



Program on International
Law and Armed Conflict

HARVARD LAW SCHOOL

Resolution 2664 (2022) and Counterterrorism Measures: An Analytical Frame for States

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March 2024

EXECUTIVE SUMMARY

The United Nations Security Council passed Resolution 2664 (2022) on December 9, 2022, aiming to provide clarity to ensure the continuation of humanitarian activities in the face of restrictive measures, particularly asset freezes, imposed by the Council or its sanctions committees. Prompted by concerns about the adverse impacts of those measures on humanitarian action, including impairment of access as well as operational, funding, and legal challenges, the Security Council established a binding humanitarian carve-out. Meant to help safeguard the delivery of humanitarian aid to affected populations regardless of their association with, or potential benefits to, sanctioned entities, UNSCR 2664 (2022) reflects a significant policy shift with extensive legal implications.

A year after adoption, several important issues regarding the implementation of UNSCR 2664 (2022) have been settled. Those include its indisputable application to several specific sanctions regimes.

Yet significant uncertainties remain. Not least, if the Security Council does not extend the carve-out's application with respect to the ISIL-and-Al-Qaida sanctions regime by December 9, 2024, the normative and operational framework will fracture, potentially undermining part of the resolution's humanitarian intent. That may result in legal, financial, and operational confusion for the dozens of States that have already implemented the carve-out as well as in adverse consequences for the populations and providers who rely on the carve-out.

Furthermore, the uncertainty extends to the broader application of the resolution to counterterrorism measures beyond specific sanctions, raising questions about a coherent multilateral approach to humanitarian aid in conflict situations that are also considered counterterrorism contexts. That is because, in addition to asset freezes, several other Security Council-mandated measures meant to prevent and punish terrorism adversely impact humanitarian efforts. These include obligations to prevent and suppress the financing of terrorism and to criminalize support to terrorism.

States face urgent political and legal challenges to harmonize humanitarian commitments with security policies. UNSCR 2664 (2022) acts both as a directive for States to ensure the continuation of humanitarian aid with respect to Council-imposed asset freezes and as an invitation to consider integrating the carve-out's policy shift into the Council's broader counterterrorism measures.

This report provides an analytical frame through which States may consider that invitation. The analysis includes an overview of relevant UNSC measures, potential legal issues, and practical implications. It also outlines, in an annex, the actions taken by States and UN-system actors concerning the implementation of UNSCR 2664 (2022). By not prescribing a definitive approach, the report leaves scope for States to set their own paths while navigating the complex interplay of international law, security considerations, and humanitarian needs.

CREDITS

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Acknowledgments

The authors thank Pablo A. Arrocha Olabuenaga, Prof. Fionnuala Ní Aoláin, and Megan Manion for valuable comments. HLS PILAC expresses its gratitude for the generous financial support for independent research provided by the Swiss Federal Department of Foreign Affairs.

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GLOSSARY

The following definitions are used for the purposes of this report.

An appropriate other: As a constituent element of the humanitarian carve-out set out in operative paragraph 1 of UNSCR 2664 (2022), the term denotes one or more “appropriate others as added by any individual Committees established by th[e Security] Council within and with respect to their respective mandates”.

A specified actor: As a constituent element of the humanitarian carve-out set out in operative paragraph 1 of UNSCR 2664 (2022), the term denotes one or more of the following: “the United Nations, including its Programmes, Funds and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations, international organizations, humanitarian organizations having observer status with the United Nations General Assembly and members of those humanitarian organizations, or bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian ‘clusters,’ or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities”.

Certain forms of facilitative conduct: As a constituent element of the humanitarian carve-out set out in operative paragraph 1 of UNSCR 2664 (2022), the term denotes “the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services”.

Indicated forms of humanitarian-related fulfillment activities: As a constituent element of the humanitarian carve-out set out in operative paragraph 1 of UNSCR 2664 (2022), the term denotes “the timely delivery of humanitarian assistance” or “other activities that support basic human needs”.

UNSCR 2664 (2022): UN Security Council Resolution 2664 (2022), adopted on December 9, 2022.

UNSC-imposed measures to counter terrorism: Obligations that are laid down by the UN Security Council, that are meant at least in part to prevent, suppress, or punish terrorism, and that UN Member States are required under the UN Charter to carry out. These measures include obligations set out in certain sanctions measures, certain prohibitions concerning the financing of terrorism, and certain prohibitions concerning the provision of (other) forms of support to terrorism.

CONTENTS

EXECUTIVE SUMMARY	i
CREDITS	ii
GLOSSARY.....	iii
1. INTRODUCTION.....	1
1.1. THE ADOPTION OF A HUMANITARIAN CARVE-OUT	1
1.2. BACKDROP.....	3
1.3. SETTLED AND UNSETTLED ISSUES.....	4
1.4. A DEMAND AND AN INVITATION.....	7
1.5. OBJECTIVE AND STRUCTURE.....	9
1.6. SOURCES AND METHODS	10
1.7. CAVEATS.....	10
2. UNSCR 2664 (2022).....	11
2.1. SUMMARY	11
2.2. IMPETUS.....	11
2.3. KEY ELEMENTS	12
3. THREE SETS OF UNSC-IMPOSED MEASURES, MEANT AT LEAST IN PART TO COUNTER TERRORISM, THAT ADVERSELY AFFECT HUMANITARIAN ACTION.....	16
3.1. OBLIGATIONS CONCERNING SANCTIONS MEASURES AGAINST INDIVIDUALS, GROUPS, UNDERTAKINGS, OR ENTITIES DESIGNATED BY THE UNSC OR A UNSC SANCTIONS COMMITTEE IN RELATION TO TERRORIST ACTS OR ACTIVITIES	17
3.1.1. Summary	17
3.1.2. Criteria Concerning Eligibility for Designation for Counterterrorism-Related Sanctions Measures	18
3.1.3. Types of Such Counterterrorism-Related Sanctions Measures.....	25
3.1.4. Carve-outs Applicable With Respect to UNSC-Imposed Counterterrorism-Related Asset-Freeze Sanctions Measures.....	30
3.2. ADDITIONAL PROHIBITIONS OR RESTRICTIONS ON ACCESS TO, OR PROVISION OR COLLECTION OF, FUNDS AND OTHER ECONOMIC RESOURCES AS MAY PERTAIN TO TERRORIST ACTS AND RELATED CONDUCT	33
3.2.1. Summary	33
3.2.2. Detailed Analysis.....	34
3.3. PROHIBITIONS AND RESTRICTIONS ON THE PROVISION OF OTHER SUPPORT AS MAY PERTAIN TO TERRORIST ACTS AND RELATED CONDUCT.....	40
3.3.1. Summary	40
3.3.2. Detailed Analysis.....	40

4. CONSIDERATIONS REGARDING WHETHER THE UNSCR 2664 (2022) CARVE-OUT APPLIES WITH RESPECT TO UNSCR-IMPOSED COUNTERTERRORISM-RELATED MEASURES.....	44
4.1. CLEAR APPLICABILITY	44
4.1.1. Summary	44
4.1.2. Detailed Analysis.....	45
4.2. UNSETTLED APPLICABILITY.....	47
4.2.1. Summary	47
4.2.2. Detailed Analysis.....	47
4.2.3. Considerations Regarding a Potential “Conflict” With UNSCR 2664 (2022).....	51
4.2.4. Additional Considerations.....	58
5. THE TENSION IN PRACTICE	59
5.1. INTRODUCTION	59
5.2. HYPOTHETICAL SITUATION	59
6. CONCLUSION	62
ANNEX: ACTION RELATED TO IMPLEMENTATION OF UNSCR 2664 (2022).....	64
1. UN-SYSTEM ACTORS	64
1.1. UNSC SANCTIONS COMMITTEES	64
1.1.1. Libya Sanctions Committee	64
1.1.2. UNSCR 1718 (2006) (DPRK) Sanctions Committee	66
1.2. UN SECRETARY-GENERAL	67
1.3. UN EMERGENCY RELIEF COORDINATOR	68
2. STATES	69
2.1. GROUPS OF STATES.....	69
2.1.1. European Union	69
2.2. INDIVIDUAL STATES	70
2.2.1. Canada	70
2.2.2. Switzerland.....	71
2.2.3. United Kingdom.....	73
2.2.4. United States.....	73

1. INTRODUCTION

1.1. The Adoption of a Humanitarian Carve-out

In passing UNSCR 2664 (2022) on December 9, 2022, the United Nations Security Council laid down a mandatory humanitarian carve-out. Heeding over a decade of advocacy efforts to safeguard humanitarian action in complex security contexts, the UNSC expressly intended to “provide clarity to ensure the continuation of humanitarian activities in the future”.¹ Numerous members of the UNSC, other States, humanitarian organizations, and commentators welcomed the resolution as a landmark development that would save lives.²

The core of the resolution reflected a politically negotiated policy shift with extensive legal implications. In short, the UNSC decided that humanitarian aid and protection should reach affected populations in areas under the de facto or de jure control or authority of actors designated for UNSC-imposed asset freezes, including in relevant counterterrorism contexts, irrespective of whether

¹ UNSCR 2664 (2022), preamble.

² See e.g. U.N. SCOR, 77th Sess., 9214th mtg. at 2, U.N. Doc. S/PV.9214 (Dec. 9, 2022). The representative for Ireland, a co-penholder alongside the United States, stated that the strong support for the resolution reflected “that the commitment to protecting the humanitarian space is a global concern.” Ibid., at 3. Albania’s representative called attention to the resolution as an example of the “Security Council [...] be[ing] responsive to the concerns and issues raised by State and non-State representatives.” The resolution’s (potentially) lifesaving power was also emphasized by the representative for the United Arab Emirates; the representative for Brazil similarly stated that the “carve-out” would permit humanitarian providers to perform necessary activities in “more predictable conditions.” Ibid., at 4, 7; ICRC, *ICRC President: “The humanitarian carveouts have allowed people to benefit from life-saving assistance,”* (May 24, 2023), <https://www.icrc.org/en/document/humanitarian-carveouts-un-sanctions-implementation-uns-c-resolution2664>; Sarah Fuhrman & Kathryn Strifflino, *U.N. Security Council Passes Resolution Safeguarding Humanitarian Action Across All U.N. Sanctions Regimes*, INTERACTION (Dec. 9, 2022), <https://www.interaction.org/blog/u-n-security-council-passes-resolution-safeguarding-humanitarian-action-across-all-u-n-sanctions-regimes/>; Naureen Chowdhury Fink & Agathe Sarfati, *Milestone in the Security Council: What the New Humanitarian “Carve-out” Means for UN Sanctions Regimes*, IPI GLOBAL OBSERVATORY (Dec. 16, 2022), <https://theglobalobservatory.org/2022/12/new-humanitarian-carve-out-un-sanctions-regimes/>. But see Rob Merrick, *One Year on: Is the UN ‘Humanitarian Exception’ from Sanctions Working?*, DEVEX (Dec. 18, 2023), <https://www.devex.com/news/sponsored/one-year-on-is-the-un-humanitarian-exception-from-sanctions-working-106796> (warning that “humanitarian exemptions are no substitute for a blanket, aligned approach”).

those designees may benefit in the process.³ Various bodies of international law, especially international humanitarian law (IHL)⁴ and international human rights law (IHRL),⁵ already entailed protections for humanitarian action. For its

³ UNSCR 2664 (2022), OP 1.

⁴ With respect to a situation of armed conflict, IHL lays down protections related to (among other things) ensuring — for people who are not, or are no longer, actively participating in hostilities and whose needs are unmet — certain essential supplies (such as food, water, means of shelter, and bedding) and objects necessary for religious worship; the passage, protection, facilitation of distribution, and receipt of certain humanitarian consignments; and the provision of medical care for the wounded and sick. On certain supplies and objects necessary for religious worship, see e.g. Geneva Convention relative to the Protection of Civilian Persons in Time of War art. 23 (¶ 1), Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter GC IV]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts art. 69 (1), Dec. 12, 1977, 1125 U.N.T.S. 3 [hereinafter AP I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts art. 18(2), Dec. 12, 1977, 1125 U.N.T.S. 609. See also ICRC, COMMENTARY ON THE THIRD GENEVA CONVENTION: CONVENTION (III) RELATIVE TO THE TREATMENT OF PRISONERS OF WAR ¶ 859 (2020) (“Assistance activities’ refers to all activities, services and the delivery of goods carried out primarily in the fields of health, water, habitat (the creation of a sustainable living environment) and economic security (defined by the ICRC as ‘the condition of an individual, household or community that is able to cover its essential needs and unavoidable expenditures in a sustainable manner, according to its cultural standards’), which seek to ensure that persons caught up in an armed conflict can survive and live in dignity.”). Regarding humanitarian consignments, see e.g. GC IV, art. 23, 59 (¶ 3); Geneva Convention Relative to the Treatment of Prisoners of War art. 72, Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter GC III]; AP I, art. 70(1)–(4), 81 (1). On medical care, see e.g. art. 3 common to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; GCs III–IV; ICRC, *supra* note 4, at ¶ 786.

⁵ Under an approach grounded in IHRL, humanitarian-action-related protections may encompass (among other things) activities necessary and incidental to ensuring, for persons in need, “a standard of living adequate for the health and well-being of [one]self and of [one’s] family,” including those aimed at securing the provision of food, water, hygiene supplies, clothing, shelter, medical care, sanitation, and maternity healthcare. See e.g. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 25 (1) (Dec. 10, 1948); International Covenant on Economic, Social and Cultural Rights art. 11 (1), Dec. 16, 1966, 993 U.N.T.S. 3. See also *ibid.*, art. 12 (2) (d); U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶ 1, E/C.12/2000/4 (Aug. 11, 2000). See also Fionnuala Ní Aoláin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), Rep. to the G.A. on the interface between human rights and international humanitarian law in counter-terrorism contexts, at 12–13, U.N. Doc. A/75/337 (Sept. 3, 2020); Fionnuala Ní Aoláin (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), Rep. to the Human Rights Council on the impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders, at 7, U.N. Doc. A/HRC/40/52 (Mar. 1, 2019).

part, the carve-out — which does not displace or diminish those preexisting legal protections — applies whether or not a specific rule or principle of IHL or IHRL is also applicable in connection with a particular situation adversely affected by UNSC-imposed sanctions.

1.2. Backdrop

The resolution's negotiations took place against the backdrop of over a decade of a rising chorus of voices — in governments, the UN system, humanitarian bodies, academia, and civil society — articulating concerns about the adverse impacts of various restrictive measures on humanitarian action.⁶ Those effects have included impairment of access to persons in need and impediments to delivering assistance to them, as well as operational, financial, security, legal, and reputational risks for individuals and entities engaged in the carrying out of those activities.⁷

⁶ See e.g. Lindsay Hamsik & Lissette Almanza, *Detrimental Impacts: How Counter-Terror Measures Impede Humanitarian Action*, INTERACTION (Apr. 2021), <https://www.interaction.org/wp-content/uploads/2021/04/Detrimental-Impacts-CT-Measures-Humanitarian-Action-InterAction-April-2021.pdf>; Jessica S. Burniske & Naz K. Modirzadeh, *Pilot Empirical Survey Study on the Impact of Counterterrorism Measures on Humanitarian Action*, HARV. L. SCH. PROGRAM ON INT'L L. & ARMED CONFLICT (Mar. 2017), <https://perma.cc/7DL7-L6AV>; Kate Mackintosh & Patrick Duplat, *Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action*, OCHA & NRC (Jul. 2013); ICRC, *Counter-Terrorism Measures Can Impact Humanitarian Action Negatively* (Oct. 6, 2022), <https://www.icrc.org/en/document/counter-terrorism-measures-can-impact-humanitarian-action-negatively>; Dustin A. Lewis, "Criminalization" of Humanitarian Action Under Counterterrorism Frameworks: Key Elements and Concerns, 112 PROC. ASIL ANN. MTG. 268 (2018); ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* 52 (2011), <https://www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf>; Naz K. Modirzadeh, Dustin A. Lewis & Claude Bruderlein, *Humanitarian Engagement under Counter-Terrorism: A Conflict of Norms and the Emerging Policy Landscape*, 93 INT'L REV. RED CROSS 623 (2011); Rep. of the High-level Review of United Nations Sanctions, at 47–8, U.N. Doc. A/69/941–S/2015/432 (Jun. 12, 2015).

⁷ See e.g. Hamsik & Almanza, *supra* note 6, at 3; Burniske & Modirzadeh, *supra* note 6, at 7; Sara Pantuliano, Kate Mackintosh, Samir Elhawary, & Victoria Metcalfe, *Counter-Terrorism and Humanitarian Action: Tensions, Impact and Ways Forward*, HUM. POL'Y GROUP (2011); Agathe Sarfati, *An Unfinished Agenda: Carving Out Space for Humanitarian Action in the UN Security Council's Counterterrorism Resolutions and Related Sanctions*, INT'L PEACE INST. 4–5 (Mar. 2022), <https://www.ipinst.org/wp-content/uploads/2022/03/Humanitarian-Action-in-UN-Sanctions-Regimes-PDF.pdf> (stating that asset freezes under the ISIL (Da'esh) and Al-Qaida sanctions regime "directly impact[] humanitarian activities, as [they] can deter financial [Footnote continued on next page]

Seen in their wider context, the restrictive measures of concern have included sanctions measures, such as asset freezes, imposed by the UNSC, regional organizations, and individual States.⁸ The relevant restrictions have also encompassed measures that many of those same entities have enacted to prevent, suppress, and punish terrorism.

The theoretical and practical relations between these kinds of measures are complex. Some, but not all, of the sanctions measures were meant, at least in part, to support efforts to counter terrorism. Similarly, some, but not all, of the measures adopted to counter terrorism were established in the form of asset freezes or travel bans targeted at individuals or entities designated in connection with purported terrorist threats. Yet due in part to overlaps between these kinds of restrictive measures as well as between their sources, it was not always possible to distinguish clearly whether a particular adverse humanitarian impact could be traced to a specific restrictive measure or some combination of such measures.

Despite the challenges in ascertaining causation, however, the overall result was clear. These restrictive measures had been documented as contributing, individually or in combination, to diminished or complete lack of access by providers to people in need or to adverse impacts upon the scope, amount, and quality of humanitarian, medical, and other related goods and services.⁹

1.3. Settled and Unsettled Issues

A little over a year after adoption, several issues regarding UNSCR 2664 (2022) are settled. Not least, it is incontrovertible that the carve-out applies to certain UNSC-imposed asset-freeze sanctions regimes, including those targeting ISIL,

intermediaries and donors from making funds available to humanitarian actors in territories controlled by listed entities or can lead humanitarian organizations themselves to restrict their operations for fear of violating sanctions”); NRC, *Principles under Pressure: The Impact of Counterterrorism Measures and Preventing/Countering Violent Extremism on Principled Humanitarian Action* (2018), <https://www.nrc.no/resources/reports/principles-under-pressure/>.

⁸ For example, asset freezes applied under certain sanctions regimes have impeded the ability of humanitarian providers to pursue practical measures to secure access to populations in need. Emanuela-Chiara Gillard, *Recommendations for Reducing Tensions in the Interplay Between Sanctions, Counterterrorism Measures and Humanitarian Action*, CHATHAM HOUSE 2 (Aug. 2017), https://www.chathamhouse.org/sites/default/files/publications/research/CHHJ5596_NSAG_iv_research_paper_1708_WEB.pdf; ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, at 20 (2015), <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>.

⁹ See e.g. *ibid.*, at 20–21. See further fn 6–7 above.

Al-Qaida, and their associates, as well as Al-Shabaab.¹⁰ Two UNSC sanctions committees have issued guidance on how to implement the carve-out.¹¹ And dozens of States have adopted measures, whether at the national or regional level, meant at least in part to implement the carve-out.¹²

Yet a number of other consequential issues concerning UNSCR 2664 (2022) are unsettled. Two of the most significant ones involve UNSC-imposed measures meant at least in part to counter terrorism.

First, if the UNSC does not reaffirm and extend the carve-out with respect to the ISIL-and-Al-Qaida sanctions regime, the normative and operational framework will fracture, potentially undermining part of the resolution's humanitarian intent. Initially, as part of the political compromise underlying the resolution, the UNSC limited the application of the carve-out with respect to that regime for a period of two years.¹³ Therefore, without further action by the UNSC, the UNSCR 2664 (2022) carve-out will cease to apply with respect to the ISIL-and-Al-Qaida sanctions regime as of December 9, 2024. That fast-approaching deadline concerns the UNSC's most extensive sanctions regime in terms of the number of designated persons and entities.¹⁴ Without such an extension, legal, financial, and operational confusion might arise, as States that have already sought to implement their obligations under UNSCR 2664 (2022) may need to "de-implement" the carve-out but only with respect to that specific sanctions regime.

Second, it is not clear whether — and, if so, how — States and other concerned actors are determining if the policy shift underlying the carve-out should apply with respect to the full range of UNSC-imposed measures meant to counter terrorism. In addition to certain specific UNSC-imposed sanctions measures, such as those targeting ISIL and Al-Qaida as well as those designating Al-Shabaab, those additional measures include general obligations related to prohibitions on the financing of terrorism and on providing other forms of support to terrorism. The traditional legal elements to assess the potential relations between the carve-out and these other obligations — including the relevant

¹⁰ See below section 4.1: Clear Applicability.

¹¹ See Annex 1.1: UNSC Sanctions Committees.

¹² See Annex 2: States.

¹³ UNSCR 2664 (2022), OP 2.

¹⁴ See below section 3.1.2.2: The Resolutions 1267 (1999), 1989 (2011), and 2253 (2015) Sanctions Regime Concerning ISIL, Al-Qaida, and Associated Individuals, Groups, Undertakings, and Entities.

resolutions' drafting histories,¹⁵ contexts of adoption,¹⁶ and texts¹⁷ — do not necessarily dictate one approach to how States should address this interaction. Nor are the initial efforts by UN-system actors or States to implement the carve-out necessarily decisive in this regard. Further, so far as we are aware, neither the UNSC, nor its sanctions committees, nor its other counterterrorism-related bodies, such as the UNSC's Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED), have issued public guidance that directly addresses this consequential question.

These two sets of unsettled issues concerning the interpretation and implementation of UNSCR 2664 (2022) are interrelated. Advocates from States, the UN system, and humanitarian organizations have voiced some of their most significant concerns regarding the adverse humanitarian impacts of the ISIL-and-Al-Qaida measures.¹⁸ That is because those measures have posed impediments to the timely provision of aid and protection to civilian populations in need that are under the de facto control or authority of those designees. In addition, ISIL and Al-Qaida are subject not only to UNSC-imposed asset-freeze sanctions measures. Both entities, as well as their associates, are also subject to numerous additional UNSC-imposed measures obliging States to prohibit the financing of terrorism and the provision of other forms of support to terrorism.¹⁹

In sum, in adopting the “landmark” UNSCR 2664 (2022), the UNSC recognized — and sought to alleviate — the adverse humanitarian effects of its asset-freeze sanctions measures. In doing so, the UNSC intended to support the continuation of humanitarian activities in the future, including with respect to relevant counterterrorism contexts.

¹⁵ Sec. Council Rep., *Sanctions: Vote on Resolution Establishing a Standing Humanitarian Carve-out to UN Sanctions Regimes**, <https://www.securitycouncilreport.org/whatsinblue/2022/12/sanctions-vote-on-resolution-establishing-a-standing-humanitarian-carve-out-to-un-sanctions-regimes.php>.

¹⁶ Radhika Kapoor, Dustin A. Lewis, and Naz K. Modirzadeh, *An Interpretive Note for U.N. Member States on Security Council Resolution 2664 (2022)*, HARV. L. SCH. PROG. INT'L L. & ARMED CONFLICT 7–11 (2023), <https://hls.harvard.edu/wp-content/uploads/2023/09/HLS-PI-LAC-Res.-2664-Interpretive-Note.pdf>.

¹⁷ See UNSCR 2664 (2022).

¹⁸ See e.g. Gillard, *supra* note 8, at 3; Sarfati, *supra* note 7; Alice Debarre, *Making Sanctions Smarter: Safeguarding Humanitarian Action*, INT'L PEACE INST. 9–13 (2019), <https://www.ipinst.org/2019/12/making-sanctions-smarter-safeguarding-humanitarian-action>.

¹⁹ See below section 3.2: Additional Prohibitions or Restrictions on Access to, or Provision or Collection of, Funds and Other Economic Resources as May Pertain to Terrorist Acts and Related Conduct and section 3.3: Prohibitions and Restrictions on the Provision of Other Support as May Pertain to Terrorist Acts and Related Conduct.

1.4. A Demand and An Invitation

Meaningful stakes are entailed in these issues. The consequences will perhaps be most immediate and significant for the people who are in need of humanitarian aid and protection and who reside in areas under the de facto control of ISIL, Al-Qaida, or other relevant entities. Yet the implications may also extend much further. The consequences may, for example, touch on matters concerning who determines what constitutes respect for international law in this area, the shape of humanitarian commitments, and the content of security policies. Given these implications, from our perspective, States should address these issues as a matter of urgency.

The authority to decide whether to extend the carve-out with respect to the ISIL-and-Al-Qaida sanctions rests with the UNSC. Yet all States have an interest in what the UNSC decides. And all States may seek to help inform and shape the UNSC's deliberations on the matter.

Furthermore, regarding the interaction between the carve-out and UNSC-imposed general counterterrorism obligations, we see UNSCR 2664 (2022) as entailing — for all States — both a demand and an invitation.

First, the UNSC demanded that States ensure the continuation of humanitarian action in contexts involving UNSC-imposed asset-freeze sanctions measures. Meeting that demand requires each State at least to review all its relevant implementing measures and to make adjustments to those measures as warranted. Depending on a particular State's system, those measures may span criminal and civil laws, financial regulations, humanitarian donor requirements, and other aspects at the national or regional level. After review and adjustment, the State may then communicate its response to relevant stakeholders, such as humanitarian organizations, financial authorities, and banking institutions, as well as security bodies tasked with monitoring the implementation of UNSC-imposed obligations to counter terrorism.²⁰

Second, UNSCR 2664 (2022) invites States to determine whether the policy shift embedded in the carve-out ought to guide their interpretation and implementation of *other* UNSC-imposed measures meant to counter terrorism. Those measures — which include UNSC-imposed obligations to counter the financing of terrorism and to prohibit other forms of support to terrorism — have also been

²⁰ See Kapoor, Lewis, & Modirzadeh, *supra* note 16, at 19–20.

documented as adversely affecting humanitarian action.²¹ Moreover, many of those obligations might overlap, theoretically or practically, with a particular State's attempts to implement certain UNSC-imposed sanctions.

At its core, the invitation raises a complex and multifaceted question: what should be the relations between efforts to safeguard humanitarian action and attempts to promote principled approaches to security? In adopting the carve-out, the UNSC was guided by the intention to provide clarity to ensure the continuation of humanitarian activities in the future, including with respect to relevant counterterrorism contexts.²² We see that commitment as a well-grounded point of departure for each State as it seeks to approach this question in a post-UNSCR 2664 (2022) world. Each State may, for example, decide to take action to formulate and implement an approach that equitably integrates the policy shift entailed in the resolution in a manner that is consistent with the State's international legal obligations, its humanitarian commitments, and its security policies.

Of course, it is up to each State to determine whether — and, if so, how — it wants to contribute to addressing these issues. Notably, for members of the UNSC, inaction on the part of the UNSC will mean that the carve-out will no longer apply with respect to the ISIL-and-Al-Qaida sanctions regime as of December 9, 2024. As to whether the policy shift embedded in UNSCR 2664 (2022) should be carried out with respect to other UNSC-imposed counterterrorism obligations, States are not the only actors involved. For example, counterterrorism-related monitoring bodies — such as CTED and the Financial Action Task Force (FATF) — continue to conduct assessments regarding States' compliance with associated obligations.²³ In the context of the wider

²¹ See e.g. ICRC, *supra* note 6, at 52; Modirzadeh, Lewis, & Bruderlein, *supra* note 6; Pantuliano, Mackintosh, Elhawary, & Metcalfe, *supra* note 7; NRC, *supra* note 7.

²² UNSCR 2664 (2022), preamble.

²³ In particular, the UNSC has characterized CTED as assuming a “crucial role” in ensuring the implementation of certain UNSC-imposed measures to counter terrorism. See UNSCR 2617 (2021), preamble. See also *ibid.*, at OP 4 (“[u]nderscor[ing] that neutral, expert assessment of the implementation of resolutions 1373 (2001), 1624 (2005), 2178 (2014), and other relevant resolutions, is the core function of CTED, and that the analysis and recommendations from these assessments are an invaluable aid to Member States in identifying and addressing gaps in implementation and capacity”). The FATF, for its part, also performs certain functions relevant to monitoring or evaluating the implementation of UNSC-decided asset freezes. See e.g. FATF, *International Standards On Combating Money Laundering And The Financing Of Terrorism & Proliferation*, recommendation 6 (Feb. 2023), <https://www.fatf-gafi.org/content/dam/fatf->
[Footnote continued on next page]

counterterrorism institutional framework, the absence of a position by States on this set of issues will be filled by institutional bodies and others.

Ultimately, these unsettled issues will need to be addressed.

1.5. Objective and Structure

In this report, we seek to provide an analytical frame regarding how States may pursue systematically the invitation to consider integrating the carve-out's policy shift into the broader set of UNSC-imposed counterterrorism measures. By not prescribing a definitive approach and instead setting out a range of considerations, we aim to leave scope for States to set their paths while navigating the complex interplay of international law, humanitarian needs, and security considerations.

Following this introduction (section 1), in section 2, we summarize UNSCR 2664 (2022).

In section 3, we provide an overview of three sets of UNSC-imposed measures meant at least in part to counter terrorism that have been documented as adversely affecting humanitarian activities: (i) certain sanctions regimes, such as those targeting ISIL and Al-Qaida, Al-Shabaab, and others; (ii) certain other prohibitions concerning the financing of terrorism; and (iii) certain prohibitions on other forms of support to terrorism.

In section 4, we frame an analysis regarding the applicability (or not) of the carve-out with respect to the three sets of counterterrorism-related measures covered in the preceding section. We aim to help show what is clearly settled and what remains open to debate.

In section 5, we frame the demand and invitation embedded in UNSCR 2664 (2022) in practical terms. We do so by sketching a hypothetical example to illustrate some of the issues posed by interactions between the web of relevant UNSC resolutions, on the one hand, and diverse sets of national laws and regulations meant at least in part to implement those resolutions, on the other hand.²⁴

[gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf](#) [hereinafter, "FATF recommendations"]. As of the time of this writing, we are not aware of any specific guidance for States from CTED or FATF regarding the potential effects of UNSCR 2664 (2022) as may relate to those bodies' respective monitoring-and-assessment mandates. Similarly, we are not aware of any information regarding how those bodies might have incorporated considerations regarding UNSCR 2664 (2022) into their visits with States since UNSCR 2664 (2022) was adopted on December 9, 2022.

²⁴ From our perspective, a side-by-side comparison of relevant provisions of UNSC resolutions [Footnote continued on next page]

In the conclusion, we underline the urgency and stakes of addressing these issues from a coherent multilateral approach.

Finally, in the Annex, as an informational resource, we outline action taken by UN-system actors and States with respect to implementation of the UNSCR 2664 (2022) carve-out. We do not, however, analyze the extent to which these actors and States have addressed the kinds of issues that we raise in the body of the report. For example, we do not evaluate whether a particular State's existing counterterrorism measures would need to be adjusted to reflect respect for UNSCR 2664 (2022). Nor do we review such measures in light of UNSCR 2664 (2022).

1.6. Sources and Methods

In developing this briefing report, we relied on the following sources and methods. We examined UNSCR 2664 (2022) and the context in which it was adopted. We evaluated action related to the implementation of UNSCR 2664 (2022) taken by groups of States, individual States, and UNSC sanctions committees and other UN-system actors. We examined certain forms of UNSC action concerning the countering of terrorism. We analyzed sources of international and national law and reviewed academic and policy literature. And we consulted with legal advisers as well as with specialists in, respectively, humanitarian affairs and counterterrorism issues.

1.7. Caveats

Research for this briefing report was conducted primarily in English. In this report, we seek in part to frame an analysis of select relations between UNSCR 2664 (2022) and certain forms of UNSC action concerning the countering of terrorism. We have not sought to exhaustively identify potentially relevant policy aspects and legal implications of those relations, especially as they may relate to complexities in carrying out relevant decisions of the UNSC with respect to the diverse range of national legal systems. Nor did we seek to comprehensively examine potential implications that may arise in connection with obligations other than those imposed by the UNSC, such as in counterterrorism treaties, or

would fail to sufficiently capture the challenge and opportunity in front of States as relates to the myriad of national- or regional-level laws that might be implicated, depending on the State concerned. Applying this complex of laws and policies to a particular hypothetical situation may better help to illustrate the issues.

with the possible (co-)application of various fields of international law, such as international humanitarian law and international human rights law, with respect to these issues.

2. UNSCR 2664 (2022)

In this section, we summarize certain key elements of UNSCR 2664 (2022).

2.1. Summary

The potential for restrictive measures, such as asset freezes under UNSC-decided sanctions regimes, to impede humanitarian access has long been documented. On December 9, 2022, the UNSC adopted UNSCR 2664 (2022), deciding that a humanitarian-related carve-out shall apply in respect of asset freezes imposed by the UNSC or its sanctions committees.²⁵ The UNSC noted that the “intention” of that decision was to “provide clarity to ensure the continuation of humanitarian activities in the future”.²⁶ In UNSCR 2664 (2022), the UNSC decided that the “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 certain actors²⁷ are permitted and are not a violation of UNSC-decided asset freezes.²⁸ The UNSC further emphasized both that a pre-existing carve-out in the UNSCR 1988 (2011) regime shall remain in effect and that, where the UNSCR 2664 (2022) carve-out conflicts with the UNSC’s previous resolutions, the carve-out shall supersede such previous resolutions to the extent of such conflict.²⁹

2.2. Impetus

UNSCR 2664 (2022) was adopted in a context marked by decades’ worth of UNSC action concerning sanctions and (other) counterterrorism measures as well as a rising awareness of the adverse impacts of many such measures on

²⁵ UNSCR 2664 (2022), OP 1.

²⁶ *Ibid.*, preamble. See further fn 32 below and associated text.

²⁷ See fn 39–40 below.

²⁸ UNSCR 2664 (2022), OP 1.

²⁹ *Ibid.*, at OP 4.

humanitarian action.³⁰ The resolution may be seen as a result of extensive engagement by humanitarian, legal, and policy actors — including in governments, the UN system, non-governmental organizations, academia, and the private sector — with the UNSC and certain other security bodies.³¹ Over more than a decade, those actors sought to diminish the adverse effects of certain restrictive measures on the array of actors, activities, and resources involved in obtaining and maintaining humanitarian access and delivering humanitarian aid and protection to people in need. Those adverse consequences have included, for example, impediments to the ability of humanitarian actors to pursue practical measures to secure and maintain access to persons and populations in need and to carry out humanitarian services, potentially resulting in adverse impacts upon the scope, amount, and quality of humanitarian, medical, and other related goods and services sought to be or actually provided to persons in need.³² Another contextual element relates to ongoing policy and academic debates on the distinctions and similarities between sanctions measures and (other) counterterrorism measures, as well as the relations between those various restrictive measures and humanitarian action.³³

2.3. Key Elements

The UNSC adopted UNSCR 2664 (2022) on December 9, 2022, expressly under Chapter VII of the UN Charter.³⁴ In the preamble of UNSCR 2664 (2022), the

³⁰ See below section 3: Three Sets of UNSC-Imposed Measures, Meant At Least In Part To Counter Terrorism, That Adversely Affect Humanitarian Action.

³¹ Dustin Lewis & Naz Modirzadeh, *The U.N. Security Council Adopts a Standing Humanitarian “Carve-Out”*, LAWFARE (Dec. 13, 2022), <https://www.lawfareblog.com/un-security-council-adopts-standing-humanitarian-carve-out>; Emanuela-Chiara Gillard, *Humanitarian Exceptions: A Turning Point in UN Sanctions*, CHATHAM HOUSE (Dec. 20, 2022), <https://www.chatham-house.org/2022/12/humanitarian-exceptions-turning-point-un-sanctions>; U.N. Doc. S/PV.9214, *supra* note 2, at 3 (statement by representative of Ireland, thanking “the humanitarian community for its long-term advocacy [...] for this effort”).

³² See e.g. Hamsik & Almanza, *supra* note 6; Burniske & Modirzadeh, *supra* note 6; Gillard, *supra* note 8, at 2; U.N. Doc. A/75/337, *supra* note 5, at 12–13; U.N. Doc. A/HRC/40/52, *supra* note 5, at 7; Mackintosh & Duplat, *supra* note 6; ICRC, *supra* note 6, at 52.

³³ See e.g. *Safeguarding Humanitarian Action in UN Sanctions and Counter terrorism Regimes: The Impact and Implementation of Resolution 2664*, INT’L PEACE INST., at 1 (Dec. 2023), <https://www.ipinst.org/wp-content/uploads/2023/12/IPI-E-RPT-Safeguarding-Humanitarian-Action2023.pdf>; U.N. Doc. A/75/337, *supra* note 5, at 15–16; Gillard, *supra* note 8, at 3.

³⁴ Under the UN Charter, UN Member States agree to confer upon the UNSC “primary responsibility for the maintenance of international security” and also agree that in discharging that

[Footnote continued on next page]

UNSC noted that the “intention” of the resolution was to “provide clarity to ensure the continuation of humanitarian activities in the future”.³⁵ In operative paragraph 1 (OP 1) of UNSCR 2664 (2022), the UNSC:

“Decide[d] that without prejudice to the obligations imposed on Member States to freeze the funds and other financial assets or economic resources of individuals, groups, undertakings, and entities designated by th[e UNSC] or its Sanctions Committees, 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, including its Programmes, Funds and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations, international organizations, humanitarian organizations having observer status with the United Nations General Assembly and members of those humanitarian organizations, or bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or

responsibility the UNSC “acts on their behalf.” UN Charter art. 24, ¶1. UN Member States agree to “accept and carry out” the decisions of the UNSC in accordance with the UN Charter. *Ibid.*, art. 25. Under Article 103 of the UN Charter, where there is a conflict between Member States’ “obligations [...] under the [...] Charter and their obligations under any other international agreement, their obligations under the [UN] Charter shall prevail.” UN Charter art. 103. Every provision in a UNSC text may not necessarily be binding; indeed, a single resolution may entail both binding elements (obligations) and non-binding elements (recommendations). Munir Akram & Syed Haider Shah, *The Legislative Powers of the United Nations Security Council*, in *TOWARDS WORLD CONSTITUTIONALISM: ISSUES IN THE LEGAL ORDERING OF THE WORLD COMMUNITY* (Ronald St John Macdonald et al. eds., 2005); Anne Peters, *Ch. V The Security Council, Functions and Powers, Article 25*, in *1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 793 (Bruno Simma et al. eds., 2012). See further *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. Rep. 16, ¶ 114 (June 21) [hereinafter, “I.C.J. *Namibia*”]. See also *Security Council Action Under Chapter VII: Myths And Realities*, SEC. COUNCIL REP. 4 (Jun. 23, 2008), <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/Research%20Report%20Chapter%20VII%2023%20June%202008.pdf>. With regard to a non-binding recommendation, UN Member States retain discretion whether or not to act, yet they must exercise that discretion in good faith and consider the recommendation in that sense. Peters, *supra* note 34 (citing Jochen A. Frowein, *Implementation of Security Council Resolutions Taken under Chapter VII in Germany*, in *UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW* 253, 263 (Vera Gowlland-Debbas ed., 2001)).

³⁵ UNSCR 2664 (2022), preamble.

OCHA-coordinated humanitarian ‘clusters,’ or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities, or by appropriate others as added by any individual Committees established by th[e UNSC] within and with respect to their respective mandates, are permitted and are not a violation of the asset freezes imposed by th[e UNSC] or its Sanctions Committees.”³⁶

In short, the UNSC decided in OP 1 that certain forms of facilitative conduct³⁷ necessary for the indicated forms of humanitarian-related fulfillment activities³⁸ by a specified actor³⁹ or an appropriate other⁴⁰ are permitted and are not a violation of UNSC-imposed asset-freeze sanctions measures.⁴¹ The UNSC’s use of the term “[*d*]ecide[.]” alongside the UNSC’s express invocation of Chapter VII of the UN Charter imbue OP 1 — and the carve-out entailed therein — with a binding character.⁴² In other operative paragraphs, the UNSC took additional actions, including by:

- Deciding that OP 1 will apply to the 1267/1989/2253 ISIL (Da’esh) and Al-Qaida sanctions regime for a period of two years from December 9, 2022 and expressing its intent to make a decision on the extension of its application to that regime prior to that date;⁴³
- Requesting that providers relying on OP 1 use reasonable efforts to minimize the accrual of any benefits prohibited by sanctions, whether as a result of direct or indirect provision or diversion, to individuals or entities designated by the UNSC or any of its committees, including by strengthening risk management and due diligence strategies and processes;⁴⁴
- Emphasizing that where OP 1 conflicts with the UNSC’s previous resolutions, OP 1 shall supersede such previous resolutions to the extent of such conflict;⁴⁵

³⁶ Ibid., at OP 1.

³⁷ See above Glossary (“Certain forms of facilitative conduct”).

³⁸ See *ibid.* (“Indicated forms of humanitarian-related fulfillment activities”).

³⁹ See *ibid.* (“A specified actor”).

⁴⁰ See *ibid.* (“An appropriate other”).

⁴¹ See fn 179 below and associated text.

⁴² See further Kapoor, Lewis, & Modirzadeh, *supra* note 16, at 16.

⁴³ UNSCR 2664 (2022), OP 2.

⁴⁴ Ibid., at OP 3.

⁴⁵ Ibid., at OP 4.

- Clarifying that OP 1 shall supersede and replace OP 37 of UNSCR 2607 (2021)⁴⁶ and OP 10 of UNSCR 2653 (2022);⁴⁷
- Clarifying as well that OP 1 of UNSCR 2615 (2021)⁴⁸ shall remain in effect;⁴⁹
- Deciding that OP 1 shall apply with respect to all future asset freezes imposed or renewed by the UNSC in the absence of an explicit decision by the UNSC to the contrary;⁵⁰
- Requesting the UN Emergency Relief Coordinator (ERC) to brief or arrange a briefing for each relevant Committee within its mandate 11 months from December 9, 2022 and every 12 months afterwards on the delivery of humanitarian assistance and other activities that support basic human needs provided consistent with UNSCR 2664 (2022);⁵¹
- Directing the Committees established by the UNSC with respect to sanctions implementation to assist Member States in properly understanding and fully implementing OP 1 by issuing Implementation Assistance Notices (IANs) to provide further guidance to give full effect to OP 1 that takes into account the unique context of the sanctions falling under their respective mandates;⁵²
- Directing further the committees established by the UNSC with respect to sanctions implementation, assisted by their respective panels of experts, to monitor the implementation of OP 1, including any risk of diversion;⁵³ and
- Requesting that the UN Secretary-General issue a written report on unintended adverse humanitarian consequences of UNSC sanctions measures, including travel ban and arms embargo measures, as well as those measures that are sui generis to particular sanctions regimes, within nine months of December 9, 2022.⁵⁴

⁴⁶ That is, the carve-out in respect of asset freezes under the Somalia sanctions regime that had been reaffirmed in OP 37 of UNSCR 2607 (2021).

⁴⁷ That is, the carve-out in respect of asset freezes under the Haiti sanctions regime laid down in OP 10 of UNSCR 2653 (2022).

⁴⁸ OP 1 of UNSCR 2615 (2021) introduced a limited humanitarian-related carve-out in respect of the UNSCR 1988 (2011) sanctions regime at least as pertains to Afghanistan.

⁴⁹ UNSCR 2664 (2022), OP 4.

⁵⁰ Ibid.

⁵¹ Ibid., at OP 5.

⁵² Ibid., at OP 6. See Annex 1.1.2: UNSCR 1718 (2006) (DPRK) Sanctions Committee (regarding the issuance of an IAN in relation to the DPRK sanctions regime).

⁵³ UNSCR 2664 (2022), OP 6.

⁵⁴ Ibid., at OP 7. See UNSC, Implementation of Security Council resolution 2664 (2022): Report of [Footnote continued on next page]

3. THREE SETS OF UNSC-IMPOSED MEASURES, MEANT AT LEAST IN PART TO COUNTER TERRORISM, THAT ADVERSELY AFFECT HUMANITARIAN ACTION

In this section, we provide an overview of certain UNSC-imposed restrictive measures that have adversely affected humanitarian action and that might be implicated by the carve-out. In particular, we elaborate some key elements of three forms of UNSC action concerning the countering of terrorism that affect humanitarian activities. Those forms encompass UNSC-imposed obligations concerning:

- Sanctions measures against individuals, groups, undertakings, or entities designated by the UNSC or its sanctions committees in relation (at least in part) to terrorist acts or activities;
- Other prohibitions or restrictions on access to, or on the collection or provision of, funds and economic resources as may pertain to terrorist acts and related conduct; and
- Prohibitions or restrictions on the provision of other forms of support as may pertain to terrorist acts and related conduct.

In doing so, we do not seek to document comprehensively the slate of counterterrorism-related obligations entailed in the diverse forms of potentially relevant UNSC action. Rather, we aim to summarize and highlight key counterterrorism-related obligations that might implicate, at least arguably, relations with the carve-out in UNSCR 2664 (2022).⁵⁵ (In the next section, we briefly examine the potential applicability of the carve-out adopted in UNSCR 2664 (2022) in relation to these three forms of UNSC counterterrorism-related action.)

the Secretary-General, U.N. Doc. S/2023/658 (Sept. 8, 2023); Annex 1.2: UN Secretary-General.

⁵⁵ The UNSC has repeatedly “stress[ed] that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and [that States] should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law”. See e.g. UNSCR 1624 (2005), preamble; UNSCR 2370 (2017), preamble; UNSCR 2354 (2017), preamble. See also UNSCR 1535 (2004), preamble, and UNSCR 1805 (2008), preamble (“[r]eminding” States to do so); UNSCR 1456 (2003), annex, ¶6.

3.1. Obligations Concerning Sanctions Measures Against Individuals, Groups, Undertakings, or Entities Designated by the UNSC or a UNSC Sanctions Committee in Relation to Terrorist Acts or Activities

3.1.1. Summary

While the UNSC has not expressly captioned any of its sanctions regimes as a “counterterrorism” regime as such, certain UNSC-decided sanctions regimes contain designation criteria or other contextual elements that refer to terrorist acts or related activities. On that basis, at least five current UNSC sanctions regimes may be conceptualized as counterterrorism-related sanctions regimes:

- The ISIL-and-Al-Qaida sanctions regime, applicable in respect of ISIL, Al-Qaida, and associated individuals, groups, undertakings, and entities;
- The UNSCR 1988 (2011) sanctions regime, applicable in respect of the Taliban and associated groups;
- The Al-Shabaab (Somalia) sanctions regime, applicable in respect of Al-Shabaab and associated individuals and entities;
- The UNSCR 1636 (2005) sanctions regime, applicable in respect of those involved in planning, sponsoring, organizing, or perpetrating the “terrorist bombing” that occurred in Beirut, Lebanon in February 2005; and
- The Yemen sanctions regime, applicable in respect of those engaging in or providing support for acts that threaten the peace, security, or stability of Yemen.⁵⁶

The sanctions measures entailed in each of those regimes include asset freezes and travel bans. The ISIL-and-Al-Qaida sanctions regime, the UNSCR 1988 (2011) sanctions regime, the Al-Shabaab (Somalia) sanctions regime, and

⁵⁶ From our perspective, the remaining UNSC-decided sanctions regimes — namely, those applicable in respect of CAR, the DPRK, the DRC, Haiti, Iraq, Libya, South Sudan, and Sudan — do not necessarily contain counterterrorism-related sanctions measures, at least as currently constituted. Notably, certain counterterrorism-related linkages may be identified with respect to the sanctions regime concerning Libya, but, from our perspective, those linkages did not suggest that the sanctions measures entailed therein constituted counterterrorism measures. See e.g. UNSCR 2362 (2017), OP 6; UNSCR 2214 (2015), OP 7. Further, while the UNSC recognized that certain terrorist groups may be operating in Libya, the UNSC has apparently decided to provide for their designation under the ISIL-and-Al-Qaida sanctions regime rather than under the Libya sanctions regime. See e.g. UNSCR 2214 (2015), OP 4.

the Yemen sanctions regime further include arms embargoes. And the Al-Shabaab (Somalia) sanctions regime additionally includes a charcoal ban and a ban on Improvised Explosive Devices (IED) components.

Below, we outline criteria concerning eligibility for designation for these arguably counterterrorism-related sanctions measures; the types of such sanctions measures; and carve-outs applicable in relation to those measures.

3.1.2. *Criteria Concerning Eligibility for Designation for Counterterrorism-Related Sanctions Measures*

From our perspective, sanctions measures decided by the UNSC under the following sanctions regimes may be conceptualized at least in part as counterterrorism-related sanctions measures: the ISIL-and-Al-Qaida sanctions regime; the UNSCR 1988 (2011) sanctions regime; the Al-Shabaab (Somalia) sanctions regime; the UNSCR 1636 (2005) sanctions regime; and the Yemen sanctions regime. (As we explain below, sanctions measures in respect of the Taliban, ISIL, Al-Qaida, and certain associated persons and entities were previously applicable under a joint sanctions regime.⁵⁷)

3.1.2.1. Previously Joint Sanctions Regime Concerning the Taliban, ISIL (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities

To understand the currently applicable (separate) sanctions regimes against the Taliban, on the one hand, and ISIL, Al-Qaida, and certain associated persons and entities, on the other hand, it may be useful to first describe the previously joint sanctions regime against these designees, particularly because that sanctions regime also entailed arguably counterterrorism-related sanctions measures. For example, in multiple decisions under that (previously joint) sanctions regime concerning the Taliban and Al-Qaida, the UNSC:

- “[C]ondemn[ed] [...] Al-Qaida [...] [and] the Taliban — and associated individuals, groups, undertakings and entities — for ongoing and multiple criminal terrorist acts”;⁵⁸

⁵⁷ See below section 3.1.2.1: Previously Joint Sanctions Regime Concerning the Taliban, ISIL (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities.

⁵⁸ UNSCR 1617 (2005), preamble; UNSCR 1822 (2008), preamble; UNSCR 1904 (2009), preamble.

- Referred to terrorism as a “threat[] to peace and security”;⁵⁹ and
- “[S]tress[ed] [...] the need for robust implementation of [sanctions] measures [...] as a significant tool in combating terrorist activity”.⁶⁰

Under that (previously joint) sanctions regime concerning the Taliban and Al-Qaida, the UNSC decided that “acts or activities” indicating that an individual, group, undertaking, or entity was “associated” with Al-Qaida, Usama bin Laden, or the Taliban (and therefore eligible for designation) included “participating in [...] financing, planning, facilitating, [or] preparing,” or “otherwise supporting” acts or activities by Al-Qaida, Usama bin Laden, or the Taliban or any cell, affiliate, splinter group, or derivative thereof.⁶¹

With the adoption of UNSCR 1988 (2011) and UNSCR 1989 (2011), the UNSC bifurcated that previously joint sanctions regime into two regimes: one applying with respect to the Taliban, and the other applying in respect of Al-Qaida and associated individuals and entities.⁶² As of November 2023, ISIL, Al-Qaida, and associated individuals, groups, undertakings and entities are designated under the UNSCR 1267 (1999), 1989 (2011), and 2253 (2015) sanctions regime,⁶³ while the Taliban and other individuals, groups, undertakings, and entities associated with the Taliban are designated under the UNSCR 1988 (2011) sanctions regime.⁶⁴

3.1.2.2. The Resolutions 1267 (1999), 1989 (2011), and 2253 (2015) Sanctions Regime Concerning ISIL, Al-Qaida, and Associated Individuals, Groups, Undertakings, and Entities

The ISIL-and-Al-Qaida sanctions regime may arguably be conceptualized in part as entailing counterterrorism-related sanctions measures. For example, in UNSCR 2610 (2021), the UNSC characterized ISIL, Al-Qaida, and associated individuals, groups, undertakings, and entities as involved in “ongoing and multiple criminal terrorist acts”.⁶⁵ Further, in multiple decisions in that sanctions regime, the UNSC referred to “terrorism in all its forms and

⁵⁹ UNSCR 1904 (2009), preamble.

⁶⁰ UNSCR 1822 (2008), preamble. UNSCR 1904 (2009), preamble.

⁶¹ UNSCR 1617 (2005), OP 2; UNSCR 1822 (2008), OP 2; UNSCR 1904 (2009), OP 2.

⁶² UNSCR 1988 (2011), OP 2; UNSCR 1989 (2011), OP 2.

⁶³ See UNSCR 1989 (2011), OP 2; UNSCR 2253 (2015), OP 2.

⁶⁴ See UNSCR 1988 (2011), OP 2.

⁶⁵ UNSCR 2610 (2021), preamble. See also UNSCR 1989 (2011), preamble.

manifestations [as] one of the most serious threats to peace and security”⁶⁶ and “underlin[ed] the importance of prompt and effective implementation of relevant resolutions, in particular Security Council resolutions 1267 (1999) and 1989 (2011) as key instruments in the fight against terrorism”⁶⁷

In a number of texts, including UNSCR 1989 (2011), UNSCR 2083 (2012), and UNSCR 2161 (2014), the UNSC reaffirmed its earlier decision in UNSCR 1617 (2005) that “acts or activities indicating that an individual, group, undertaking or entity is associated with Al-Qaida” (and therefore eligible for designation) included “participating in the financing, planning, facilitating, [or] preparing” of acts or activities by, or in support of, or “otherwise supporting” acts or activities of, Al-Qaida or any cell, affiliate, splinter group, or derivative thereof.⁶⁸ The UNSC later recalled that “any individual, group, undertaking, or entity supporting ISIL or Al-Qaida is eligible for listing”⁶⁹ and decided that “acts or activities indicating that an individual, group, undertaking or entity is associated with ISIL or Al-Qaida” included “[p]articipating in the financing, planning, facilitating, [or] preparing” of acts or activities by, or in support of, or “otherwise supporting” acts or activities of, Al-Qaida, ISIL, or any cell, affiliate, splinter group, or derivative thereof.⁷⁰ Further, the UNSC:

- Expressed “readiness” to “consider listing [those] providing support to ISIL or to the [Al-Nusrah Front]”;⁷¹
- Expressed “strong determination” to “consider listing [those] financing [Al-Qaida], or otherwise supporting [Al-Qaida’s] acts or activities”;⁷²
- Directed the ISIL and Al-Qaida Sanctions Committee to consider designating those financing, supporting, or facilitating acts or activities of ISIL, Al-Qaida, and associated individuals, groups, undertakings, and entities;⁷³ and
- Encouraged States to submit to the Committee for designation names of individuals, groups, undertakings, and entities “participating, by any

⁶⁶ UNSCR 1989 (2011), preamble; UNSCR 2610 (2021), preamble; UNSCR 2199 (2015), preamble.

⁶⁷ UNSCR 2199 (2015), preamble; UNSCR 2129 (2013), preamble.

⁶⁸ UNSCR 1989 (2011), OP 4; UNSCR 2083 (2012), OP 2 (a), (d); UNSCR 2161 (2014), OP 2 (a), (c). See also UNSCR 1617 (2005), OP 2.

⁶⁹ UNSCR 2253 (2015), preamble; UNSCR 2368 (2017), preamble; UNSCR 2610 (2011), preamble.

⁷⁰ UNSCR 2253 (2015), OP 3 (a), (c); UNSCR 2368 (2017), OP 2 (a), (c); UNSCR 2610 (2011), OP 2 (a), (c).

⁷¹ UNSCR 2170 (2014), OP 18.

⁷² UNSCR 2178 (2014), OP 7.

⁷³ UNSCR 2253 (2015), OP 14; UNSCR 2368 (2017), OP 14; UNSCR 2610 (2011), OP 14.

means, in the financing or support of acts or activities of ISIL, Al-Qaida, and associated individuals, groups, undertakings, and entities”⁷⁴

As of November 2023, the ISIL and Al-Qaida Sanctions List, which was last updated in July 2023, contains the names of 256 individuals and 89 entities.⁷⁵

3.1.2.3. The Resolution 1988 (2011) Sanctions Regime

The UNSCR 1988 (2011) sanctions regime may also arguably be conceptualized in part as entailing counterterrorism-related measures. In a number of texts, including in UNSCR 2611 (2021), UNSCR 2665 (2022), and UNSCR 2557 (2020), the UNSC referred to its decisions under the UNSCR 1988 (2011) sanctions regime as “resolutions on international terrorism and the threat it poses to Afghanistan”⁷⁶ In UNSCR 2501 (2019) and UNSCR 2557 (2020), the UNSC “[e]mphasiz[ed] its serious concern about [...] the ongoing violent and terrorist activities by the Taliban and associated groups”⁷⁷ Further, in a preambular paragraph of UNSCR 2255 (2015), the UNSC emphasized:

“[I]ts serious concern about the security situation in Afghanistan, in particular the ongoing violent and terrorist activities by the Taliban and associated groups, including the Haqqani Network, and by Al-Qaida, and other violent and extremist groups, illegal armed groups, criminals and those involved in terrorism and the illicit brokering in arms and related material and arms trafficking in the production, trafficking or trade of illicit drugs, and the strong links between terrorism and insurgency activities and illicit drugs, resulting in threats to the local population, including women, children, national security forces and international military and civilian personnel, including humanitarian and development workers”⁷⁸

In a number of texts adopted under the UNSCR 1988 (2011) sanctions regime, including in UNSCR 1988 (2011), UNSCR 2082 (2012), and UNSCR 2255 (2015), the UNSC decided that “acts or activities indicating that an individual, group, undertaking or entity is eligible for designation” under the

⁷⁴ UNSCR 2253 (2015), OP 43; UNSCR 2368 (2017), OP 50; UNSCR 2610 (2011), OP 53.

⁷⁵ UNSC, ISIL (Da’esh) & Al-Qaida Sanctions List, https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list.

⁷⁶ UNSCR 2611 (2021), preamble; UNSCR 2665 (2022), preamble; UNSCR 2557 (2020), preamble.

⁷⁷ UNSCR 2501 (2019), preamble; UNSCR 2557 (2020), preamble.

⁷⁸ See e.g. UNSCR 2255 (2015), preamble, ¶14.

UNSCR 1988 (2011) sanctions regime included “[p]articipating in the financing, planning, facilitating, [or] preparing” of acts or activities by, or in support of, or “[o]therwise supporting” acts or activities of, those designated under the sanctions regime or associated with the Taliban in constituting a threat to the peace, stability, and security of Afghanistan.⁷⁹ In UNSCR 2255 (2015), the UNSC also confirmed that any individual or entity “otherwise supporting” an individual or entity designated under the UNSCR 1988 (2011) sanctions regime “shall be eligible for listing”⁸⁰ and encouraged States to submit to the relevant committee “listing requests of individuals and entities supporting the Taliban, and associated individuals, groups, undertakings, and entities, including those who provide financial support.”⁸¹ As of November 2023, the UNSCR 1988 (2011) Sanctions List, which was last updated in January 2019, contains the names of 135 individuals and five entities.⁸²

3.1.2.4. The Sanctions Regime Concerning Al-Shabaab

On the basis of the following characterizations (among others) by the UNSC, the Al-Shabaab (Somalia) sanctions regime may arguably be conceptualized in part as imposing counterterrorism-related measures:

- In UNSCR 2662 (2022), the UNSC expressed “grave concern that the terrorist group Al-Shabaab continues to pose a serious threat to the peace, security and stability of Somalia and the region”;⁸³
- In UNSCR 2607 (2021), the UNSC referred to “Al-Shabaab’s terrorist attacks in Somalia and beyond” and stated that “Al-Shabaab poses a threat to peace and security, and that its terrorist and other activities have a destabilising impact in Somalia”;⁸⁴ and
- In a preambular paragraph of UNSCR 2093 (2013), the UNSC characterized Al-Shabaab as constituting a “continuing terrorist threat to Somalia, the region and the international community”.⁸⁵

⁷⁹ UNSCR 1988 (2011), OP 3; UNSCR 2082 (2012), OP 2 (a), (d); UNSCR 2255 (2015), OP 2 (a), (d); UNSCR 2160 (2014), OP 2 (a), (d).

⁸⁰ UNSCR 2255 (2015), OP 3.

⁸¹ *Ibid.*, at OP 9.

⁸² UNSC, 1988 Sanctions List, <https://www.un.org/securitycouncil/sanctions/1988/materials>.

⁸³ UNSCR 2662 (2022), preamble.

⁸⁴ UNSCR 2607 (2021), preamble, OP 1.

⁸⁵ See e.g. the reference in UNSCR 2093 (2013), preamble, ¶7, to Al-Shabaab constituting a [Footnote continued on next page]

In a number of texts, including in UNSCR 1844 (2008), UNSCR 2002 (2011), and UNSCR 2060 (2012), the UNSC decided that the Al-Shabaab (Somalia) sanctions regime⁸⁶ applies in respect of those “engaging in or providing support for acts that threaten the peace, security or stability of Somalia”.⁸⁷ In UNSCR 2060 (2012), the UNSC added that “such acts may also include, but are not limited to, engaging in or providing support for acts which obstruct or undermine the transition process in Somalia”.⁸⁸ Further, in UNSCR 2662 (2022), the UNSC decided that sanctions under that regime would also apply to entities designated by the Al-Shabaab (Somalia) Sanctions Committee as “being associated with Al-Shabaab”.⁸⁹ Pursuant to UNSCR 2662 (2022), acts and activities indicating association with Al-Shabaab (and eligibility for designation) include “participating in the financing, planning, facilitating, [or] preparing” of acts or activities by or in support of Al-Shabaab, or “otherwise supporting acts or activities of Al-Shabaab or any cell, affiliate, splinter group or derivative thereof”.⁹⁰ As of November 2023, the Al-Shabaab (Somalia) Sanctions List, which was last updated in May 2023, contains the names of 19 individuals and one entity.⁹¹

3.1.2.5. The Resolution 1636 (2005) Sanctions Regime Concerning the 14 February 2005 Terrorist Bombing in Beirut, Lebanon

The UNSC decided that the UNSCR 1636 (2005) sanctions regime shall apply in respect of individuals “designated [...] as suspected of involvement in [...]”

“continuing terrorist threat to Somalia, the region and the international community” (“*Reiterating* [the UNSC’s] strong condemnation of all attacks on Somali institutions, AMISOM, United Nations personnel and facilities, journalists, and the civilian population by armed opposition groups, and foreign fighters, particularly Al-Shabaab, stressing that such groups, including foreign fighters engaged in destabilizing Somalia, constitute a continuing terrorist threat to Somalia, the region and the international community, *stressing* that there should be no place for terrorism or violent extremism in Somalia, and *reiterating* its call to all opposition groups to lay down their arms”).

⁸⁶ See UN DPPA, *Subsidiary Organs Of The United Nations Security Council*, at 6 (Sept., 2023) https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organs_series_7sep23_.pdf.

⁸⁷ UNSCR 1844 (2008), OP 8 (a); UNSCR 2002 (2011), OP 1 (a); UNSCR 2060 (2012), OP 1; UNSCR 2093 (2013), OP 43 (a); UNSCR 2662 (2022), OP 26 (a).

⁸⁸ UNSCR 2060 (2012), OP 3.

⁸⁹ UNSCR 2662 (2022), OP 26 (b).

⁹⁰ UNSCR 2662 (2022), OP 26 (b) (i), (iii).

⁹¹ UN DPPA, *supra* note 86, at 6.

planning, sponsoring, organizing or perpetrating”⁹² the “terrorist bombing”⁹³ that occurred in Beirut, Lebanon, in February 2005. On the basis that the UNSC characterized the incident as a “terrorist bombing,” the UNSCR 1636 (2005) sanctions regime may arguably be conceptualized as entailing counterterrorism-related measures. As of November 2023, no individuals or entities are designated under the UNSCR 1636 (2005) sanctions regime.

3.1.2.6. The Sanctions Regime Concerning Yemen

The Yemen sanctions regime may arguably be conceptualized in part as imposing counterterrorism-related measures. For example, in UNSCR 2624 (2022), whereby the UNSC “[d]ecide[d]” that the Houthis “shall be subject to” certain measures under the Yemen sanctions regime, the UNSC:

- Characterized the Houthis as “hav[ing] [...] perpetrated repeated cross-border terrorist attacks”;⁹⁴
- “Reaffirm[ed] its press statement [...] that condemned in the strongest terms the heinous terrorist attacks [...] that were claimed and committed by the Houthis”;⁹⁵ and
- “Strongly condemn[ed] the cross-border attacks by the Houthi terrorist group”.⁹⁶

In UNSCR 2140 (2014), the UNSC decided that measures under the Yemen sanctions regime applied in respect of “individuals or entities designated by the [Yemen Sanctions] Committee as engaging in or providing support for acts that threaten the peace, security or stability of Yemen”.⁹⁷ As of November 2023, the Yemen sanctions list, which was last updated in October 2022, contains the names of 12 individuals and one entity.⁹⁸

⁹² UNSCR 1636 (2005), OP 3 (a). See also the reference in UNSCR 1636 (2005) concerning “all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act”; that “terrorist act” is “the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and 22 others, and caused injury to dozens of people”. *Ibid.*, preamble.

⁹³ *Ibid.*, preamble.

⁹⁴ UNSCR 2624 (2022), annex.

⁹⁵ *Ibid.*, preamble.

⁹⁶ *Ibid.*, at OP 1.

⁹⁷ UNSCR 2140 (2014), OP 17.

⁹⁸ UNSC, 2140 Sanctions List, <https://www.un.org/securitycouncil/sanctions/2140/sanctions-list-materials>.

3.1.3. *Types of Such Counterterrorism-Related Sanctions Measures*

The above-mentioned sanctions regimes, which may arguably be characterized as counterterrorism-related sanctions regimes, entail at least three types of sanctions measures: asset freezes, travel bans, and arms embargoes.

3.1.3.1. Asset Freezes

The UNSC has imposed asset freezes in respect of those designated under certain arguable counterterrorism-related sanctions regimes. Under the previously joint sanctions regime applicable in respect of the Taliban and Al-Qaida,⁹⁹ the UNSC imposed asset freezes in respect of:

- The Taliban and “any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need”;¹⁰⁰ and
- “Usama bin Laden or individuals and entities associated with him including [...] Al-Qaida”.¹⁰¹

In UNSCR 1390 (2002), the UNSC imposed asset freezes in respect of “Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them,” as included in the relevant sanctions list.¹⁰² Later, in a number of texts, including in UNSCR 1526 (2004), UNSCR 1617 (2005), and UNSCR 1735 (2006), the UNSC decided that those asset freezes would apply in respect of “Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them,” as designated under the sanctions regime, to ensure that no economic resources were made available for the benefit of “Usama bin Laden, members of [...] Al-Qaida [...] and the Taliban and other individuals, groups, undertakings and entities associated with them.”¹⁰³ In UNSCR 1735 (2006), UNSCR 1822 (2008), and UNSCR 1904 (2009), the UNSC “[c]onfirm[ed]” that the asset freeze applied to financial and economic

⁹⁹ See above section 3.1.2.1: Previously Joint Sanctions Regime Concerning the Taliban, ISIL (Da’esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities.

¹⁰⁰ UNSCR 1267 (1999), OP 4 (b).

¹⁰¹ UNSCR 1333 (2000), OP 8 (c).

¹⁰² UNSCR 1390 (2002), OP 2 (a).

¹⁰³ UNSCR 1526 (2004), OP 1 (a); UNSCR 1617 (2005), OP 1 (a); UNSCR 1735 (2006), OP 1 (a); UNSCR 1822 (2008), OP 1 (a); UNSCR 1904 (2009), OP 1 (a).

resources of every kind.¹⁰⁴

In UNSCR 1988 (2011) and UNSCR 1989 (2011), whereby the UNSC bifurcated two sanctions regimes, the UNSC decided, respectively:

- That an asset freeze would apply in respect of “individuals and entities [already] designated [...] as the Taliban, and other individuals, groups, undertakings and entities associated with them” and those designated by the 1988 Sanctions Committee hereafter as “individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan,” and that the application of the asset freeze extended to “funds derived from property owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction”;¹⁰⁵ and
- That an asset freeze would apply in respect of “Al-Qaida and other individuals, groups, undertakings and entities associated with them,”¹⁰⁶ including ISIL.¹⁰⁷ The UNSC affirmed that this obligation required States to “freeze without delay the funds and other financial assets or economic resources of ISIL, ANF [al-Nusrah Front], and other individuals, groups, undertakings and entities associated with Al-Qaida.”¹⁰⁸

The UNSC “[c]onfirm[ed]” that those asset freezes applied to financial and economic resources of every kind.¹⁰⁹ The asset freeze entailed in the ISIL-and-Al-Qaida sanctions regime extends to “funds derived from property owned or controlled directly or indirectly, by [those designated] or by persons acting on their behalf or at their direction”¹¹⁰ and applies to “financial transactions involving any funds, economic resources or income-generating activities that benefit individuals, groups, undertakings and entities on the ISIL (Da’esh) & Al-Qaida Sanctions List”¹¹¹

¹⁰⁴ UNSCR 1735 (2006), OP 3, 20; UNSCR 1822 (2008), OP 4; UNSCR 1904 (2009), OP 4.

¹⁰⁵ UNSCR 1988 (2011), OP 1 (a). See also UNSCR 2082 (2012), OP 1 (a); UNSCR 2255 (2015), OP 1 (a); UNSCR 2160 (2014), OP 1 (a).

¹⁰⁶ UNSCR 1989 (2011), OP 1 (a). See also UNSCR 2083 (2012), OP 1 (a); UNSCR 2161 (2014), OP 1 (a).

¹⁰⁷ See UNSCR 2253 (2015), OP 2; UNSCR 2368 (2017), OP 1 (a); UNSCR 2610 (2021), OP 1 (a).

¹⁰⁸ UNSCR 2199 (2015), OP 3, 7.

¹⁰⁹ UNSCR 1988 (2011), OP 6; UNSCR 1989 (2011), OP 6; UNSCR 2082 (2012), OP 5; UNSCR 2083 (2012), OP 4; UNSCR 2160 (2014), OP 6; UNSCR 2161 (2014), OP 5; UNSCR 2199 (2015), OP 28; UNSCR 2253 (2015), OP 6; UNSCR 2255 (2015), OP 6; UNSCR 2368 (2017), OP 5; UNSCR 2610 (2021), OP 5.

¹¹⁰ UNSCR 2368 (2017), OP 1 (a).

¹¹¹ *Ibid.*, at OP 7; UNSCR 2610 (2021), OP 7.

Under the Al-Shabaab (Somalia) sanctions regime,¹¹² the UNSC decided that States shall “freeze without delay the funds, other financial assets and economic resources [...] owned or controlled, directly or indirectly, by the individuals or entities designated by the [Sanctions] Committee [...] or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by th[at] Committee” and shall “ensure that any funds, financial assets or economic resources are prevented from being made available [...] to or for the benefit of such individuals or entities”.¹¹³

Under the UNSCR 1636 (2005) sanctions regime, the UNSC decided that States shall “freeze all funds, financial assets and economic resources [...] owned or controlled, directly or indirectly, by [designated] individuals, or that are held by entities owned or controlled, directly or indirectly, by such individuals or by persons acting on their behalf or at their direction” and shall “ensure that no funds, financial assets or economic resources are made available [...] to or for the benefit of such individuals or entities”.¹¹⁴

Under the Yemen sanctions regime, the UNSC decided that States shall “freeze without delay all funds, other financial assets and economic resources [...] owned or controlled, directly or indirectly, by [designated] individuals or entities [...] or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them” and shall “ensure that any funds, financial assets or economic resources are prevented from being made available [...] to or for the benefit of [designated] individuals or entities”.¹¹⁵

3.1.3.2. Travel Bans

The UNSC has imposed travel bans in respect of those designated under certain arguable counterterrorism-related sanctions measures:

- Under the ISIL-and-Al-Qaida sanctions regime, the UNSC decided that States shall “[p]revent the entry into or transit through their territories” of ISIL, Al-Qaida, and associated individuals;¹¹⁶
- Under the Al-Shabaab (Somalia) sanctions regime, the UNSC decided that States shall “prevent the entry into or transit through their

¹¹² See UN DPPA, *supra* note 86.

¹¹³ UNSCR 1844 (2008), OP 3.

¹¹⁴ UNSCR 1636 (2005), OP 3 (a).

¹¹⁵ UNSCR 2140 (2014), OP 11. See also UNSCR 2707 (2023), OP 1.

¹¹⁶ UNSCR 2610 (2021), OP 1 (b).

territories” of individuals designated under that sanctions regime;¹¹⁷

- Under the UNSCR 1988 (2011) sanctions regime, the UNSC decided that States shall “[p]revent the entry into or transit through their territories” of individuals designated “as the Taliban” or as “associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan”,¹¹⁸
- Under the UNSCR 1636 (2005) sanctions regime, the UNSC decided that States shall “prevent entry into or transit through their territories” of individuals designated under that sanctions regime;¹¹⁹ and
- Under the Yemen sanctions regime, the UNSC decided that States shall “prevent the entry into or transit through their territories” of individuals designated under that sanctions regime.¹²⁰

3.1.3.3. Arms Embargoes

The UNSC has imposed arms embargoes in respect of those designated under certain arguable counterterrorism-related sanctions measures.¹²¹

- Under the ISIL-and-Al-Qaida sanctions regime, the UNSC decided that States shall “[p]revent the direct or indirect supply, sale, or transfer” to those associated with ISIL and Al-Qaida of “arms and related materiel of all types [...] and technical advice, assistance or training related to military activities”,¹²²
- Under the Al-Shabaab (Somalia) sanctions regime, the UNSC decided that States shall implement “a general and complete embargo on all deliveries of weapons and military equipment to Somalia, including prohibiting the financing of all acquisitions and deliveries of weapons and military equipment and the direct or indirect supply of technical advice, financial and other assistance, and training related to military activities,”¹²³ subject to certain exceptions,¹²⁴ and that States shall “prevent the direct or indirect supply, sale or transfer of weapons and military

¹¹⁷ UNSCR 1844 (2008), OP 1.

¹¹⁸ UNSCR 2255 (2015), OP 1 (b).

¹¹⁹ UNSCR 1636 (2005), OP 3 (a).

¹²⁰ UNSCR 2140 (2014), OP 15. See also UNSCR 2707 (2023), OP 1.

¹²¹ The UNSC has not imposed arms embargoes in respect of those designated under the UNSCR 1636 (2005) sanctions regime.

¹²² UNSCR 2610 (2021), OP 1 (c).

¹²³ UNSCR 2498 (2019), OP 6; UNSCR 2662 (2022), OP 10.

¹²⁴ UNSCR 2662 (2022), OP 11, 14, 15, 18, 21.

equipment and the direct or indirect supply of technical assistance or training, financial and other assistance [...] related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the [Sanctions] Committee”;¹²⁵

- Under the UNSCR 1988 (2011) sanctions regime, the UNSC decided that States shall “[p]revent the direct or indirect supply, sale, or transfer to [designated] individuals, groups, undertakings and entities [...] of arms and related materiel of all types [...] and technical advice, assistance, or training related to military activities”;¹²⁶ and
- Under the Yemen sanctions regime, the UNSC decided that States shall “prevent the direct or indirect supply, sale or transfer to, or for the benefit of [certain named individuals] and [designated] individuals and entities [...] and those acting on their behalf or at their direction in Yemen [...] of arms and related materiel of all types [...] and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel”.¹²⁷

3.1.3.4. Other Sanctions Measures

Other sanctions measures are entailed at least in the Al-Shabaab (Somalia) sanctions regime, namely:

- A charcoal ban, whereby Somalia is obliged to “take the necessary measures to prevent the export of charcoal from Somalia” and all States are obliged to “take the necessary measures to prevent the direct or indirect import of charcoal from Somalia, whether or not such charcoal originated in Somalia”;¹²⁸ and
- A ban on IED components, whereby all States are obliged to “prevent the direct or indirect sale, supply or transfer [...] to Somalia [of certain IED components listed in an annex to UNSCR 2498 (2019)] from their territories or by their nationals outside their territories, or using their

¹²⁵ UNSCR 1844 (2008), OP 7. In UNSCR 2093 (2013), the UNSC partially eased the arms embargo with respect to Somalia to permit “deliveries of weapons or military equipment or the provision of advice, assistance or training, intended solely for the development of the Security Forces of the Federal Government of Somalia”. See UNSCR 2093 (2013), OP 33.

¹²⁶ UNSCR 2255 (2015), OP 1 (c).

¹²⁷ UNSCR 2216 (2015), OP 14.

¹²⁸ UNSCR 2036 (2012), OP 22.

flag vessels or aircraft if there is sufficient evidence to demonstrate that the item(s) will be used, or a significant risk they may be used, in the manufacture in Somalia of improvised explosive devices”.¹²⁹

3.1.4. *Carve-outs Applicable With Respect to UNSC-Imposed Counterterrorism-Related Asset-Freeze Sanctions Measures*

Before setting out the relations between the carve-out in OP 1 of UNSCR 2664 (2022) and UNSC action concerning the countering of terrorism, it may be useful to outline other (pre-existing) carve-outs applicable in respect of those measures, as well as certain aspects of the relations between those (pre-existing) carve-outs and the carve-out in OP 1 of UNSCR 2664 (2022).

The UNSC has decided that the asset-freeze sanctions measures of the ISIL-and-Al-Qaida sanctions regime, the Al-Shabaab (Somalia) sanctions regime,¹³⁰ the UNSCR 1988 (2011) sanctions regime,¹³¹ and the Yemen

¹²⁹ UNSCR 2498 (2019), OP 26.

¹³⁰ Under a previous carve-out applicable to the Al-Shabaab (Somalia) sanctions regime, which has now been superseded — pursuant to OP 4 of UNSCR 2664 (2022) — by OP 1 of UNSCR 2664 (2022), the UNSC had decided that the asset freeze “shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia” by certain specified actors. UNSCR 2551 (2020), OP 22. That carve-out had replaced an earlier, time-limited carve-out. See UNSCR 1916 (2010), OP 5.

¹³¹ It bears emphasis that the issue of whether the UNSCR 2664 (2022) carve-out is applicable in respect of the UNSCR 1988 (2011) sanctions regime appears unsettled. In OP 1 of UNSCR 2664 (2022), the UNSC “[d]ecide[d]” that the carve-out in OP 1 of UNSCR 2664 (2022) applies with respect to “asset freezes imposed by th[e Security] Council or its Sanctions Committees”. UNSCR 2664 (2022), OP 1. In OP 4, the UNSC further “[d]ecide[d]” that the carve-out “shall apply with respect to all future asset freezes imposed or renewed by this Council in the absence of an explicit decision by th[e Security] Council to the contrary” and also “clarifie[d]” that OP 1 of UNSCR 2615 (2021) shall remain in effect. UNSCR 2664 (2022), OP 4. According to OP 1 of UNSCR 2615 (2021), “humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of” asset freezes imposed under the UNSCR 1988 (2011) sanctions regime and “the processing and payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are permitted”. UNSCR 2615 (2021), OP 1. Under one interpretation, that carve-out is the sole carve-out applicable with respect to asset freezes under the UNSCR 1988 (2011) sanctions regime, and, thus, the carve-out in OP 1 of UNSCR 2664 (2022) is not capable of applying in parallel with respect to asset freezes under the UNSCR 1988 (2011) sanctions regime. See U.N. Doc. S/2023/658, *supra* note 54, at 9–10. Under another interpretation, the two carve-outs — namely, those entailed in OP 1 of UNSCR 2615 (2021) and OP 1 of UNSCR 2664 (2022) — are arguably capable of applying in parallel with respect to asset freezes under the UNSCR 1988 (2011) sanctions

[Footnote continued on next page]

sanctions regime¹³² do not apply with respect to economic resources determined by a certain actor¹³³ as necessary for either:

- “[B]asic expenses,” such as payment for foodstuffs, medicines, or medical treatment, after notification to and in the absence of a negative decision by the relevant sanctions committee; or
- “[E]xtraordinary expenses,” after notification to and approval by the relevant sanctions committee.¹³⁴

regime, with the latter carve-out applying in relation to all situations that (i) concern asset freezes under the UNSCR 1988 (2011) sanctions regime, (ii) involve conduct covered by OP 1 of UNSCR 2664 (2022), but (iii) are *not* covered by the carve-out in OP 1 of UNSCR 2615 (2021) — for example, in situations pertaining to humanitarian assistance and other activities that support basic human needs in territories other than Afghanistan. See further Kapoor, Lewis, & Modirzadeh, *supra* note 16, at 24 (fn 85 and associated text). Under this interpretation, with respect to situations meeting the above-mentioned criteria, the carve-out in OP 1 of UNSCR 2664 (2022) is arguably (also) applicable with respect to asset freezes imposed under the UNSCR 1988 (2011) sanctions regime and shall apply with respect to asset freezes imposed under that regime in the future unless and until the UNSC explicitly decides to the contrary. *Ibid.* It may be recalled that the UNSC has directed “the Committees established by th[e Security] Council with respect to sanctions implementation to assist Member States in properly understanding and fully implementing paragraph 1 of [UNSCR 2664 (2022)] by issuing Implementation Assistance Notices to provide further guidance to give full effect to paragraph 1 that takes into account the unique context of the sanctions falling under their respective mandates”. UNSCR 2664 (2022), OP 6. As of November 2023, the UNSCR 1988 (2011) Sanctions Committee has not (at least not on its website) issued such guidance, including as may relate to the applicability (or not) of OP 1 of UNSCR 2664 (2022) with respect to the UNSCR 1988 (2011) sanctions regime. See UNSC, Security Council Committee established pursuant to resolution 1988 (2011), <https://www.un.org/securitycouncil/sanctions/1988>.

¹³² Further, in UNSCR 2511 (2020), the UNSC decided that the 2140 Sanctions Committee “may, on a case-by-case basis, exempt any activity from the sanctions measures imposed [under the Yemen sanctions regime] if the Committee determines that such an exemption is necessary to facilitate the work of the United Nations and other humanitarian organisations in Yemen or for any other purpose consistent with the objectives of these resolutions”. UNSCR 2511 (2020), OP 3.

¹³³ Pursuant to UNSCR 2610 (2021), the asset freeze under the ISIL-and-Al-Qaida sanctions regime does not apply to economic resources determined by the ISIL and Al-Qaida Sanctions Committee as necessary for such “basic expenses” or “extraordinary expenses”. UNSCR 2610 (2021), OP 84 (a), (b). See also UNSCR 1735 (2006); UNSCR 1452 (2002). Pursuant to UNSCR 1844 (2008), the UNSC decided that the asset freeze under the Al-Shabaab (Somalia) sanctions regime does not apply to economic resources “determined by relevant Member States” as necessary for such “basic expenses” or “extraordinary expenses”. UNSCR 1844 (2008), OP 4 (a), (b). Pursuant to UNSCR 2255 (2015), the asset freeze under the UNSCR 1988 (2011) sanctions regime does not apply to economic resources that the “relevant State determines” necessary for such “basic expenses” or “extraordinary expenses”. UNSCR 2255 (2015), OP 18 (a), (b). Pursuant to UNSCR 2140 (2014), the asset freeze under the Yemen sanctions regime does not apply to economic resources that the “relevant Member States” determine as necessary for such “basic expenses” or “extraordinary expenses”. UNSCR 2140 (2014), OP 12 (a), (b). See also UNSCR 2707 (2023), OP 1.

¹³⁴ UNSCR 2610 (2021), OP 84 (a), (b). See also UNSCR 1735 (2006); UNSCR 1452 (2002); [Footnote continued on next page]

Along similar lines, with respect to the asset freeze under the UNSCR 1636 (2005) sanctions regime, the UNSC has assigned to the UNSCR 1636 (2005) Sanctions Committee the responsibility to approve, on a “case-by-case basis,” exceptions to that asset freeze “where the [Sanctions] Committee determines that such exceptions are necessary for basic expenses,” such as payments for foodstuffs, medicines, and medical treatment.¹³⁵

There are at least two differences between a “basic”- or “extraordinary”-expenses carve-out, on the one hand, and the standing carve-out in UNSCR 2664 (2022), on the other hand.

A first difference concerns their respective scopes of application. A “basic”- or “extraordinary”-expenses carve-out applies with respect to economic resources deemed necessary by a particular actor¹³⁶ for certain types of payments or “expenses”. For example, a “basic”- or “extraordinary”-expenses carve-out may be invoked when a listed actor subject to an asset freeze needs to access frozen funds in order to make certain necessary payments, such as for rent or insurance premiums.¹³⁷ For its part, the carve-out in UNSCR 2664 (2022) applies to the provision, processing, or payment of funds or the provision of goods and services necessary for certain humanitarian-related fulfillment activities carried out by a specified actor or an appropriate other. For example, that carve-out may be relied on to provide funds (for instance, in connection with incidental payments to access an area where civilians are in need) necessary to ensure the timely delivery of humanitarian assistance carried out by a specified actor.

A second difference concerns (a lack of) a requirement related to case-by-case notification or approval. The respective “basic”- or “extraordinary”-expenses carve-outs entail various case-by-case notification-or-approval requirements.¹³⁸

UNSCR 1844 (2008), OP 4 (a), (b); UNSCR 2255 (2015), OP 18 (a), (b); UNSCR 2140 (2014), OP 12 (a), (b).

¹³⁵ UNSCR 1636 (2005), annex, 2 (ii).

¹³⁶ See fn 133 above.

¹³⁷ See UNSCR 2610 (2021), OP 84 (a), (b); UNSCR 1844 (2008), OP 4 (a), (b); UNSCR 1636 (2005), annex, 2 (ii); UNSCR 2255 (2015), OP 18 (a), (b).

¹³⁸ With respect to the ISIL-and-Al-Qaida sanctions regime, the listed actor seeking the exemption is required to make a request to the “focal point,” who submits the request to the actor’s State of residence and any other State where the relevant economic resources are held and then transmits the request to the relevant Sanctions Committee for a decision. See UNSCR 1730 (2006), OP 1 (“[R]equest[ing] the Secretary-General to establish within the Secretariat (Security Council Subsidiary Organs Branch), a focal point” to perform certain tasks). See further Security Council Committee Pursuant To Resolutions 1267 (1999), 1989 (2011), And 2253 (2015) [Footnote continued on next page]

Meanwhile, the carve-out in UNSCR 2664 (2022) applies on a standing basis and does not require notification to, or the approval of, a sanctions committee.

3.2. Additional Prohibitions or Restrictions on Access to, or Provision or Collection of, Funds and Other Economic Resources as May Pertain to Terrorist Acts and Related Conduct

3.2.1. Summary

In addition to certain asset freezes targeting individuals or entities designated by the UNSC or its sanctions committees, UNSC action aimed at least in part at countering terrorism includes a range of additional prohibitions and restrictions concerning access to, or the provision or collection of, funds and economic resources as may pertain to terrorist acts and related conduct. Those further prohibitions and restrictions entail a range of measures, including with respect to UNSC-imposed obligations that States are required to implement concerning:

- The prevention and suppression of financing of acts of terrorism;
- The denial of safe haven to those who finance terrorist acts;
- Bringing to justice those who participate in the financing of terrorist acts and the establishment of such acts as serious criminal offenses;
- Asset freezes in respect of those who commit or attempt to commit terrorist acts;
- The criminalization of the provision of economic resources for the benefit of persons who commit or attempt to commit terrorist acts;
- The prohibition on the provision of economic resources with respect to certain specified actors; and

Concerning ISIL (Da'esh), Al-Qaida And Associated Individuals, Groups Undertakings And Entities, Guidelines Of The Committee For The Conduct Of Its Work, ¶ 11 (c) (Mar. 10, 2023); Security Council Committee Pursuant to Resolution 751 (1992) Concerning Somalia, Guidelines Of The Committee For The Conduct Of Its Work, ¶ 11 (c) (Feb. 25, 2019); Security Council Committee Established Pursuant to Resolution 1988 (2011), Guidelines Of The Committee For The Conduct Of Its Work, ¶ 12 (c), (d) (Dec. 3, 2018); Security Council Committee Established Pursuant to Resolution 1636 (2005), Guidelines Of The Committee Established Pursuant to Resolution 1636 (2005), ¶ 4 (Mar. 8, 2006); Security Council Committee Established Pursuant to Resolution 2140 (2014), Guidelines Of The Committee For The Conduct Of Its Work, ¶ 10 (c), (d) (Oct. 29, 2021).

- The criminalization of the willful provision or collection of economic resources with the intention or knowledge that: (i) the funds would be used to carry out terrorist acts; (ii) the funds would be used for the benefit of terrorist organizations or individual terrorists; or (iii) the funds would be used to finance the travel of certain individuals as pertains to terrorism-related conduct.

3.2.2. Detailed Analysis

The UNSC has adopted several texts pertaining to prohibitions or other restrictions on the provision of funds and other economic resources as may relate to terrorist acts and related conduct. The adverse consequences on humanitarian action of those prohibitions and restrictions include, for example, impediments to the ability of humanitarian actors to make incidental payments to access, and deliver humanitarian assistance in, areas under the control of certain actors. Those adverse impacts also encompass legal, reputational, financial, and security risks for those who provide funds or economic resources for humanitarian activities that may benefit organizations or individual characterized as terrorists.¹³⁹

3.2.2.1. Prevent and Suppress the Financing of Acts of Terrorism

In UNSCR 1269 (1999), the UNSC “[c]all[ed] upon” States to prevent and suppress the financing of acts of terrorism;¹⁴⁰ and, in UNSCR 1373 (2001), the UNSC “[d]ecide[d]” that States shall take that action.¹⁴¹ In UNSCR 2199 (2015), the UNSC “[r]ecognize[d] the need to take measures to prevent and suppress the financing of terrorism, individual terrorists, and terrorist organizations.”¹⁴²

¹³⁹ See further Dustin A. Lewis, Radhika Kapoor, and Naz Modirzadeh, *Advancing Humanitarian Commitments In Connection With Countering Terrorism*, HARV. L. SCH. PROG. INT’L L. & ARMED CONFLICT 33–34 (Dec. 2021), <https://dash.harvard.edu/bitstream/handle/1/37371628/Advancing-Humanitarian-Commitments.pdf?isAllowed=y&sequence=1>.

¹⁴⁰ UNSCR 1269 (1999), OP 4.

¹⁴¹ UNSCR 1373 (2001), OP 1 (a); UNSCR 2133 (2014), OP 1; UNSCR 2253 (2015), preamble; UNSCR 2347 (2017), preamble; UNSCR 2370 (2017), preamble.

¹⁴² UNSCR 2199 (2015), OP 8. Further, in UNSCR 2462 (2019), the UNSC urged States, “when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical [Footnote continued on next page]

In UNSCR 2354 (2017), the UNSC affirmed that “financing, planning and inciting terrorist acts [...] are [...] contrary to the purposes and principles of the United Nations”.¹⁴³

3.2.2.2. Deny Safe Haven to Those Who Finance Terrorist Acts

In UNSCR 1373 (2001), the UNSC decided that States shall “[d]eny safe haven to those who finance [...] terrorist acts”¹⁴⁴; and, in UNSCR 2322 (2016), the UNSC called upon States to cooperate in this respect.¹⁴⁵

3.2.2.3. Bring to Justice Any Person Who Participates In the Financing of Terrorist Acts and Establish Such Acts As Serious Criminal Offenses

In UNSCR 1373 (2001), UNSCR 2199 (2015), and UNSCR 2462 (2019), the UNSC decided that States shall ensure both that “any person who participates in the financing, planning, preparation or perpetration of terrorist acts [...] is brought to justice” and that “such terrorist acts” are established as “serious criminal offences”.¹⁴⁶ Further, the UNSC called on States, in a number of resolutions, to cooperate in order to bring to justice those who support, facilitate, participate, or attempt to participate in the financing, planning, preparation, or commission of terrorist acts.¹⁴⁷

activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”. UNSCR 2462 (2019), OP 24. Similarly, in UNSCR 2482 (2019), the UNSC urged States to “ensure that all measures taken to counter terrorism comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, and [...] to take into account the potential effects of counterterrorism measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”. UNSCR 2482 (2019), OP 6. See also fn 55 above.

¹⁴³ UNSCR 2354 (2017), preamble.

¹⁴⁴ UNSCR 1373 (2001), OP 2 (c).

¹⁴⁵ UNSCR 2322 (2016), OP 9.

¹⁴⁶ UNSCR 1373 (2001), OP 2 (e); UNSCR 2199 (2015), OP 11; UNSCR 2462 (2019), preamble. See also fn 55, 142 above.

¹⁴⁷ UNSCR 1526 (2004), OP 2; UNSCR 2129 (2013), preamble; UNSCR 2395 (2017), preamble; UNSCR 2617 (2021), preamble. See also UNSCR 2253 (2015), OP 12; UNSCR 2322 (2016), OP 8; UNSCR 2368 (2017), preamble, OP 12; UNSCR 2396 (2017), OP 23; UNSCR 2610 (2011), preamble.

3.2.2.4. Freeze Economic Resources As Pertains to Persons Who Commit, or Attempt to Commit, Terrorist Acts

In multiple texts, including in UNSCR 2617 (2021), UNSCR 2199 (2015), and UNSCR 1963 (2010), the UNSC laid down — or, subsequently, affirmed — an obligation on all States to “freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts [and] of entities owned or controlled directly or indirectly by such persons”.¹⁴⁸ The UNSC did not state expressly that this obligation applies only in respect of those designated under a specific counterterrorism-related sanctions regime. Rather, on its terms, this obligation applies in respect of those “who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts [and] entities owned or controlled directly or indirectly by such persons”.¹⁴⁹

¹⁴⁸ UNSCR 1963 (2010), preamble; UNSCR 2199 (2015), preamble; UNSCR 2617 (2021), preamble.

¹⁴⁹ Ibid. See UNSCR 1373 (2001), OP 1 (c). See further UNSC, Technical guide to the implementation of Security Council resolution 1373 (2001) and other relevant resolutions, U.N. Doc. S/2019/998 (Dec. 27, 2019), at 15–18 (“The obligation to freeze, without delay, funds and assets linked to terrorist organizations or individual terrorists is a key element of resolution 1373 (2001). All elements of the provision set forth in paragraph 1 (c) [...] should be in place, and the State should be able to freeze [such] funds, other financial assets or economic resources without delay. [...] States should have in place a legal provision that provides for the freezing of terrorist funds and assets pursuant to resolution 1373 (2001) and establish a designating mechanism with adequate due process consideration, as well as a dedicated mechanism to address foreign asset-freezing requests. The decisions to freeze funds and assets must be communicated to the private sector in order to identify and detect any funds or financial assets held by designated person or entities. Regular reviews of the designations to ensure that the persons and entities whose assets have been frozen still represent a terrorist threat to the State could be considered. [...] *The mechanism to be established pursuant to resolution 1373 (2001) differs from the requirements set forth [pursuant to] the ISIL (Da’esh) and Al-Qaida sanctions [regime].* [...] The following issues should be considered: (a) How does the State implement the asset-freezing requirements of resolution 1373 (2001)? (b) Does the State freeze assets without delay? (c) Can the State freeze funds ex parte or without prior notice? [...] (d) How does the State identify and designate the names of persons and entities whose funds and assets are to be frozen under resolution 1373 (2001)? [...] (g) How does the State provide guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets? [...] (p) Has the State frozen any assets pursuant to resolution 1373 (2001)?”) (emphasis added).

3.2.2.5. Criminalize Making Any Economic Resource or Financial or Other Related Services Available for the Benefit of Persons Who Commit or Attempt to Commit or Participate In the Commission of Terrorist Acts

In multiple texts, including in UNSCR 1373 (2001), UNSCR 2133 (2014), and UNSCR 2170 (2014), the UNSC obliged States to prohibit their nationals or any persons and entities within their territories from making any economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, or entities owned or controlled, directly or indirectly, by such persons, or persons and entities acting on behalf of or at the direction of such persons.¹⁵⁰ In UNSCR 2253 (2015), UNSCR 2322 (2016), UNSCR 2368 (2017), and UNSCR 2610 (2021), the UNSC called upon States to ensure that “wilful violation[s] of [this] prohibition” were established as “serious criminal offence[s]” in domestic laws and regulations.¹⁵¹ In a number of resolutions, the UNSC clarified that this obligation entailed a prohibition on making such economic resources available for the benefit of “terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act”.¹⁵²

¹⁵⁰ See e.g. UNSCR 1373 (2001), OP 1 (d); UNSCR 2133 (2014), OP 2; UNSCR 2170 (2014), OP 12. See also UNSCR 2199 (2015), OP 2, 4; UNSCR 2253 (2015), OP 13.

¹⁵¹ UNSCR 2253 (2015), OP 20; UNSCR 2322 (2016), OP 6; UNSCR 2368 (2017), OP 21; UNSCR 2610 (2021), OP 23.

¹⁵² UNSCR 2253 (2015), OP 19; UNSCR 2322 (2016), preamble; UNSCR 2368 (2017), OP 20; UNSCR 2462 (2019), OP 3; UNSCR 2610 (2021), OP 22. See also UNSCR 2322 (2016), OP 6. In that connection, the UNSC has identified linkages with recommendations by the FATF — an intergovernmental body that issues recommendations aimed at countering terrorism financing and money laundering and monitors States’ compliance with those recommendations — as pertains to countering the financing of terrorism, particularly recommendation 5. Pursuant to that recommendation, “[c]ountries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts”. See FATF recommendations, recommendation 5. For example, in UNSCR 2253 (2015) and UNSCR 2368 (2017), the UNSC “highlight[ed] that FATF Recommendation 5 applies to the financing of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act”. UNSCR 2253 (2015), OP 17; UNSCR 2368 (2017), OP 18. See also UNSCR 2322 (2016), OP 6.

3.2.2.6. Prohibit the Provision of Economic Resources With Respect to Certain Specified Actors, Including ISIL and Al-Qaida

The UNSC has emphasized that the scope of application of certain prohibitions on the provision of economic resources extends to certain specified actors. For example, the UNSC:

- Clarified in multiple decisions, including in UNSCR 2253 (2015), UNSCR 2368 (2017), and UNSCR 2610 (2021), that the provision of economic resources to certain specified actors — namely, ISIL, Al-Qaida, and associated individuals, group, entities, and undertakings — is prohibited;¹⁵³
- Called upon States to “cut the flows” of economic resources to Al-Qaida, Usama bin Laden, and the Taliban, and individuals and entities associated with them,¹⁵⁴ pursuant to UNSCR 1526 (2004) and UNSCR 1822 (2008) and, later, to individuals and entities on the ISIL and Al-Qaida Sanctions List, pursuant to multiple texts, including UNSCR 2161 (2014), UNSCR 2253 (2015), and UNSCR 2368 (2017);¹⁵⁵ and
- Emphasized, in UNSCR 1390 (2002), that States are “obligat[ed]” to implement UNSCR 1373 (2001) in full, including with respect to members of the Taliban and the Al-Qaida, and any individuals or entities associated with them “who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts”.¹⁵⁶

¹⁵³ UNSCR 2253 (2015), OP 18; UNSCR 2368 (2017), OP 19; UNSCR 2610 (2021), OP 13, 21; UNSCR 2170 (2014), OP 12. See also UNSCR 2199 (2015), OP 9 (extending the same obligation to “oil, oil products, modular refineries and related material and other natural resources that are identified as directed to, collected for, or otherwise for the benefit of [...] individuals, groups, undertakings and entities associated with Al-Qaida”).

¹⁵⁴ UNSCR 1526 (2004), OP 4; UNSCR 1822 (2008), OP 5.

¹⁵⁵ UNSCR 2161 (2014), OP 12; UNSCR 2253 (2015), OP 21; UNSCR 2368 (2017), OP 22; UNSCR 2610 (2021), OP 24.

¹⁵⁶ UNSCR 1390 (2002), OP 4.

3.2.2.7. Criminalize the Willful Provision or Collection of Economic Resources With the Intention or Knowledge That the Funds Would Be Used for Certain Purposes

In a number of texts, the UNSC has decided that States shall criminalize the willful provision or collection of economic resources with the intention or knowledge that the funds would be used for certain purposes.

First, in UNSCR 1373 (2001) and UNSCR 2462 (2019), the UNSC decided that States shall criminalize the willful provision or collection of funds by their nationals or in their territories with the intention or knowledge that the funds would be used to carry out terrorist acts.¹⁵⁷

Second, the UNSC decided, in UNSCR 2462 (2019) and UNSCR 2610 (2021), that States shall, “in a manner consistent with their obligations under international law, including international humanitarian law, international human rights law and international refugee law,” establish “serious criminal offenses” proscribing the “wilful provision or collection” of economic resources¹⁵⁸ with the intention or knowledge that the funds would be used for the “benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act”¹⁵⁹.

And third, in UNSCR 2178 (2014), the UNSC decided that States shall establish “serious criminal offenses” criminalizing the “wilful provision or collection” of funds with the intention or knowledge that the funds would be used “to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training”¹⁶⁰. In the same resolution, the UNSC also called upon States to cooperate in order to “disrupt[] and prevent[] financial support to foreign terrorist fighters”¹⁶¹.

¹⁵⁷ UNSCR 1373 (2001), OP 1 (b); UNSCR 2462 (2019), OP 2.

¹⁵⁸ For ease of reference, this report uses the term “economic resources” to refer collectively to funds, financial assets, and economic resources.

¹⁵⁹ UNSCR 2462 (2019), OP 5; UNSCR 2610 (2021), OP 19.

¹⁶⁰ UNSCR 2178 (2014), OP 6.

¹⁶¹ *Ibid.*, at OP 4.

3.3. Prohibitions and Restrictions on the Provision of Other Support as May Pertain to Terrorist Acts and Related Conduct

3.3.1. Summary

UNSC action aimed at countering terrorism also includes a range of prohibitions and restrictions on the provision of other forms of support (that is, not only funding-related support) as may pertain to terrorist acts and related conduct. Those prohibitions and restrictions concern, for example:

- Refraining from providing support to entities or persons involved in terrorist acts;
- Denying safe haven to those who support terrorist acts;
- Bringing to justice those supporting terrorist acts and establishing such acts as serious criminal offenses;
- Implementing UNSCR 1373 (2001) with respect to any individuals or entities associated with the Taliban or Al-Qaida who have participated in supporting terrorist acts; and
- Taking certain actions with respect to non-profit organizations.

3.3.2. Detailed Analysis

The UNSC has adopted several texts entailing prohibitions or other restrictions on the provision of support (not expressly limited to financial support) as may pertain to terrorist acts and related conduct.¹⁶² Certain efforts to implement

¹⁶² Certain actions of the UNSC concerning prohibitions or restrictions on the provision of support in relation to terrorist acts predate the adoption of UNSCR 1373 (2001). Such measures include those imposed by the UNSC in respect of specific States. For example, in UNSCR 748 (1992), the UNSC “[d]ecide[d]” that Libya shall “commit itself definitively to cease [...] all assistance to terrorist groups” and that States shall prohibit the provision to Libya, by their nationals or from their territories, of “technical advice, assistance or training related to” certain matters, and “[w]ithdraw any [...] officials or agents present in Libya to advise the Libyan authorities on military matters”. See UNSCR 748 (1992), OP 2, OP 5 (b), (c). See also *ibid.*, preamble (determining that Libya’s “failure [...] to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security”). Other examples of measures predating the adoption of UNSCR 1373 (2001) include the duty to “refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such

[Footnote continued on next page]

those prohibitions or restrictions have been documented as adversely affecting humanitarian action. For example, under certain broad conceptions of “support,” certain aspects of humanitarian activities have been conceptualized as forms of impermissible “support” with respect to terrorist acts and related conduct. Potentially implicated situations may include those where the ultimate beneficiaries of humanitarian action include “entities or persons involved in terrorist acts” or where humanitarian action is being carried out in areas under the de facto or de jure control or authority of such entities or persons.¹⁶³

3.3.2.1. Refrain from Providing Any Form of Support, Active or Passive, to Entities or Persons Involved In Terrorist Acts

In the UNSCR 1373 (2001) line of resolutions, the UNSC has adopted numerous provisions aimed at the countering of support for terrorism. A core decision of the UNSC in that connection is that States shall “[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts”.¹⁶⁴ In UNSCR 2354 (2017), the UNSC affirmed that “supporting terrorist organizations [is] [...] contrary to the purposes and principles of the United Nations”.¹⁶⁵ In UNSCR 2322 (2016), UNSCR 2368 (2017), UNSCR 2370 (2017), and UNSCR 2610 (2021), the UNSC called on States to share information on sources of “material support” of those implicated in terrorist activities.¹⁶⁶ Further, in UNSCR 2178 (2014) and UNSCR 2396 (2017), the UNSC recognized

acts”; prevention and suppression of the “preparation” of acts of terrorism; prevention of the provision of “technical advice, assistance, or training related to the military activities of the armed personnel under the control of the Taliban”; “bring[ing] to justice the perpetrators, organizers and sponsors of [the] terrorist attacks [that occurred on September 11, 2001];” and holding accountable “those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of th[o]se acts”. UNSCR 1189 (1998), preamble; UNSCR 1269 (1999), OP 4; UNSCR 1333 (2000), OP 5 (b). See also *ibid.*, at OP 9 (referring to “Taliban terrorist activities”); UNSCR 1368 (2001), OP 3.

¹⁶³ See further Lewis, Kapoor, and Modirzadeh, *supra* note 139, at 32.

¹⁶⁴ UNSCR 1373 (2001), OP 2 (a); UNSCR 2129 (2013), OP 13; UNSCR 2133 (2014), OP 1; UNSCR 2170 (2014), OP 11; UNSCR 2199 (2015), preamble; UNSCR 2253 (2015), preamble; UNSCR 2347 (2017), preamble; UNSCR 2368 (2017), preamble; UNSCR 2370 (2017), preamble; OP 1; UNSCR 2395 (2017), OP 22; UNSCR 2462 (2019), OP 1; UNSCR 2610 (2011), preamble; UNSCR 2617 (2021), OP 28. See also UNSCR 2370 (2017), OP 15.

¹⁶⁵ UNSCR 2354 (2017), preamble.

¹⁶⁶ UNSCR 2322 (2016), preamble; UNSCR 2368 (2017), preamble; UNSCR 2370 (2017), preamble; UNSCR 2610 (2021), preamble.

that the “foreign terrorist fighter threat includes [...] individuals supporting acts or activities of Al-Qaida and its cells, affiliates, splinter groups, and derivative entities”.¹⁶⁷

3.3.2.2. Deny Safe Haven to Those Who Support Terrorist Acts

In UNSCR 1373 (2001), the UNSC decided that States shall “[d]eny safe haven to those who [...] support [...] terrorist acts”¹⁶⁸; and, in UNSCR 2322 (2016), the UNSC called upon States to cooperate in this respect.¹⁶⁹

3.3.2.3. Bring to Justice Any Person Who Participate In Supporting Terrorist Acts and Establish Such Acts as Serious Criminal Offenses

In UNSCR 1373 (2001), UNSCR 2199 (2015), and UNSCR 2462 (2019), the UNSC decided that States shall ensure both that “any person who participates [...] in supporting terrorist acts is brought to justice” and that “such terrorist acts” are established as “serious criminal offences”.¹⁷⁰ Further, in a number of resolutions, the UNSC called on States, to cooperate in order to bring to justice those who support the financing, planning, preparation, or commission of terrorist acts.¹⁷¹

3.3.2.4. Implement UNSCR 1373 (2001) With Respect to Any Individuals or Entities Associated With the Taliban or Al-Qaida Who Have Participated In Supporting Terrorist Acts

In UNSCR 1390 (2002), the UNSC emphasized that States are “obligat[ed]” to implement UNSCR 1373 (2001) in full, including with respect to members of

¹⁶⁷ UNSCR 2178 (2014), preamble; UNSCR 2396 (2017), preamble.

¹⁶⁸ UNSCR 1373 (2001), OP 2 (c).

¹⁶⁹ UNSCR 2322 (2016), OP 9.

¹⁷⁰ UNSCR 1373 (2001), OP 2 (e); UNSCR 2199 (2015), OP 11; UNSCR 2462 (2019), preamble. See also fn 55, 142 above.

¹⁷¹ UNSCR 1526 (2004), OP 2; UNSCR 2129 (2013), preamble; UNSCR 2395 (2017), preamble; UNSCR 2617 (2021), preamble. See also UNSCR 2253 (2015), OP 12; UNSCR 2322 (2016), OP 8; UNSCR 2368 (2017), preamble, OP 12; UNSCR 2396 (2017), OP 23; UNSCR 2610 (2011), preamble.

the Taliban and the Al-Qaida, and any individuals or entities associated with them “who have participated [...] in supporting terrorist acts”.¹⁷²

3.3.2.5. Take Certain Actions With Respect to Non-profit Organizations

The UNSC recognized, in UNSCR 2368 (2017), the “exploit[ation]” of non-profit organizations (NPOs) by “terrorists and terrorist organizations [...] to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and operations”.¹⁷³ In this respect, the UNSC:

- Called upon NPOs, in UNSCR 2368 (2017), to “prevent and oppose, as appropriate, attempts by terrorists to abuse their status through risk mitigation measures,” including under FATF recommendation 8,¹⁷⁴ which, in its current form, states, among other aspects, that “[c]ountries should identify the organisations which fall within the FATF definition of [NPOs¹⁷⁵] and assess their terrorist financing risks” and that “countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach”;¹⁷⁶
- Reiterated, in UNSCR 2368 (2017), UNSCR 2395 (2017), and UNSCR 2617 (2021), that States should take “effective and proportionate actions against [NPOs] that either are exploited by or knowingly support terrorists or terrorist organizations taking into account the specifics of the case”;¹⁷⁷ and
- Called upon States, in UNSCR 2462 (2019), to “periodically conduct [or

¹⁷² UNSCR 1390 (2002), OP 4. Further, in UNSCR 2665 (2022), the UNSC affirmed that “no Afghan group or individual should support terrorists operating on the territory of any country”. UNSCR 2665 (2022), preamble.

¹⁷³ UNSCR 2368 (2017), preamble.

¹⁷⁴ *Ibid.*

¹⁷⁵ See FATF, *Combating The Terrorist Financing Abuse Of Non-Profit Organisations*, at 7 (Nov. 2023) (noting that FATF defines an NPO as a “legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types [of] “good works””).

¹⁷⁶ FATF recommendations, recommendation 8.

¹⁷⁷ UNSCR 2368 (2017), preamble; UNSCR 2395 (2017), preamble; UNSCR 2617 (2021), preamble.

update] [...] risk assessment[s] of [the] non-profit sector [...] to determine the organizations vulnerable to terrorist financing and to inform the implementation of a risk based approach”.¹⁷⁸

4. CONSIDERATIONS REGARDING WHETHER THE UNSCR 2664 (2022) CARVE-OUT APPLIES WITH RESPECT TO UNSC-IMPOSED COUNTERTERRORISM-RELATED MEASURES

In this section, we frame an examination as to whether the UNSCR 2664 (2022) carve-out applies with respect to the three sets of UNSC-imposed measures meant at least in part to counter terrorism covered in section 3. We aim to show what is clearly settled and what remains open to debate.

We divide our analysis into two parts. The first part covers UNSC-imposed counterterrorism-related measures with respect to which the carve-out, from our perspective, indisputably applies. The second part covers such measures with respect to which the carve-out’s applicability, from our perspective, remains unsettled. Regarding those other measures, the second part also outlines some elements that States might consider in seeking to form a position on whether a “conflict” within the meaning of UNSCR 2664 (2022) exists with a particular UNSC-imposed counterterrorism-related obligation, as well as some wider considerations.

4.1. Clear Applicability

4.1.1. Summary

By its terms, the carve-out applies with respect to “asset freezes imposed by th[e] [UNSC] or its Sanctions Committees”.¹⁷⁹ Asset freezes under at least four of the five counterterrorism-related sanctions regimes are covered under that framing.¹⁸⁰ In particular, the carve-out clearly applies with respect to asset freezes

¹⁷⁸ UNSCR 2462 (2019), OP 23.

¹⁷⁹ UNSCR 2664 (2022), OP 1.

¹⁸⁰ Further, under at least one interpretation, the carve-out applies with respect to asset freezes under the UNSCR 1988 (2011) sanctions regime. That is, under one — admittedly unsettled — [Footnote continued on next page]

under: (i) the ISIL-and-Al-Qaida sanctions regime (until at least December 9, 2024); (ii) the Al-Shabaab (Somalia) sanctions regime; (iii) the UNSCR 1636 (2005) sanctions regime; and (iv) the Yemen sanctions regime.

4.1.2. Detailed Analysis

From our perspective, the carve-out in OP 1 of UNSCR 2664 (2022) clearly applies with respect to the following four sets of counterterrorism-related asset-freeze sanctions measures imposed by a UNSC Sanctions Committee:

- With respect to asset freezes imposed under the ISIL-and-Al-Qaida sanctions regime;¹⁸¹
- With respect to asset freezes imposed under the Al-Shabaab (Somalia) sanctions regime;¹⁸²
- With respect to asset freezes imposed under the UNSCR 1636 (2005) sanctions regime;¹⁸³ and
- With respect to asset freezes imposed under the Yemen sanctions regime.¹⁸⁴

interpretation, the carve-out in OP 1 of UNSCR 2664 (2022) may arguably be said to apply, in parallel with the carve-out in OP 1 of UNSCR 2615 (2021), in respect of certain situations with regard to asset freezes imposed under the UNSCR 1988 (2011) sanctions regime. See fn 131 above. In addition, it may be argued that asset freezes carried out under the UNSC-imposed obligation on all States to “freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts [and] of entities owned or controlled directly or indirectly by such persons” qualify as “asset freezes imposed by th[e] UNSC] or its Sanctions Committees” in the sense of OP 1 of UNSCR 2664 (2022). UNSCR 1963 (2010), preamble; UNSCR 2199 (2015), preamble; UNSCR 2617 (2021), preamble. See above section 3.2.2.4: Freeze Economic Resources As Pertains to Persons Who Commit, or Attempt to Commit, Terrorist Acts.

¹⁸¹ See fn 43, 99–111 above and associated text.

¹⁸² See fn 112–113, 179 above and associated text.

¹⁸³ See fn 114, 179 above and associated text.

¹⁸⁴ See fn 115, 179 above and associated text.

Table: Settled Issues	
Question	Answer
Does the UNSCR 2664 (2022) carve-out apply to asset-freeze sanctions measures imposed by the UNSC or its sanctions committees?	<p>Yes, with one possible exception, the UNSCR 2664 (2022) carve-out applies to all current and future asset-freeze sanctions measures imposed by the UNSC or its sanctions committees.</p> <p>(The possible exception is the UNSCR 1988 (2011) (Taliban) asset-freeze sanctions measures: while the carve-out in UNSCR 2615 (2021) applies to those measures, it is an open question whether the UNSCR 2664 (2022) carve-out also applies with respect to those measures.)</p>
Does the UNSCR 2664 (2022) carve-out apply to at least some UNSC-imposed measures meant in part to counter terrorism measures?	<p>Yes, the UNSCR 2664 (2022) carve-out applies to at least the following UNSC-imposed measures meant in part to counter terrorism:</p> <ul style="list-style-type: none"> (i) The ISIL-and-Al-Qaida asset-freeze sanctions measures (until December 9, 2024, with the potential for an extension); (ii) The Al-Shabaab (Somalia) asset-freeze sanctions measures (indefinitely); (iii) The UNSCR 1636 (2005) asset-freeze sanctions measures (indefinitely); and (iv) The Yemen asset-freeze sanctions measures (indefinitely).

4.2. Unsettled Applicability

4.2.1. Summary

The carve-out clearly applies with respect to at least four, and potentially all five, of the counterterrorism-related sanctions regimes decided by the UNSC.¹⁸⁵ However, the carve-out's applicability with respect to certain other forms of UNSC action aimed at countering terrorism remains, from our perspective, unsettled. That potential applicability depends on a variety of factors, including whether the carve-out conflicts with relevant previous UNSC action and, thereby, supersedes such action to the extent of such conflict.¹⁸⁶

4.2.2. Detailed Analysis

From our perspective, it is unsettled whether the carve-out in OP 1 of UNSCR 2664 (2022) necessarily applies with respect: (i) to additional UNSC-imposed prohibitions on access to, or the provision or collection of, funds and other economic resources pertaining to terrorism, and (ii) to UNSC-imposed prohibitions on the provision of other forms of support regarding terrorism.

In particular, as outlined above, in addition to counterterrorism-related asset freezes against individuals and entities designated by the UNSC or its sanctions committees, it is an open question whether a conflict (in the meaning of UNSCR 2664 (2022)) exists between the carve-out and the following types of UNSC-imposed prohibitions and other restrictions on access to, or the provision or collection of, funds and other economic resources as may pertain to terrorist acts and related conduct:¹⁸⁷

- Obligations related to the prevention and suppression of the financing of acts of terrorism;¹⁸⁸
- Obligations related to the denial of safe haven to those who finance

¹⁸⁵ See above section 3.1: Obligations Concerning Sanctions Measures Against Individuals, Groups, Undertakings, or Entities Designated by the UNSC or a UNSC Sanctions Committee in Relation to Terrorist Acts or Activities and section 4.1: Clear Applicability.

¹⁸⁶ See UNSCR 2664 (2022), OP 4.

¹⁸⁷ See below section 4.2.3: Considerations Regarding a Potential "Conflict" With UNSCR 2664 (2022).

¹⁸⁸ See above section 3.2.2.1: Prevent and Suppress the Financing of Acts of Terrorism.

terrorist acts;¹⁸⁹

- Obligations related to bringing to justice any person who participates in the financing of terrorist acts and establish such acts as serious criminal offenses;¹⁹⁰
- Obligations related to freezing of economic resources as pertains to persons who commit, or attempt to commit, terrorist acts;¹⁹¹
- Obligations related to the criminalization of making any economic resource or financial or other related services available for the benefit of persons who commit or attempt to commit or participate in the commission of terrorist acts;¹⁹²
- Obligations related to the prohibition on the provision of economic resources with respect to certain specified actors;¹⁹³ and
- Obligations related to the criminalization of the willful provision or collection of economic resources with the intention or knowledge that the funds would be used for certain purposes.¹⁹⁴

Along similar lines, it is an open question whether a conflict (in the meaning of UNSCR 2664 (2022)) exists between the carve-out and the following types of UNSC-imposed prohibitions and other restrictions on the provision of other forms of support to terrorism have entailed adverse impacts on

¹⁸⁹ See above section 3.2.2.2: Deny Safe Haven to Those Who Finance Terrorist Acts.

¹⁹⁰ See above section 3.2.2.3: Bring to Justice Any Person Who Participates In the Financing of Terrorist Acts and Establish Such Acts As Serious Criminal Offenses.

¹⁹¹ See above section 3.2.2.4: Freeze Economic Resources As Pertains to Persons Who Commit, or Attempt to Commit, Terrorist Acts.

¹⁹² See above section 3.2.2.5: Criminalize Making Any Economic Resource or Financial or Other Related Services Available for the Benefit of Persons Who Commit or Attempt to Commit or Participate In the Commission of Terrorist Acts.

¹⁹³ See above section 3.2.2.6: Prohibit the Provision of Economic Resources With Respect to Certain Specified Actors, Including ISIL and Al-Qaida.

¹⁹⁴ Covered purposes include the use of funds to carry out terrorist acts, the use of funds for the “benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act”, and the use of funds “to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training”. See fn 157, 159, 160 above and associated text; see above section 3.2.2.7: Criminalize the Willful Provision or Collection of Economic Resources With the Intention or Knowledge That the Funds Would Be Used for Certain Purposes.

humanitarian action:¹⁹⁵

- Obligations related to refraining from providing any form of support, active or passive, to entities or persons involved in terrorist acts;¹⁹⁶
- Obligations related to the denial of safe haven to those who support terrorist acts;¹⁹⁷
- Obligations related to bringing to justice any person who participates in supporting terrorist acts and establishing such acts as serious criminal offenses;¹⁹⁸
- Obligations related to the implementation of UNSCR 1373 (2001) with respect to any individuals or entities associated with the Taliban or Al-Qaida who have participated in supporting terrorist acts;¹⁹⁹ and
- Obligations related to certain actions with respect to non-profit organizations.²⁰⁰

¹⁹⁵ See below section 4.2.3: Considerations Regarding a Potential “Conflict” With UNSCR 2664 (2022).

¹⁹⁶ See above section 3.3.2.1: Refrain from Providing Any Form of Support, Active or Passive, to Entities or Persons Involved In Terrorist Acts.

¹⁹⁷ See above section 3.3.2.2: Deny Safe Haven to Those Who Support Terrorist Acts.

¹⁹⁸ See above section 3.3.2.3: Bring to Justice Any Person Who Participate In Supporting Terrorist Acts and Establish Such Acts as Serious Criminal Offenses.

¹⁹⁹ See above section 3.3.2.4: Implement UNSCR 1373 (2001) With Respect to Any Individuals or Entities Associated With the Taliban or Al-Qaida Who Have Participated In Supporting Terrorist Acts.

²⁰⁰ See above section 3.3.2.5: Take Certain Actions With Respect to Non-profit Organizations.

Table: Interactions Between UNSC-Imposed Counterterrorism-Related Measures and the UNSCR 2664 (2022) Carve-out		
Certain UNSC-imposed restrictive measures meant at least in part to counter terrorism that States are obliged to carry out	Authority that determines in relation to which individuals and entities the measure applies	Does the UNSCR 2664 (2022) carve-out apply with respect to the measure?
<i>Funding-related obligations</i>		
Prevent and suppress the financing of acts of terrorism	Each State	Unsettled
Deny safe haven to those who finance terrorist acts	Each State	Unsettled
Bring to justice any person who participates in the financing of terrorist acts and establish such acts as serious criminal offenses	Each State	Unsettled
Freeze assets:		
(i) With respect to an obligation to freeze economic resources as pertains to persons who commit, or attempt to commit, terrorist acts	Each State	Unsettled
(ii) With respect to the ISIL-and-Al-Qaida Sanctions Regime	The UNSC and/or its ISIL-and-Al-Qaida Sanctions Committee	Yes, until Dec. 9, 2024 (pending a potential extension)
(iii) With respect to the Al-Shabaab (Somalia) Sanctions Regime	The UNSC and/or its Al-Shabaab (Somalia) Sanctions Committee	Yes
(iv) With respect to the UNSCR 1636 (2005) Sanctions Regime	The UNSC and/or its UNSCR 1636 (2005) Sanctions Committee	Yes
(v) With respect to the Yemen Sanctions Regime	The UNSC and/or its Yemen Sanctions Committee	Yes
(vi) With respect to the UNSCR 1988 (Taliban) Sanctions Regime	The UNSC and/or its UNSCR 1988 Sanctions Committee	Unsettled
Criminalize making any economic resource or financial or other related services available for the benefit of persons who commit or attempt to commit or participate in the commission of terrorist acts	Each State	Unsettled
Prohibit the provision of economic resources with respect to certain specified actors	Each State	Unsettled
Criminalize the willful provision or collection of economic resources with the intention or knowledge that the funds would be used for certain purposes	Each State	Unsettled
<i>“Support”-related obligations</i>		
Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts	Each State	Unsettled
Deny safe haven to those who support terrorist acts	Each State	Unsettled
Bring to justice any person who participates in supporting terrorist acts and establish such acts as serious criminal offenses	Each State	Unsettled
Implement UNSCR 1373 (2001) with respect to any individuals or entities associated with the Taliban or Al-Qaida who have participated in supporting terrorist acts	Each State	Unsettled
Take certain actions with respect to non-profit organizations	Each State	Unsettled

4.2.3. Considerations Regarding a Potential “Conflict” With UNSCR 2664 (2022)

A key way to help ascertain whether the UNSCR 2664 (2022) carve-out applies with respect to the enumerated counterterrorism measures is to determine whether a relevant previous resolution of the UNSC conflicts, in the sense of OP 4 of UNSCR 2664 (2022), with the carve-out.²⁰¹ It may be recalled that, in OP 4 of UNSCR 2664 (2022), the UNSC emphasized that “where paragraph 1 of [UNSCR 2664 (2022)] conflicts with its previous resolutions, paragraph 1 shall supersede such previous resolutions to the extent of such conflict”.²⁰² To help inform that determination, we set out six sets of general elements that are arguably necessary to ascertain and assess in combination in relation to each specific UNSC-imposed counterterrorism measure of concern here.²⁰³

4.2.3.1. Content of the Notion of “Conflict”

A first element concerns the content of the notion of a “conflict[]” in the sense of OP 4 of UNSCR 2664 (2022). The UNSC did not expressly define the term in the resolution. Nor, so far as we are aware, has a relevant UNSC Sanctions Committee sought to provide a definition — for the purposes of that specific sanctions regime — of the notion in an IAN.²⁰⁴ Under a relatively narrow approach, a “conflict” in the sense of OP 4 of UNSCR 2664 (2022) might be said to arguably arise in respect only of a situation in which a State is unable to fully implement the carve-out in OP 1 of UNSCR 2664 (2022) due to that State’s carrying out of a UNSC-imposed asset-freeze sanctions measure.²⁰⁵ Under that approach, impediments to a State’s ability to fully implement the carve-out arising from *other* UNSC action meant at least in part to counter terrorism may not be construed as a relevant “conflict” in the sense of OP 4 of UNSCR 2664 (2022). On the other hand, under an approach that also takes into account the humanitarian ecosystem and the adverse effects of certain counterterrorism measures on it, a “conflict” in the sense of OP 4 might arguably arise (additionally or

²⁰¹ UNSCR 2664 (2022), OP 4.

²⁰² *Ibid.*

²⁰³ Namely, the enumerated UNSC-imposed: (i) prohibitions on access to, or the provision of, funds and other economic resources pertaining to terrorism; and (ii) prohibitions on the provision of other forms of support regarding terrorism.

²⁰⁴ See UNSCR 2664 (2022), OP 6.

²⁰⁵ *Ibid.*, at OP 4.

separately) in respect of a situation in which a State's performance of an obligation arising under OP 1 of UNSCR 2664 (2022) is incompatible with that State's carrying out of an obligation entailed in *any* previous UNSC resolution, not limited to UNSC-imposed asset freezes and instead also encompassing those pertaining to relevant (other) counterterrorism obligations.²⁰⁶

4.2.3.2. Taking Into Account the Preamble of UNSCR 2664 (2022)

A second element concerns the preamble of UNSCR 2664 (2022). Relevant considerations in connection with interpreting and applying the terms of a UNSC resolution arguably include the “context” of the resolution, encompassing the preamble.²⁰⁷ In particular, the preamble may help shed light on the resolution's object and purpose.²⁰⁸

Preambular paragraphs that may be useful in connection with the implementation of UNSCR 2664 (2022) as may concern ascertaining the relations between the resolution, on the one hand, and UNSC-imposed measures meant at least in part to counter terrorism, on the other hand, include the following:

“Bearing in mind the importance of assessing potential humanitarian impacts prior to a [UNSC] decision to establish a sanctions regime, while accepting the need for the [UNSC] to act swiftly in countering threats to international peace and security”;

“Recalling resolution 2462 (2019), which decides that all States shall, in a manner consistent with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a

²⁰⁶ See further Kapoor, Lewis, & Modirzadeh, *supra* note 16, at 44.

²⁰⁷ Efthymios Papastavridis, *Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraqi Crisis*, 56 INT'L & COMP. L.Q. 83, 101 (2007); Michael C. Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. U.N. L. 73, 89 (1998).

²⁰⁸ *Ibid.*, at 86. See also *ibid.*, at 90–91 (describing how “both the terms of the preamble [of UNSCR 757 (1992)] and many of the statements made in the Security Council upon [its] adoption made it clear that the purpose [of the resolution] was not to punish the people of Yugoslavia but rather to induce the authorities to behave responsibly”). Wood notes, however, that the preamble ought to be “read with caution” as it may reference proposals that could not be incorporated in operative paragraphs.

manner duly reflecting the seriousness of the offense the willful provision or collection of funds, financial assets or economic resources or financial or other related services, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act, and *urging* States when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law”;

“*Recalling* the need for Member States to ensure that all measures taken by them to implement sanctions, including in the context of counter-terrorism, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, as applicable, and noting, in this regard, the rules of international humanitarian law, as applicable, regarding respect for, and the protection of, humanitarian personnel and consignments for humanitarian relief operations and the non-punishment of any person for carrying out medical activities compatible with medical ethics”;

“*Emphasizing* that such measures are not intended to have adverse humanitarian consequences for civilian populations nor adverse consequences for humanitarian activities or those carrying them out, and *noting* that humanitarian and basic human needs differ depending on the specific context”;

“*Expressing* its readiness to review, adjust and terminate, when appropriate, its sanctions regimes taking into account the evolution of the situation on the ground and the need to minimize unintended adverse humanitarian effects [...]”; and

“*Encouraging* the United Nations, where appropriate, to take an active role in coordinating humanitarian activities in situations where its sanctions are applicable, recalling the United Nations guiding principles of General Assembly Resolution 46/182 of humanitarian emergency assistance, including humanity, neutrality,

impartiality and independence, and noting that the intention of this resolution is to provide clarity to ensure the continuation of humanitarian activities in the future”.²⁰⁹

4.2.3.3. Which “Previous Resolutions” May Pose a Conflict

A third element concerns which “previous resolutions” may pose a “conflict[]” in the sense of OP 4 of UNSCR 2664 (2022). As a starting point, consistent with the text of OP 4, only UNSC resolutions (or a portion thereof) may so qualify. Therefore, action taken in the form of, for example, a UNSC Presidential Statement would apparently not be capable of giving rise to a conflict in the sense of OP 4. Under a relatively narrow approach, it might be submitted that “previous resolutions” encompass only UNSC resolutions that meet two cumulative criteria: the resolution (i) relates to a UNSC-imposed asset-freeze sanctions measure and (ii) conflicts with OP 1 Of UNSCR 2664 (2022). Alternatively, under an approach that also takes into account the humanitarian ecosystem and the adverse effects of certain counterterrorism measures on it, it might be argued that the notion of “previous resolutions” encompasses any resolution adopted by the UNSC prior to December 9, 2022 — including one laying down a general counterterrorism obligation — that conflicts with OP 1 of UNSCR 2664 (2022). In support of that approach, it may be underlined that in OP 4 of UNSCR 2664 (2022) the UNSC did not expressly limit “previous resolutions” only to resolutions directly pertaining to UNSC-decided sanctions measures.

4.2.3.4. The Extent To Which UNSCR 2664 (2022) May Supersede Previous Resolutions

A fourth element concerns the extent to which OP 1 of UNSCR 2664 (2022) may supersede previous resolutions in the sense of OP 4 of UNSCR 2664 (2022). Under a relatively narrow approach, “to the extent of such conflict” might be said to mean that OP 1 of UNSCR 2664 (2022) supersedes the specific (portion of a) provision of a previous UNSC resolution that meets two cumulative criteria: the resolution both (i) relates to carrying out a UNSC decision imposing an asset-freeze sanctions measure and (ii) conflicts with OP 1. Under an approach that also takes into account the humanitarian ecosystem and the adverse effects

²⁰⁹ UNSCR 2664 (2022), preamble.

of certain counterterrorism measures on it, “to the extent of such conflict” might mean that OP 1 of UNSCR 2664 (2022) supersedes each and every provision in a previous UNSC resolution that, where carried out in practice, is incompatible with the obligation to permit the forms of facilitative conduct or the indicated forms of humanitarian-related fulfillment activities covered by the carve-out, including to the extent that a UNSC-imposed general counterterrorism obligation gives rise to that incompatibility.²¹⁰

4.2.3.5. Content of the “Are Permitted And Are Not A Violation Of the Asset Freezes Imposed By Th[e UNSC] Or Its Sanctions Committees” Terminology in OP 1 of UNSCR 2664 (2022)

A fifth element concerns the content of the following terminology in OP 1 of UNSCR 2664 (2022): “are permitted and are not a violation of the asset freezes imposed by th[e UNSC] or its Sanctions Committees”. It may be recalled that, in OP 1 of UNSCR 2664 (2022), the UNSC decided:

“[T]hat without prejudice to the obligations imposed on Member States to freeze the funds and other financial assets or economic resources of individuals, groups, undertakings, and entities designated by th[e UNSC] or its Sanctions Committees, 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 [a specified actor], or by [an appropriate other], *are permitted and are not a violation of the asset freezes imposed by th[e UNSC] or its Sanctions Committees*.”²¹¹

At least two aspects of this terminology arguably need to be addressed: (i) what the “are permitted and are not a violation” terminology means; and (ii) what falls within the notion of “the asset freezes imposed by th[e UNSC] or its Sanctions Committees”.

²¹⁰ See UNSCR 2664 (2022), OP 1. See also *ibid.*, preamble (noting that the UNSC’s express intention in adopting UNSCR 2664 (2022) was to ensure the continuation of humanitarian activities).

²¹¹ *Ibid.*, at OP 1 (emphasis added).

Under a relatively narrow approach to (i), the terminology might be said to mean that the conduct and activities covered by the carve-out — namely, certain forms of facilitative conduct necessary for indicated forms of humanitarian-related fulfillment activities by a specified actor or an appropriate other — are permitted only in the sense that such conduct and activities are not to be considered by the State a violation of the asset freezes imposed by the UNSC or its sanctions committees. Under an approach that also takes into account the humanitarian ecosystem and the adverse effects of certain counterterrorism measures on it, the terminology might be said to mean that States are obliged to permit the conduct and activities covered by the carve-out in relation to any circumstance or situation, perhaps including by entailing an obligation on the State to *actively establish* conditions conducive to facilitating such conduct and activities. Such an approach may result from the argument that the term “and” between “are permitted” and “are not a violation of the asset freezes imposed by th[e UNSC] or its Sanctions Committees” ought to be interpreted by adopting a presumption against redundancy to give effect to every clause and word of OP 1 of resolution 2664 (2022), thereby avoiding a construction that could imply that a portion of the terminology employed by the UNSC was superfluous.²¹² Under that approach, States would be obliged:

- To ensure that the conduct and activities covered by the carve-out are not considered to constitute a violation of the asset freezes imposed by the UNSC or its sanctions committees; and
- To ensure that no other measure — in any other domain (that is, in areas other than those that relate to UNSC-imposed asset-freeze sanctions measures) — adopted by the State impairs or impedes the carrying out of that conduct or those activities.

Under a relatively narrow approach to (ii), the terminology — “the asset freezes imposed by th[e UNSC] or its Sanctions Committees” — might be interpreted as including only asset freezes imposed by the UNSC or its sanctions committees under all currently active sanctions regimes with the exception of asset freezes under the UNSCR 1988 (2011) sanctions regime.²¹³ The basis for adopting such a narrow approach may concern the UNSC’s “clarif[ication]” in UNSCR 2664 (2022) that, while OP 1 of UNSCR 2664 (2022) “shall supersede and replace”

²¹² Such an interpretation might draw from aspects of the argumentation in I.C.J. *Namibia*, *supra* note 34, at ¶113.

²¹³ See U.N. Doc. S/2023/658, *supra* note 54, at 9–10.

previous carve-outs applicable with respect to the Al-Shabaab (Somalia) sanctions regime and the Haiti sanctions regime, the carve-out applicable with respect to the UNSCR 1988 (2011) sanctions regime “shall remain in effect”.²¹⁴ Under that approach, the carve-out in UNSCR 2664 (2022) applies with respect to (among other UNSC-imposed sanctions regimes) the following four sets of counterterrorism-related asset-freeze sanctions measures: those under the ISIL-and-Al-Qaida sanctions regime until at least December 9, 2024; those under the Al-Shabaab (Somalia) sanctions regime; those under the UNSCR 1636 (2005) sanctions regime; and those under the Yemen sanctions regime.

Under an approach to (ii) that also takes into account the humanitarian ecosystem and the adverse effects of certain counterterrorism measures on it, the terminology might be interpreted as including all asset freezes “imposed” — in a wider sense — by the UNSC or its sanctions committees. Pursuant to that approach, the carve-out in UNSCR 2664 (2022) applies with respect to all five sets of counterterrorism-related asset-freeze sanctions measures — those under the ISIL-and-Al-Qaida sanctions regime (until at least December 9, 2024); those under the Al-Shabaab (Somalia) sanctions regime; those under the UNSCR 1636 (2005) sanctions regime; those under the Yemen sanctions regime; and those under the UNSCR 1988 (2011) sanctions regime²¹⁵ — as well as to any asset freezes that a State implements in carrying out the UNSC-imposed general, freestanding counterterrorism asset-freeze obligation.²¹⁶

4.2.3.6. Consequences Arising In The Event of a Conflict

A sixth element concerns what consequences may arise in the event of an apparent conflict in the sense of OP 4 of UNSCR 2664 (2022).²¹⁷ Under a relatively

²¹⁴ UNSCR 2664 (2022), OP 4. See further fn 46–49 above and associated text.

²¹⁵ On that view, two carve-outs — namely, those entailed in OP 1 of UNSCR 2615 (2021) and OP 1 of UNSCR 2664 (2022) — may apply in parallel with respect to asset freezes under the UNSCR 1988 (2011) sanctions regime, with the latter carve-out applying in relation to all situations (i) that concern asset freezes under the UNSCR 1988 (2011) sanctions regime, (ii) that involve conduct covered by OP 1 of UNSCR 2664 (2022), but (iii) that are not covered by the carve-out in OP 1 of UNSCR 2615 (2021) — for example, in situations pertaining to humanitarian assistance and other activities that support basic human needs in territories other than Afghanistan. See further Kapoor, Lewis, & Modirzadeh, *supra* note 16, at 24.

²¹⁶ See above section 3.2.2.4: Freeze Economic Resources As Pertains to Persons Who Commit, or Attempt to Commit, Terrorist Acts.

²¹⁷ On the interpretation of Security Council resolutions generally, including where they may [Footnote continued on next page]

narrow approach, in the event of such a conflict, a State might arguably be obliged to adjust the relevant elements of its national legal system — and any multi-state legal arrangements to which the State is party — to ensure that the State does not consider the conduct and activities covered by the carve-out to constitute a violation of a UNSC-imposed asset-freeze sanctions measure. Under an approach that also takes into account the humanitarian ecosystem and the adverse effects of certain counterterrorism measures on it, in the event of such a conflict, a State might arguably be obliged to adjust (among other things) the relevant elements of its national legal system — and any multi-state legal arrangements to which the State is party — to ensure that the State not only permits but also takes sufficient measures to *actively facilitate* the conduct and activities carved out in OP 1 of UNSCR 2664 (2022).

4.2.4. *Additional Considerations*

In formulating a position on the specific relations, if any, between the UNSCR 2664 (2022) carve-out and the State’s approach to implementation of a particular UNSC-imposed counterterrorism-related obligation, a State may take into account various additional considerations. For example, a State may consider, in addition to the six general considerations set out above, such elements as:

- The drafting history, context of adoption, and text of each relevant resolution;
- The UNSC’s express intention in adopting UNSCR 2664 (2022) — namely, to “provide clarity to ensure the continuation of humanitarian activities in the future”;²¹⁸
- Whether — and, if so, the extent to which — the policy shift made by the UNSC in UNSCR 2664 (2022) ought to be carried out in relation to other restrictive measures that entail adverse impacts on humanitarian action;
- An assessment of whether the State’s efforts to carry out a particular UNSC-decided counterterrorism-related obligation might impede

contain apparent conflicts with (other) international legal principles, see Alexander Orakhe-lashvili, *The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions*, 16 EUR. J. INT’L L. 59 (2005). See also Martti Koskeniemi, *Fragmentation Of International Law: Difficulties Arising From The Diversification And Expansion Of International Law*, Rep. of the Study Group of the Int’l L. Comm., ¶37, U.N. Doc. A/CN.4/L.682 and Add.1 (Apr. 13, 2006) (“In international law, there is a strong presumption against normative conflict.”).

²¹⁸ UNSCR 2664 (2022), preamble. See further fn 32 above and associated text.

- humanitarian activities;
- The rules and principles of international law applicable to the State with respect to its efforts to carry out a particular UNSC-decided counterterrorism-related obligation; and
- The State’s humanitarian commitments and accompanying policy framework.

5. THE TENSION IN PRACTICE

5.1. Introduction

In this section, we sketch a hypothetical example to illustrate how interpretation and implementation challenges may arise for a State as it seeks to safeguard humanitarian activities consistent with UNSC-imposed obligations to counter terrorism. Applying a sample assemblage of laws and policies to a particular situation may help to show the scope of the implicated stakes and to provide a basis for States to develop potential avenues for addressing them.

5.2. Hypothetical Situation

Arcadia is a middle-income State with a large Somali diaspora population. Dozens of humanitarian organizations that are registered in Arcadia provide humanitarian assistance to civilian populations in Somalia, including in areas under the de-facto control of persons and entities designated under the UNSC’s Al-Shabaab (Somalia) sanctions regime. Many of those humanitarian organizations — including several that qualify as specified actors under the UNSCR 2664 (2022) carve-out — are funded in part by the Government of Arcadia.

Following the adoption of UNSCR 2664 (2022), Arcadia undertakes a full-scale review of its national legal system to make any necessary adjustments. On the basis of that review, Arcadia decides to adjust all national measures that pose potential impediments to the following conduct and activities, which the carve-out entailed in UNSCR 2664 (2022) expressly obliges UN Member States to permit and not to consider a violation of a relevant UNSC-imposed asset freeze: 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

actors specified by the UNSC or subsequently added by a UNSC sanctions committee. In particular, Arcadia determines that at least two sets of its domestic laws and regulations need to be modified: (1) those concerning asset-freeze measures, and (2) those concerning the prohibition of material support in connection with terrorism.

(1) *Asset-freeze laws.* The first set concerns Arcadia's asset-freeze legal framework, which aims in part to implement the UNSC's Al-Shabaab (Somalia) sanctions regime. The Government of Arcadia has designated Al-Shabaab, its members, and dozens of people "affiliated with" Al-Shabaab (in the view of the Government of Arcadia) under the State's asset-freeze legal framework. In doing so, Arcadia has designated many more people under its Al-Shabaab asset-freeze legal framework than are designated under the UNSC's Al-Shabaab (Somalia) sanctions regime. Notably, Arcadia designated a wider set of people as part of its efforts to implement the UNSC's general, freestanding counterterrorism asset-freeze obligation. Arcadia adjusts its asset-freeze legal framework in line with OP 1 of UNSCR 2664 (2022).²¹⁹ Arcadian officials are concerned, however, that a counterterrorism monitoring body, such as CTED or FATF, may view the application of the carve-out beyond designees under the UNSC's Al-Shabaab (Somalia) sanctions regime as a violation of the UNSC-imposed general, freestanding counterterrorism asset-freeze obligation.²²⁰ Arcadian officials are also concerned about potential scrutiny from the Al-Shabaab (Somalia) Sanctions Committee and its panel of experts, tasked with assisting the

²¹⁹ In particular, Arcadia adjusts that framework so as to permit the provision, processing or payment of funds, other financial assets, or economic resources to Al-Shabaab, its members, and its affiliates or the provision of goods and services to Al-Shabaab, its members, and its affiliates, necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by a specified actor or an appropriate other.

²²⁰ See e.g. UNSC, Framework document for Counter-Terrorism Committee visits to Member States aimed at monitoring, promoting and facilitating the implementation of Security Council resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017), 2462 (2019) and 2482 (2019) and other relevant Council resolutions, at 4, U.N. Doc. S/2020/731 (Jul. 21, 2020) ("[T]he Counter-Terrorism Committee [(CTC)] is required to monitor, promote and facilitate the[] implementation [of relevant UNSC resolutions] by Member States. The [CTC] visit, conducted by the [CTED], is just one element of the monitoring mandate, which also includes a permanent stocktaking exercise that enables Member States to provide the Committee with updated information on measures taken to implement the relevant resolutions"); U.N. Doc. S/2019/998, *supra* note 149, at 16 ("States should have in place a legal provision that provides for the freezing of terrorist funds and assets pursuant to resolution 1373 (2001)"), 17 (stating that, pursuant to the CTED's technical guidance, "[t]he following issues should be considered: (a) How does the State implement the asset-freezing requirements of resolution 1373 (2001)? (b) Does the State freeze assets without delay? [...] (d) How does the State identify and designate the names of persons and entities whose funds and assets are to be frozen under resolution 1373 (2001)?").

Committee in monitoring the implementation of the Al-Shabaab (Somalia) sanctions regime.

(2) *Material-support laws.* The second set concerns Arcadia’s national counterterrorism framework. That framework, which seeks in part to implement relevant UNSC-imposed obligations aimed at countering terrorism, criminalizes the willful or knowing provision of material support to persons and entities designated by the Government of Arcadia as involved in terrorism. “Support” under Arcadia’s national framework includes, but is not limited to, financial support. Al-Shabaab, its members, and dozens of people “affiliated with” Al-Shabaab are designated under Arcadia’s national counterterrorism framework. Arcadia adjusts its material-support laws so as to exempt the provision, processing, or payment of funds in relation to Al-Shabaab, its members, and its affiliates in line with OP 1 of UNSCR 2664 (2022).²²¹ Arcadian officials are concerned, however, that a counterterrorism monitoring body, such as CTED or the FATF, may view the application of the carve-out in the form of such an exemption as a breach of several UNSC-imposed general counterterrorism obligations related to prohibiting financial and other forms of support to terrorism.²²² Arcadia understands the potentially significant stakes of the upcoming CTED and FATF assessments and wishes to obtain a favorable assessment from both.²²³

²²¹ In particular, Arcadia adjusts that framework so as to permit the provision, processing or payment of funds, other financial assets, or economic resources to Al-Shabaab, its members, and its affiliates, or the provision of goods and services to Al-Shabaab, its members, and its affiliates, necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by a specified actor or an appropriate other.

²²² See e.g. U.N. Doc. S/2019/998, *supra* note 149, at 9 (“In paragraph 2 (e) of resolution 1373 (2001), [...] the Council requires all States to ensure that any person who participates in [...] supporting terrorist acts is brought to justice. This requirement lends itself to a review of the extent to which the related legislation is being effectively implemented by Member States”), 31 (“States are required to identify and take effective and proportionate action against non-profit organizations that [...] are knowingly supporting [...] terrorists or terrorist organizations, taking into account the specifics of the case”), *ibid.* (“Countries should aim to prevent and prosecute, as appropriate, the financing of terrorism and other forms of support to terrorists”); FATF recommendations, Interpretive note to recommendation 6, at 46 (setting out FATF guidance with respect to “identifying and designating persons and entities financing or supporting terrorist activities”); Caitlin Maslen, *The Impact of Grey Listing by the Financial Action Task Force (FATF)*, TRANSPARENCY INT’L (2023), <https://www.u4.no/publications/the-impact-of-grey-listing-by-the-financial-action-task-force-fatf.pdf>.

²²³ UNSC, Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States, at 7, 31, U.N. Doc. S/2021/972 (Nov. 24, 2021) (“Member States have increasingly introduced amendments to their legislation on countering [Footnote continued on next page]

6. CONCLUSION

States continue to face pressing political and legal challenges to harmonize humanitarian commitments with security policies. From our perspective, UNSCR 2664 (2022) acts both as a directive for States to ensure the continuation of humanitarian aid with respect to UNSC-imposed asset freezes and as an invitation to consider integrating the carve-out's policy shift into the UNSC's broader collection of counterterrorism measures.

That invitation has arisen in a context where, a year after UNSCR 2664 (2022) was adopted, several important issues regarding its implementation have been settled. Those include its indisputable application to several specific sanctions regimes, including asset freezes targeting ISIL and Al-Qaida (at least until December 9, 2024) as well as Al-Shabaab.²²⁴

Yet, as we have sought to establish in this report, at least two significant uncertainties remain. Both, from our perspective, warrant urgent consideration.

First, if the UNSC does not extend the carve-out's application with respect to the ISIL-and-Al-Qaida sanctions regime by December 9, 2024, the normative and operational framework concerning UNSC-imposed asset freezes will fracture, potentially undermining part of the resolution's humanitarian intent. That may mean that States would in practice then need to “de-implement” the carve-out with respect *only* to that sanctions regime, resulting in legal, financial, and operational confusion for the dozens of States that have already implemented the carve-out as well as in adverse consequences for the populations and providers who rely on the carve-out. The urgency around the extension of the carve-out thus arises because there is a specific, and rapidly approaching, date to which the uncertainty is affixed and because a non-renewal of the carve-out with respect to that sanctions regime might result in a cascading series of adverse effects — not least for populations in need, for the humanitarian ecosystem that serves them, and for States seeking to safeguard humanitarian action while carrying out systematically UNSC-imposed

the financing of terrorism to address the requirements of [...] relevant [UNSC] resolutions [...], recommendations made by the [CTC] pursuant to its country assessment visits, and mutual evaluations and follow-up processes of the [FATF] and the [FATF]-style regional bodies”; “Priority recommendations include [...] [o]perationalizing asset freezing regimes prescribed by resolution 1373 (2001)”. Grey-listing by the FATF, for its part, can bring “negative economic and reputational impacts” for the State concerned. Maslen, *supra* note 222.

²²⁴ See above section 4.1: Clear Applicability.

obligations concerning asset freezes.

Second, the uncertainty extends to the broader application of UNSCR 2664 (2022) to counterterrorism measures beyond specific sanctions, raising questions about a coherent multilateral approach to humanitarian aid in conflict situations that are also considered counterterrorism contexts. That is because, in addition to asset freezes, several other UNSC-mandated measures meant to prevent and punish terrorism adversely impact humanitarian efforts. These measures include obligations to prevent and suppress the financing of terrorism and to criminalize support to terrorism.

Whether through action or inaction, these uncertainties will be addressed. A key question now is whether they will be dealt with primarily by States seeking to develop a coherent multilateral approach to them or by other actors on an ad-hoc basis.

ANNEX: ACTION RELATED TO IMPLEMENTATION OF UNSCR 2664 (2022)

In this Annex, as an informational resource, we outline action taken by UN-system actors and States with respect to implementation of the UNSCR 2664 (2022) carve-out. We do not, however, analyze or take a normative position on the extent to which these actors and States have addressed the kinds of issues that we raise in the body of the report. For example, we do not evaluate whether a particular State’s existing counterterrorism measures would need to be adjusted to reflect respect for UNSCR 2664 (2022), nor do we review such measures in light of UNSCR 2664 (2022).

1. UN-SYSTEM ACTORS

1.1. UNSC Sanctions Committees

1.1.1. Libya Sanctions Committee

On December 4, 2023, the Security Council Committee established pursuant to UNSCR 1970 (2011) concerning Libya (Libya Sanctions Committee) issued a new IAN to guide Member States in applying the carve-out in UNSCR 2664 (2022) to the asset freeze established under the Libya sanctions regime. In the IAN, the Libya Sanctions Committee noted that the intention of UNSCR 2664 (2022) “is to provide clarity to ensure the continuation of humanitarian activities by [specified] providers [...] in contexts where the [UNSC] has imposed an asset freeze in response to threats to international peace and security,”²²⁵ and stated that:

- “Where the conditions of [OP] 1 of resolution 2664 (2022) are satisfied and there is a conflict with [OP] 16 of resolution 2009 (2011) [which] delineates procedures to allow certain listed entities to access funds, other financial assets, or economic resources for humanitarian needs,”²²⁶

²²⁵ Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya, Implementation Assistance Notice #7: Guidance to Member States on the application of the humanitarian exemption established by resolution 2664 (2022) to the asset freeze established under resolution 1970 (2011), at 1, Dec. 4, 2023 [hereinafter, “Libya IAN”].

²²⁶ See UNSCR 2009 (2011), OP 16 (a) (deciding that the asset freeze under the Libya sanctions [Footnote continued on next page]

[OP] 1 of resolution 2664 (2022) supersedes [OP] 16 of resolution 2009 (2011) to the extent of such conflict”;²²⁷

- “[OP] 1 of resolution 2664 (2022) does not prejudice the obligations imposed on Member States to freeze the funds and other financial assets or economic resources of individuals, groups, undertakings, and entities designated by the [UNSC] or the [Libya Sanctions] Committee”;²²⁸
- “[OP] 1 of resolution 2664 (2022) covers the provision, processing or payment of funds, other financial assets, or economic resources, or the provisions of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by [specified] providers” and that “[i]n the context of such activities [...], 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 [specified] providers [...] are permitted and are not a violation of the assets freeze [...] under [the Libya sanctions regime] including where funds, financial assets or economic resources are made available for the benefit of individuals or entities designated by the [Libya Sanctions] Committee”;²²⁹ and
- “Under the Libya sanctions regime, humanitarian assistance includes but is not limited to the activities stipulated in the [U.N.] Appeals related to Libya”;²³⁰

The Libya Sanctions Committee further “invite[d] Member States to provide any relevant and additional information including the risk of diversion on the implementation of resolution 2664 (2022) [...] including with respect to [specified] providers [...] subject to their jurisdiction,” and “recommend[ed] that [specified] providers [...] put in place [...] procedures, strategies, and processes

regime “do[es] not apply to funds, other financial assets or economic resources of the Central Bank of Libya, the LAFB, the LIA and the LAIP provided that [...] a Member State has provided notice to the Committee of its intent to authorize access to funds, other financial assets, or economic resources, for one or more of the following purposes and in the absence of a negative decision by the Committee within five working days of such a notification: (i) humanitarian needs”).

²²⁷ Libya IAN, *supra* note 225, at 1–2.

²²⁸ *Ibid.*, at 2.

²²⁹ *Ibid.*, at 2.

²³⁰ *Ibid.*, at 2.

to mitigate the risk of diversion.”²³¹

1.1.2. UNSCR 1718 (2006) (DPRK) Sanctions Committee

On June 2, 2023, the Security Council Committee established pursuant to UNSCR 1718 (2006) (1718 Committee) issued an updated IAN to guide Member States in carrying out the obligations entailed in decisions adopted by the UNSC under the sanctions regime applicable in respect of the Democratic People’s Republic of Korea (DPRK).²³² In the IAN, the 1718 Committee “recall[ed]” the UNSC’s “direct[ion]” to sanctions committees to “assist Member States in properly understanding and fully implementing paragraph 1 of resolution 2664 (2022) by issuing [IANs]”²³³ and stated that:

- “[OP 1] of resolution 2664 (2022) created an exception to [asset freezes under the DPRK sanctions regime] [...], to permit ‘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 certain organizations”;²³⁴
- “[C]onsistent with [OP] 4 of resolution 2664 (2022), a case-by-case Committee exemption is not required with respect to [asset freezes under the DPRK sanctions regime] for activities permitted by resolution 2664 (2022)”;²³⁵
- “Because the exception set forth in [OPs] 1 and 4 of resolution 2664 (2022) applies only to the asset freeze, a case-by-case Committee exemption is required to engage in activity prohibited by any other measure imposed [under the DPRK sanctions regime]”;²³⁶ and
- “[OP] 6 of resolution 2664 (2022) directs the Committee, assisted by its Panel of Experts, to monitor the implementation of [OP 1] of the

²³¹ Ibid., at 3. See also *ibid.* (“Providers [...] may inform the Committee of steps taken to this effect through the Panel of Experts”).

²³² Security Council Committee established pursuant to resolution 1718 (2006), Implementation Assistance Notice No. 7: Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People’s Republic of Korea, at 1–2, Jun. 2, 2023 [hereinafter, “DPRK IAN”].

²³³ Ibid. See also UNSCR 2664 (2022), OP 6.

²³⁴ DPRK IAN, *supra* note 232, at 1–2.

²³⁵ Ibid., at 2.

²³⁶ Ibid.

resolution, including any risk of diversion. The Committee therefore encourages [...] Member States and international and non-governmental organizations carrying out humanitarian assistance and relief activities for the benefit of the civilian population of the DPRK to provide the Committee and its Panel of Experts with any information relevant to the risk of diversion.”²³⁷

1.2. UN Secretary-General

Pursuant to OP 7 of UNSCR 2664 (2022),²³⁸ on September 8, 2023, the UN Secretary-General issued a report on unintended consequences of UNSC-decided sanctions, including travel bans, arms embargoes, and measures that are *sui generis* to specific sanctions regimes.²³⁹ The report examined how UNSC-decided sanctions “may contribute to unintended adverse humanitarian consequences”, for instance by virtue of “fear of violating sanctions measures, including [UNSC] sanctions (and the concomitant fear of being cited for non-compliance)” and Member States’ reliance on the “designation of non-State armed groups under a [UNSC] sanctions regime [...] to justify restrictions on [...] engagement [...] with these groups for humanitarian purposes”.²⁴⁰ Among numerous areas of focus, the UN Secretary-General:

- Stated that, notwithstanding UNSCR 2664 (2022), “humanitarian actors may still face financial hurdles and operational delays”, and, “[t]o the extent that United Nations sanctions may contribute to these challenges, the [UNSC] may need to make further adjustments to the design and scope of the humanitarian carveout”;²⁴¹
- “[E]ncouraged [States] to consider expediting the adoption of measures to ensure the full implementation of resolution 2664 (2022) and other

²³⁷ Ibid.

²³⁸ See fn 54 above and associated text.

²³⁹ U.N. Doc. S/2023/658, *supra* note 54.

²⁴⁰ Ibid., at 2, 4, 6. See also *ibid.*, at 4 (“In some cases, facilitating the delivery of humanitarian assistance to people in need implies various types of direct or indirect interactions with United Nations sanctioned individuals and entities. In some areas, such actors have effective control, serve as the *de facto* authority and perform governmental functions, such as controlling public security and structures, or movements into, within or through these areas. Where assistance is provided to communities residing in areas under the control of such actors, humanitarian actors may require the services of local vendors indirectly linked to United Nations-sanctioned actors, or under the *de facto* jurisdiction of such actors, for lack of alternatives”).

²⁴¹ Ibid., at 10.

existing humanitarian carveouts in their domestic legislation [and] to adopt risk management policies that create an environment that is conducive to principled humanitarian action”;²⁴² and

- Stated that “[t]he [UNSC] and its subsidiary organs may wish to consider encouraging Member States and other stakeholders to report on impediments to the implementation of the humanitarian carveout to supplement the briefings by the Emergency Relief Coordinator”.²⁴³

1.3. UN Emergency Relief Coordinator

As mentioned above, the UNSC requested the ERC to brief or arrange a briefing for each relevant UNSC Sanctions Committee by November 9, 2023.²⁴⁴ As of January 11, 2024, press releases available on the UN website reveal that, pursuant to the UNSC’s request, an OCHA representative has briefed the Central African Republic (CAR) Sanctions Committee, the Democratic Republic of the Congo (DRC) Sanctions Committee, the Sudan Sanctions Committee, the South Sudan Sanctions Committee, and the 2140 Sanctions Committee on behalf of the ERC.²⁴⁵ Similar briefings to the Haiti Sanctions Committee and the ISIL and Al-Qaida Sanctions Committee were scheduled to occur in October and November 2023, respectively.²⁴⁶

²⁴² Ibid., at 10–11.

²⁴³ Ibid., at 11.

²⁴⁴ See fn 51 above and associated text.

²⁴⁵ Press Release, Security Council, Security Council Sanctions Committee Concerning South Sudan Receives Briefing on Behalf of Emergency Relief Coordinator in Pursuance of Resolution 2664 (2022), U.N. Press Release SC/15478 (Oct. 31, 2023); Press Release, Security Council, Security Council 2127 Committee Receives Briefing on Behalf of Emergency Relief Coordinator in Pursuance of Resolution 2664 (2022), U.N. Press Release SC/15480 (Nov. 2, 2023); Press Release, Security Council, Security Council 1533 Committee Receives Briefing on Behalf of Emergency Relief Coordinator in Pursuance of Resolution 2664 (2022), U.N. Press Release SC/15474 (Oct. 30, 2023); Press Release, Security Council, Security Council Sanctions Committee concerning Sudan Receives Briefing on Behalf of Emergency Relief Coordinator in Pursuance of Resolution 2664 (2022), U.N. Press Release SC/15486 (Nov. 9, 2023); Press Release, Security Council, Security Council 2140 Committee Considers Final Report of Panel of Experts, Receives Briefing by Office for Coordination of Humanitarian Affairs, U.N. Press Release SC/15497 (Nov. 16, 2023).

²⁴⁶ Security Council Report, *The Week Ahead At The UN Security Council* (Nov. 6–10, 2023), <https://scranswhatsinblue.cmail19.com/t/r-e-tiajg-khkihrhlq-r/>; Security Council Report, *The Week Ahead At The UN Security Council* (Oct. 30–Nov. 3, 2023), <https://scranswhatsinblue.cmail20.com/t/r-e-tixdlj-khkihrhlq-r/>.

2. STATES

Various States have taken action with respect to carrying out at least certain aspects of the decisions entailed in UNSCR 2664 (2022).

2.1. Groups of States

2.1.1. European Union

In February 2023, exemptions based on OP 1 of UNSCR 2664 (2022) were introduced to the European Union's (EU) regulations implementing UNSC-decided sanctions in respect of CAR, Haiti, Iraq, Lebanon, Somalia, and Yemen. According to Council Regulation (EU) 2023/331, asset freezes under those sanctions regimes “shall not apply to the making available of funds or economic resources necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by” actors specified in OP 1 of UNSCR 2664 (2022).²⁴⁷

Further, in March 2023, exemptions based on OP 1 of UNSCR 2664 (2022) were introduced to mixed EU-UNSC sanctions regimes in respect of: the DPRK; the DRC; Iran; ISIL (Da'esh) and Al-Qaida; Libya; Mali; South Sudan; and Sudan.²⁴⁸ These amendments were introduced under Council Decision (CFSP) 2023/726 and Council Regulation (EU) 2023/720. According to those amendments, asset freezes under the aforementioned sanctions regimes “shall not apply to the making available of funds or economic resources necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by” actors specified in OP 1 of UNSCR 2664 (2022).²⁴⁹

²⁴⁷ Council Regulation (EU) 2023/331 of 14 February 2023 amending certain Council regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption, arts 1–6, OJ L 47/1.

²⁴⁸ See Ireland Department of Foreign Affairs, *Press Release: Humanitarian Exemptions Included in EU Law*, <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2023/march/humanitarian-exemptions-included-in-eu-law-.php> (Mar. 31, 2023).

²⁴⁹ Council Regulation (EU) 2023/720 of 31 March 2023 amending certain Council Regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption, arts 1–9, OJ L 94/1; Council Decision (CFSP) 2023/726 of 31 March 2023 amending certain Council Decisions concerning restrictive measures in order to insert provisions on a humanitarian exemption, arts 1–8, OJ L 94/48.

2.2. Individual States

2.2.1. Canada

In June 2023, to give effect to the carve-out in OP 1 of UNSCR 2664 (2022), Canada introduced amendments to its regulations implementing UNSC sanctions. According to Section 2 of Canada's Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da'esh) and Al-Qaida, "[i]t is prohibited for any person in Canada or any Canadian outside Canada to knowingly" conduct certain transactions with persons associated with the Taliban, ISIL (Da'esh), or Al-Qaida.²⁵⁰ A new "exception" provides that Section 2 "does not prohibit the provision, processing or payment of funds, other financial assets or economic resources or the provision of goods and services that are necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs" in Afghanistan or in any other foreign State, carried out by actors specified in OP 1 of UNSCR 2664 (2022).²⁵¹ In other words, the exemption apparently applies the personal scope of UNSCR 2664 (2022) to the Afghanistan/Taliban exemption as well, with one key difference: the Afghanistan/Taliban exemption applies also with respect to "any other international organization that provides humanitarian assistance or leads other activities that support basic human needs in Afghanistan and are so recognized by Canada."²⁵² The exemption shall cease to be in effect in respect of asset freezes concerning any "person associated with ISIL (Da'esh) or Al-Qaida or a person acting on behalf of or at the direction of that person or an entity that is owned, held or controlled by that person, directly or indirectly, or to or for the benefit of a person associated with ISIL (Da'esh) or Al-Qaida"²⁵³ on December 9, 2024 or on another date when OP 1 of UNSCR 2664 "or any resolution that replaces that paragraph" ceases to apply, whichever is later.²⁵⁴ Analogous amendments have been made to Canadian regulations implementing other UNSC sanctions, including the Regulations Implementing the United Nations

²⁵⁰ Government of Canada, Regulations Implementing the United Nations Resolutions on Taliban, ISIL (Da'esh) and Al-Qaida § 2, SOR/99-444.

²⁵¹ *Ibid.*, § 2.1.

²⁵² *Ibid.*, § 2.1 (1) (f).

²⁵³ *Ibid.*, § 2 (d) (ii).

²⁵⁴ *Ibid.*, § 2.1 (3). See also UNSCR 2664 (2022), OP 2.

Resolutions on CAR,²⁵⁵ the DPRK,²⁵⁶ the DRC,²⁵⁷ Haiti,²⁵⁸ Iraq,²⁵⁹ Lebanon,²⁶⁰ Libya,²⁶¹ Mali,²⁶² Somalia,²⁶³ South Sudan,²⁶⁴ Sudan,²⁶⁵ and Yemen.²⁶⁶

2.2.2. *Switzerland*

In April 2023, Switzerland's Federal Council introduced an ordinance to implement (among other provisions) OP 1 of UNSCR 2664 (2022). The ordinance simultaneously implements both the carve-out in OP 1 of UNSCR 2664 (2022) and the carve-out in OP 1 of UNSCR 2615 (2021), the latter of which applies only with respect to the UNSCR 1988 (2011) sanctions regime.²⁶⁷ According to the ordinance:

- Asset freezes with respect to individuals and entities linked with ISIL, Al-Qaida, and the Taliban “do[] not apply if [...] the provision of assets

²⁵⁵ Government of Canada, Regulations Implementing the United Nations Resolutions on the Central African Republic, § 2.1, SOR/2014-163.

²⁵⁶ Government of Canada, Regulations Implementing the United Nations Resolutions on the Democratic People's Republic of Korea (DPRK), § 5.1, SOR/2006-287.

²⁵⁷ Government of Canada, Regulations Implementing the United Nations Resolutions on the Democratic Republic of the Congo, § 2.1, SOR/2004-222.

²⁵⁸ Government of Canada, Regulations Implementing the United Nations Resolution on Haiti, § 2.1, SOR/2022-237.

²⁵⁹ Government of Canada, Regulations Implementing the United Nations Resolutions on Iraq, § 5.1, SOR/2004-221.

²⁶⁰ Government of Canada, Regulations Implementing the United Nations Resolution on Lebanon, § 7.1, SOR/2007-204.

²⁶¹ Government of Canada, Regulations Implementing the United Nations Resolutions and Imposing Special Economic Measures on Libya, § 3.1, SOR/2011-51.

²⁶² Government of Canada, Regulations Implementing the United Nations Resolutions on Mali, § 3.1, SOR/2018-203.

²⁶³ Government of Canada, Regulations Implementing the United Nations Resolutions on Somalia, § 2.1, SOR/2009-92.

²⁶⁴ Government of Canada, Regulations Implementing the United Nations Resolutions on South Sudan, § 2.1, SOR/2015-165.

²⁶⁵ Government of Canada, Regulations Implementing the United Nations Resolutions on Sudan, § 2.1, SOR/2004-197.

²⁶⁶ Government of Canada, Regulations Implementing the United Nations Resolutions on Yemen, § 3.1, SOR/2014-213.

²⁶⁷ Le Conseil fédéral Suisse, Ordonnance sur les exceptions à certaines mesures de coercition pour l'acheminement de l'aide humanitaire ou pour l'appui à d'autres activités visant à répondre aux besoins essentiels des personnes (provisional text), <https://www.news.admin.ch/newsd/message/attachments/77518.pdf> (Apr. 26, 2023).

or the making available, directly or indirectly, of assets or economic resources to persons, enterprises and entities listed in the sanctions list under United Nations Security Council Resolution 1988 (2011) is necessary for the delivery of humanitarian assistance or in support of other activities aimed at meeting the basic needs of people in Afghanistan [or] the provision of assets or the making available, directly or indirectly, of assets or economic resources to persons, enterprises and entities listed on the sanctions list pursuant to United Nations Security Council resolutions 1267 (1999), 1989 (2011) and 2253 (2015) is necessary for the delivery of humanitarian assistance or in support of other activities aimed at meeting the basic needs of people in need [by] [certain specified actors or appropriate others]”;²⁶⁸ and

- Asset freezes with respect to those designated under sanctions regimes concerning CAR, the DPRK, DRC, Haiti, Iran, Lebanon, Libya, Mali, Somalia, South Sudan, Sudan, and Yemen “do[] not apply to the delivery of humanitarian aid or to the support of other activities aimed at meeting the basic needs of people in need [by] [certain specified actors or appropriate others]”.²⁶⁹

In a press release, the Swiss Federal Council confirmed that under the ordinance, “[c]ertain categories of humanitarian actors may now enter into business relations with, make payments to, or transfer goods to sanctioned individuals or companies where [...] necessary for the delivery of humanitarian assistance or other activities to meet basic human needs”.²⁷⁰

²⁶⁸ Ibid. (unofficially translated using an online translation tool). Original excerpt: “L’interdiction prévue à l’al. 2 ne s’applique pas si: a. la fourniture des avoirs ou la mise à disposition, directe ou indirecte, des avoirs ou des ressources économiques aux personnes, entreprises et entités figurant sur la liste des sanctions en vertu de la résolution 1988 (2011)³ du Conseil de sécurité des Nations Unies est nécessaire à l’acheminement de l’aide humanitaire ou à l’appui d’autres activités visant à répondre aux besoins essentiels des personnes en Afghanistan; la fourniture des avoirs ou la mise à disposition, directe ou indirecte, des avoirs ou des ressources économiques aux personnes, entreprises et entités figurant sur la liste des sanctions en vertu des résolutions 1267 (1999), 1989 (2011) et 2253 (2015)⁵ du Conseil de sécurité des Nations Unies est nécessaire à l’acheminement de l’aide humanitaire ou à l’appui d’autres activités visant à répondre aux besoins essentiels des personnes par [certain specified actors and appropriate others]”.

²⁶⁹ Ibid. Original excerpt: “L’interdiction [...] ne s’applique pas à l’acheminement de l’aide humanitaire ou à l’appui d’autres activités visant à répondre aux besoins essentiels des personnes par [certain specified actors and appropriate others]”.

²⁷⁰ Swiss Federal Council, *Press Release, Switzerland to implement the humanitarian exemption* [Footnote continued on next page]

2.2.3. *United Kingdom*

In February 2023, the United Kingdom (UK) adopted the Sanctions (Humanitarian Exception) (Amendment) Regulations. The amendment covers asset freezes in respect of CAR, the DPRK, the DRC, Haiti, Iran, Iraq, ISIL (Da'esh) and Al-Qaida, Lebanon, Libya, Mali, Somalia, Sudan, South Sudan, and Yemen, and provides that those asset freezes “are not contravened by a person (“P”) carrying out a relevant activity which is necessary— (a) to ensure the timely delivery of humanitarian assistance, or (b) to support other activities that support basic human needs, where Conditions A and B are met. [...] Condition A is that the humanitarian assistance or other activities [...] are carried out by [actors specified in OP 1 of UNSCR 2664 (2022).] [...] Condition B is that P believes that carrying out the relevant activity is so necessary and there is no reasonable cause for P to suspect otherwise.”²⁷¹

2.2.4. *United States*

In December 2022, the United States Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued or amended four categories of general licenses that support humanitarian-related activities across elements of OFAC’s sanctions regimes, including its regimes seeking to implement UNSC sanctions. Four categories of activities were authorized thereunder: “the official business of the U.S. government; the official business of certain international organizations and entities; transactions incident to certain humanitarian and other activities by nongovernmental organizations; and the provision of food and other agricultural commodities, medicine, medical devices, replacement parts and components, or software updates for medical devices for personal, non-commercial use.”²⁷² To put those licenses into effect, OFAC adopted two new rules. Together, the new rules — namely, 87 FR 78470 and 87 FR 78484 — introduce general licenses covering certain OFAC-administered sanctions, including but not limited to UNSC sanctions. Further, in guidance published on its website, OFAC stated that for humanitarian activity falling outside the scope of the

to UN sanctions regimes, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-94589.html> (Apr. 26, 2023).

²⁷¹ The Sanctions (Humanitarian Exception) (Amendment) Regulations 2023, §§ 2–15, U.K. S.I. 2023/121.

²⁷² *Cross-Programmatic Compliance Services Guidance*, U.S. DEPT. OF TREASURY, OFAC, <https://ofac.treasury.gov/faqs/1105>.

above-mentioned licenses, it will consider granting case-by-case licenses.²⁷³

The express purpose of 87 FR 78470 is to “amend[] [OFAC] regulations in multiple sanctions programs to add, amend, or update general licenses authorizing official business of the United States government and official business of certain international organizations and entities.”²⁷⁴ Sanctions covered under that rule include those in respect of: Belarus; Burma; Darfur; the DPRK; the DRC; “foreign terrorist organizations”; “global terrorism”; Iran; Iraq; Somalia; South Sudan; Syria; Yemen; and Zimbabwe.²⁷⁵ The particular international organizations authorized under each license vary. For example, the Burma license authorizes additional organizations, including “[t]he Association of Southeast Asian Nations; [t]he Colombo Plan; [t]he Consultative Group on International Agricultural Research (CGIAR) System Organization and the International Agricultural Research Centers supported by the CGIAR.”²⁷⁶ The rule stipulates that “funds transfers initiated or processed with knowledge or reason to know that the intended beneficiary of such transfers is a [blocked] person [...] [are not authorized] other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.”²⁷⁷

The express purpose of 87 FR 78484 is to “amend[] [OFAC] regulations in multiple sanctions programs to add general licenses authorizing certain transactions of nongovernmental organizations and certain transactions related to the provision of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates.”²⁷⁸ Sanctions covered under 87 FR 78484 include those in respect of: CAR; Darfur; the DRC; “foreign terrorist organizations”; “global terrorism”; Lebanon; Libya; Mali; Somalia; South Sudan; Syria; Yemen; and Zimbabwe.²⁷⁹ The rule stipulates that “funds transfers initiated or processed with knowledge or reason to

²⁷³ *Ibid.*

²⁷⁴ Addition of General Licenses for the Official Business of the United States Government and Certain International Organizations and Entities and Updates to the 50 Percent Rule Interpretive in OFAC Sanctions Regulations, 87 (244) Fed. Reg. 78470 (Dec. 21, 2022).

²⁷⁵ *Ibid.*, at 78470.

²⁷⁶ *Ibid.*, at 78471.

²⁷⁷ See e.g. *ibid.*, at 78472.

²⁷⁸ Addition of General Licenses to OFAC Sanctions Regulations for Certain Transactions of Nongovernmental Organizations and Related to Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates for Medical Devices, 87 (244) Fed. Reg. 78484 (Dec. 21, 2022).

²⁷⁹ *Ibid.*

know that the intended beneficiary of such transfers is a [blocked] person [...] [are not authorized] other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.”²⁸⁰

²⁸⁰ Ibid.

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