



Working session on Shrinking Humanitarian Space

Video conference, 17 September 2020

Humanitarian action has to deal with a humanitarian space which is more and more shrinking resulting from intensified anti-terrorism legislation, regulations and policies. This undermines the effectiveness of humanitarian action and violates the humanitarian principles of independence, impartiality and neutrality.

As a follow-up to an [expert meeting](#) on this topic in April 2020, The Dutch Relief Alliance (DRA), Human Security Collective (HSC) and KUNO presented this working session on Thursday 17 September.

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

Speakers

- Klaartje Docters van Leeuwen – Institutional Partnerships Manager Netherlands Red Cross
- Jan Jaap van Oosterzee – Advisor Policy & Public Affairs Middle East and Caucasus PAX
- Paul van den Berg – Political advisor Cordaid, chair Visibility Working Group Dutch Relief Alliance (DRA)
- Karel Hendriks – Humanitarian Representative MSF Netherlands
- Lia van Broekhoven – Director Human Security Collective (HSC)
- Emma O’Leary – Senior Humanitarian Policy Advisor Norwegian Refugee Council (NRC)

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

Introductions

Klaartje Docters van Leeuwen (Netherlands Red Cross) with an overview of the practicalities related to the new countering financing of terrorism (CFT) related conditions of donors in contracts and grant agreements of NGOs

UN Security Council Resolution 2462, EC council directives and the Dutch Law on anti money laundering and financing of terrorism (Wwft) inform the clauses in the contracts between donors and aid organisations. These clauses have an effect on different steps in the Aid delivery cycle (see figure below).

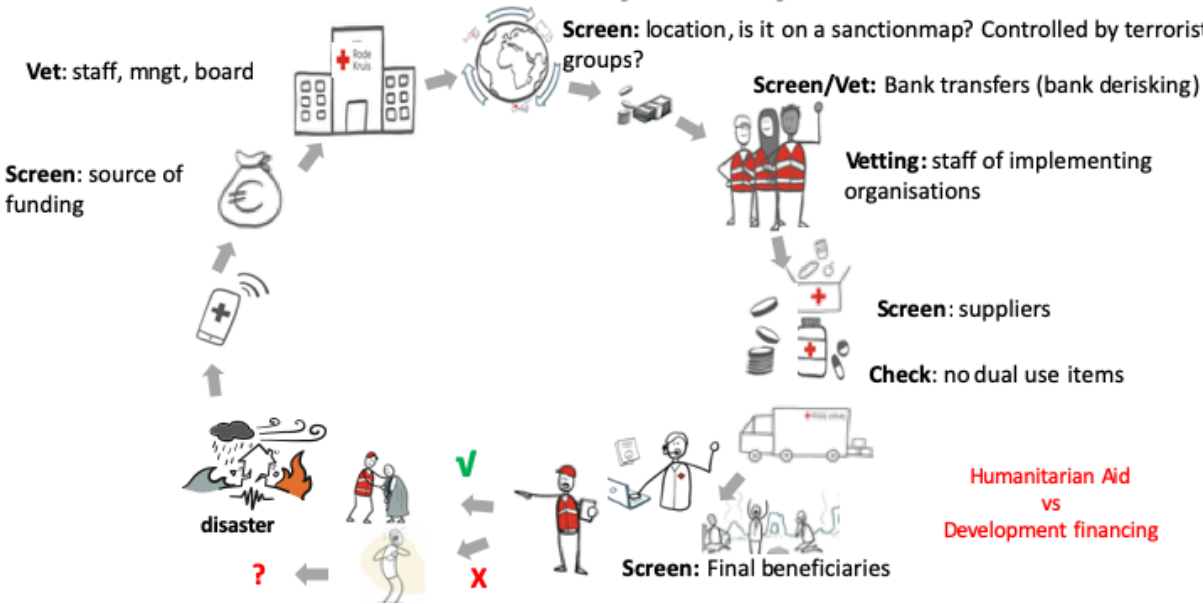
Amongst others, the measures include requiring organizations to do screening and vetting of their staff, they have to check whether the area where they will be delivering the aid is controlled by terrorists, banks have to vet the financial transfers, organisations have to vet staff of implementing partners, screen the suppliers and lastly, potentially screen the beneficiaries. In general, humanitarian donors like the Netherlands Ministry of Foreign Affairs (Humanitarian Aid Department - DSH) and EC DG ECHO do not require to screen final beneficiaries, but development donors (like EC DG DevCO) do. A similar clause as the one DG DevCO is currently using was announced in the MoFA’s tender for the Civil Society

Instrument (Maatschappelijke Middenveld). All these CFT measures lead to different risks – including risk of non-compliance and thus potentially financial penalties, losing trust and reputation, but also personal security risks to humanitarian field workers – as they are no longer seen by beneficiaries or warring parties as neutral, independent and impartial. It can lead to aid organisations becoming very risk averse. If aid organisations refuse to accept the clauses relating to the countering of financing terrorism, they risk losing an important source of income.

It is clear that there are conflicting policy objectives and legislation. On the one hand there are policy objectives to countering the financing of terrorism, but on the other hand there is International Humanitarian Law, Human Rights law, regulations on data protection and privacy, and policy objectives on having inclusive dialogues with civil society. How to best handle these, sometimes conflicting, policy objectives? Donors and aid organisation need to enter in a constructive dialogue and ask themselves:

- Are the measures clear (sometimes they are very vague, not clear what is really expected)?
- Are the measures appropriate – what do you want to achieve, and is it fitting with the mandate and capacity of the organisation?
- Are risks shared equitably- from donor to (inter)national organisation to local partners?
- Is it proportionate - do the benefits of the measures really outweigh the costs?

CFT measures: what, when, where?



First slide PPT-presentation Klaartje Docters van Leeuwen

Jan Jaap van Oosterzee (PAX) on three issues that PAX as a peace organization deals with when anti-terrorism legislation will be implemented

Firstly, the regulations that are included in the funding contracts are often not fully clear. There is unclarity about what organizations are on the sanction lists and there are sanction lists from different institutions. The Dutch follow the European sanctions list, but even on this list there are some arbitrary decisions about who gets on this sanction list. Furthermore, the decision of who is on the list and who is not, is a political decision.

Secondly, the regulations that are included in many contracts place the responsibility for vetting and controlling deep in the chain of responsibility, with the local partners in the Global South. Organizations in the Global North have the legal knowledge to deal with this and do so from a safe distance. In a country like South Sudan the practicalities can be quite different. PAX has to require partners to check participants of a workshop and have them refuse any people involved with armed organizations. In reality you would want these people in the workshops.

Lastly, PAX is afraid that the unclarity in contracts can also be used by governments or by other organizations who would actually want to block the work that they do. For example, there are organizations associated with the settler's movement in Israel / Palestine that try every possible angle to block the work of European CSOs with Palestinian organizations. For this reason, Palestinian CSOs have not been able to receive any European funding for some time. These organizations have quite a crucial role in the social networks in their communities, is this really what The Netherlands want to achieve with this kind of stipulation?

Karel Hendriks (MSF Netherlands) on the recent political developments in the Netherlands

The anti-terror law that criminalizes presence in designated terrorist territories, was presented for the lower house of parliament in September 2019. November 2019 the senate organized an expert meeting.

There are several objections by (humanitarian) organizations against this law. It is a principled problem of having to ask permission from the Ministry of Justice to work in 'terrorist areas' and also a practical problem because of the extra workload, the uncertainty before the law and the suddenness in which the ministry might demarcate areas as 'terrorist areas'. In the current version of the law, organizations would have to ask for approval every so often and then be exempted from having to ask this permission for a specific amount of time. The ICRC and Red Cross do not have to ask for permission, they will be exempt by law.

There has been a united front of organizations that are not in favour of this law and they have continued to present themselves as such in the senate. The senate has decided to ask a second round of questions from the minister, also based on some concerns by humanitarian organizations and journalist organizations.

There are a few possible avenues forward. There could be lobby towards the senate. There is a few weeks delay before the answers from the minister come back, then there will be a plenary debate and then there will be a vote. The political lobby is the first order of business. The two other scenarios are public action or fighting the law in court after it is accepted.

Paul van den Berg (DRA, Cordaid) discussed the new Dutch anti-terror legislation in a wider context

The Netherlands will be the fourth country with such a law. Denmark, the UK and Australia already have one. Paul is quite concerned that the law will be duplicated by other EU member states, which means it will be even more difficult for humanitarian organizations to operate.

We are happy with the support from high-up people. External pressure is important. Humanitarian organizations and journalists are helped by the concessions that have already been made. They are able to ask for permission, but peace organizations are kept out of the loop. They cannot even enter the area anymore. The side-effects of this law are tremendous, which needs to be fought. It will lead to inaccessibility of many organizations.

Lia van Broekhoven (HSC) with an update on the FATF (Financial Action Task Force) Netherlands country evaluation in 2021

The FATF has set 40 AML/CTF (anti-money laundering and countering the financing of terrorism) standards which have been endorsed by 200 countries. These countries have to translate these standards into laws, regulations and policies. The FATF has a specific standard for CSOs (Recommendation 8) since the sector has been identified after the events of 9/11 as vulnerable to terrorism financing. The countries that endorse the standards are evaluated every 8 to 9 years. The outcome of the evaluation has direct influence on the country's financial ratings.

The FATF is currently evaluating the Netherlands to assess if the country is compliant with the 40 FATF standards for countering terrorism financing and money laundering and if these standards are implemented effectively, in other words, do they work. The evaluators will assess if the Netherlands is a country where the government protects the sector against terrorism financing and is thus compliant with Recommendation 8. It is important for us to engage on the evaluation. Every three years the Dutch government updates the national risk assessment for terrorism financing and money laundering, the last update was in 2019. The WODC conducted the NRA update for terrorism financing. This is an important piece of information analysis that the Ministry of Finance that coordinates the FATF evaluation uses as a benchmark for the effective implementation of the FATF standards. The FATF will assess if laws, rules and regulations implemented by the government are proportionate to the risk for terrorism financing and money laundering

In the WODC 2019 update, our sector is categorized as high risk for terrorism financing. This conclusion is primarily based on the support by foundations to foreign fighters that went to Iraq and Syria in support of IS, and on money from the Gulf states entering the country in support of Muslim cultural foundations and mosques. A small part of the sector was thus defined as high risk, but the whole sector was labelled as such, thereby potentially criminalizing the entire non-profit sector. We have to engage on the evaluation, especially before the on-site visit by the FATF in June 2021. There is already an ongoing dialogue about the FATF evaluation and the potential risk for terrorism financing abuse of NPOs coordinated by the Ministry of Finance where, MOFA (DSO and DSH), SBF (umbrella organization of Goede Doelen Nederland, FIN/Vermogensfondsen and CIO/churches), CBF, and HSC take part. It has been requested that umbrella groups such as Partos and Partin are also present in or provide their input to this dialogue. Especially Islamic and diaspora groups are disproportionately affected by CFT and other counterterrorism measures, especially through bank derisking, whereby banks refuse to take them on as clients or apply more stringent customer due diligence on them. The smaller organizations do not have work arounds to deal with bank-derisking and do not have the resources to leverage and

lobby against this. HSC is trying to reach out to these organizations, and together with Wo=Men has engaged with their smaller and diaspora members on bank derisking

The EU fifth AML/CFT directive considers the NPO sector in the EU member states at risk for terrorism financing and money laundering. Their regulations could lead to a rule-based approach to regulate NPOs against terrorism financing and money laundering abuse, instead of the risk-based approach that the FATF is urging countries to apply. Such rule-based approach could lead to more overregulation of NPOs and more derisking of NPOs by banks. The EU directive thus adds another layer of CFT measures with the aim to protect the internal market against money laundering and terrorism financing that will affect the operational space of civil society.

The FATF standards and the EU AML/CFT directive illustrate that CFT and AML measures are driven by global and regional policies and decision making that have a significant impact on the way NPOs can operate in the Netherlands and other countries. Becoming aware of initiatives that allow the participants on the call to engage on these issues could be helpful for national lobby and advocacy. www.fatfplatform.org

Emma O’Leary (NRC) on Counter Terrorism Measures at UN-level and the impact on the humanitarian sector

The issue of counterterrorism is something that the Norwegian Refugee Council has been working on since 2012. It was seen as a niche topic and advocacy efforts are still needed to create awareness among humanitarian organizations. Over the last few years there has been a lot more interest in and understanding of the topic. It reflects the fact that the environment of humanitarian organizations has been more restricted

The UN architecture in relation to CT is quite a complex and opaque topic. In the UN security council, International Humanitarian Law (IHL) is largely absent from counterterrorism discourse and is only addressed in a tokenistic way. In 2019 the SC adopted Resolution 2462, on counterterrorism financing, initiated by France, which had problematic language, but ultimately was passed with protective language for humanitarian action. Furthermore, in 2021, Kenya will take a seat as an elective member and will likely again attempt to list Al-Shabaab as a terrorist organization and have a wider focus on counter-terrorism.

Currently we see within the UN a prevalence of counterterrorism (CT) sanctions over IHL. The ideal way forward is to establish prevalence of IHL over CT sanctions, but dynamics at UNSC level are not conducive. It is more likely that we move towards co-existence of IHL and CT. A realistic way forward is the use of exemptions, these must be well-framed, well-worded and address state and humanitarian concerns. There has been some support on this agenda from current Council Members, which is a positive development. The United Nations Counter-Terrorism Committee Executive Directorate (UNCTED) is the UN body that provides assessments and reports of security council resolutions. UNCTED has started looking more on counterterrorism and humanitarian action in recent years, but the core focus is on CT and not IHL. There is no expertise on IHL within UNCTED, which might reinforce to the prevalence of CT over IHL.

The UN General Assembly has an active part in counterterrorism measures. The first resolution was adopted in 2006 and in 2010 a UN office of counterterrorism opened. The global CT strategy is non-binding and guiding member states. It is composed of four pillars and there are measures to ensure respect for human rights and law. However, the Human Rights are the fourth pillar of the strategy, and it is the weakest one.

Key messages from the discussion

- All these measurements place huge constraints towards populations that are in the greatest need.
- We are talking about humanitarian organizations and IHL, but there are also organizations that are doing only development work, or both. IHL does not protect everything they do. We cannot uphold counter-terrorism measures, what do we do with things that are not covered under IHL?
- A way of sharing information needs to be found. This is not only a Dutch discussion, these regulations start in New York or other places. There needs to be a way that works for CSOs but also caters to the need of the government. There needs to be a follow-up of this discussion
- Advocacy to FATF has been done by the global NPO coalition (of non-profit organizations). Organizations can become a member of this coalition. It is also recommended to become a member of the Global NPO Coalition, this roundtable is very much focused on de-risking, but could also combine more topics in civil society like humanitarian relief and peacebuilding. It would be a broader platform to discuss these issues together with the Ministry of Finance, the Ministry of Foreign Affairs and banking associations. These are options to explore. Instead of reinventing another dialogue table, perhaps an already existing dialogue mechanism should be enlarged.
- The Ministry of Foreign Affairs will provide an opening for discussion on this topic soon.
- SV and IRC recognized that these challenges place huge constraints towards populations that are in need most. This led to Project Frontline, which is dedicated to field teams who require more time, capacity and experience in order to overcome some of the major concerns that people face in the field. This project lasts three years.