



Humanitarian exemptions to limit the impact of sanctions on humanitarian aid

Introduction

In response to various threats to international peace and security, international organisations and states have adopted a number of measures such as sanctions and counterterrorism measures. As a member state of the United Nations (UN), Switzerland is obliged to implement the sanctions adopted by the Security Council. Under the Embargo Act,¹ Switzerland may also decide to align itself with sanctions imposed by its main trading partners. Participating in sanctions that have broadly been approved internationally serves the interests of Switzerland's foreign policy which is based on respect for international law and humanitarian values. Switzerland advocates for the effective implementation of sanctions and works with other countries and the European Union in order to achieve this. At the UN, it promotes respect for the rule of law, human rights and international humanitarian law in relation to the imposition and implementation of sanctions. The adverse consequences of sanctions for populations must be minimised.

The purpose of imposing sanctions is to bring conflict to an end, maintain or restore respect for international law and protect populations. The majority of sanctions relating to armed conflict include language calling for compliance with international humanitarian law (IHL). Sanctions that are well designed and properly implemented can therefore also help to ensure compliance.

However, some measures can have the effect of delaying, hindering, or preventing humanitarian activities laid down by IHL. This is particularly evident with asset-freezing measures, or targeted financial sanctions, which prohibit the direct or indirect provision of assets or economic resources to sanctioned persons or entities. This type of measures may be problematic for humanitarian activities, especially when a designated entity controls a territory, by restricting

certain transactions that are necessary for humanitarian aid. Sanctions also contribute to a deterrent effect on humanitarian organisations, donors and providers of services that are essential for humanitarian activities, such as banks and transport companies.

The adverse consequences of sanctions for populations must be kept to a minimum. Measures hindering humanitarian activities and access to populations in need undoubtedly contradict both the letter and spirit of IHL. Under IHL, all states and parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief to civilians in need. As part of this, impartial humanitarian organisations may offer their services to all parties to a conflict, for example the ICRC may visit detainees or medical assistance may be

IHL legal framework

Measures that impede or prevent the provision of humanitarian assistance or other humanitarian activities as provided by IHL are incompatible with the letter and spirit of IHL, particularly with the rules governing humanitarian and medical activities, including:

- *the right of impartial humanitarian organisations to offer their services to parties to an armed conflict, including non-state parties (i.e. organised armed groups) in non-international armed conflicts [Common Article 3 of the Geneva Conventions (GC); Article 9 GC III; Article 10 GC IV; Article 8] Additional Protocol (AP) I; Article 18(1) AP II];*
- *the obligation to allow and facilitate humanitarian access to populations in need [Articles 23 and 55 GC IV; Article 70(2) AP I; Article 18(2) AP II; Rule 55 of the ICRC customary IHL study];*
- *the explicit prohibition against punishing individuals for medical activities and other rules protecting the wounded, sick and those that provide them with medical care [Article 16 AP I; Article 10 AP II; Rule 26 of the ICRC customary IHL study]*
- *the rules protecting the civilian population, including humanitarian personnel and persons hors de combat [Common Article 3 to the Geneva Conventions; Articles 41, 48, 51 AP I; Rules 1 and 47 of the ICRC customary IHL study].*

¹ Federal Act on the Implementation of International Sanctions (Embargo Act (EmbA), [SR 946.231](#))

provided to the sick and injured. The inclusion of humanitarian exemptions enables compliance with IHL as well as neutral, independent and impartial humanitarian action that is directly based on the populations' needs.

Overview of measures taken by Switzerland and best practices

Switzerland has a long-standing commitment to limiting the adverse impacts of sanctions on civilians and humanitarian activities in accordance with IHL. As a state party to the Geneva Conventions, Switzerland has an obligation to respect and ensure respect for IHL. In December 2022, the UN Security Council adopted Resolution 2664, put forward by the United States and Ireland, to mitigate specific adverse effects of sanctions on humanitarian operations. This resolution establishes humanitarian exemptions from targeted financial sanctions across all UN sanctions regimes. The resolution aims to reduce these measures' impact on the delivery of humanitarian assistance and other activities that support the basic needs of populations.

Since the adoption of this resolution, Switzerland has been committed to its implementation by all states and parties concerned. Switzerland has also incorporated the resolution into its national legislation. Amendments to all relevant ordinances pertaining to sanctions took effect on 1 June 2023.² The EU's sanctions regimes, to which Switzerland is associated, provide for numerous exemptions for humanitarian actors, which Switzerland also adopted. If necessary, Switzerland can introduce additional ones.

Switzerland supports research and awareness-raising on this topic, notably through its collaboration with two entities in particular that have been strongly advocating for these exemptions for years: the Program on International Law and Armed Conflict (PILAC) at Harvard Law School and the Norwegian Refugee Council (NRC). While PILAC focuses on legal research, NRC studies the practical consequences of exemptions and facilitates dialogue between humanitarian actors and private sector entities, especially in the financial sector.

² Cf. Ordinance governing exceptions to specific coercive measures for the purposes of supplying humanitarian aid or supporting other activities aimed at meeting basic human needs [AS 2023 236] and related [press release](#).

³ The regime established by Resolution 1988 has its own exemption mechanism and is not covered by Resolution 2664.

⁴ S/RES/2664(2022), OP 7.

Challenges

Resolution 2664 represents a major step forward in both normative and practical terms, while also sending a strong political signal. However, its intended impact can only be achieved through effective implementation at the regional and national levels. States must incorporate the exemption into their national legislation to ensure that activities now covered by the humanitarian exemption are not prohibited. To ensure full implementation of the resolution, it is also paramount that all relevant stakeholders, both humanitarian organisations and the private sector, are informed of these legislative changes.

Resolution 2664 applies solely to asset-freezing measures and does not extend to other sanctions measures. As suggested in the resolution,⁴ other measures pertaining to particular sanctions regimes may also require the adoption of exemptions. Although Resolution 2664 only concerns sanctions regimes established under the auspices of the UN, the exemption it provides for can serve as a model for national and regional sanctions regimes. Similar humanitarian exemptions have already been included in the vast majority of European sanctions regimes, which Switzerland has also taken over.

Significance of Security Council Resolution 2664 (2022)

Resolution 2664 establishes a humanitarian exemption that applies to all sanctions regimes imposed by the Security Council. It pertains to the asset-freezing measures of these regimes.³ The resolution is an essential tool to enhance legal clarity and facilitate the activities of humanitarian organisations involved in the delivery of aid and other humanitarian activities in contexts subject to UN sanctions. It is especially significant in situations where sanctioned entities, including groups designated by the UN as terrorist organisations, control entire populations.

The resolution applies only temporarily to the sanctions regime against ISIL (Da'esh) and al-Qaida (established by Resolution 1267 [1999]). The application to this regime is currently limited to two years and will be subject to renewal at the end of 2024. Switzerland is actively committed to its renewal because, from a humanitarian perspective, these contexts are where humanitarian exemptions are most crucial. It is estimated that several tens of millions of people live in territories controlled by groups designated as terrorist. Without exemptions, sanctions targeting entire groups can significantly impact the delivery of humanitarian aid when these groups control large areas of territory.



Security Council and IHL

Introduction

The protection of civilians in armed conflicts is one of Switzerland's four priorities during its 2023–24 term on the UN Security Council. Civilians bear the brunt of armed conflicts. In 2023, nearly 33,500 civilians lost their lives in armed conflicts.⁵ This represents an alarming and unprecedented increase. Respecting and promoting international law, particularly international humanitarian law (IHL), has always been a priority for Swiss foreign policy.

Overview of initiatives taken by Switzerland as part of its mandate

In Security Council negotiations, Switzerland advocates for the inclusion of robust, comprehensive and precise language regarding IHL. Furthermore, Switzerland emphasises that all parties to a conflict, whether states or non-state armed groups, should be explicitly called upon to respect IHL, and that the binding nature of IHL should not be diluted or qualified. Indeed, all parties to a conflict must respect IHL in all circumstances.

As chair of the Group of Friends on the Protection of Civilians, Switzerland facilitates informal exchanges among states, including with the participation of civil society. During its presidency in May 2023, Switzerland organised a high-level open debate led by the President of the Confederation, Alain Berset, on the protection of civilians, focusing on food security and the protection of essential infrastructure. Switzerland highlighted the link between conflict and food insecurity, as well as related IHL obligations. Indeed, parties to a conflict must allow and facilitate humanitarian access, and are prohibited from attacking objects indispensable to the survival of civilians and using starvation as a method of warfare. Switzerland also organised, jointly with Mozambique and on the margins of the UN 2023 Water Conference, an informal Security Council meeting at ministerial level which, for the first time, provided an opportunity to discuss water-related IHL issues in greater depth, such as access to water and the protection of water supply infrastructure in armed conflicts.

Other key areas of the Swiss commitment to IHL include the protection of children and humanitarian personnel. In May 2024, the Security Council adopted a resolution on this topic (S/RES/2730 (2024)) proposed by Switzerland. The resolution was co-sponsored by 98 UN member states. It notably reaffirms the obligations of parties to a conflict to respect and protect humanitarian and UN personnel. It focuses on the protection of national and locally recruited personnel, who are particularly vulnerable to violence.

Switzerland also stresses the importance of bringing alleged perpetrators of IHL violations to justice. The fight against impunity is one of its foreign policy priorities. In this context, Switzerland organised an informal meeting of Security Council members to commemorate the 25th anniversary of the Rome Statute which established the International Criminal Court (ICC). This meeting highlighted strong state support for the ICC's work and underscored the importance of collaboration between the Security Council and the ICC in maintaining international peace and security.

Challenges

Protecting and promoting respect for IHL in the Security Council requires sustained and vigilant effort. Since becoming a Security Council member, Switzerland has noted, in negotiations, an alarming tendency to relativise international law, especially IHL, and to call its mandatory nature into question. This development calls for increased vigilance to preserve the integrity of IHL, its binding effect independent of any reciprocity or the legitimacy of a conflict, and its applicability to all parties to a conflict. These persistent attempts to relativise IHL represent a major challenge that can only be addressed through a collective response.

⁵ See the latest report by the UN Secretary-general on the protection of civilians in armed conflict, 14 May 2024 (S/2024/385, para. 6).



New technologies

Introduction

Increasing digitalisation and technological developments, particularly in robotics, sensors, artificial intelligence (AI) and quantum computing, are affecting the way how armed conflicts are conducted and the implementation of international humanitarian law (IHL). Advancements in AI are creating new areas of military application, including for increasingly autonomous weapons systems. Cyberspace and outer space are progressively being utilised as new spheres for military operations.

On the one hand, these technologies promise the possibility of more effective warfare (e.g., increased speed, troop protection) or even a better compliance with IHL (for instance through greater precision). On the other hand, they also raise legal, ethical, humanitarian, and practical questions. These include targeting without any human control and the close interconnection between civilian and military infrastructure, particularly in outer space and cyberspace. New technologies being developed could also have a huge impact both on military operations and populations. These include quantum computing technology with encryption-breaking capabilities, which could, for example, make it easier for parties to a conflict to disrupt communications systems or energy supplies.

IHL legal framework

The existing rules and principles of IHL apply to all new technologies in the various types of armed conflict, even when not explicitly mentioned. All relevant IHL obligations must be respected when using these new technologies. This includes, in particular, the rules and principles governing the conduct of hostilities.

While in many cases the way in which IHL applies to these new technologies in armed conflicts is clear, several issues still require clarification. This sometimes necessitates new approaches and careful consideration of the concrete implementation and interpretation of IHL.

Overview of the approaches adopted by Switzerland

Various intergovernmental processes, notably within the framework of the UN, are assessing the opportunities and risks associated with these technological developments. Switzerland advocates for the applicability of international law, including IHL and human rights, to these new weapons and the use of new technologies in armed conflicts.

Regarding cyberspace, Switzerland promotes international collaboration to establish an open, secure and peaceful cyberspace. Its specific commitments include implementing and respecting international law, including IHL, in cyberspace. To this end, Switzerland has published a [position paper](#) on the application of international law in cyberspace, with a particular focus on IHL.⁶ As part of an informal cross-regional group committed to ensuring that IHL is taken into account in cyberspace,⁷ Switzerland contributes to discussions aimed at clarifying the application of IHL (see [joint statement](#) and [working paper](#)). It encourages states to develop and publish position statements on the application of international law, particularly in cyberspace.

The topic of autonomous weapons systems has been discussed in Geneva since 2013.⁸ Switzerland contributes to developing effective international regulations for weapons systems with increasing autonomy, emphasising respect for international law, particularly IHL. The concept of human control is essential in this approach, especially to ensure these weapons comply with IHL.⁹ Furthermore, Switzerland supported the [UN General Assembly resolution](#) of 22 December 2023 on lethal autonomous weapons systems. This resolution, among other provisions, calls for the drafting of a report on these

6 Switzerland's position: Application of international law in cyberspace, annex to the report of the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security (UNGGE) 2019/2021.

7 Argentina, Brazil, Canada, Chile, Colombia, Czech Republic, Estonia, Germany, Indonesia, Japan, Jordan, Mexico, Netherlands, Republic of Korea, Senegal and Sweden.

8 Currently within the framework of a Group of Governmental Experts (GGE) of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW).

9 For further details, see its position as defined in the Arms Control and Disarmament Strategy 2022–25 and A 'compliance-based' approach to Autonomous Weapon Systems, working paper submitted by Switzerland, GGE of the CCW.

weapons under the auspices of the UN Secretary-General.¹⁰ More broadly, the increasing use of artificial intelligence in military operations raises complex questions. Switzerland, aware of these challenges, actively supports initiatives such as the 'Call to Action' launched at the Responsible AI in the Military Domain Summit (REAIM 2023). These actions highlight Switzerland's efforts to help develop clear international standards for AI use in military contexts.

Humanitarian data protection is also becoming increasingly important. In light of challenges such as [the recent data breach affecting 515,000 ICRC beneficiaries](#), secure, ethical and efficient management of humanitarian data is essential. Since 2020, the ICRC, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and Switzerland have been collaborating to develop frameworks and guidelines for the responsible collection, management, and use of data by humanitarian organisations and states. Switzerland is committed to the protection of humanitarian data through its *Humanitarian Data and Trust Initiative*.¹¹

In outer space, growing competition among major powers is having security repercussions. Switzerland contributes to developing norms for responsible behaviour in outer space, supporting UN efforts to prevent an arms race in this domain. Switzerland actively works to prevent the weaponisation of outer space and to promote space security. Following a UN General Assembly resolution adopted in 2022 on anti-satellite missile tests, Switzerland has committed not to conduct such tests.¹²

Challenges

The rapid evolution of new technologies presents inherent challenges, including the need to balance military effectiveness with adherence to ethical and humanitarian standards. Complex legal questions alongside ethical, humanitarian and security challenges necessitate coordinated international approaches to clarify IHL rules and, where necessary, develop specific regulations. Switzerland approaches these challenges rigorously to ensure responsible and ethical technological advancement.

¹⁰ Resolution A/RES/78/241, UN General Assembly, 78th Session, First Committee, Lethal Autonomous Weapons Systems, 22 December 2023.

¹¹ For further details on the Humanitarian Data and Trust Initiative, [see here](#).

¹² UN General Assembly Resolution A/RES/77/41, 'Destructive direct-ascent anti-satellite missile testing', adopted on 7 December 2022.



Missing persons

Introduction

Every year, thousands of people go missing worldwide, primarily due to armed conflicts, forced displacement, and along migration routes. Disappearances are a global phenomenon with devastating, long-lasting consequences for families, communities, and societies. The issue of missing persons also has a negative impact on peacebuilding efforts and social cohesion. The search for and identification of missing persons are a priority in Switzerland's peace and human rights policy. This issue is also prioritised in Switzerland's support for those affected by armed conflicts and forced displacement.

Implementation by Switzerland

Switzerland supports efforts to search for and identify missing persons, particularly in Ukraine, Syria, Georgia, Kosovo, and Colombia. In Ukraine, for example, Switzerland's engagement dates back to 2016. Besides donating equipment, such technological equipment used for DNA analysis, Switzerland supports the ICRC's Central Tracing Agency Bureau for the International Armed Conflict between the Russian Federation and Ukraine. Acting as a neutral intermediary between the parties to the conflict, the bureau centralises and transmits information on military personnel and civilians who have fallen into enemy hands. It is responsible for ensuring that missing people are located and family links restored.

At the multilateral level, Switzerland and the ICRC jointly launched the [Global Alliance for the Missing](#) in May 2021. This alliance of states aims to enhance cooperation between states and other relevant actors, using member states' collective diplomatic influence to search for missing persons and prevent disappearances. Switzerland presides over the Global Alliance for the Missing with a non-permanent co-chair, with the ICRC serving as its secretariat. The alliance issued joint statements at the UN Security Council's open debate on the protection of civilians, notably emphasising the importance of implementing [Resolution 2474 on missing persons in armed conflict](#).¹³ In June 2024, an informal Security Council meeting on preventing and responding to missing persons worldwide was organised in collaboration with the Global Alliance for the Missing. In the spirit of this global effort, the Swiss Red Cross (SRC) conducts searches and assists affected families as part of its auxiliary role to public authorities. This role, derived from the Geneva Conventions, is carried out in

collaboration with the ICRC and 191 other national Red Cross and Red Crescent societies. The objective is to leverage Switzerland's presence in the most fragile contexts with a view to promoting systematic IHL implementation and ensuring that civilians are protected.

Best practices and challenges

Switzerland is in the process of defining and updating instruments and proceedings (regulations, training programmes, functioning of the National Information Bureau's, etc.) to ensure a better implementation within its armed forces of Geneva Conventions obligations regarding missing, deceased, and detained persons.

Challenges also exist with respect to missing civilians. Switzerland continually strives to optimise processes and instruments defined by a resolution on restoring family links adopted at the 2019 International Conference of the Red Cross and Red Crescent.¹⁴ In this framework, Switzerland collaborates with the SRC to address data protection and access issues, while ensuring resource availability for locating missing persons and supporting their families.

¹³ See in particular [declaration of 23 May 2023](#) ; [declaration of 21 May 2024](#).

¹⁴ 'Restoring family links while respecting privacy, including as it relates to personal data protection', 33rd International Conference of the Red Cross and Red Crescent, 2019.