

Citation: SEATZU, F., VARGIU, P., “Is the UNSC Resolution No. 2664 (2022) on humanitarian exemption a paradigm shift for sanction regimes?”, *Peace & Security – Paix et Sécurité Internationales*, No 11, 2023.

Received: 29 May 2023.

Accepted: 12 September 2023.

IS THE UNSC RESOLUTION NO. 2664 (2022) ON HUMANITARIAN EXEMPTION A PARADIGM SHIFT FOR SANCTION REGIMES?

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I. INTRODUCTION. – II. ASSESSING THE CONTENT AND REACH OF THE SCOPE OF APPLICATION OF RESOLUTION NO. 2664. – III. THE SIGNIFICANCE OF HUMANITARIAN EXEMPTIONS IN THE CONTEXT OF SANCTIONS. – IV. A NEW DAWN IN THE SANCTIONS LANDSCAPE: THE INNOVATIONS OF RESOLUTION NO. 2664. – V. CONCLUDING REMARKS.

ABSTRACT: The United Nations Security Council Resolution No. 2664 is a trailblazing development in the protection of humanitarian interests in the context of sanctions regimes. Adopted after strenuous and tough negotiations, the Resolution introduces a humanitarian carve-out to almost all asset-freezing sanctions, exempting humanitarian operations from the scope of application of UN sanction regimes. This represents a momentous achievement towards prioritizing and safeguarding the needs and interests of humanitarian organizations and actors. Indeed, economic sanctions as instruments to achieve policy objectives raise challenges as they restrict entire economies, thus bringing severe consequences for the populations of the targeted states. Targeted sanctions, however, can be difficult to implement, as the activities of targeted individuals or groups and legitimate humanitarian actors can often overlap from a financial standpoint. The humanitarian carve-out introduced by Resolution No. 2664 aims at addressing these issues; and while the effectiveness of the carve-out will depend largely on its implementation and enforcement, the rationale behind the Resolution should be adopted as the standard for current and future sanctions regimes. This article argues that Resolution No. 2664 has the potential to transform the way sanctions are implemented and enforced, and is therefore a crucial development in the UN’s effort to protect and promote human rights.

KEYWORDS: sanctions, humanitarian protection, NGOs, asset freezes, United Nations.

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¿ES LA RESOLUCIÓN N° 2664 (2022) DEL CONSEJO DE SEGURIDAD DE LA ONU SOBRE EXCEPCIÓN HUMANITARIA UN CAMBIO DE PARADIGMA PARA LOS REGÍMENES DE SANCIONES?

RESUMEN: La Resolución n° 2664 del Consejo de Seguridad de las Naciones Unidas es un avance pionero en la protección de los intereses humanitarios en el contexto de los regímenes de sanciones. Adoptada tras negociaciones arduas y difíciles, la Resolución introduce una excepción humanitaria en casi todas las sanciones de congelación de activos, eximiendo las operaciones humanitarias del ámbito de aplicación de los regímenes de sanciones de la ONU. Esto representa un logro importante con el objetivo de priorizar y proteger las necesidades e intereses de las organizaciones y actores humanitarios. De hecho, las sanciones económicas como instrumentos para alcanzar objetivos políticos presentan desafíos ya que restringen economías enteras, llevando así a graves consecuencias para las poblaciones de los estados objetivo. Sin embargo, las sanciones específicas pueden ser difíciles de implementar, ya que las actividades de los individuos o grupos objetivo y de los actores humanitarios legítimos a menudo pueden solaparse desde un punto de vista financiero. La excepción humanitaria introducida por la Resolución n° 2664 busca abordar estos problemas; y aunque la eficacia de esta excepción dependerá en gran medida de su implementación y aplicación, la lógica detrás de la Resolución debería adoptarse como norma para los regímenes de sanciones actuales y futuros. Este artículo sostiene que la Resolución n° 2664 tiene el potencial de transformar la manera en que las sanciones se implementan y aplican, y es, por lo tanto, un avance crucial en los esfuerzos de la ONU para proteger y promover los derechos humanos.

PALABRAS CLAVE: sanciones, protección humanitaria, ONG, congelación de activos, Naciones Unidas.

LA RÉSOLUTION N° 2664 (2022) DU CONSEIL DE SÉCURITÉ DE L'ONU : UN CHANGEMENT DE PARADIGME POUR LES RÉGIMES DE SANCTIONS?

RÉSUMÉ: La Résolution n° 2664 du Conseil de Sécurité des Nations Unies est une avancée pionnière dans la protection des intérêts humanitaires dans le contexte des régimes de sanctions. Adoptée après des négociations ardues et difficiles, la Résolution introduit une exception humanitaire à presque toutes les sanctions de gel des avoirs, exemptant les opérations humanitaires du champ d'application des régimes de sanctions de l'ONU. Cela représente une réalisation majeure en vue de prioriser et de protéger les besoins et intérêts des organisations et acteurs humanitaires. En effet, les sanctions économiques en tant qu'instruments pour atteindre des objectifs politiques posent des défis car elles restreignent des économies entières, entraînant ainsi des conséquences graves pour les populations des États ciblés. Cependant, les sanctions ciblées peuvent être difficiles à mettre en œuvre, car les activités des individus ou groupes ciblés et des acteurs humanitaires légitimes peuvent souvent se chevaucher d'un point de vue financier. L'exception humanitaire introduite par la Résolution n° 2664 vise à aborder ces problèmes ; et bien que l'efficacité de cette exception dépendra largement de sa mise en œuvre et de son application, la logique derrière la Résolution devrait être adoptée comme la norme pour les régimes de sanctions actuels et futurs. Cet article soutient que la Résolution n° 2664 a le potentiel de transformer la manière dont les sanctions sont mises en œuvre et appliquées, et constitue donc une avancée cruciale dans les efforts de l'ONU pour protéger et promouvoir les droits de l'homme.

MOTS-CLÉS: sanctions, protection humanitaire, ONG, gel des avoirs, Nations Unies.

I. INTRODUCTION

The recently adopted United Nations Security Council Resolution No. 2664 represents a significant milestone in the ongoing global efforts to improve the protection of humanitarian interests in the context of the application of sanctions regimes.³ Adopted after several weeks of intense and challenging negotiations,⁴ the resolution introduces a carve-out for almost all asset freezes, exempting humanitarian action from the reach of the United Nations (hereinafter also referred to as “UN”) sanctions regime. This development, as it will be discussed below, stands as the most recent example of a series of measures aimed at prioritizing and safeguarding the needs and interests of humanitarian organizations and actors. Economic sanctions are often imposed as a tool to coerce foreign governments into changing their policies or behaviour. However, while sanctions can be an effective means to achieve these goals, they can also have severe consequences for the civilian populations of the targeted states. In particular, comprehensive sanctions that seek to restrict the entire economy of a state have been shown to be especially harmful to the welfare of the people who actually live there. Targeted sanctions, on the other hand, seek to restrict the activities of specific individuals or organizations and are generally considered to be a more effective means of achieving policy goals. However, targeted sanctions do not come without their own set of problems: they can be difficult to implement effectively, as there is often a great deal of overlap between the activities of targeted individuals or groups and those of legitimate humanitarian actors. As a result, targeted sanctions can inadvertently end up harming those who are most in need of assistance.⁵

Resolution No. 2664 represents an important step towards addressing these issues. The resolution introduces a humanitarian carve-out to almost

³ United Nations Security Council, Resolution 2664 (2022), adopted by the Security Council at its 9214th meeting on 9 December 2022, S/RES/2664 (2022).

⁴ United Nations, “Adopting Resolution 2664 (2022), Security Council Approves Humanitarian Exemption to Asset Freeze Measures Imposed by United Nations Sanctions Regimes”, available at <https://press.un.org/en/2022/sc15134.doc.htm> (last accessed 27 April 2023).

⁵ A number of these adverse effects of sanctions were addressed at the 8962nd meeting of the Security Council, 7 February 2022, a comprehensive report on which, entitled “Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met”, can be read at <https://press.un.org/en/2022/sc14788.doc.htm>.

all asset freezes, which exempts humanitarian action from the reach of the United Nations sanctions regime. The humanitarian carve-out prioritizes and safeguards the needs and interests of humanitarian organizations and actors, representing a significant development in the ongoing efforts to ensure that sanctions do not harm the people they are intended to help. While the adoption of the Resolution is certainly a positive development, however, it remains to be seen whether it will achieve its objective in the long term: the effectiveness of the humanitarian carve-out will depend largely on its implementation and enforcement. It will also be important to monitor its impact over time to ensure that it is not having unintended consequences for the people it is intended to help. Despite these potential challenges, the resolution should be adopted as the interpretive standard for current and future sanctions regimes. By prioritizing humanitarian interests and improving their protection, Resolution No. 2664 has the potential to transform the way sanctions are implemented and enforced around the world.

This article is structured as follows. Section 2 is aimed at assessing the content and reach of the scope of application of Resolution No. 2664, with a focus on which activities are in fact covered by the Resolution. Section 3 shall address the significance of humanitarian exemptions in the context of sanctions regimes. Section 4 will highlight the main innovations of Resolution No. 2664, underscoring why the Resolution should be treated as the main interpretive standard for current and future sanctions regimes. Finally, Section 5 shall provide some brief concluding remarks.

II. ASSESSING THE CONTENT AND REACH OF THE SCOPE OF APPLICATION OF RESOLUTION NO. 2664

It is widely accepted that the main objective of the UN sanctions regime is the promotion of international peace and security.⁶ Sanctions can assume a variety of forms, spanning economic, financial, diplomatic, and military

⁶ See among others RUYS, T., “Sanctions, retortions and countermeasures: concepts and international legal framework”, in Van Den Herik, L. (ed.), *Research Handbook on UN Sanctions and International Law*, Edward Elgar, Cheltenham, 2017, pp. 19-51; CARISCH, E., RICKARD-MARTIN, L., MEISTER, S., *Creating the Security Council and Its Sanctions System*, Springer, Heidelberg, pp. 17-28; BRZOSKA, M., “International sanctions before and beyond UN sanctions”, *International Affairs*, n° 91, 2015, pp. 1339-1349; CIAMPI, A., *Sanzioni del Consiglio di Sicurezza e diritti umani*, Giuffrè, Milano, 2007, pp. 8-12.

measures, and can be targeted - thus aimed at specific individuals or entities - or comprehensive, depending on the nature of the issue at hand.⁷ Their ultimate goal is to exert pressure on states, individuals, or entities, with the aim of inducing them to adhere to international law, to halt or prevent conflicts, or to address any violations of human rights.⁸

Although sanctions are intended to promote international peace and security, their use as a means of enforcing compliance with international law can be a contentious issue, particularly due to their significant impact on individuals.⁹ Sanctions have indeed been criticized for their negative effects on innocent civilians. Despite the objective of targeted sanctions to isolate specific individuals or entities responsible for violating international law, the actual outcome often extends beyond their intended reach - for instance, significantly affecting economies, leading to widespread unemployment, food shortages, and a decline in the overall standard of living.¹⁰ The repercussions

⁷ CHARRON, A., *UN Sanctions and Conflict: Responding to Peace and Security Threats*, Routledge, Abingdon, 2011, pp. 8-16; CARISCH, E., RICKARD-MARTIN, L., MEISTER, S., *op. cit.*; RODILES, A., “The design of UN sanctions through the interplay with informal arrangements”, in Van Den Herik, L. (ed.), *op. cit.*, pp. 177-193; VAN DEN HERIK, L., “The individualization and formalization of UN sanctions”, in Van Den Herik, L. (ed.), *op. cit.*, pp. 3-5; CIAMPI, A., *Sanzioni del Consiglio di Sicurezza... cit.*, pp. 29-32; BIERSTEKER, T., HUDÁKOVÁ, Z., “UN targeted sanctions: historical development and current challenges”, in Van Bergeijk, P. (ed.), *Research Handbook on Economic Sanctions*, Edward Elgar, Cheltenham, 2021, pp. 107-124.

⁸ DAVIDSSON, E., “Legal boundaries to UN sanctions”, *The International Journal of Human Rights*, n° 7, 2003, pp. 1-50. See also REISMAN, W., “Sanctions and International Law - The Cuban Embargo and Human Rights”, *Intercultural Human Rights Law Review*, n° 4, 2009, pp. 9-20.

⁹ LUGATO, M., “Sanctions and Individual Rights”, in Ronzitti, N. (ed.), *Coercive Diplomacy, Sanctions and International Law*, Brill/Nijhoff, The Hague, 2016, pp. 171-189; LÓPEZ-JACOISTE, E., “Coercive Diplomacy, Sanctions and International Law”, in VON BOGDANDY, A., WOLFRUM, R., *Max Planck Yearbook of United Nations Law*, vol. 14, 2010, pp. 273-335; JAEGER, M., *Coercive Sanctions and International Conflicts: A Sociological Theory*, Routledge, Abingdon, 2018, pp. 15-36.

¹⁰ See among others PEKSEN, D., “When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature”, *Defence and Peace Economics*, n° 30, 2019, pp. 635-647; EARLY, B., *Busted Sanctions: Explaining Why Economic Sanctions Fail*, Stanford University Press, Stanford, 2015, pp. 57-88; DASHIT-GIBSON, J., DAVIS P., RADCLIFF, B., “On the Determinants of the Success of Economic Sanctions: An Empirical Analysis”, *American Journal of Political Science*, n° 41, 1997, pp. 608-618; SMITH, H., “The ethics of United Nations sanctions on North Korea: effectiveness, necessity and proportionality”, *Critical Asian Studies*, n° 52, 2020, pp. 182-203; JOYNER, C., “United Nations Sanctions after Iraq: Looking Back to See Ahead”, *Chicago Journal of International Law*, n° 4, 2003, pp. 329-354; REISMAN, W.,

of such actions can be particularly severe for vulnerable members of society, including children, the elderly, and the disabled, who rely heavily on government support and social services. Moreover, targeted sanctions have the potential to exacerbate already precarious situations, particularly from a humanitarian standpoint.¹¹ In contexts characterized by ongoing conflict, the imposition of sanctions can inflame resentment and exacerbate existing tensions, leading to heightened violence and instability.¹² This in turn can hinder the ability of aid organizations to deliver critical goods and services, thereby compounding the suffering of vulnerable populations struggling to endure.¹³ Furthermore, sanctions can result in the erosion of diplomatic channels, complicating efforts to negotiate peaceful resolutions to conflicts.¹⁴

STEVICK, D., “The Applicability of International Law Standards to United Nations Economic Sanctions Programmes”, *European Journal of International Law*, n° 9, 1998, pp. 86-141; PROVOST, R., “Starvation as a weapon: legal implications of the United Nations food blockade against Iraq and Kuwait”, *Columbia Journal of Transnational Law*, n° 30, 1992, 577-639.

¹¹ BOTHE, M., “Human Rights Law and International Humanitarian Law as Limits of Security Council Action”, in Marauhn, T., De Vries, B. (eds.), *Legal Restraints on the Use of Military Force - Collected Essays by Michael Bothe*, Brill/Nijhoff, The Hague, 2021, pp. 501-526; ROSKAAM, H., “Crime-Based Targeted Sanctions: Promoting Respect for International Humanitarian Law by the Security Council”, *Yearbook of International Humanitarian Law*, n° 19, 2016, pp. 89-117; BRUDERLEIN, C., “The UN Security Council at the crossroads: toward more humane and better targeted sanctions”, in Réseau, V. (ed.), *Perspectives humanitaires entre conflits, droit(s) et action*, Bruyant, Bruxelles, 2022, pp. 233-250.

¹² HULTMAN, L., PEKSEN, D., “Successful or Counterproductive Coercion? The Effect of International Sanctions on Conflict Intensity”, *Journal of Conflict Resolution*, n° 61, 2017, pp. 1315-1339; ALLEN, S., “The Domestic Political Costs of Economic Sanctions”, *Journal of Conflict Resolution*, n° 52, 2008, pp. 916-44.

¹³ See among others ZAPPALÀ, S., “Conflict Related Hunger, ‘Starvation Crimes’ and UN Security Council Resolution 2417 (2018)”, *Journal of International Criminal Justice*, n° 17, 2019, pp. 881-906; AKANDE, D., GILLARD, E., “Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare - The Underlying Rules of International Humanitarian Law”, *Journal of International Criminal Justice*, n° 17, 2019, pp. 753-779; D’ALESSANDRA, F., GILLET, M., “The War Crime of Starvation in Non-International Armed Conflict”, *Journal of International Criminal Justice*, n° 17, 2019, pp. 815-847.

¹⁴ See generally BENTALL, P., “United Nations targeted sanctions and other policy tools: diplomacy, legal, use of force”, in Biersteker, T., Eckert, S., Tourinho, M. (eds.), *Targeted Sanctions - The Impacts and Effectiveness of United Nations Action*, Cambridge University Press, Cambridge, 2016, pp. 79-100; PEKSEN, P., COOPER DRURY, A., “Economic Sanctions and Political Repression: Assessing the Impact of Coercive Diplomacy on Political Freedoms”,

The Security Council Resolution No. 2664 appears to have been inspired by the need to minimise the effect of sanctions upon the civilian population in a targeted territory. According to the Resolution, UN member states are allowed to authorize ‘the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs’ by the United Nations and its bodies as well as a variety of other entities and actors, without such provisions, processing of funds or payments being considered in violation of ‘the asset freezes imposed by this Council or its Sanctions Committees.’¹⁵ The exemption established by point 1 of the Resolution thus applies to a rather wide range of entities, and its scope of application shall extend to all future UN sanctions regimes. It should also be noted that the resolution supersedes all previous types of humanitarian exceptions that had been implemented by the Security Council on a case-by-case basis, including the humanitarian exemption upon request in the regimes of the Yemen¹⁶ and North Korea¹⁷ as well as the humanitarian exemption in the sanctions regimes in Somalia¹⁸ and Haiti.¹⁹

Ultimately, the humanitarian exemption provided by Resolution No. 2664 is intended to address certain specific obstacles related to the provision of

Human Rights Review, n° 10, 2009, pp. 393-411; and from a different standpoint REGAN, P., AYDIN, A., “Diplomacy and Other Forms of Intervention in Civil Wars”, *Journal of Conflict Resolution*, n° 50, 2006, pp. 736-756.

¹⁵ United Nations Security Council, Resolution 2664 (2022), *op. cit.* note 1 at para. 1. On this issue see ONISHI, K., “The relationship between international humanitarian law and asset freeze obligations under United Nations sanctions”, *International Review of the Red Cross*, n° 103, 2021, pp. 363-384.

¹⁶ United Nations Security Council, Resolution 2511 (2020), adopted by the Security Council at its 8732nd meeting on 25 February 2020, S/RES/2511 (2020).

¹⁷ United Nations Security Council, Implementation Assistance Notice No. 7: Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People’s Republic of Korea, 6 August 2018, pursuant to para. 25 of Resolution 2397 (2017), adopted by the Security Council at its 8151st meeting on 22 December 2017, S/RES/2397 (2017).

¹⁸ United Nations Security Council, Resolution 1972 (2011), adopted by the Security Council at its 6496th meeting on 17 March 2011, S/RES/1972 (2011).

¹⁹ United Nations Security Council, Resolution 2653 (2022) adopted by the Security Council at its 9159th meeting on 21 October 2022, S/RES/2653 (2022).

humanitarian aid and assistance in contexts that are subject to the Council's sanctions. These obstacles can include delays in obtaining the necessary licenses or permits to transfer funds or goods, as well as the risk of inadvertent violations of sanctions regulations. Through the provision of an explicit and enduring exemption for humanitarian activities, Resolution No. 2664 facilitates the unfettered and expeditious delivery of humanitarian aid, even in instances where sanctions have been implemented. By proactively addressing these specific exigencies, the resolution can be regarded as a consequential mechanism that promotes the harmonization of humanitarian assistance and aid with the prerequisites of international security. This outcome is principally derived from the Resolution's establishment of a continuous humanitarian exemption, *in lieu* of impermanent or sporadic dispensations. The establishment of a permanent exemption confers greater stability and uniformity in the application of sanctions regimes, thereby ensuring that sanctions are implemented in a manner that mitigates deleterious consequences for civilian populations, while simultaneously accomplishing the objectives of international security and observance of international law.

Notwithstanding its utility, the Resolution is circumscribed by several limitations, foremost among which is its ambit. Specifically, the Resolution exclusively pertains to measures adopted by the Security Council concerning individuals and entities implicated in the freezing of assets and other financial or economic resources.²⁰ Consequently, it does not extend to other forms of sanctions, including travel bans or arms embargoes, notwithstanding the significant impact that these measures may also exert on civilian populations.²¹

²⁰ United Nations Security Council, Resolution 2664 (2022), *op. cit.* note 1 at para. 1.

²¹ It is worth noting, however, that point 7 of the Resolution '[r]equests that the Secretary-General issue a written report on unintended adverse humanitarian consequences of Security Council sanctions measures, including travel ban and arms embargo measures, as well as those measures that are sui generis to particular sanctions regimes, within 9 months of the adoption of this resolution, requests that such report contain recommendations on ways to minimize and mitigate such unintended adverse consequences including via the promulgation of additional standing exemptions to such measures, and expresses its intent to consider further steps as necessary, taking into account the Secretary-General's report and recommendations, to further minimize and mitigate such unintended adverse consequences.' See also HUFBAUER, G., OEGG, B., "Targeted Sanctions: A Policy Alternative", *Law and Policy in International Business*, n° 32, 2000, pp. 11-20; FERJANI, N., HUET, V., "L'impact de la décision onusienne d'embargo sur l'exécution des contrats internationaux", *Journal du droit international*, n° 137, 2010, pp.

Furthermore, an additional constraint of the Resolution is the duration of its applicability to sanctions aimed at Da'esh and Al-Qaeda groups. The Resolution's provisions are valid for a period of merely two years, beginning from its adoption date;²² this temporal limitation, however, may potentially undermine the efficacy of these measures due to the lack of the protective safeguards provided by the Resolution.

III. THE SIGNIFICANCE OF HUMANITARIAN EXEMPTIONS IN THE CONTEXT OF SANCTIONS

Since the conclusion of the Cold War, the Security Council has increasingly relied upon targeted sanctions as a means of advancing international peace and security.²³ Unlike the traditionally comprehensive sanctions, which often had a devastating impact on entire nations, these focused sanctions are designed, as stated beforehand, to specifically target individuals, groups, or entities deemed to pose a threat to international peace and security.²⁴ However, as mentioned

737-760; SHAYGAN, F., *La comptabilité des sanctions économiques du Conseil de sécurité avec les droits de l'homme et le droit international humanitaire*, Bruyant, Bruxelles, 2008, pp. 67-75; VINES, A., "Can UN Arms Embargoes in Africa Be Effective?", *International affairs*, n° 83, 2007, pp. 1107-1121; KNIGHT, A., "Improving the Effectiveness of UN Arms embargoes", in Price, R., Zacher, M. (eds.), *The United Nations and global security*, Springer, Heidelberg, 2004, pp. 39-55.

²² United Nations Security Council, Resolution 2664 (2022), *op. cit.* note 1 at para. 2.

²³ See generally GIUMELLI, F., *Coercing, constraining and signalling: explaining UN and EU sanctions after the Cold War*, ECPR Press, Colchester, 2011; GARFIELD, R., "Economic Sanctions, Humanitarianism, and Conflict After the Cold War", *Social Justice*, n° 29, 2002, pp. 94-107; Cortright, D., Lopez, G. (eds.), *Economic Sanctions: Panacea Or Peacebuilding In A Post-cold War World?*, Routledge, 1995; BIERSTEKER, T., ECKERT, S., TOURINHO, M., HUDÁKOVÁ, Z., "UN targeted sanctions datasets (1991–2013)", *Journal of Peace Research*, n° 55, 2018, pp. 404–412.

²⁴ See recently HUBER, C., *Imposing sanctions on violent non-state actors to restore international peace and security: a systematic analysis of the conditions under which UN targeted sanctions work*, Springer, Heidelberg, 2022; DAM-DE JONG, D., "Who is targeted by the Council's Sanctions? the UN Security Council and the Principle of Proportionality", in Linderfalk, U., Gill-Pedro, E. (eds.), *Revisiting proportionality in international and European law: interests and interest-holders*, Brill/Nijhoff, The Hague, 2021, pp. 130-144; ROSKAM, H., "Crime-Based Targeted Sanctions: Promoting Respect for International Humanitarian Law by the Security Council", *Yearbook of International Humanitarian Law*, n° 19, 2016, pp. 89-117; ECKERT, S., "The evolution and effectiveness of UN targeted sanctions", in VAN DEN HERIK, L. (ed.), *op. cit.* note 4 at pp. 52-70; TZANAKOPOULOS, A., "Sharing Responsibility for UN Targeted Sanctions", in Barros, A., Ryngaert, C., Wouters, J. (eds.), *International organizations and member state responsibility: critical perspectives*, Brill/Nijhoff,

beforehand, even these targeted sanctions have not been immune to criticism; it is in response to these that the Security Council has begun to incorporate what are known as “humanitarian exemptions” in its resolutions adopting sanctions, with the aim of mitigating the impact of sanctions on civilians by facilitating the delivery of essential goods and services, including food, medicine, and humanitarian aid.²⁵

The incorporation of humanitarian exemptions in targeted sanctions is founded upon a variety of provisions in the United Nations Charter - for instance Article 41, which authorizes the Security Council to enact non-military measures, such as economic sanctions, to preserve or reinstate international peace and security, or Article 55, that allows UN institutions to take measures aimed at ‘the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations’;²⁶ and although

The Hague, 2017, pp. 139-158; *Id.*, “Sharing Responsibility for UN Targeted Sanctions”, *International organizations law review*, n° 12, 2015, pp. 427-447; CARISCH, E., RICKARD-MARTIN, L., “Implementation of United Nations targeted sanctions”, in Biersteker, T., Eckert, S., Tourinho, M. (eds.), *op. cit.*, pp. 150-171; GARVEY, J., “Targeted Sanctions: Resolving the International Due Process Dilemma”, *Texas international law journal*, n° 50, 2016, pp. 551-601; KANETAKE, M., “Catching Up with Society - What, How, and Why: The Regulation of the UN Security Council’s Targeted Sanctions”, in Hamamoto, S., Sakai, H., Shibata, A. (eds.), *‘L’ être situé», effectiveness and purposes of international law: essays in honour of Professor Ryuichi Ida*, Brill/Nijhoff, The Hague, 2015, pp. 255-283; LARIK, J., “The Kadi Saga as a Tale of “Strict Observance” of International Law: Obligations Under the UN Charter, Targeted Sanctions and Judicial Review in the European Union”, *Netherlands international law review*, n° 61, 2014, pp. 23-42; CLARK, HERSEY, E., “No Universal Target: Distinguishing Between Terrorism and Human Rights Violations in Targeted Sanctions Regimes”, *Brooklyn journal of international law*, n° 38, 2013, pp. 1231-1267; KANETAKE, M., “The Interfaces Between the National and International Rule of Law: the Case of UN Targeted Sanctions”, *International organizations law review*, n° 9, 2012, pp. 267-338.

²⁵ For a historic perspective on humanitarian exemptions please see GRAF SPONECK, H., “Sanctions and humanitarian exemptions: a practitioner’s commentary”, *European Journal of International Law*, n° 13, 2002, pp. 81-87. See also MÜNICHSDORFER, A., TERREY, S., “Humanitarian exemptions: illusive progress in safeguarding humanitarian assistance in the international counterterrorism architecture?”, *EUI AEL*, 2022/15, European Society of International Law (ESIL) Papers, at <https://cadmus.eui.eu/handle/1814/75025>; SPIEKER, H., “Humanitarian Assistance, Access in Armed Conflict and Occupation”, in Wolfrum, R., Peters, A. (eds.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Oxford, 2008, para. 33.

²⁶ GOWLLAND-DEBBAS, V., “Sanctions Regimes under Article 41 of the UN Charter”, in Gowlland-Debbas, V. (ed.), *National implementation of United Nations sanctions: a comparative study*,

these measures are not designed to be punitive, they may substantially affect the economic and social well-being of the targeted region or country.²⁷

A defining characteristic of targeted sanctions is their adaptability. In contrast to comprehensive sanctions, which tend to be rigid and all-encompassing, targeted sanctions can be customized to suit particular circumstances, and can be altered or lifted upon achieving the desired outcome.²⁸ Such flexibility is essential in ensuring that the sanctions are effective in fulfilling their intended purpose while mitigating their impact on civilians.

In order to further minimize the impact of sanctions on civilians, the Security Council has implemented the practice of including so-called “sunset clauses” in its resolutions adopting sanctions.²⁹ These clauses provide for a specific expiration date - usually around 12 months - unless they are expressly renewed by the Security Council.³⁰ This mechanism allows for a regular review of the effect of sanctions, the possibility to monitor their effectiveness as well as, most importantly, whether they are still necessary. By means of the inclusion of a deadline on the effects of sanctions, the Security Council can apply pressure on targeted individuals, groups or entities to either complying with the relevant international law obligations - which is, ultimately, the objective of sanctions - or at least participate in negotiations to find a peaceful

Brill/Nijhoff, The Hague, 2004, pp. 3-31; LAvALLE, R., “The “Acting Under Chapter VII” Clause in Security Council Resolutions Under Article 41 of the United Nations Charter: a Misconceived and Harmful Way of Invoking Authority”, *Italian Yearbook of International Law*, n° 19, 2009, pp. 233-252 (2009).

²⁷ See among others SWINDELLS, F., “U.N. Sanctions in Haiti: A Contradiction under Articles 41 and 55 of the U.N. Charter”, *Fordham International Law Journal*, n° 20, 1997, pp. 1878-1960; DE WET, E., “Human Rights Limitations to Economic Enforcement Measures Under Article 41 of the United Nations Charter and the Iraqi Sanctions Regime”, *Leiden Journal of International Law*, n° 14, 2001, pp. 277-300.

²⁸ See for instance CAMERON, I., “UN Targeted Sanctions, Legal Safeguards and the European Convention on Human Rights”, *Nordic Journal of International Law*, n° 72, 2003, pp. 159-214; DREZNER, D., “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice”, *International Studies Review*, n° 13, 2011, pp. 96-108.

²⁹ A rather good overview of sunset clauses can be found in GISNBORG, L., “The United Nations Security Council’s counter-terrorism Al-Qaida sanctions regime: Resolution 1267 and the 1267 Committee”, in Saul, B. (ed.), *Research Handbook on International Law and Terrorism*, Edward Elgar, Cheltenham, 2014, pp. 608–625.

³⁰ BOON, K., *Terminating Security Council Sanctions*, International Peace Institute, New York, 2014, pp. 5-7.

resolution of the issues that lead to the adoption of sanctions. Sunset clauses, however, may cause problems with regard to the certainty and stability of sanctions regimes that include humanitarian exemptions. While the prescribed expiration date may create a sense of urgency on the targeted subjects to comply with the demands of the Security Council, the inclusion of sunset clauses can potentially create challenges for humanitarian organizations to plan and deliver aid, especially if they rely on long-term funding and support.

One of the most interesting development in this area is the use of sanctions against non-state actors, such as terrorist groups like Al-Qaeda. These are quite unique cases, as the sanctions adopted are not linked to any specific territory, state or region. The Security Council has imposed sanctions against Al-Qaeda since 1999, following the group's involvement in the bombings of the US Embassies in Kenya and Tanzania.³¹ These sanctions create a general obligation on UN member states to prevent financial and other forms of support to Al-Qaeda, regardless of whether or not a specific event has occurred. The obligations created by these sanctions are not limited by time nor do they include sunset clauses, and apply all UN member states, regardless of whether or not they have been directly affected by Al-Qaeda's actions. The UN Security Council has compiled lists of individuals and entities allegedly associated with Al-Qaeda and has called on states to implement measures to freeze their assets, prevent their travel, and prohibit arms sales.³² The imposition of sanctions against Al-Qaeda prompts an inquiry into whether the Security Council has assumed a *de facto* legislative function, as the adoption of resolutions imposing sanctions against non-state actors effectively blurs the line between enforcement and law-making.³³ Indeed, lacking any more specific provision under international law, one may argue that the enforcement of sanctions

³¹ United Nations Security Council, Resolution 1267 (1999), adopted by the Security Council at its 4051st meeting on 15 October 1999, S/RES/1267 (1999); Resolution 1989 (2011), adopted by the Security Council at its 6557th meeting on 17 June 2011, S/RES/1989 (2011); Resolution 2253 (2015), adopted by the Security Council at its 7587th meeting on 17 December 2015, S/RES/2253 (2015).

³² United Nations, Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, available at <https://www.un.org/securitycouncil/sanctions/1267>.

³³ FOCARELLI, C., *Trattato di Diritto Internazionale*, UTET, Padova, 2015, paras. 84.3, 115.11; CASSESE, A., *Diritto Internazionale*, Il Mulino, Bologna, 2007, p. 226.

against non-state actors by means of the establishment of an obligation upon states to actively prevent support for groups such as Al-Qaeda, the Security Council is not merely performing its interpretive powers but rather engaging in a law-making function. However, it could also be conversely argued - and it is our position - that the adoption of sanctions against non-state actors does not entail that the Security Council is engaging in legislative activity, but it is rather interpreting and implementing existing international law, clarifying the scope of application of existing obligations such as the duty to prevent terrorism under international law.³⁴

IV. A NEW DAWN IN THE SANCTIONS LANDSCAPE: THE INNOVATIONS OF RESOLUTION NO. 2664

Given the context, it is apparent that the enactment of Resolution No. 2664 of 2022 by the Security Council represents a momentous development, as it provides an exemption for humanitarian assistance and its related operations from the application of targeted multilateral sanctions regimes. The carve-out for humanitarian aid should lead to a substantial diminution of the legal, administrative, and operational obstructions that sanctions regimes tend to generate, thereby allowing humanitarian actors to address, more expeditiously and in a more ethical fashion, the needs of vulnerable populations. This is an imperative development, particularly considering that UN sanctions regimes are designed to buttress the political resolution of conflicts.³⁵ The scholarship has underscored the manner in which sanctions regimes - and in particular their inconsistent application or equivocal scope - have at times obstructed humanitarian aid.³⁶ For actors in the humanitarian sphere - be they UN agencies, international humanitarian organizations, NGOs, and

³⁴ BUTCHARD, P., *The responsibility to protect and the failures of the United Nations Security Council*, Routledge, Abingdon, 2022, esp. Part III; AMBOS, K., TIMMERMANN, A., "Terrorism and customary international law", in Saul, B. (ed.), *op. cit.*, pp. 16-30.

³⁵ CIAMPI, A., "Security Council Targeted Sanctions and Human Rights", in Fassbender, B. (ed.), *Securing Human Rights? Achievements and Challenges of the UN Security Council*, Oxford University Press, Oxford, 2011, p. 99.

³⁶ UNITED NATIONS, "Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met", Meeting Coverage, 8962nd Meeting (AM), SC/14788, 7 February 2022, available at <https://press.un.org/en/2022/sc14788.doc.htm>.

their local partners who execute aid programs - the ramifications of sanctions can be manifold. Such ramifications can encompass the discontinuation of life-sustaining programs, the proscription of humanitarian aid and attendant legal ramifications, disruptions to supply chains and procurement processes, impediments to financial access, and peril to the safety of personnel, among other impacts.³⁷

Even though humanitarian actors tend not to take positions on the application of sanctions by virtue of the principles of neutrality and independence, it has been pointed out that financial sanctions can be particularly troublesome for their operations. Bank account closures or freezes and the inability to make payments, transfers or withdrawals of funds may result in the incapacity to pay salaries to staff - many of which work in the front line of crises - and consideration to suppliers. In the worst case scenarios, the end result of sanctions may be a forced stop to the humanitarian activities, preventing vulnerable population from receiving much needed assistance.³⁸

Humanitarian carve-outs are therefore necessary to mitigate the effects of sanctions regimes on vital activities in conflict zones. As stated beforehand, the United Nations had already adopted resolutions in the past that implemented a retroactive humanitarian carve-out in sanctions regimes such as those in Somalia,³⁹ Mali,⁴⁰ Central African Republic,⁴¹ the Democratic Republic of

³⁷ See among others ROBERTS, A., "The United Nations and international security", *Survival - Global Politics and Strategy*, n° 35, 1993, pp. 3-30; VON SPONECK, H., *A Different Kind of War - The UN Sanctions Regime in Iraq*, Berghan Books, Oxford, 2006, p. 263.

³⁸ BRUBAKER, R., HUVÉ, S., "Conflict-related UN sanctions regimes and humanitarian action: A policy research overview", *International review of the Red Cross*, n° 103, 2022, pp. 385-402; CRAVEN, M., "Humanitarianism and the Quest for Smarter Sanctions", *European Journal of International Law*, n°13, 2002, pp. 43-61; BARRAT, C., *Status of NGOs in International Humanitarian Law*, Brill/Nijhoff, The Hague, 2014, pp. 143; ZAROCOSTAS, J., "UN sanctions hamper humanitarian work", *The Lancet*, n°339, 2022, p. 706.

³⁹ See S/RES/1972 (2011), *op. cit.* n. 15.

⁴⁰ United Nations Security Council, Resolution 2374 (2017), adopted by the Security Council at its 8040th meeting on 5 September 2017, S/RES/2374 (2017).

⁴¹ United Nations Security Council, Resolution 2588 (2021), adopted by the Security Council at its 8828th meeting on 29 July 2021, S/RES/2588 (2021).

Congo⁴² and Afghanistan.⁴³ Furthermore, Resolution 2462 (2019) includes provisions for humanitarian exemptions, and it also encourages UN Member States to make the most of INTERPOL's policing capabilities, such as using relevant databases and analytical files, to prevent and counteract the financing of terrorism.⁴⁴ Resolution No. 2664, however, has the potential to be the most impactful safeguard for humanitarian action, as it shall cover a wide range of stakeholders, including the employees, grantees, subsidiaries, or implementing partners of operational humanitarian organizations; moreover, the carve-out applies to all humanitarian activities normally carried out in crisis areas, rather than being limited to specific activities or categories of activity. Indeed, even though individual licensing practices of states and carve-outs for particular regimes were certainly useful instruments, there was nonetheless a need for a standardized solution capable of being consistently applied across multilateral sanctions regimes to mitigate unintended consequences to humanitarian assistance. Both humanitarian aid and other operations that serve fundamental human needs are included in the wording used in Resolution No. 2664, which is quite similar to the language used in the carve-out for actions in Afghanistan.⁴⁵

Ultimately, it can be affirmed that the adoption of Resolution No. 2664 represents a remarkable achievement for the humanitarian sector, as it is capable of allowing humanitarian actors to respond to the needs of vulnerable people in crisis areas effectively, timely and in a more principled fashion. The carve-out introduced by the Resolution will likely reduce the various legal, administrative and practical hurdles often brought by sanctions regimes. It remains to be seen whether UN member states will take action as needed to allow for the success of the Resolution.⁴⁶

⁴² United Nations Security Council, Resolution 2293 (2016), adopted by the Security Council at its 7724th meeting on 23 June 2016, S/RES/2293 (2016).

⁴³ United Nations Security Council, Resolution 1988 (2011), adopted by the Security Council at its 6557th meeting on 17 June 2011, S/RES/1988 (2011). The humanitarian carve-out was implemented by Resolution 2615 (2021), adopted by the Security Council at its 8941st meeting on 22 December 2021, S/RES/2615 (2021).

⁴⁴ United Nations Security Council, Resolution 2462 (2019), adopted by the Security Council at its 8496th meeting on 28 March 2019, S/RES/2462 (2019).

⁴⁵ S/RES/2615 (2021), *op. cit.* n. 40.

⁴⁶ The US has already announced that it will incorporate humanitarian authorizations across its domestic sanctions programs. US Department of The Treasury, "Treasury Implements

V. CONCLUDING REMARKS

The importance of Resolution No. 2664 can hardly be underplayed. The Resolution required several weeks of difficult and intense negotiations within the UN Security Council, but ultimately passed with a surprisingly broad and overwhelming majority of 14 votes in favour, none against and one mere abstention. The definition of the humanitarian carve-out marked the culmination of a process of increasing attention on humanitarian interests and improving their protection, which had begun back in 2010 with the introduction of a general exception to the UN sanctions regime on Somalia; such exception was aimed at protecting the operation of those who received bilateral or multilateral funding and participated in the UN humanitarian aid plan.⁴⁷ The process, as mentioned beforehand, also led to the implementation of a humanitarian exemption from the sanctions regime against the Taliban in Afghanistan in 2021 and the exemptions from the sanctions regime on Haiti in 2022.⁴⁸

Many an observer welcomed Resolution No. 2664 as a fundamental and necessary step in obtaining adequate international protection of humanitarian interests in the application of the UN sanctions regimes. Its significance is highlighted by the fact that, for almost two decades, humanitarian action and the international fight against terrorism and its financing have been presented and conceived as mutually exclusive objectives - and this notwithstanding the fact that international counter-terrorism laws play a valuable role in integrating international humanitarian law and international human rights law in the repression of unwanted violence, thus avoiding the political difficulties that can arise in trying and amending instruments of international human rights law.⁴⁹

Historic Humanitarian Sanctions Exceptions”, Press Release of 20 December 2022, at <https://home.treasury.gov/news/press-releases/jy1175>.

⁴⁷ S/RES/1972 (2011), *op. cit.* n. 15.

⁴⁸ S/RES/1988 (2011), *op. cit.* n. 40, and S/RES/2653 (2022), *op. cit.* n. 16.

⁴⁹ SAUL, B., “Terrorism, Counter-terrorism, and International Humanitarian Law”, in SAUL, B., AKANDE, D. (eds.), *The Oxford Guide to International Humanitarian Law*, Oxford University Press, Oxford, p. 403. See also GILLARD, E., “IHL and the Humanitarian Impact of Counterterrorism Measures and Sanctions: Unintended Effects of Well-Intended Measures”, 3 September 2021, at <https://www.chathamhouse.org/2021/09/ihl-and-humanitarian-impact-counterterrorism->

The concise evaluation of Resolution No. 2664 expounded in this article necessitates some final reflections on certain salient aspects that warrant highlighting and scrutiny. First, the exemption of humanitarian action from the application of UN sanctions regimes, as stated beforehand, exhibits an almost transformative quality, which could potentially lead to a significant shift in the current paradigm. Economic and financial sanctions have the potential to give rise to certain challenges from normative, legal, and operational standpoints for humanitarian actors as well as their counterparts in the financial sector. This point has been particularly raised by some of the most prominent humanitarian NGOs, which for two decades have often insisted on the ripple effects of asset freeze measures on humanitarian activities due to excessively strict compliance by donors, and the consequent “freezing effect” on the humanitarian organizations themselves. Moreover, it is worth underscoring that there is little doubt as to the legally binding nature of the Resolution upon all the UN member states: even though this is not expressly stated, the legally binding nature of Resolution 2664 is evident from its adoption under Chapter VII of the United Nations Charter and the imperative language employed in several of its paragraphs, thereby providing compelling evidence of its force and effect; and it is certainly advisable that the Resolution be henceforth treated as the main interpretive parameter for other humanitarian exemptions from the Security Council sanction regimes.

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