**.

Text Box A:

The UN as an Applicant

In theory, the UN does not have the ability to apply directly to the relevant Sanctions Committee except in the cases of Somalia, IDAQ, 1988, South Sudan, and possibly Guinea-Bissau.⁴⁰ In practice, however, both missions and UN Special Representatives and Envoys of the Secretary-General were reported to have approached the relevant Committee about exemptions and managed to have exemptions considered and approved.⁴¹ Not all members of the Council, however, feel comfortable formalizing this practice. Some feel that, as sanctions resolution architects, and, often, key players in a peace process, they are reluctant to “relinquish control” to UN actors that do not always have “a central role in a given peace process strategy.”⁴² This constituency would, therefore, prefer to keep direct UN applications to the committee ad hoc rather than institutionalizing direct access.

HOW DOES THE PROCESS ACTUALLY WORK?

Despite the broad existence of exemption measures, in practice, very few applications are made. Even in the case of the 1988 regime, where the resolution language is clearly designed to facilitate participation in peace talks, only a handful of applications have been lodged.⁴³ For a detailed description of one such case see **Text Box B** on the issuing of a travel ban exemption for senior Taliban member Nur Jalal. Currently, only one approved request is publicly listed on the UN sanctions committees' websites. The remaining applications were kept confidential, and thus are both inconsistently reported and remembered. Details of the few previous confidential cases described in interviews could not be detailed in this paper. However, overall it is estimated that only about 7 – 25 applications have been made across existing regimes and over the last two decades, of which the majority (according to one source) or the entirety (according to another) were granted.⁴⁴

More often than not, however, the UN Secretariat, the relevant group of sanctions experts, members of the Security Council, or the relevant committee had to “twist the arm” or “lobby” the State of citizenship, residence, or the Member State hosting the peace talks to apply for an exemption rather than simply arranging or paying for participants' travel outside the regulatory framework of the UN

Text Box B:

The Story of Nur Jalal: International/Afghan Government Efforts to Bring a Senior Taliban Member Back into the Fold by Using Exemptions to the UN-imposed Travel Ban

In 2009 – 2010, Nur Jalal, a Minister of the Interior for the Taliban from Kunar Province, approached the Karzai Government signalling his willingness to enter into an agreement with the Government and become “reconciled.” He wished to be “welcomed into the body politic of Afghanistan.”⁴⁵

Nur Jalal had been sanctioned as a member of the Taliban and, accordingly, was under a UN travel ban, an asset freeze and an arms embargo. One way for the Karzai Government to show that Nur Jalal was in their good graces was to process an exemption to the UN sanctions regime on his behalf. By doing so, it would demonstrate to Nur Jalal that both the Russians and the Americans approved of his proposed travel. This reassured Nur Jalal that neither country would threaten his safety or thwart his transfer while travelling under this official UN exemption. According to one source, the granting of the travel exemption “allowed all 15 [members of the sanctions committee] to decide that this was a good guy.”⁴⁶

Nur Jalal knew of other Taliban members who had “come in from the cold,” thinking they had an agreement with the Afghan Government only to be targeted by a third country and found dead.⁴⁷ As a result, he agreed to the formal exemption application believing it would better ensure his safe passage.⁴⁸

Via a press release, the sanctions committee authorized his travel on medical grounds. At the time, specific language relating to exemptions on the grounds of participation in peace talks did not yet exist. The travel was successfully completed and both sides – the sanctioned party and the Government – proceeded in their talks towards full reconciliation.

Nur Jalal’s name was subsequently deleted from the UN sanctions list on 16 March 2012, and in turn, the travel ban, asset freeze and arms embargo over him were lifted.⁴⁹

Simultaneously, the US supported the Council’s addition of more specific language through updates to the 1988 sanctions regime in 2012. The new language emphasized the “importance of a comprehensive political process in Afghanistan to support peace and reconciliation among all Afghans,” and called on the Government, “to submit for the committee’s consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation.”⁵⁰ More specific language was needed, the US is reported to have argued, “to advertise” to moderate members of the Taliban “that exemptions were on the table and to make it clear to [those under sanctions] that you can use exemptions.”⁵¹ As with Nur Jalal – most of those under 1988 sanctions were unaware that such exemptions provisions existed.⁵²

sanctions regime. If States apply at all for a travel ban exemption, they often forget to apply for an asset freeze as well. In one case a host State offered the equivalent of around USD \$10,000 in cash to each participant in a training that included members of the Taliban, with no requirement to report how the “stipend” was spent.⁵³

Moreover, of the few applications made, interviewees were clear that no State applied for an exemption unless “they were sure of the outcome in advance.”⁵⁴ Low application rates would, in part, explain the statement, detailed above, that “there have been almost no rejections of exemptions requests related to peace talks to date.”⁵⁵ In other words, it would be incorrect to assume that the low to non-existent rejection rates are an indication that future applications are almost certain to be accepted, an inference occasionally made by those encouraging more active compliance.⁵⁶

Given the prevalence of (both clear and vague) exemptions provisions across all regimes but one, and given the Council’s general support for peace talks in the contexts on their agenda, why might so few States and individuals (bother to) apply for exemptions to facilitate participation in talks?

WHY IS COMPLIANCE WITH THE EXEMPTIONS PROVISIONS SO LOW?

There are generally three reasons why compliance with the existing exemptions provisions are so low. They include: lack of awareness/ honest mistakes, a calculated choice based on the pros and cons of applying, and recourse to competing legal and/or policy arguments as the basis for the inaction.

Lack of Awareness/Oversights

On the first point, lack of awareness, it is worth noting that global compliance with UN sanctions provisions is estimated around 20 – 30 per cent in general.⁵⁷ The regimes are complex, ever changing, and compliance requires a great deal of designated resources and expertise. In informal discussions with some mediation specialists sitting in governments, they were unaware of the existence of the exemptions provisions for peace talks and, thus, would not necessarily have known to seek out such an exemption in the course of ongoing talks.⁵⁸

On a related note, mistakes happen. Interviewees cited cases in which States had applied *post hoc* either because of an oversight or, as one observer put it, due to “an honest mistake.”⁵⁹ Oversights are common due to understandable “confusion about the detailed regulations,”⁶⁰ which both differ between regimes and can vary between the sanctions committee webpages and the guidelines. Mistakes also arise due to, as past convenors or facilitators of talks explained, the “speed of developments on the ground” and, as one interviewee put it, the “chaos of a crisis” situation, which can inevitably result in some procedures – such as the necessity to apply for an exemption to prohibited travel – being overlooked. In other words, the “fog of peacemaking” may lead to certain unplanned for outcomes.⁶¹

In a similar vein, most interviewees referenced mistakes that had resulted from siloed government bureaucracies that separate the “Taliban whisperers” from the “grey suits.” Interviews described how the separation between the government departments that make contact and then foster links with groups (such as the Taliban, ETA, the FARC, Boko Haram, Al Shabab, Al Qaida and others), with the goal of paving the way for eventual talks (known as the “whisperers”), often make decisions in isolation from the international law or international organization divisions (known as the “grey suits”), which are providing support and guidance to the country’s mission in New York. As a result, by the time the State’s international organization division or Permanent Mission to the UN learns of their colleagues’ initiatives, which may have involved travelling members of the above groups, it may be too late for them to apply for an exemption, of which their intelligence or regional counterparts were often not aware of, or if aware, were less inclined to adhere to.⁶²

Calculated Choice

A second reason so few States apply for exemptions relating to peace talks is because of a calculated choice. The choice is often informed by four concerns regarding the act of formally applying. First, some States participating in the organization of peace talks do not apply because they fear that States on the sanctions committee will object to their application for an exemption. As the committees are bound by their guidelines and longstanding practice to make decisions by consensus, one vote against

a request will lead to its rejection. Thus, instead of risking these odds, States organizing, hosting or supporting peace talks, according to interviewees, would often rather “beg forgiveness” if and when they are found out rather than “ask for permission.”⁶³ This boils down to a fear of the committee in question interfering politically with the peace talks through its decision-making and a concern that “non-relevant actors” will have veto power over a sensitive exemptions decision.

Second, actors hosting peace talks may choose not to apply because they worry about unhelpful delays in the time it may take to render a decision. As described earlier, the process design for peace talks requires nimbleness and flexibility – a need that is rather out of step with the linear process required for the application for a formal exemption. As a result, some hosts or organizers of talks may come to conclude that going through the “regular procedures” is simply not practicable given the immediate needs for the talks. Such was the case for the UN Mission in Afghanistan, for example, when seeking to facilitate the organization of Track II talks involving the Taliban in December 2012 in Turkmenistan. At the time there were “serious concerns” amongst the UN officials organizing the talks regarding the significant time needed for processing exemptions to travel bans for members of the Taliban. Since the requests for exemptions needed to be processed first through Afghanistan’s High Peace Council, Palace and Ministry of Foreign Affairs, before reaching the sanctions committee, UN officials had estimated that the full process would take more than six weeks. Moreover, members of the UN team were concerned about whether or not the Government of Afghanistan could be convinced to “green light” the exemptions on the proposed individuals’ behalf, in the first place. In the end, the Karzai Government issued a note verbale to all missions in-country, requesting States and the UN halt all Track II endeavours outside the country, which, in turn, closed off the option to apply for exemptions and led to the decision to cancel the talks in Ashgabat.⁶⁴

Third, some States do not apply for exemptions because they fear leaks.⁶⁵ Leaks have occurred in the past and many States view the sanctions committees as less information-secure than would be required to make applicants feel comfortable sharing confidential information regarding secret talks. In this context, it is understandable that if States are supporting a highly confidential peace process, they would not wish to risk exposing it and, as a result, prompting the parties to pull out. During the exploratory phase of some peace negotiations, leaks can have even more dire effects. They can threaten the safety of negotiators, and/or cause the collapse of an entire mediation effort if there is only limited knowledge at that time of the existence of exploratory discussions within a given group’s membership.

Fourth, some potential applicants fear the veto of the government(s) directly concerned in the conflict, particularly when this veto is written into the exemptions design. Such is the case with 1988 – an application cannot go forward if it does not have the consent of the Government of Afghanistan. Clearly government support for a particular process and its role in the process will vary from case to case when that government is a party to the conflict. Its support for a process often depends on whether it is interested in inclusive peace talks or whether it is excluded from bilateral arrangements. A government may not approve of all efforts to prepare parties for a mediated outcome, especially when this preparation involves armed groups operating in its territory or in its immediate neighbourhood. Thus, it is understandable that “baking in,” as one sanctions designer phrased it, the need for the approval of the State of residence, or of a State that may itself be a party to conflict, into a UN exemption process has discouraged some applicants from using the formal exemption route.

Competing Legal and Policy Justifications

When instances of non-compliance are identified, States usually draw on one of three justifications. The most common is lack of knowledge/awareness of existing provisions, as discussed above.⁶⁶ When lack of knowledge is harder to employ, two other arguments are also brought to bear. The first argument one could characterize as the “defence or plea of necessity.”⁶⁷ State officials may explain that they chose not to apply for the exemption, despite knowing it existed, because they were not legally obligated to apply if they could demonstrate that the immediate convening of parties and the

subsequent violation of the existing terms of a travel ban or asset freeze provision were justified by the legal concepts of necessity, immediate peril, and last resort.⁶⁸ The US, for example, employed a version of this argument to justify authorizing the transfer of the “Taliban 5” from Guantanamo Bay to Qatar, as part of a 2014 prisoner exchange, without first securing exemptions to the existing UN travel bans on these five individuals. See the **Text Box C** for a more detailed description of this example.

The second argument brought to bear rests on certain assumptions of shared responsibility vis-à-vis international obligations. Some States argue (more often in private) that they did not apply for exemptions to travel, on behalf of participants in peace talks, because they observed, on occasion, the Five Permanent members (P5) of the Council as well as the (Non-Permanent) Elected Ten (E10), breaching these same provisions. Accordingly, these other States rationalized: if the rule makers (on the Security Council) do not comply with their own sanctions measures, why should we?⁷⁸

To summarize, often government officials are not aware of the specific existing exemptions and therefore make mistakes due to:

- Lack of knowledge/awareness regarding the provisions;
- The “fog of peace making;”
- Government siloing between “Taliban whisperers” and “grey suits.”

Even when Member States or mediators know the appropriate exemptions measures exist, they may still choose not to comply because of concerns regarding:

- Political interference within the committee/non-relevant actors’ veto power over an exemption decision;
- Delays;
- Leaks;
- The committee requirement to also seek the permission of a State that is itself a party to the conflict, in a case where permission is unlikely to be granted unless it serves that State’s interests.

To justify the failure to apply, States also cite:

- “Higher” legal principles such as saving lives;
- Other Council members’ own past oversights.

Text Box C:

The Bo Bergdahl Prisoner Exchange and the Defence of Legal Necessity

In May 2014, the US exchanged five mid to senior level members of the Taliban (known as the “Taliban 5”) for US Army Sergeant Bowe Bergdahl. Bergdahl had been captured and held for five years by the Taliban. The five members of the Taliban were under a UN travel ban at the time of the exchange. The US neglected to formally apply for an exemption to the travel ban, including seeking the Government of Afghanistan’s permission for the exemption, before arranging for the transport of the individuals from Cuba to Qatar, under Qatari supervision.⁶⁹

The Government of Afghanistan was said to have had no knowledge of the exchange before it occurred, despite the 1988 sanctions regime requirement to seek its input regarding applications for exemptions to the UN travel bans and asset freezes a minimum of 15 days before the travel occurs.⁷⁰

In its defence, the US Government argued that it feared leaks regarding the proposed travel would upend the deal and hurt the broader efforts at restarting peace talks.⁷¹ According to a *New York Times* article penned immediately following the swap: "One of the Americans' chief concerns was that word of the plan would leak, and the Taliban would get cold feet or face pressure from harder line elements not to release Sergeant Bergdahl."⁷² In addition, US officials were concerned that if they had gone through the formal channels they would risk an "outburst from the Afghan President, Hamid Karzai, who might see the prisoner swap as an attempt to open peace talks with the Taliban behind his back."⁷³ This, in turn, could have also scuttled the deal.

Lastly, in response to both criticisms in UN circles and, more prominently, in its own Congress, the US Administration argued that the failure to give notice and use the existing formal procedures⁷⁴ was justified in the name of the greater good⁷⁵ – "due to a near-term opportunity to save Sergeant Bergdahl's life, we moved as quickly as possible," requiring action outside the notice requirement of the statute."⁷⁶ Another US official argued that "the circumstances of a fast-moving exchange deal made it appropriate to act outside the statutory framework for transfers," which included not only US domestic but also US international obligations, according to those officials interviewed for this paper.

In addition, US President Obama expressed his country's desire that the act, while conducted in violation of existing statutes and UN provisions, could serve as a means of building confidence between the parties, expressing hope that "Sergeant Bergdahl's recovery could potentially open the door for broader discussions among Afghans about the future of their country by building confidence that it is possible for all sides to find common ground."⁷⁷

THE ARGUMENTS FOR COMPLYING

Less often recognized are the four strong arguments for complying. Proponents within the UN Secretariat, the groups of sanctions experts, and members on the Council and sanctions committees interviewed for this paper believed that if the following four reasons were better understood, compliance amongst individuals and Member States might improve.

The first of these arguments is the idea that applying for and receiving approval for upcoming travel provides a “chain of protection” for individuals travelling to and from talks. Those under sanctions may also be under international or national arrest warrants of which they, or the organizers of the talks, are unaware. In less frequent cases, the individuals may face greater risks while travelling. Applying for and receiving an internationally approved exemption provides a stamp of approval of sorts, indicating that none of the States involved in the approval process and, in theory, none of the States involved in the approval process will attempt to interfere with the proposed travel.⁷⁹ According to interviewees close to the process, it would be very unlikely for a sanctions committee member to approve an exemption if their own government planned to interrupt the travel, apprehend the individual(s) or in any other way target the individual while en route. Thus, following the formalized exemption route can be in the immediate interests of both the individual travelling and the organizers of the talks as a means of providing a “chain of protection” during the period of proposed travel.

The second argument, a corollary of the first, is that applying for and receiving a UN sanctions committee endorsed exemption will provide for useful “risk sharing” between applicant/sponsoring State on the one hand and the Security Council/its sanctions committee on the other. If something should happen to the individual while in transit or at the talks or if the individual violates the terms of the exemption, the responsibility for this breach in international security would be shared between the Security Council and the State(s) facilitating travel and organizing the talks. In other words, applying for an official exemption can help provide cover for applicants, sponsors and States of transit should there be a security breach during the period of travel.

The third argument proffered for applying for formal exemptions to UN travel bans and asset freezes hinged on an applicant’s degree of desire to “uphold UN Security Council resolutions in order to uphold international law, despite (or in spite of) their content.”⁸⁰ Of those interviewed, this argument was thought to be held most firmly by “European States” and members of the Security Council who might not always see eye-to-eye with a particular Security Council resolution provision (especially vis-à-vis sanctions), but prefer to comply, where possible, in the interest of upholding the institution, multilateralism and the legitimacy of the body itself. Others described this argument as simply appealing to States desire to “avoid public stigmatization,” both at home and in the corridors of the UN if found to be in violation of their international obligations.

The fourth and final argument for formally applying for exemptions to sanctions provisions is to provide an individual under sanctions with a “dress rehearsal for being brought back into the fold.” In other words, following a formal exemptions process for a designated party can serve as a means of testing out a party’s willingness to comply with the terms of an interim agreement. If successful, this could serve as a confidence building measure for considering eventual permanent sanctions relief. **Text Box A** provides a detailed account of one such use of travel ban exemptions to bring a prominent Taliban leader to reconcile with the Karzai Government in Afghanistan. Moreover, engaging the Security Council-endorsed exemption procedure can also serve as a means of further legitimizing the purpose of a particular peace process in which the individual is engaged.

To summarize, even when member States or mediators know that applying for UN exemptions is time consuming, potentially inefficient, bears risks and may delay their process, they may still choose to comply because of:

- Chain of protection benefits;
- Risk sharing;
- Upholding international law and the legitimacy of the Council's resolutions/avoiding public stigmatization if found to be in violation;
- Building confidence between the parties/testing the sanctioned entity's willingness to comply with the terms of the exemption; and
- Further legitimizing the purpose of a particular peace process in which the individual is engaged.

IMPLICATIONS

States and individuals will have to weigh up the costs of using formal channels, which are significant, with the potential benefits, which are perhaps lesser known. Currently, the default assumption is that there are many costs and few to no benefits. If the benefits of formally applying for exemptions were better understood, then more States, looking to support peace talks, might apply for the UN exemptions. But those from the mediation field interviewed for this paper suggest that even when well understood the benefits are generally insufficient to motivate compliance. They find the current structure time consuming, administratively heavy, formalistic and “generally not compatible with the fast-paced, frequently changing nature of peace negotiations.”⁸¹ They argue that tweaks to the design and process for applying for exemptions would need to be made before they could justify recourse to the formal routes.

Those supporting the sanctions architecture see the problem a little differently. They believe that arguing about the “fast-paced nature of talks” serves as an excuse rather than a valid reason for avoiding the formal process. As one individual noted regarding talks between parties on the situation in Afghanistan: “planning for talks took months, sometimes years, so timing was not really that tight.” Rather, the interviewee continued, taking the time to apply for a formal exemption “added on to their otherwise already complex work and...this added complexity is something that they could ignore at no costs.”⁸²

In the absence of State and individual willingness to use the existing mechanism, Council members are left with few viable options for increasing compliance with this aspect of their sanctions regimes. Though a small step, some State representatives interviewed noted that the Council members could potentially increase compliance through leading by example or, more controversially, increasing the costs of non-compliance through secondary sanctions and public stigmatization. The first measure is unlikely to occur as sanctions committee members – particularly the P5 – share many of the same concerns regarding the downsides of issuing a formal request for an exemption. And the second measure is unlikely to be politically viable.⁸³ This leaves the choice largely with potential applicants rather than with the Council. And potential applicants, in turn, must ask themselves, will they gain more by going the formal route or not? The answer will vary based on a cost benefit calculation of each situation. But a cost benefit calculation requires knowledge of the process and of potential repercussions. Lack of transparency regarding the process and the difficulty of predicting repercussions tends to weight such an analysis towards a decision to forgo the application process.

GENERAL RECOMMENDATIONS

The final section will examine whether there are design elements or particular actions the Security Council, its sanctions committees, and the UN Secretariat can take to help reduce the perceived (and real) costs of applying for exemptions through formal routes:

1. Where the UN has an explicit role in the process, make the UN Envoy or Special Representative to the Secretary-General an explicit “applicant” party for sanctions exemptions. Requiring a UN representative, with a significant role in an ongoing peace process, to approach a sanctions committee only through another State introduces avoidable delays and, potentially, increases the likelihood of leaks and creates opportunities for politically-motivated obstruction. Formalizing select senior UN officials’ direct access to the committee would help reduce some of the barriers and perceived costs to UN officials employing the formal routes. Of course, the relevant Security Council committee will retain the final say in approving or rejecting exemption requests.
2. Improve the confidentiality mechanism to help address the quite valid concerns regarding leaks. Council members, the Secretariat, and groups of experts have called for improving information security across the sanctions committees. More research is needed on how best this could be accomplished. But once achieved, it could go a long way towards assuring applicants, who wish their applications to remain confidential, that information from their applications will be treated with utmost care.
3. Create more accountability in the application process. This will help reduce the fear/concern of arbitrariness. Require provision of reasons for a rejection.⁸⁴ This will reduce potential applicants’ perception of undue risk.
4. Offer an expedited decision-making option that would allow for a truncated notice period prior to travel and require a decision to be rendered within 48 hours if an applicant can demonstrate sufficient grounds for urgency. There is a slight risk, however, that rushing a committee may also result in the issuing of more frequent holds on an approval decision and, subsequently, even longer delays.
5. Include language only requiring an applicant “to inform” a government, when it is a party to the conflict, rather than requiring that same government’s permission. Sanctions committees should seek to strike a balance between affording concerned governments a say in the process and protecting would-be applicants from a potential veto by a party to the conflict.
6. Invite lead mediators to submit lists of individuals pre-approved for potential future participation in peace talks currently under UN sanctions. Once approved, individuals should be able to travel to the talks without further need for approval (although the mediator may still need to inform the committee when/if travel actually takes place). The pre-approved list could be updated or revised every three to six months.⁸⁵
7. Offer a grace period for parties to come clean regarding a potential violation of the measure. Such a provision will help provide cover for cases where parties neglect to apply or forget to apply for permission, while also assisting the relevant sanctions committee to remain informed of the whereabouts of a sanctioned individual. Such a provision, however, would only succeed if the costs for not coming clean, beyond this grace period, were increased.

8. Require only a “notification” for assets freeze exemptions in connection with peace talks when the sum in question is under a certain threshold and a formal approval for any quantities above the threshold amount.
9. Recategorize participation in peace talks as a basic rather than as an extraordinary expense under the sanctions committees’ existing guidelines on asset freeze exemptions.
10. Establish a sanctions focal point in Ministries of Foreign Affairs to help coordinate between the so-called “Taliban whisperers” on the one hand and the UN Mission/International Law/International Organization divisions on the other.
11. Plan events targeted at raising awareness amongst states of the potential advantages of using the formal exemptions process. This could include the arguments around the chain of protection, risk sharing, avoiding stigmatization and testing a designated entity’s commitment to “return to the fold.”
12. Further standardize guidelines across committees to reduce complexity and the need for regimes specific details. Greater harmonization would further simplify the procedures and thereby potentially increase their use. Moreover, consider harmonizing all guidelines to include an asset freeze exemption element in the travel ban exemption procedure.
13. Publish detailed guidance on how to apply for exemptions, including individual steps and timelines in clear and accessible language on the committee website. Currently, the descriptions on the sanctions committee websites tend to repeat the language of the corresponding sanctions resolutions while omitting additional information contained in the committees’ guidelines. Consolidating the information into an “easy to read, how to guide” may serve to address reported concerns regarding confusion and complexity.
14. Sanctions committee members, particularly the P5, must continue to lead by example. This is for the sake of the legitimacy of the measures they create.

ANNEX: TABLES 1 - 7

Table 1: Overview by regime

Color-coded to highlight **clearly** or **possibly** peace-talks-related exemptions

	Travel ban exemption	Assets freeze exemption (Security Council resolution number)
Somalia	“where the committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region ” (S/RES/1844 (2008), OP 2b)	Funds “necessary for extraordinary expenses ” (S/RES/1844 (2008), OP 4b)
IDAQ	Where “the committee determines on a case-by-case basis only that entry or transit is justified ” (S/RES/2368 (2017), OP 1b)	Funds “necessary for extraordinary expenses , being expenses other than basic expenses” (S/RES/2368 (2017), OP 81b)
Iraq (1518)	There are no travel ban measures in the Iraq regime	Assets freeze, but no exemptions
DRC	“where the committee concludes that an exemption would further the objectives of the Council’s resolutions, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region ” (S/RES/1596 (2005), OP 14)	Funds “necessary for extraordinary expenses ” (S/RES/1596 (2005), OP 16b)
Sudan	“where the committee concludes that an exemption would otherwise further the objectives of the Council’s resolutions for the creation of peace and stability in Sudan and the region; ” (S/RES/1591 (2005), OP 3f)	Funds “necessary for extraordinary expenses ” (S/RES/1591 (2005), OP 3g (ii))
Lebanon (1636)	“where the committee concludes that an exemption would otherwise further the objectives of this resolution; ” (S/RES/1636 (2005): Annex 2(i))	Basic expenses only

	Travel ban exemption	Assets freeze exemption (Security Council resolution number)
DPRK (1718)	<p>“where the committee concludes that an exemption would otherwise further the objectives of the present resolution” (S/RES/1718 (2006), OP 8e)</p>	<p>Funds</p> <ul style="list-style-type: none"> • “necessary for extraordinary expenses” (S/RES/1718 (2006), OP 9b) • “required for the delivery of humanitarian assistance, denuclearization or any other purpose consistent with the objectives of this resolution” (S/RES/2270 (2016), OP 32)
Libya	<ul style="list-style-type: none"> • “Where the <u>committee</u> determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the Libyan Arab Jamahiriya and stability in the region” (S/RES/1970 (2011), OP 16c) • “Where a <u>State</u> determines on a case-by-case basis that such entry or transit is required to advance peace and stability in the Libyan Arab Jamahiriya and the States subsequently notifies the Committee within forty-eight hours after making such a determination” (S/RES/1970 (2011), OP 16d) 	<p>Funds “necessary for extraordinary expenses” (S/RES/1970 (2011), OP 19b)</p>
Afghanistan (1988)	<ul style="list-style-type: none"> • Where “the committee determines on a case-by-case basis only that entry or transit is justified, including where this directly relates to supporting efforts by the Government of Afghanistan to promote reconciliation” (S/RES/2255 (2015), OP 1b) • “Underlines the importance of a comprehensive political process in Afghanistan to support peace and reconciliation among all Afghans, invites the Government of Afghanistan, in close coordination with the High Peace Council, to submit for the Committee’s consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation” (S/RES/2255 (2015), OP 19) • “where the committee determines, on a case-by-case basis only, that such entry or transit is justified” (S/RES/2255 (2015), OP 19) 	<p>Funds ““necessary for extraordinary expenses, being expenses other than basic expenses, including funds to finance travel undertaken with an approved travel ban exemption request” (S/RES/2255 (2015), OP 18b)</p>

	Travel ban exemption	Assets freeze exemption (Security Council resolution number)
Guinea-Bissau	“Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Guinea-Bissau and stability in the region ” (S/RES/2048 (2012), OP 5c)	There are no assets freeze measures in the Guinea-Bissau regime
CAR	“Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the CAR and stability in the region ” (S/RES/2399 (2018), OP 14c)	Funds “necessary for extraordinary expenses ” (S/RES/2399 (2018), OP 17b)
Yemen (2140)	<ul style="list-style-type: none"> • “Where the <u>committee</u> determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Yemen” (S/RES/2140 (2014), OP 16c) • “Where a <u>State</u> determines on a case-by-case basis that such entry or transit is required to advance peace and stability in Yemen and the States subsequently notifies the Committee within forty-eight hours after making such a determination” (S/RES/2140 (2014), OP 16d) 	Funds “necessary for extraordinary expenses ” (S/RES/2140 (2014), OP 12b)
South Sudan	“Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in South Sudan and stability in the region ” (S/RES/2206 (2015), OP 11)	Funds “necessary for extraordinary expenses ” (S/RES/2206 (2015), OP 13b)
Mali	“Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Mali and stability in the region ” (S/RES/2374 (2017), OP 2c)	<ul style="list-style-type: none"> • Funds “necessary for extraordinary expenses” (S/RES/2374 (2017), OP 5b) • “Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Mali and stability in the region” (S/RES/2374 (2017), OP 5d)

Table 2: Overview by language

Color-coded to highlight **clearly** or **possibly** peace-talks-related exemptions

	Language version	Present in these regimes (multiple references possible)
Travel Ban	"entry or transit is justified, including where this directly relates to supporting efforts by the Government of Afghanistan to promote reconciliation "	Afghanistan
	Exemption would further the objectives of "peace and national reconciliation in [name of country] and stability in the region"	Somalia DRC Libya Guinea-Bissau CAR South Sudan Mali
	"exemption would further the objectives of peace and national reconciliation in [country] "	Yemen
	Exemption would "further the objectives of the Council's resolutions for the creation of peace and stability in [country] and the region "	Sudan
	"a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in [country] "	Libya Yemen
	"exemption would otherwise further the objectives of [this/the present] resolution "	DPRK Lebanon
	"Committee determines on a case-by-case basis only that entry or transit is justified "	IDAQ Afghanistan
Assets Freeze	"exemption would further the objectives of peace and national reconciliation in [country] and stability in the region "	Mali
	"extraordinary expenses, being expenses other than basic expenses, including funds to finance travel undertaken with an approved travel ban exemption request "	Afghanistan
	<i>more indirect mention of travel-related funds in connection with travel exemptions:</i> "travel-related funds, other financial assets or economic resources may only be provided in accordance with the exemption procedures set out in [...]"	IDAQ (S/RES/2368 (2017), OP 6) Afghanistan (S/RES/2160 (2014), OP 5)

	Language version	Present in these regimes (multiple references possible)
Assets Freeze	Extraordinary expenses	Somalia IDAQ DRC Sudan DPRK Libya CAR Yemen South Sudan Mali
	Expenses “required for the delivery of humanitarian assistance, denuclearization or any other purpose consistent with the objectives of this resolution ”	DPRK

Table 3: Language evolution

The same/similar language versions are color-coded, to be able to track when and in which regime the language first appeared

Year	Regime	What happened? (Security Council Resolution number)	Relevant exemption	
1999	IDAQ / Afghanistan	S/RES/1267 (1999) imposes assets freeze for the Taliban		
2000	IDAQ / Afghanistan	S/RES/1333 (2000) seems to contain a precursor for the travel ban?		<p>OP 11: Decides also that all States are required to deny any aircraft permission to take off from, land in or over-fly their territories if that aircraft has taken off from, or is destined to land at, a place in the territory of Afghanistan designated by the committee as being under Taliban control, unless the particular flight has been approved in advance by the committee on the grounds of humanitarian need, including religious obligations such as the performance of the Hajj, or on the grounds that the flight promotes discussion of a peaceful resolution of the conflict in Afghanistan, or is likely to promote Taliban compliance with this resolution or with resolution 1267 (1999)</p> <p>OP 14: Urges States to take steps to restrict the entry into or transit through their territory of all senior officials of the rank of Deputy Minister or higher in the Taliban, the equivalent rank of armed personnel under the control of the Taliban, and other senior advisers and dignitaries of the Taliban, unless those officials are travelling for humanitarian purposes, including religious obligation such as the performance of the Hajj, or where the travel promotes discussion of a peaceful resolution of the conflict in Afghanistan or involves compliance with this resolution or resolution 1267 (1999)</p>
2002	IDAQ / Afghanistan	S/RES/1390 (2002) imposes travel ban	travel ban	[...] committee determines on a case by case basis only that entry or transit is justified

Year	Regime	What happened? (Security Council Resolution number)	Relevant exemption	
2002	IDAQ / Afghanistan	S/RES/1452 (2002) introduces exemption for assets freeze	assets freeze	Funds necessary for extraordinary expenses
2005	Sudan	S/RES/1591 (2005) imposes travel ban and assets freeze	travel ban	[...] where the committee concludes that an exemption would otherwise further the objectives of the Council's resolutions for the creation of peace and stability in Sudan and the region;
			assets freeze	Funds necessary for extraordinary expenses
	DRC	S/RES/1596 (2005) imposes travel ban and assets freeze	travel ban	[...] where the committee concludes that an exemption would further the objectives of the Council's resolutions, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region
			assets freeze	Funds necessary for extraordinary expenses
Lebanon	S/RES/1636 (2005) imposes travel ban and assets freeze	travel ban	[...] where the committee concludes that an exemption would otherwise further the objectives of this resolution	
2006	DPRK	S/RES/1718 (2006) imposes travel ban and assets freeze	travel ban	[...] where the committee concludes that an exemption would otherwise further the objectives of the present resolution;
			assets freeze	Funds necessary for extraordinary expenses
2008	Somalia	S/RES/1844 (2008) imposes travel ban and arms embargo	travel ban	Where the committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region
			assets freeze	Funds necessary for extraordinary expenses
2011	Libya	S/RES/1970 (2011) imposes travel ban and assets freeze	travel ban	Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the Libyan Arab Jamahiriya and stability in the region

Year	Regime	What happened? (Security Council Resolution number)	Relevant exemption	
2011	Libya	S/RES/1970 (2011) imposes travel ban and assets freeze	travel ban	Where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in the Libyan Arab Jamahiriya and the States subsequently notifies the committee within forty-eight hours after making such a determination;
			assets freeze	Funds necessary for extraordinary expenses
	Afghanistan	S/RES/1988 (2011) imposes travel ban and assets freeze	travel ban	(Where the) committee determines on a case-by-case basis only that entry or transit is justified, including where this directly relates to supporting efforts by the Government of Afghanistan to promote reconciliation
2012	Guinea-Bissau	S/RES/2048 (2012) imposes travel restrictions	travel ban	Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Guinea-Bissau and stability in the region
	Afghanistan	S/RES/2082 (2012) repeats language on travel ban exemptions from S/RES/1988 (2011), plus:	travel ban	OP 9: Underlines the importance of a comprehensive political process in Afghanistan to support peace and reconciliation among all Afghans, invites the Government of Afghanistan, in close coordination with the High Peace Council, to submit for the committee's consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation [...] OP10. Decides that the travel ban imposed by paragraph 1 (b) shall not apply to individuals identified pursuant to paragraph 9 above , where the committee determines, on a case-by-case basis only, that such entry or transit is justified [...]
2014	CAR	S/RES/2134 (2014) imposes travel ban and assets freeze	travel ban	Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in the CAR and stability in the region;

Year	Regime	What happened? (Security Council Resolution number)	Relevant exemption	
2014	CAR	S/RES/2134 (2014) imposes travel ban and assets freeze	assets freeze	Funds necessary for extraordinary expenses
	Yemen	S/RES/2140 (2014) imposes travel ban and assets freeze	travel ban	Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Yemen ; and
			travel ban	Where a State determines on a case-by-case basis that such entry or transit is required to advance peace and stability in Yemen and the States subsequently notifies the committee within 48 hours after making such a determination;
			assets freeze	Funds necessary for extraordinary expenses
	Afghanistan	S/RES/2160 (2014) mentions travel- related funds	assets freeze	Travel-related funds or other financial assets or economic resources may only be provided in accordance with the exemption procedures set out in [...]
	IDAQ	S/RES/2161 (2014) mentions travel- related funds	assets freeze	Travel-related funds, other financial assets or economic resources may only be provided in accordance with the exemption procedures set out in [...]
2015	South Sudan	S/RES/2206(2015) imposes travel ban and assets freeze	travel ban	Where the Committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in South Sudan and stability in the region
			assets freeze	Funds necessary for extraordinary expenses
	IDAQ	S/RES/2253 (2015) specifies assets freeze exemption a little	assets freeze	Funds necessary for extraordinary expenses, being expenses other than basic expenses
	Afghanistan	S/RES/2255 (2015) specifies assets freeze exemption	assets freeze	Funds necessary for extraordinary expenses, being expenses other than basic expenses, including funds to finance travel undertaken with an approved travel ban exemption request

Year	Regime	What happened? (Security Council Resolution number)	Relevant exemption	
2016	DPRK	S/RES/2270 (2016) expands assets freeze exemption	assets freeze	Funds required for the delivery of humanitarian assistance, denuclearization or any other purpose consistent with the objectives of this resolution
2017	Mali	S/RES/2374 (2017) imposes travel ban and assets freeze	travel ban	Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Mali and stability in the region
			assets freeze	Funds necessary for extraordinary expenses
			assets freeze	Where the committee determines on a case-by-case basis that an exemption would further the objectives of peace and national reconciliation in Mali and stability in the region;

Table 4: Who can submit requests for travel ban exemptions?¹

PM = through Permanent Mission

FP = through Focal Point

UN = through relevant UN office

	State of nationality	State of residence	State of destination	State of transit	Listed individuals	Listed groups	UN office/ agency	Other
IDAQ	PM	PM	PM	PM	FP	FP	In the absence of a central government	
Afghanistan	PM	PM	PM	PM	FP		In the absence of a central government	see ²
Somalia	PM	PM	PM	PM			In the absence of a central government	
South Sudan	PM	PM	PM	PM			In the absence of a central government	
Yemen	PM	PM	PM	PM	UN			see ³
Sudan	PM	PM			UN			
Libya	PM	PM			UN			see ³
Mali	PM	PM			UN			
Guinea-Bissau	PM	PM			UN			
DRC	PM	PM			UN			
CAR	PM	PM			UN			
Lebanon	PM	PM						
DPRK	PM	PM	PM	PM	UN			

¹ This information is taken from the individual Committee Guidelines and may, in some instances, diverge from the information provided on the sanctions regime's website (e.g. DPRK).

² *Afghanistan*: "the Government of Afghanistan, in close coordination with the High Peace Council, may submit a request for those individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation." United Nations Security Council, "Resolution 2255, adopted by the Security Council at its 7590th meeting," United Nations, 22 December 2015, S/RES/2255: OP 19.

³ *Libya/Yemen*: "Where a State determines on a case-by-case basis that entry into or transit [through its territory, as specified in the guidelines] is required to advance peace and stability in [Libya/Yemen], it will notify the Committee within forty-eight hours after making such a determination." For *Libya*: United Nations Security Council, "Resolution 1970, adopted by the Security Council at its 6491st meeting," United Nations, 26 February 2011, S/RES/1970: OP 16d; For *Yemen*: United Nations Security Council, "Resolution 2140, adopted by the Security Council at its 7119th meeting," United Nations, 26 February 2014, S/RES/2140: OP 16d.

Table 5: Process for obtaining travel ban exemptions⁴

⁴ The indicated deadlines and processing times vary slightly by regime. The numbers in this chart pertain to the Somalia regime.

Process for obtaining travel ban exemptions

Request for an extension of the exemption:

- “shall be subject to the procedures set out above and shall be received by the Chair in writing, with a revised itinerary, no less than five working days before the expiry of the approved exemption”



Publication of exemption:

- all approved requests for exemptions from the travel ban (and extensions thereto) need to be posted on the regime’s website until the exemption expires / the traveler is back in his/her country of residence
- **Somalia, IDAQ, Afghanistan and South Sudan: publication “unless the committee otherwise decides”**
- **Lebanon: no reference to (the need of) publication**



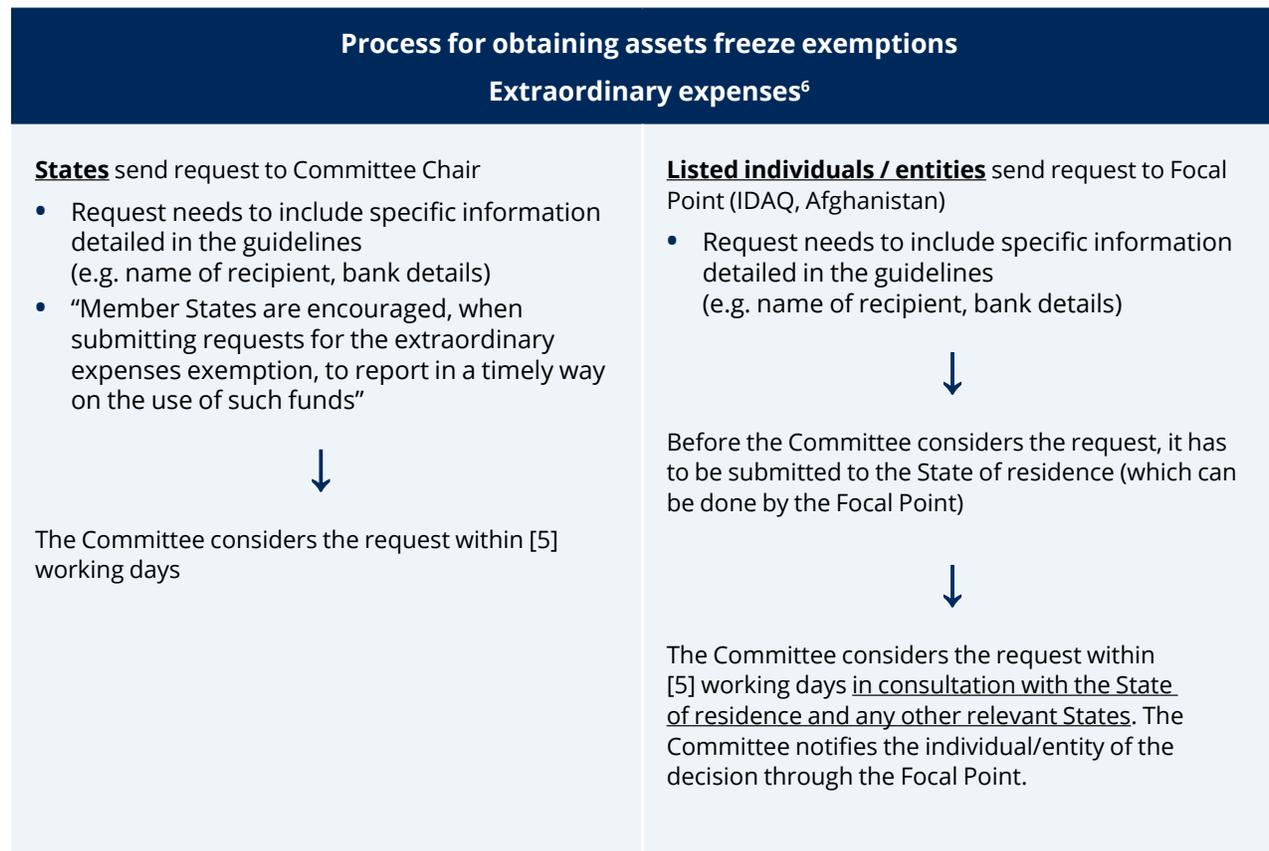
After the travel:

- “Written confirmation of the completion of the travel shall be provided to the Chair within five working days following the expiry of the exemption” by the State of residence (or UN office/agency).

Table 6: Who can submit requests for assets exemptions?

	Member States who intend to authorize access to frozen funds	Listed individual / entity
IDAQ	Yes	Through Focal Point
Afghanistan	Yes	Through Focal Point
Somalia	Yes	
South Sudan	Yes	
Yemen	Yes	
Sudan	Yes	
Libya	Yes	
Mali	Yes	
Guinea-Bissau	no assets freeze measures	
DRC	Yes	
CAR	Yes	
Lebanon	Yes	
DPRK	Yes	

Table 7: Process for obtaining assets freeze exemptions⁵



⁵ The indicated deadlines and processing times vary slightly by regime. The numbers in this chart pertain to the Somalia regime.

⁶ Or “reconciliation expenses” as in the Mali regime.

ENDNOTES

- 1 This category of exemption constitutes just one type; exemptions to sanctions measures are also used to meet pressing humanitarian needs, cover basic expenses, fulfill religious obligations, and achieve other political objectives.
- 2 See Table 2 in the Annex.
- 3 See Table 2 in the Annex.
- 4 Named after the sanctions resolution establishing this regime.
- 5 See Table 1 in the Annex.
- 6 See Table 1 in the Annex. The 1988 regime allows for “funds to finance travel undertaken with an approved travel ban exemption request.” This can include financing for travel related to peace talks, but the resolution does not explicitly state as much. The same holds true for even more indirect mentions of “travel-related funds” in the 1988 and IDAQ regimes. See, United Nations Security Council, “Resolution 2368, adopted by the Security Council at its 8007th meeting,” United Nations, 30 July 2017, S/RES/2368: para. 6, United Nations Security Council, “Resolution 2160, adopted by the Security Council at its 7198th meeting,” United Nations, 17 June 2014, S/RES/2160: para. 5.
- 7 The regimes relating to ISIS (Da’esh), Al Qaida and Associates (IDAQ), the assassination of Rafik Hariri in Lebanon, or nuclear proliferation in DPRK.
- 8 The 1636 regime was “established to register individuals designated by the International Independent Investigation Commission...or the Government of Lebanon as suspected of involvement in the 14 February 2005 terrorist bombing in Beirut, Lebanon that killed former Lebanese Prime Minister Rafiq Hariri and 22 others.” United Nations Security Council, “Security Council Committee established pursuant to resolution 1636 (2005),” accessed 12 October 2020, <https://www.un.org/securitycouncil/sanctions/1636>.
- 9 See Table 2 in the Annex.
- 10 United Nations Security Council, “Resolution 1988, adopted by the Security Council at its 6557th meeting,” United Nations, 17 June 2011, S/RES/1988; United Nations Security Council, “Resolution 2082, adopted by the Security Council at its 6890th meeting,” United Nations, 17 December 2012, S/RES/2082; United Nations Security Council, “Resolution 2160, adopted by the Security Council at its 7198th meeting,” United Nations, 17 June 2014, S/RES/2160; United Nations Security Council, “Resolution 2255, adopted by the Security Council at its 7590th meeting,” United Nations, 22 December 2015, S/RES/2255; United Nations Security Council, *1988 Sanctions Committee: Guidelines of the Committee for the Conduct of Its Work v*, 4 (United Nations: New York, 2018), <https://www.un.org/securitycouncil/sanctions/1988/guidelines>.
- 11 See, United Nations Security Council, “Resolution 1970, adopted by the Security Council at its 6491st meeting,” United Nations, 26 February 2011, S/RES/1970: OP 16d; United Nations Security Council, “Resolution 2140, adopted by the Security Council at its 7119th meeting,” United Nations, 26 February 2014, S/RES/2140: OP 16d.
- 12 This is clearly specified in United Nations Security Council, “Resolution 2368, adopted by the Security Council at its 8007th meeting,” United Nations, 20 July 2017, S/RES/2368: para. 81. With regards to the 1267 regime as well as in United Nations Security Council, “Resolution 2255, adopted by the Security Council at its 7590th meeting,” United Nations, 22 December 2015, S/RES/2255: para. 18 a) and b) regarding the 1988 sanctions regime.
- 13 The extraordinary expenses exemption has basically stayed the same since 2002, with a minor specification in the IDAQ sanctions regime in 2015 further defining extraordinary expenses as “expenses other than basic expenses and a major specification in the 1988 regime in 2015 specifying that extraordinary expenses include funds to finance exempted travel (See, United Nations Security Council, “Resolution 2368, adopted by the Security Council at its 8007th meeting,” United Nations, 20 July 2017, S/RES/2368: para. 81(b); United Nations Security Council, “Resolution 2255, adopted by the Security Council at its 7590th meeting,” United Nations, 22 December 2015, S/RES/2255: para. 18(b); The IDAQ and 1988 regimes contain further references to travel-related funds (see Table 2).
- 14 See, United Nations Security Council, “Resolution 2374, adopted by the Security Council at its 8040th meeting,” United Nations, 5 September 2017, S/RES/2374: para. 5(d).

- 15 In UN sanctions regimes related to ongoing peace processes. In contrast under the CT regime (known as “IDAQ”) a standing travel ban exemption exists for any travel related to judicial purposes (standing trial, testifying in a trial, etc.) (See, United Nations Security Council, “ISIL (Da’esh) & Al-Qaida Sanctions Committee: Travel Ban,” accessed 13 October 2020, <https://www.un.org/securitycouncil/sanctions/1267/travel-ban>). Otherwise the travel ban exceptions in the IDAQ regime only relate to two very specific purposes: a) emergency medical treatment, and b) fulfilment of religious obligations (Haj travel exemption). See, United Nations Security Council, *Al-Qaida Sanctions Committee: Travel Ban Explanation of Terms* (New York: United Nations, 2015), https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/eot_travel_ban_english.pdf: para 24.
- 16 There seem to be some discrepancies and ambiguous language in the information provided on the Committees’ websites versus the Committee Guidelines. Please see Annex I (“Who can submit requests for travel ban exemptions”) for a detailed account of these differences.
- 17 See Table 4 in the Annex.
- 18 1988, Somalia, and South Sudan.
- 19 1988 Sanctions Committee, *Guidelines of the Committee for the Conduct of Its Work* (United Nations: New York, 2018): para 13(b)(i)(i).
- 20 According to the respective committee websites on the UN Security Council Affairs Subsidiary Organs’ Branch website. United Nations Security Council, “Sanctions Committee Information,” accessed 12 October 2020, <https://www.un.org/securitycouncil/sanctions/information>
- 21 See Table 4 in the Annex.
- 22 The necessary information is detailed in the relevant Committee guidelines.
- 23 Deadlines and processing times vary slightly by regime. The numbers used in this general description are taken from the Somalia regime.
- 24 See Table 5 in the Annex.
- 25 In addition, one must consider turnover times between reception of a request by the UN Secretariat/Sanctions Committee Chair and the reception of the request by the Committee. The “no objections procedure” only begins once the Committee receives the request.
- 26 Deadlines and processing times vary slightly by regime. The numbers offered in the text are primarily taken from the Somalia regime. But the IDAQ sanctions regime allows for a ten rather than five day NOP. The 1988 sanctions regimes provides for a ten “working day” NOP.
- 27 See Table 5 in the Annex.
- 28 States on the Committee can place a “hold” on a decision, if for example, they wish for States to furnish additional information on a request. In this scenario, decisions are delayed until the hold lapses or is actively lifted. As a result, decisions can take much longer than the otherwise specified 15 or five days.
- 29 Interviews with individuals familiar with the working methods of the UN sanctions committees (May – June 2020).
- 30 In UN sanctions regimes related to ongoing peace processes. In contrast, under the CT regime (known as “IDAQ”), an asset freeze exemptions exists for expenses related to meeting with the Ombudsperson. See, United Nations Security Council, *Al-Qaida Sanctions Committee: Asset Freezes - Explanation of Terms* (New York: United Nations, 2015), https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/eot_assets_freeze_-_english.pdf: para 6 (ii).
- 31 See, United Nations Security Council, *1988 Sanctions Committee: Guidelines of the Committee for the Conduct of Its Work*: para. 12(g).
- 32 See the committee guidelines in the respective sections of the UN Security Council Affairs Subsidiary Organs’ Branch website. United Nations Security Council, “Sanctions Committee Information,” accessed 12 October 2020, <https://www.un.org/securitycouncil/sanctions/information>
- 33 Deadlines and processing times vary slightly by regime. The numbers offered in the text are taken from the Somalia regime.
- 34 No approval appears to be required, but the State of residence needs to be made aware of the request (See Para 11(c)).
- 35 United Nations Security Council, *Mali Committee Guidelines of the Committee for the Conduct of its Work* (New York: United Nations, 2018): para 11(e), <https://www.un.org/securitycouncil/sanctions/2374/guidelines>.
- 36 Interview, June 2020.
- 37 Application deadlines range from 4 to 15 days across regimes. The majority, however, require 15 days notice.
- 38 Interviews, May – June 2020.

- 39 Source withheld. For an example, see the discussion in this paper of the UN Mission in Afghanistan's efforts to apply for travel ban exemptions for members of the Taliban to attend Track II talks in Uzbekistan in 2012.
- 40 See Table 4 in the Annex.
- 41 Interviews with individuals supporting senior UN officials in these approaches, July and August 2020.
- 42 Interview, July 2020.
- 43 Source withheld. For a description of the most recent, publicly listed exemptions granted see: <https://www.un.org/securitycouncil/sanctions/1988/exemptions/travel-exemptions-in-effect>.
- 44 Sources withheld.
- 45 Source withheld.
- 46 Source withheld.
- 47 This was said to be the case with one of Osama Bin Laden's drivers, who had thought he had an agreement with the Afghan government before being targeted in a drone strike (source needed to confirm interviewee statement).
- 48 Source withheld.
- 49 United Nations Security Council, "Security Council 1988 Committee Deletes One Entry from Its Sanctions List," 19 March 2012, SC/10581, <https://www.un.org/press/en/2012/sc10581.doc.htm>. Subsequent, unconfirmed reports cite the fact that Nur Jalal has since returned to the Taliban following the US withdrawal and his subsequent fear that the government would be unable or unwilling to protect him.
- 50 The initial 1988 Sanctions Resolution, establishing the 1988 regime following the splitting apart of the previous 1267 regime, specified that: "where [...] the Committee determines on a case-by-case basis only that entry or transit is justified, including where this directly relates to supporting efforts by the Government of Afghanistan to promote reconciliation." The 1988 sanctions regime was updated in 2012, via Resolution 2082, para. 9 to more explicitly 'advertise' exemptions in to participate in peace talks. This provision, in operative paragraph 9: "Underlines the importance of a comprehensive political process in Afghanistan to support peace and reconciliation among all Afghans, invites the Government of Afghanistan, in close coordination with the High Peace Council, to submit for the Committee's consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation."
- 51 Source withheld.
- 52 Source withheld.
- 53 Source withheld.
- 54 Interviews with individuals privy to the sanctions committees' work, June – July 2020.
- 55 Interviews with individuals privy to the sanctions committees' work, June – July 2020. This statement was often shared by those involved with a sanctions committee or the architecture around the sanctions regimes in the context of questioning why so few states apply since the rejection rate is so low.
- 56 Ibid.
- 57 Compliance with sanctions measures in general, canvassed through mandated member State self-reporting. For an example of self-reports, see those submitted on the sanctions committee website related to sanctions in Yemen: United Nations Security Council, "Libya Sanctions Committee: Implementation Reports," accessed 13 October 2020, <https://www.un.org/securitycouncil/sanctions/1970/implementation-reports> or the Democratic People's Republic of Korea: United Nations Security Council, "1718 Sanctions Committee (DPRK): Implementation Reports," accessed 13 October 2020, <https://www.un.org/securitycouncil/sanctions/1718/implementation-reports>.
- 58 This was only an informal straw poll. A more studied analysis would be needed to determine the scope of need for further awareness raising on this point.
- 59 Source withheld.
- 60 Source withheld.
- 61 See references to oft quoted "fog of war" attributed to military theorist Carl von Clausewitz. It describes the persistent degree of uncertainty in one's situational preparedness. The direct quote follows: "War is the realm of uncertainty; three quarters of the factors on which action in war is based are wrapped in a fog of greater or lesser uncertainty."
- 62 Interviews with a number of individuals representing both "silos" described above, May – June 2020.
- 63 Source withheld.

- 64 Thomas Ruttig, "Qatar, Islamabad, Chantilly, Ashgabad: Taleban Talks Season Again? (amended)," Afghanistan Analyst Network, 31 December 2012, <https://www.afghanistan-analysts.org/en/reports/war-and-peace/qatar-islamabad-chantilly-ashgabad-taleban-talks-season-again-amended/>. Interviewees noted that this request from the government did not stop some non-governmental entities as well as some Member States from persisting in organizing endeavours. But that it would have been impossible for the UN team in Afghanistan to do so, once the Government had issued the note verbale.
- 65 Individuals interviewed for this report, close to the sanctions committee working methods, countered that leaks regarding confidential exemptions requests are very rare.
- 66 Despite widespread instances of lack of awareness, lack of knowledge of applicable Security Council measures is not technically considered a valid excuse for non-compliance.
- 67 For example, United Nations, "International Law Commission Report on the work of its fifty-third session," United Nations General Assembly, 12 December 2001, A/56/10: art. 25 (on the plea or defense of necessity).
- 68 Source withheld. United Nations, "International Law Commission Report on the work of its fifty-third session," United Nations General Assembly, 12 December 2001, A/56/10: art. 25 (for discussion on necessity /imminent peril/ last resort).
- 69 This was in addition to an oversight in adhering to additional statutes imposed by the US's own Congress vis-à-vis the transfer of prisoners from Guantanamo ("Congress has imposed statutory restrictions on the transfer of detainees from Guantánamo Bay. The statutes say the secretary of defense must determine that a transfer is in the interest of national security, that steps have been taken to substantially mitigate a future threat by a released detainee, and that the secretary notify Congress 30 days before any transfer of his determination.") Eric Schmitt and Charlie Savage, "Bowe Bergdahl, American Soldier, Freed by Taliban in Prisoner Trade," *New York Times*, 31 May 2014, <https://www.nytimes.com/2014/06/01/us/bowe-bergdahl-american-soldier-is-freed-by-taliban.html>.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Ibid.
- 74 In this speech the US President was primarily responding to criticism from his own Congress on a failure to follow the statutes regarding the conditions under which prisoners could be transfers from Guantanamo. Yet, officials interviewed for this report offered similar arguments vis-à-vis the US violation of the existing UN travel ban. It is clear, however, that officials were more concerned about criticisms from the US Congress than from the UN.
- 75 Source withheld.
- 76 Eric Schmitt and Charlie Savage, "Bowe Bergdahl, American Soldier, Freed by Taliban in Prisoner Trade," *New York Times*, 31 May 2014, <https://www.nytimes.com/2014/06/01/us/bowe-bergdahl-american-soldier-is-freed-by-taliban.html>.
- 77 The White House, "Statement by the President on Sergeant Bowe Bergdahl," 31 May 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/05/31/statement-president-sergeant-bowe-bergdahl>
- 78 Source withheld. To this consideration, add the fact that the rule makers, according to sanctions committee watchers, generally, "go out of their way to publicly defend their own violations while also bending over backwards to avoid calling out each other's [inadvertent or otherwise] violations."
- 79 This includes States of transit, who would ordinarily be obliged to obstruct listed individuals' travel. However, it is not clear that such an exemption would necessarily supersede obligations to a State party under the Rome Statute to enforce an arrest warrant based on alleged involvement in gross human rights violations, war crimes, or crimes against humanity. Travel for judicial proceedings is another grounds for exemptions to UN travel bans.
- 80 Interviews, June 2020.
- 81 Source withheld.
- 82 Source withheld.
- 83 UN secondary sanctions have only been used twice in the history of UN sanctions.
- 84 Appeal to the Security Council, which does not make decisions by consensus, is currently possible but infrequently practiced. Many would argue that it is not a sufficiently good use of the Council's time to field appeals to individual travel ban and asset freeze requests.
- 85 Something similar already exists in the 1988 sanctions regime. According to the Committee guidelines, a travel ban exemption can be granted for up to 9 months and for an unlimited number of countries when the exemption request is submitted by the Government of Afghanistan. United Nations Security Council, *1988 Sanctions Committee: Guidelines of the Committee for the Conduct of Its Work*: para 13 ii (b).



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cpr.unu.edu
@UNUCPR

767 Third Avenue, Suite 35B
New York, NY 10017, USA