

SENATE STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE
ATTORNEY-GENERAL'S DEPARTMENT

Senator Eggleston asked the following question at the hearing on 6 October 2011:

Senator Eggleston asked whether purpose is a consideration in UN Security Council Resolutions applying sanctions to Somalia.

The answer to the honourable senator's question is as follows:

The following response was prepared (in consultation with the Attorney-General's Department) by the Department of Foreign Affairs and Trade, which has portfolio responsibility for the implementation and administration of UN Security Council sanctions in Australia.

2. There are two categories of sanctions in relation to Somalia: a general and complete embargo on all deliveries of weapons and military equipment to Somalia; and sanctions targeted at individuals or entities designated by the United Nations Security Council's (UNSC) Somalia Sanctions Committee pursuant to paragraph 8 of UNSC resolution (UNSCR) 1844 (**designated persons or entities**). Of these sanctions, the most relevant to the question of payment of ransoms are obligations to:

- a) prohibit the direct or indirect supply to Somalia of financial and other assistance related to military activities (UNSCR 1425, paragraph 2);
- b) ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of designated persons or entities (UNSCR 1844, paragraph 3); and
- c) prevent the direct or indirect supply of financial and other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to designated persons or entities (UNSCR 1844 paragraph 7).

3. Funds transfers will be captured by UNSCR 1425, paragraph 2, and UNSCR 1844, paragraph 7 where those transfers are for the furtherance or facilitation of military activities. "Purpose" is not relevant in respect of funds transfers captured by UNSCR 1844, paragraph 3, as it relates to all funds transfers to designated persons or entities, per se.

4. The UNSC has provided for specific and conditional exceptions to the application of its sanctions in relation to Somalia. "Purpose" is a consideration in the application of these exceptions. None of these exceptions would apply to the payment of a ransom that would otherwise contravene the UNSC sanctions in relation to Somalia. There may of course be situations where a ransom payment in Somalia does not fall within the scope of the sanctions at all. This answer applies only to ransom payments that would come within the scope of the sanctions.

5. The exceptions to UNSCR 1425, paragraph 2 apply only to:
 - a) assistance intended solely for the support of or use by the African Union Mission in Somalia (UNSCR 1772 paragraph 11(a)); or
 - b) assistance intended solely for the purpose of helping develop security sector institutions, consistent with the political process set out in paragraphs 1 to 5 of UNSCR 1772 (UNSCR 1772 paragraph 11(b)).
6. The exceptions to UNSCR 1844, paragraph 3 apply only to:
 - a) funds, other financial assets or economic resources that have been determined by relevant Member States:
 - i. to be necessary for basic expenses (such as food, rent, mortgage, medicines, taxes, insurance, public utility charges, reasonable professional fees) as notified to the UNSC's Somalia Sanctions Committee and in the absence of a negative decision by the Committee within three working days of such notification (UNSCR 1844 paragraph 4(a));
 - ii. to be necessary for extraordinary expenses as approved by the UNSC's Somalia Sanctions Committee (UNSCR 1844 paragraph 4(b)); or
 - iii. to be the subject of a judicial, administrative or arbitral lien or judgement notified to the UNSC's Somalia Sanctions Committee, provided that the lien or judgement predates UNSCR 1844, the beneficiary is not a designated person or entity (UNSCR 1844 paragraph 4(c));
 - b) the addition to frozen accounts of:
 - i. interests or other earnings due on those accounts; or
 - ii. payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the sanctions, provided that any such interest, other earnings and payments continue to be subject to the sanctions provisions and are frozen (UNSCR 1844 paragraph 5);
 - c) the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners (UNSCR 1916, paragraph 5).
7. There are no exceptions to UNSCR 1844 paragraph 7.
8. The above sanctions, and their exceptions, are given effect in Australia through the Charter of the United Nations (Sanctions – Somalia) Regulations 2008 (**the Regulations**).
9. The prohibitions in the Regulations that correspond to the sanctions described above (regulation 10 for UNSCR 1425, paragraph 2, regulation 12 for UNSCR 1844, paragraph 7

and regulation 13 for UNSCR 1844 paragraph 3) are UN sanction enforcement laws for the purposes of the *Charter of the United Nations Act 1945* (**the Act**). Contravention of a UN sanction enforcement law is an offence under section 27 of the Act. For an individual the fault element for the offence is “intent” (section 5.6 of the *Criminal Code*). For bodies corporate, it is an offence of strict liability.

10. This offence is subject to the general principles relating to criminal responsibility provided in Part 2.3 of the *Criminal Code Act 1995*, which provide for situations in which a person is not criminally responsible for an offence (for example, where the conduct constituting the offence was carried out under duress or in self defence, including to terminate the unlawful imprisonment of another person).