

# Developments within the UN System (2022)

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## 1 Introduction

This section<sup>1</sup> analyses developments relevant to disaster law which occurred within selected United Nations (UN) bodies during the course of 2022. In particular, it will address 1) the adoption by UN General Assembly (UNGA) of a number of Resolutions on disaster-related topics; 2) the work of the International Law Commission (ILC) on the topic of sea-level rise and the related comments made by States within the UNGA's Sixth Committee; and c) the adoption by the UN Security Council (UNSC) of Resolution 2664 (2022), providing for a humanitarian exemption to asset freeze measures in UN sanctions regimes.

## 2 Adoption by the UNGA of Resolutions on Disaster-Related Topics

In the course of 2022, during its seventy-sixth and seventy-seventh sessions, the UNGA adopted several Resolutions relevant to disaster prevention and response. Two of them dealt with measures necessary to prevent the reoccurrence of global pandemics and to be better prepared should the threat resurface. Three additional Resolutions fell within the ambit of humanitarian assistance and disaster risk reduction.<sup>2</sup> All the texts were adopted by consensus.

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2 An additional UNGA Resolution dealt with the aftermath of the devastating floods that hit Pakistan from June to October 2022, see UNGA, 'Solidarity with and support for the Government and people of Pakistan and strengthening of emergency relief, rehabilitation, reconstruction and prevention in the wake of the recent devastating floods' (17 October 2022) UN Doc A/RES/77/1. Through the Resolution, the UNGA extended the Organization's support and sympathy to the Government and people of Pakistan, emphasizing the need to help the country recovering from the devastating rains that left a third of the country under water.

### 2.1 *Pandemic-Related UNGA Resolutions*

UNGA Resolution 76/257 titled ‘Elevating pandemic prevention, preparedness and response to the highest level of political leadership’<sup>3</sup> represented the UNGA’s annual Resolution on global health and foreign policy. Norway’s representative introduced the text highlighting the weaknesses and inequities exposed by the coronavirus pandemic in today’s world. The Resolution urges countries to strengthen pandemic prevention and develop resilient healthcare systems. It also expresses support for discussions leading to a new binding instrument on the management of pandemics, ‘including by participating in and supporting ongoing discussions to draft and negotiate a World Health Organization convention, agreement or other international instrument on pandemic prevention, preparedness and response, with a view to adoption under article 19 or under other provisions of the Constitution of the World Health Organization as may be deemed appropriate by the intergovernmental negotiating body and through discussions on strengthening the implementation of and compliance with the International Health Regulations (2005)’.<sup>4</sup> The text also reaffirms the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as well as the World Trade Organization Doha Declaration on the TRIPS Agreement and Public Health, which recognizes that ‘intellectual property rights should be interpreted and implemented in a manner supportive of the right of Member States to protect public health and, in particular, to promote access to medicines for all’.<sup>5</sup>

Brunei Darussalam’s representative pointed out that, if global health had been fully integrated into foreign policy before the pandemic, the world might have been better prepared with stronger health systems. During the pandemic, the disconnect between nations was evident as borders were unilaterally closed, critical medical supplies were restricted, blame was assigned, and misinformation spread.<sup>6</sup> Australia’s representative, speaking also on behalf of Canada and New Zealand, emphasized that preventing future health crises is more cost-effective than responding to them. She emphasized the countries’ commitment to using the lessons from COVID-19 to build a more agile global health system with the WHO at its core, and stressed the need for a new global instrument on pandemic preparedness.<sup>7</sup>

3 UNGA, ‘Elevating pandemic prevention, preparedness and response to the highest level of political leadership’ (31 March 2022) UN Doc A/RES/76/257.

4 *Ibid.*, 4.

5 *Ibid.*, 7.

6 UNGA, ‘63rd plenary meeting’ (29 March 2022) UN Doc A/76/PV.63, 22–23.

7 *Ibid.*, 21–22.

Subsequent UNGA Resolution 76/301 builds on the same premises as it calls for the organization of a high-level meeting – to be convened by the President of the General Assembly in collaboration with the World Health Organization, and at the level of Heads of State and Government – to ‘adopt a succinct political declaration aimed at, inter alia, mobilizing political will at the national, regional and international levels for pandemic prevention, preparedness and response’.<sup>8</sup> During the discussion, the United States’ representative expressed strong support for the goal of enhancing political focus on pandemic prevention and response. He endorsed the idea of convening a special meeting, which could effectively contribute to achieving these objectives and stressed the need to carefully coordinate UN action with other ongoing initiatives, such as the discussions at the WHO regarding amendments to the International Health Regulations and the development of a pandemic preparedness and response instrument under the WHO’s purview.<sup>9</sup>

## 2.2 *Resolutions Addressing Humanitarian Assistance and Disaster Risk Reduction*

In December 2022, the UNGA adopted three Resolutions addressing disasters in general terms. Through Resolution 77/29 on ‘International cooperation on humanitarian assistance in the field of natural disasters, from relief to development’<sup>10</sup> the UNGA acknowledges once more the interconnection between emergency response, rehabilitation, and development, emphasizing the significance of ensuring a seamless transition between these phases. The delegate from Pakistan, speaking on behalf of the ‘Group of 77’ and China, presented the text. He emphasized the critical importance of providing assistance to countries and individuals affected by natural disasters, underscoring the need for early actions to mitigate the impact of calamities. Moreover, he recognized the unique financial requirements of countries facing compound risks arising from humanitarian emergencies, natural disasters, and climate change. In this year’s text, new paragraphs have been introduced with the objective of enhancing humanitarian assistance, prevention, preparedness, response, and recovery efforts to effectively reduce the loss of lives and minimize damage caused by natural disasters. Specific attention is given to heightened efforts in preventing famine, food insecurity, and malnutrition associated with natural

8 UNGA, ‘High-level meeting on pandemic prevention, preparedness and response’ (9 September 2022) UN Doc A/RES/76/301, 2.

9 UNGA, ‘98th plenary meeting’ (2 September 2022) UN Doc A/76/PV.98.

10 UNGA, ‘International cooperation on humanitarian assistance in the field of natural disasters, from relief to development’ (9 December 2022) UN Doc A/RES/77/29.

disasters. Furthermore, the Resolution includes provisions for incorporating mental health support services into disaster response and recovery efforts, recognizing the importance of addressing the psychological well-being of those affected.

Resolution 77/28 on ‘Strengthening of the coordination of emergency humanitarian assistance of the United Nations’ was adopted on the same day.<sup>11</sup> By approving the 19-page Resolution, the UNGA reaffirms the principles set forth in Resolution 46/182 of 19 December 1991, which designed the blueprint for today’s international humanitarian system. Resolution 77/28 encourages the international community to provide support to Member States in their disaster preparedness efforts. It also promotes the development of multi-hazard warning systems and acknowledges the accomplishments of the Central Emergency Response Fund. The text was introduced by Sweden, emphasizing that the Resolution equips the humanitarian community with an essential framework to deliver assistance effectively. With respect to previous eponymous Resolutions, the text introduces crucial provisions related to climate change, cash assistance, the safety and security of humanitarian personnel, the need to address the humanitarian funding gap, and the importance of strengthening partnerships with international financial institutions.

Finally, on 14 December 2022, the UNGA adopted Resolution 77/164 on ‘Disaster risk reduction’.<sup>12</sup> By its terms, the Assembly underlined the need to address the economic, social and environmental impacts of disasters caused by human-made or natural hazards, many of which are exacerbated by climate change, stressing the urgent need to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change and extreme weather events. The text importantly recognizes that, while each State has the primary responsibility for preventing and reducing disaster risk, it is a shared responsibility between Governments and relevant stakeholders, including entities such as ‘parliaments, civil society, the International Red Cross and Red Crescent Movement, non-governmental organizations, Indigenous Peoples and their organizations, national platforms for disaster risk reduction focal points for the Sendai Framework, local government representatives, scientific institutions and the private sector’.<sup>13</sup>

11 UNGA, ‘Strengthening of the coordination of emergency humanitarian assistance of the United Nations’ (9 December 2022) UN Doc A/RES/77/28.

12 UNGA, ‘Disaster risk reduction’ (21 December 2022) UN Doc A/RES/77/164.

13 *Ibid.*, 13.

### 3 The Work of the ILC on Sea-Level Rise and the Related Debate within the UNGA Sixth Committee

The ILC held the first part of its seventy-third session from 18 April to 3 June 2022, and the second part from 4 July to 5 August 2022 at the United Nations Office in Geneva. Among the topics addressed was that of 'sea-level rise in relation to international law'. The Commission's report was later discussed by the Sixth Committee of the UNGA (the s.c. Legal Committee). Both debates contained interesting references to the ILC's previous work on the protection of persons in the event of disasters and to disaster law more generally.

#### 3.1 *Sea-Level Rise and Disasters within the ILC's Debate*

At the beginning of the 2022 session, the ILC reconstituted the Study Group on sea-level rise in relation to international law.<sup>14</sup> The Study Group had before it the second issues paper, and one of the sub-topics addressed in it was the protection of persons affected by sea-level rise.<sup>15</sup> The paper examined a number of key issues, including a) the extent to which State obligations to protect the human rights of individuals under their jurisdiction applies to the consequences of sea-level rise; b) whether the principle of international cooperation may be applied in support of States struggling to cope with the adverse effects of sea-level rise; c) whether there are any international legal principles applicable to measures aimed at assisting States unwilling or unable to move their population; d) whether there are any international legal principles applicable to the evacuation, relocation and migration abroad of persons caused by sea-level rise; and e) possible principles applicable to the protection of the human rights of internally or externally displaced persons who were forced to migrate due to sea-level rise.<sup>16</sup>

The paper's starting point was the acknowledgement that sea-level rise poses a significant threat to the international community, notably to small islands and low-lying coastal areas. One of the tangible consequences of rising sea levels is the heightened exposure of coastal communities to the loss of land due to an increased risk of destructive erosion, inundation, and the flooding of low-lying coastal regions and wetlands. The increased flooding poses a major

14 The Study Group was composed by 30 of the Commission's 34 members. See UNGA, 'Report of the International Law Commission, Seventy-third session (18 April–3 June and 4 July–5 August 2022)' (12 August 2022) UN Doc A/77/10, 3.

15 ILC, 'Sea-level rise in relation to international law. Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law' (19 April 2022) UN Doc A/CN.4/752, 56–100.

16 *Ibid.*, 19.

threat to infrastructure, settlements, and agricultural lands situated close to or along the coast. More importantly, the paper remarks that '[s]tudies of extreme sea levels worldwide have also indicated that sea-level rise brings with it more frequent extreme events driven by severe weather such as tropical cyclones and mid-latitude storms, which further aggravate such physical changes'.<sup>17</sup> It bears, however, highlighting that sea-level rise qualifies as a disaster itself, in the sense of the 2016 Draft Articles on the protection of persons in the event of disasters (2016 Draft Articles).<sup>18</sup> Yet the paper suggests that, while sea-level rise can be seen as a disaster similar to other catastrophic events, it possesses unique characteristics that warrant careful consideration when applying the 2016 Draft Articles. One crucial distinction is that sea-level rise is a slow-onset event, leading to long-term consequences that may prove extremely challenging, if not impossible, to reverse, such as territorial loss and the salinization of freshwater sources. The irreversibility of some of these effects and the impossibility of reverting to the status quo ante 'might justify specific forms of application of some of the 2016 Draft Articles and the need for additional forms of protection'.<sup>19</sup>

The paper then went on to review the various bodies of international law relevant to the protection of individuals affected by sea-level rise, as well as the relevant practice of States, international organizations and other entities. The branches of international law examined included disaster law, and under this heading specific emphasis was given to the ILC's 2016 Draft Articles, the Sendai Framework for Disaster Risk Reduction (2015–2030), and the Nansen Initiative and its Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.<sup>20</sup> The paper concluded that the current international legal frameworks potentially applicable to the protection of persons affected by sea-level rise are fragmented and mostly non-specific to sea-level rise but generally applicable to disasters and climate change and that further developments should be encouraged.<sup>21</sup> Such an exercise could build on the 2016 Draft Articles 'which provide a general framework for disaster response and the protection of persons, namely with regard to human dignity (draft article 4), human rights (draft article 5), the duty to cooperate (draft article 7) and the role of the affected State (draft article 10)'.<sup>22</sup>

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17 *Ibid.*, 56.

18 *Ibid.*, 72.

19 *Ivi.*

20 *Ibid.*, 72–76.

21 *Ibid.*, 103.

22 *Ibid.*, 104.

Moving to the debate within the ILC, the Study Group recognized that the legal framework governing the protection of persons affected by sea-level rise is rather patchy.<sup>23</sup> Summing up the discussion, the Co-Chair noted that the emerging practice of States, international organizations and other relevant actors will need to be carefully reviewed to identify legal principles applicable to the subject matter.<sup>24</sup> She also reiterated that the Commission's work on the topic should refer to the 2016 Draft Articles. Over the next five years, the Study Group will devote its attention to various aspects related to sea-level rise, focusing again in 2024 on the subtopic of the protection of individuals. In 2025, it aims to produce a comprehensive and substantive report on the entire topic.<sup>25</sup>

### 3.2 *The Debate within the UNGA's Sixth Committee*

Between 25 October and 2 November 2022, the UNGA's Sixth Committee discussed the report produced by the ILC, including the issue of sea-level rise.<sup>26</sup> Delegations generally commended the Study Group for its dedicated work on the topic, stressing once more that sea-level rise is an urgent issue of real and global concern. It was noted that sea-level would continue to rise throughout the century thus being an existential threat and causing devastating effects on local communities across the world, in particular on small island developing States.<sup>27</sup>

Turning to substantive issues, some delegations pointed out that the principle of international cooperation is a fundamental aspect in matters of assistance to States affected by sea-level rise, suggesting that the principle entails an obligation for developed countries to provide assistance to developing nations, subject to their agreement, while upholding their human rights commitments. For instance, according to Antigua and Barbuda (speaking on behalf of the Alliance of Small Island States) 'developed States had a duty to provide financial, technical and scientific assistance and to cooperate in the prevention of transboundary environmental harm. Under international disaster law, the duty to cooperate meant working together to enhance resilience. The duty was incumbent upon all States, but non-affected States had a particularly strong obligation to provide adequate, timely and sustainable

23 UNGA (n 13) 336.

24 *Ibid.*, 339.

25 *Ibid.*, 341.

26 ILC, 'Report of the International Law Commission on the work of its seventy-third session (2022), Topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventy-seventh session, prepared by the Secretariat' (10 February 2023) UN Doc A/CN.4/755.3.

27 *Ibid.*, 11.

assistance to developing States directly affected'.<sup>28</sup> While such statements may have some merit, it should be recalled that several States and the ILC itself have explicitly rejected the existence of a general duty to provide assistance to disaster-affected States.<sup>29</sup> The commentary to the 2016 Draft Articles states that offers of assistance, 'whether made unilaterally or in response to a request, are essentially voluntary and should not be construed as recognition of the existence of a legal duty to assist'.<sup>30</sup> Be that as it may, the ILC was urged to conduct a more in-depth examination of the applicability and extent of the principle of international cooperation, particularly regarding the responsibilities of non-affected countries to engage in cooperative efforts.

The importance of evaluating the significance of the ILC's previous efforts was underscored, including an examination of the 2016 Draft Articles. Nevertheless, there were differing opinions among delegations regarding their applicability to the current subtopic. Some argued that the 2016 Draft Articles, which were meant to cover situations where no State was responsible for the events, might not be directly relevant. This, it was maintained, was due to the fact that sea-level rise is caused by human-induced climatic factors, while disasters are considered natural phenomena without any State involvement in causing them. According to the Small Island States, the situation is different in the context of climate change, as in this case responsibility 'was shared among the largest emitting States in the international community, and those States must also share the legal duty to cooperate to mitigate its adverse effects'.<sup>31</sup> While it is understandable that States most affected by climate change are keen on identifying those States that have most contributed to greenhouse gas emissions as legally responsible for sea-level rise and its effects, suggesting that the 2016 Draft Articles do not apply to specific types of disasters seems unconvincing. Indeed, the definition of 'disaster' provided in Draft Article 3 focuses

28 UNGA, 'Sixth Committee, Summary record of the 28th meeting' (7 December 2022) UN Doc A/C.6/77/SR.28, 3. See also the statements of the Jamaican delegate, UNGA, 'Sixth Committee, Summary record of the 29th meeting' (7 December 2022) UN Doc A/C.6/77/SR.29, 5.

29 For an overview of the positions of States on the topic, see ILC, 'Fifth report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur' (9 April 2012) UN Doc A/CN.4/652, paras. 51–54 and 67–68.

30 ILC, 'Report of the International Law Commission, sixty-eighth session (2 May–10 June and 4 July–12 August 2016)' UN Doc A/71/10, Commentary to Article 12, 57. On the issue of an alleged legal duty of cooperation in the framework of sea-level rise see Patrícia Galvão Teles, Claire Duval and Victor Tozetto da Veiga, 'International Cooperation and the Protection of Persons Affected by Sea-Level Rise Drawing the Contours of the Duties of Non-affected States' (2022) 3 Yearbook of International Disaster Law, 213.

31 UNGA, 'Sixth Committee, Summary record of the 28th meeting' (n 27) 3.



on the consequences of a calamitous event and does not mention its origin.<sup>32</sup> The Commentary notes that '[n]o limitation is included concerning the origin of the event, that is whether it is natural or human-made, in recognition of the fact that disasters often arise from complex sets of causes that may include both wholly natural elements and contributions from human activities'.<sup>33</sup> It then explicitly affirms that the Draft Articles also apply 'to slow-onset events (such as drought or *sea-level rise*)'.<sup>34</sup> The issue of whether a calamitous event can be attributed to a given State has rather to do with the secondary rules concerning State responsibility, which are generally detached from primary rules. In fact, Draft Article 18 ('Relationship to other rules of international law') states that the Draft Articles 'are without prejudice to other applicable rules of international law' and the Commentary to the provision then lists examples of such rules, which include 'the rules on the responsibility of States and international organizations'.<sup>35</sup> Certainly, important indications on State obligations in relation to sea-level rise (and possibly on the issue of international responsibility deriving from them) will be included in the International Court of Justice's Advisory Opinion on the 'Obligations of States in respect of Climate Change', which has recently been requested by the UNGA.<sup>36</sup>

#### 4 UN Security Council Resolution 2664 (2022)

On 9 December 2022, the UNSC adopted Resolution 2664(2022) entitled 'General issues relating to sanctions', by a vote of 14 in favour to none against, with 1 abstention (India).<sup>37</sup> The Resolution provides for a global and automatic exemption for humanitarian actors regarding the provision, processing or payment of funds, other financial assets or economic resources or the provision of goods and services to individuals and entities that are listed under

32 According to the Draft Articles, 'disaster' means 'a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society', see ILC (n 29) 14.

33 *Ibid.*, 23.

34 *Ivi* (emphasis added).

35 *Ibid.*, 72.

36 UNGA, 'Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change' (29 March 2023), UN Doc A/RES/77/276, 4 April 2023.

37 Explaining her country's abstention, India's delegate expressed concern over the misuse of humanitarian carve-outs by terrorist groups to raise funds and recruit new affiliates, UNSC, '9214th meeting' (9 December 2022) UN Doc S/PV.9214, 7.

UNSC sanctions Resolutions. Its adoption is meant to facilitate the activities of humanitarian actors providing much-needed relief to areas affected by armed conflict and/or disasters.

#### 4.1 *Background to Resolution 2664 (2022)*

Sanctions represent one of the most important tools employed by the UN to address threats to peace originating from the conduct of State and non-State actors.<sup>38</sup> As is known, collective sanctions can be imposed by the UNSC under Chapter 7 of the UN Charter in case of 'threats to the peace, breaches of the peace, and acts of aggression' (Articles 39 and 41). The measures adopted may include diplomatic and economic sanctions (e.g., weapons embargoes, freezing of financial assets, and travel bans). The implementation of each sanction regime established is monitored by a sanction committee set up within the UNSC under the number of the relevant Resolution. Sanctions and coercive measures adopted by the UNSC might be binding, in which case they must be implemented by all UN member States.

Historically, sanctions were used mainly against reprobate States to put pressure on their political elites and obtain a change of behaviour. However, certain sanction regimes had serious humanitarian consequences on the population of the affected State.<sup>39</sup> While the UNSC used sanctions as a means for advancing the UN mandate to preserve peace and security, it became clear that the outcomes of these measures were undermining other dimensions of the UN agenda, especially the goal of improving general living conditions.<sup>40</sup> To limit their impact on the population, sanctions have become more targeted to focus on specific groups and individuals covering key roles in the governmental apparatus. Since the early nineties, sanctions have also been applied to non-State actors,<sup>41</sup> and they are currently an important component of the global counterterrorism strategy restricting financing and material support to designated groups and individuals.<sup>42</sup>

38 Alain Pellet, Alina Miron, 'Sanctions', The Max Planck Encyclopedia of Public International Law (August 2013), available at <<http://opil.ouplaw.com>> last accessed (as any subsequent URL) on 16 July 2023.

39 UNSC, 'Report on humanitarian needs in Iraq in the immediate post-crisis environment by a mission to the area led by the Under-Secretary-General for Administration and Management, 10–17 March 1991' (20 March 1991) UN Doc S/22366.

40 David Cortright and George A. Lopez (eds.), *Smart Sanctions: Targeting Economic Statecraft* (Rowman & Littlefield 2002) 207.

41 Nigel D. White, 'Sanctions against non-state actors' in Natalino Ronzitti (ed.), *Coercive diplomacy, sanctions and international law* (Brill/Nijhoff 2016) 127.

42 For an overview of all UN sanctions imposed since 1991, see Thomas Biersteker, Zuzana Hudakova and Marcos Tourinho, 'UN Sanctions App: An Interactive Database of UN

However, UN sanctions have created challenges to humanitarian action either directly through the measures themselves, or indirectly through their implementation by States, donors, as well as international service providers, such as international vendors and financial sector actors. Sanctions listing, exemption procedures, and implementation requirements can directly affect the crucial activities of humanitarian actors.<sup>43</sup> This has also been the case in areas interested by specific sanction regimes that were affected by natural disasters. For instance, delays in accessing financial resources had a considerable impact on disaster response activities in Syria, which was hit by a major earthquake in early 2023.<sup>44</sup>

Mindful of this reality, the UNSC had already attempted to limit the applicability of sanctions so that humanitarian relief activities would not be unduly affected. For instance, UNSC Resolution 2593(2021) on the sanctions regime in Afghanistan provides that 'all parties [need] to allow full, safe, and unhindered access for the United Nations, its specialized agencies and implementing partners, and all humanitarian actors engaged in humanitarian relief activity, (...) to ensure that humanitarian assistance reaches all those in need'.<sup>45</sup> Other Resolutions contained language requiring that the implementation of sanctions would be in line with, *inter alia*, existing international humanitarian law and international human rights law standards that are conducive to the provision of humanitarian relief. For example, UNSC Resolution 2582(2021) on the sanctions regime in the Democratic Republic of the Congo demanded that 'States ensure that all measures taken by them to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, as applicable'.<sup>46</sup>

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Sanctions' (August 2020) <<https://unsanctionsapp.com>>. Currently, there are fifteen sanctions regimes in place.

43 For a description of the main challenges posed by sanctions to humanitarian response activities see Huvé, Sophie et al., 'Enforcing UN Sanctions and Protecting Humanitarian Action: Towards Coherent and Consistent Approach?', United Nations University, Centre for Policy Research (March 2022) 34–40.

44 Human Rights Watch, 'Questions and Answers: How Sanctions Affect the Humanitarian Response in Syria' (22 June 2023) <<https://www.hrw.org/news/2023/06/22/questions-and-answers-how-sanctions-affect-humanitarian-response-syria>>.

45 UNSC, 'The situation in Afghanistan' (30 August 2021) UN Doc S/RES/2593, para. 3.

46 UNSC, 'The situation concerning the Democratic Republic of the Congo' (29 June 2021) UN Doc S/RES/2582, para. 4.

#### 4.2 *Content and Scope of Resolution 2664 (2022)*

The humanitarian exemption provided by Resolution 2664(2022) is applicable to all former and future UNSC sanctions regimes. It provides a broad definition of humanitarian activities that are excluded from the scope of the asset freeze established by the UNSC. These include ‘the provision of funds and assets necessary to ensure the timely delivery of humanitarian assistance or to support other activities that supports basic human needs’.<sup>47</sup> It is important to stress that the document explicitly extended the application of this humanitarian exemption to the special counterterrorism sanction regime established through Resolution of 1267(1999) and subsequent Resolutions against ISIL and Al-Qaida, although with respect to said regime Resolution 2664(2022) stipulates that the humanitarian exemption will be applicable for an initial period of two years and that subsequently it will either be extended or suppressed.<sup>48</sup>

The Resolution requests that providers 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 this Council or any of its Committees’.<sup>49</sup> To monitor the implementation of the Resolution, the UNSC requested the UN Emergency Relief Coordinator to provide a yearly briefing for each relevant Committee on the delivery of humanitarian assistance and other activities to support basic human needs.<sup>50</sup> Possibly indicating an intention to extend the exceptions for humanitarian purposes beyond asset freezes, the UNSC requested the UN Secretary-General to present a report on the unintended negative humanitarian effects of Security Council sanctions, encompassing measures such as travel bans and arms embargoes. The report should also incorporate ‘recommendations on ways to minimize and mitigate such unintended adverse consequences including via the promulgation of additional standing exemptions to such measures’.<sup>51</sup>

Resolution 2664(2022) was adopted after more than a decade of international discussions on how to reconcile humanitarian values with security concerns. The issue has proven crucial, particularly in contemporary armed conflicts, emergencies, and politically sensitive situations affected by UN sanctions. In fact, ‘the application of certain restrictive measures, including asset freezes in at least some contexts, has contributed to diminished or complete

47 UNSC, ‘General issues relating to sanctions’ (9 December 2022) UN Doc S/RES/2664, para. 1.

48 *Ibid.*, para. 2.

49 *Ibid.*, para. 3.

50 *Ibid.*, para. 5.

51 *Ibid.*, para. 7.

lack of access by humanitarian actors to people in need.<sup>52</sup> Consequently, these measures have negatively impacted the scale, quantity, and quality of humanitarian assistance and other activities aimed at meeting essential human needs. It is to be hoped that States will rapidly implement the new carve-out regime to facilitate the delivery of humanitarian assistance.<sup>53</sup> At the same time, “unilateral” sanctions adopted by States or regional organizations seem capable of severely undermining humanitarian response efforts, and their consequences will need to be tackled too.<sup>54</sup>

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52 Radhika Kapoor, Dustin A. Lewis and Naz K. Modirzadeh, ‘An Interpretive Note for U.N. Member States on Security Council Resolution 2664 (2022)’ Harvard Law School Program on International Law and Armed Conflict (2023) i.

53 Some countries, such as the United States, have already amended their regulations to allow humanitarian actors to operate without undue hinderances, see ‘The Treasury Department Implements Security Council Resolution Establishing a Humanitarian Carveout for UN Sanctions’ (2023) 117 *American Journal of International Law*, 335.

54 In the wake of the earthquake that struck Türkiye and Syria, several UN Human Rights Special Rapporteurs have expressed concern about the effects of unilateral sanctions against Syria on emergency response, urging the international community to take prompt action to lift them, see <<https://www.ohchr.org/en/statements/2023/02/genuine-solidarity-earthquake-survivors-calls-lifting-sanction-induced>>. See also the UNGA, ‘Human rights and unilateral coercive measures’ (5 January 2023) UN Doc A/RES/77/214.