



Expert meeting on an ongoing Shrinking Humanitarian Space

Video conference, 2 April 2020

Humanitarian Action is suffering from an ongoing shrinking humanitarian space. Humanitarian access is hindered by safety concerns, intensified anti-terrorism legislation and criminalizing of humanitarian support to refugees. This undermines the effectiveness of humanitarian action.

The Platform for Humanitarian Action (PHA), Dutch Relief Alliance (DRA) and KUNO (Platform for Humanitarian Knowledge Exchange) organized an expert meeting about disturbing multi-annual trends and latest developments.

This report summarizes the introductions and it provides an overview of the key messages that resulted from the discussion afterwards.

Speakers:

Lia van Broekhoven – Director Human Security Collective

Paul van den Berg – Political advisor Cordaid, chair Visibility Working Group DRA

Teresa Dumasy – Director of Policy & Learning Conciliation Resources

Sophie Desoulieres – Humanitarian Affairs Advisor MSF NL

Hassiba Hadj Sahraoui – Humanitarian Affairs Advisor MSF NL

Leela Koenig – Academy Fellow and negotiation skills trainer Clingendael Institute

The meeting was facilitated by Peter Heintze of KUNO (Platform for Humanitarian Knowledge Exchange in the Netherlands).

Introductions

Lia van Broekhoven (HSC) on tightened international (financial) rules since 9/11

Lia van Broekhoven talked about the influence of the anti-money laundering and countering financing of terrorism (AML/CFT) standards of the financial action task force (FATF). The FATF is an inter-governmental body and sets international standards that aim to prevent these illegal activities and the harm they cause to society. These standards, however, have impacted humanitarian space, and the entire civil society. Challenges are faced by development, peace building and human rights organizations amongst others. Issues deriving from the FATF standards can be grouped into two groups. The first is over-

regulation, with examples like restrictions on the formation of civil society organisations or legal barriers to access foreign/domestic funding for NGOs. The second issue is financial access restrictions which are caused by stronger regulations through their 'know your customer' and 'due diligence' procedures. Lia van Broekhoven discussed multiple short- and long term solutions like: compliance demands; transparency; multi-stakeholder dialogues; safe payment channels. Lia van Broekhoven stressed the need for civil society to work together in a broad, cross-sector coalition to push back negative consequences of anti-terror regulations.

Paul van den Berg (DRA, Cordaid) on the latest developments in anti-terror legislation

In January 2019 the draft bill 'Presence in a by a terrorist organization controlled area' was tabled in Dutch Parliament by the government. This bill was the result of the 2017 coalition agreement between VVD, CDA, D66 and Christian Union. It was seen by the government as an extra fortification of the existing body of anti-terrorist legislation, because it gave the Ministry of Justice extra powers to withheld Dutch citizens from travelling abroad to become part of terrorist organizations. The Netherlands became the 4th country in the world (after the UK, Denmark and Australia) to have such a law in place. There were heavy criticisms on the law such as: the violation of freedom of press (by journalists) and the encroachment of humanitarian access and the principled nature of humanitarian work (neutrality and independence) (by humanitarian organizations). In November 2019 the Dutch Senate organized an expert session to be informed about the law and hear the perspectives and concerns from stakeholders. In this session the representative of the ICRC pleaded for a general exemption for all independent and neutral humanitarian organizations. The session led to a large number of questions by political fractions, which are now in the process of being answered. It remains to be seen if the law will be accepted or sent back to revision.

Teresa Dumasy (Conciliation Resources) on the counter-terrorism laws and regulations in the UK

The Counter-Terrorism and Border Security Act in the UK (2019) allows the minister to designate an entire country or region of a country, making it an offence for a UK national or UK resident to enter or remain in that designated area. Initially the only exemption was for people working for or on behalf of the government. From October 2018 till February 2019 NGOs worked through the BOND platform to secure an exemption for humanitarian, peacebuilding and development workers. They were mostly successful. The final version of the law (Feb 2019) includes an exemption for 'aid of a humanitarian nature'. The amendment to include peacebuilders was not passed, although the government agreed this constituted a 'reasonable excuse' for travel.

Teresa Dumasy introduced 4 lessons learnt from their advocacy work in 2018-2019:

- The importance of collective action and allies inside and outside government;
- The need for future proofing (and the contagion effect). The UK government worked on Australia's example in establishing this power for the future use, and the Netherlands have since replicated the UK law. Civil society should proactively seek legal safeguards as a way to 'future proof' their space;
- Exemption is not (enough) protection, we need official guidance on how the exemption will be applied in practice;
- Humanitarian action is arguably not the deliberate target *but* (accepted) collateral damage. Bank de-risking of NGOs and policy incoherence result from these laws.

Dialogue and trust between stakeholders (where possible) are a key part in finding mutually accessible solutions.

Sophie Desoulieres (MSF) on shrinking humanitarian space in MSF-practices

The shrinking humanitarian space is not a new trend at MSF. It is both a trend you can see in the countries MSF is working, as well as in the countries where MSF is working from. There are some practical implications, like the influence on bank transfers, which mean a delay of supplies, or the modes of communications which might be subject to governmental laws. Then there are the legal implications which can be divided into organizational and individual liability. Where you can see an increase in risk on individuals, especially local staff that work on negotiations with groups that might be defined as terrorist groups. This is especially difficult because terrorism and terrorist groups are defined differently by different national governments. The framing of a bridge between humanitarian aid and terrorism is a broader implication of the shrinking humanitarian space, which leads to compromising the humanitarian principles and ethics, like the idea that some parts of the population are not worthy of receiving (medical) assistance.

Hassiba Hadj Sahraoui (MSF) on the 'case study' of MSF at the Mediterranean Sea

When looking at the timeline of the search and rescue activities at the Mediterranean Sea a shift in framing of these activities by NGOs can be seen. In 2015/2016 the NGOs that stepped in the gap of search and rescue activities were seen as 'heroes', there was no question of the humanitarian nature of their actions. In 2016, after the influx of refugees hurdles started to appear. In an article of the Financial Times, MSF was publicly being accused of being colluding with traffickers and smugglers (the story appeared to be based on misinformation leaked by Frontex), which resulted in: smear campaigns in the media; the delegitimization of the actions of MSF in the eyes of the public and (incorrect) quotes by politicians. The public criticism against MSF started with this article. It appeared impossible for MSF to bring nuance to the story in the Financial Times, the damage was done. MSF was put under investigation, which did not only happen on an organizational level but also on an individual level (eg. Frozen bank accounts). The lessons learned by this were: 'do not let anything slide' and avoid litigation and take legal action on time, because negative news can escalate quickly.

Another fear that MSF is currently dealing with is the use of the Covid-19 outbreak as a political 'weapon'. An example of this was one of the MSF ships that was not allowed to let their crew and other people on board disembark. After negotiations, they were allowed, but the whole ship (including crew) had to be quarantined for 15 days, meaning that there was also a stop on their search and rescue actions for those 15 days.

Leela Koenig on the humanitarian access negotiation training

for more information on the training Leela can be contacted at: lkoenig@clingendael.org.

The Clingendael institute was asked by the Dutch Ministry of Foreign Affairs to extend their negotiations training to the humanitarian sector. The training programme is developed by negotiation experts and staff with a lot of field experience. The training consists of very practical tools. Impact results show that people report that they are more successful in negotiations. It is noticed that when more states reject the presence of humanitarian organizations the more they have to rely on mediation in order for them to open up space for dialogue. This is also something Clingendael works on in their trainings. Relationship management is a crucial element of humanitarian negotiations, especially for the purpose of obtaining and maintaining humanitarian access. This complex task often goes to national staff due to their knowledge of the context and various languages spoken in the region. They also have existing networks and contacts. To reflect their importance, we strive for a representation of 75%-80% of national staff in our trainings.

Key messages from the discussion

- Even though humanitarian organizations believe that humanitarian principles are being respected by the public and politics, counter terrorism measures can have a real impact on these principles and ofteneven trump the principles.
- Copycatting of legislation is something to look out for, in financial as well as political regulations.
- Governments might also try to 'put organizations up against each other'. This is another reason why a broad coalition is of importance when discussing the matter of shrinking humanitarian space.
- It is also important to support civil servants 'fighting' their own internal wars at MFA / DG ECHO, again a call for collaborative action and multi-stakeholder dialogue. This is also confirmed by Teresa Dumasy, who observes that the UK Tri-Sector Working Group has helped to connect and inform relevant government ministires on the issues affecting NGOs and reconcile different positions.

Outcome of this meeting: A broader coalition in the Netherlands, consisting not just of humanitarian organizations should be organized in order to effectively advocate and lobby on this issue. And at the same time look for opportunities where global -already existing- coalitions can be joined. As a follow-up to this meeting a strategizing session with stakeholders will be organized, in which concrete steps for action will be discussed.