

LEGALFOXES LAW TIMES

HUMANITARIAN AID AS A DEVICE APROPOS OF COUNTER-TERRORISM & GLOBAL SECURITY

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INTRODUCTION TO COUNTER-TERRORISM VIS-À-VIS HUMANITARIAN ACTION

For the past twenty year & more, states & inter-governmental bodies have espoused progressively vigorous counterterrorism laws & policies. Simultaneously, humanitarian predicaments in countries which were poorly developed like *Somalia, Mali, & Syria* have reiterated the sustained significance of righteous humanitarian action. Counterterrorism laws were primarily treasured in a series of international treaties, & tackled specific questions such as the funding of terrorism or the commandeering of airplanes. Subsequently to the event of 9/11, the growth of an outbreak of laws & policies radically transformed the normative basis for counterterrorism.²

The established commissions & councils like OCHA, NRC, IASC, etc., purposes to increase the understanding of prevailing counterterrorism laws & policies & their influence. Humanitarian ideologies necessitate that aid & defense be provided anywhere it is required, fairly & with penchant for those in utmost need. This basis for humanitarian act is based in International Humanitarian Law (IHL) & has been recurrently reiterated by States. In certain circumstances, some donor counterterrorism measures have offered humanitarian actors with a serious dilemma. If we stand by the humanitarian ideologies the law might be violated & charged against criminal prosecution. Observance of certain counterterrorism laws & measures may necessitate individuals to act in a way discrepant with these ideologies. This could result in destabilizing of the acceptance of humanitarian assistors among the distinct parties involved in skirmish & the communities in which they work, averting them from defending & supporting those in need. There is a crucial necessity to make mutual concessions between the objects of counterterrorism

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²Sara Pantuliano, Kate Mackintosh, Samir Elhawary & Victoria Metcalfe 'HPG Policy Brief 43 on Counterterrorism and humanitarian action: Tensions, impact and ways forward' *Overseas Development Institute* 1-12 (2011).

laws & measures on one side, & humanitarian action which obeys to these ideologies, on the flip side. The case studies of the engaged Palestinian territory & Somalia are the instances to accentuate some of the effects of counterterrorism measures on humanitarian assistors. These embraces increased managerial actions for obtaining or screening of partners; diluted capacity to sustain people in areas where rebellious groups nominated as terrorist may be vigorous; & a tendency towards self-restraint & other negative surviving tactics by humanitarian actors.³

The *problem* that emerges is that, quite a few objectives are shared by the *counterterrorism & humanitarian aid* inclusive of the prevention of the outbreaks against the non-combatants & of digression of assistance to armed groups. Hitherto, in the recent years, stiffness has been arising between these two branches of law & policy. Consequently, a lot of challenges have been lined up for both the government & the humanitarian assistors. These challenges have been a hurdle to the open & canny deliberations on the pragmatic & legal consequences of counterterrorism laws for humanitarian acts specifically (i) *in the regions where there are recognized & listed armed & rebellious terrorist groups annexing the territory; or (ii) wherein the populace of any region is in need*. Also, it resulted in the donor's growing menace abhorrence, which can complex or throttle the exertions of the humanitarian organisations to function in red alert areas. There is also the need to take the commendations by the inter-governmental bodies that appear to administer the humanitarian organisations as they seemingly observed as the channel for the terrorist operations. It is also essential to address the dearth of exceptions in counter-terrorism law for virtuous humanitarian act. For the progression & justice to the humanitarian action, the outlawing of the terrorist operations is believed to be essential, *for instance*, providing the medical aid to the injured rival combatant & the increasing application of the eccentric strategies, *for instance*, senatorial questioning or the usage of '*naming & shaming*' crusades to associate civic society organisations with destructive actions.

The strain between the laws on combating terrorism vis-à-vis the humanitarian aid have been addressed by several worldly renowned scholar's & experts on divisive issue of terrorism in the global field. Also, the profound research by the NRC, OCHA et al. has thrown significant amount of light on the pragmatic effect of the measures employed by the donor state on the

³Jessica Burniske, N. K. Modirzadeh & D. A. Lewis, "Counter-terrorism laws and regulations: What aid agencies need to know"⁷⁹ *Humanitarian Practice Network* 1-15 (2014).

humanitarian aid. The continued deliberations on this subject have established painstaking & subtle scrutinization of the contemporary legal structure & the quandaries confronting humane players. The *objective* of this research paper is to determine the donor & humanitarian organizations backing & their retort to counterterrorism agendas by looking into the key trends concerning Counterterrorism rules & regulations. Also, to bring emerging challenges of humanitarian action apropos of counterterrorism law in light specially in protection of needy population in circumstances of warfare with non-state armed groups (NSAGs) & recognized non-state actors which control territory by analyzing the two countervailing set of rules (i) *endorsing humanitarian action with NSAGs* & (ii) *barring such engagement with listed armed groups*. The project will also look into the reputational harm faced & injury inflicted in view of the conglomeration of other challenges under Counterterrorism law apropos of humanitarian action as a device taking into account instances like *naming & shaming* et al.

INTERNATIONAL TERRORISM & ITS INTERPLAY WITH THE (I) LEAGUE OF NATIONS (II) UNITED NATIONS

Terrorism, the term isn't subject to a universally agreed definition it can be broadly accepted as a method of coercion that applies or intimidates to use the violence in order to disseminate the angst & by that achieve the political & ideological objectives. International terrorism, it carried out by the individuals or groups in influenced, associated & aided by designated foreign terrorist organisations nor sponsored by the states. Modern terrorist violence is thus distinguished in law from the ordinary violence by the classic terrorist triangle. The attack spreads the fear among the innocent individuals as the violence is aimed suddenly which puts the third party such as governments under pressure to change their policy, schemes & other factors. Modern terrorists use various forms of extreme forces & aimlessly targets the citizens & other state officials. The term terrorism was initially put forth to describe the hold sway of terror, the period of the French revolution when the rebellious & revolutionary government directed the violence & the hard measures against the civilians who were under the suspicion of being against the revolution. The famous invasion of the Napoleon to the Spanish Peninsula resulted in the new form of fighter i.e. "Guerrilla" derived from the Spanish word "Guerra" which means 'little war'. The use of terrorism as a technique of destruction by the groups can be drawn back to the old time in several forms. it is as ancient as the government & armed battle & extensive.

THE LEAGUE OF NATIONS & TERRORISM

In 1919, Versailles Peace Treaty between the Germany & the Allied powers which winded up the World War I accelerated in the development of the contemporary terrorism. The Covenant of LON readjusted former German & Turkish colonies etc. through the league authorization system basically to assure mild form of international responsibility for administration. Helped in the growth of the outnumbered people in the new states created after 1919 such as Yugoslavia & were contemplating to serve as the peace-making actions, discouraging the trans boundary affiliations. The covenant system of collective armament appeared to be inclined towards concerns regarding the global security than those of the global & the rule of law, in the occurrence of the stifle. A nexus was raised between the contemporary terrorism & ideal of self-determination within the conflicting & competing manifesto of the socialist/communists' theory & reflected in the LON covenant in which there is no explicit remark to the self-determination principle. The deluge of the terrorist bloodsheds although continued. By 1930, various mutual agreements mentioned the abolition of terrorism & many deportation accords had the clauses where the assassination attempts against the state head was excluded from the account the political offences. Further, experts committee was formed by the League Council to formulate convention on terrorism for the creation of the ICC which would have the administration over certain terrorism specified acts in the convention. Although, terrorism & political offences were distinguished by state & regional tradition of refuges in 1937, terrorism convention had no international criminal law rooted in it & hence any law applicable to the criminal prosecution for the acts regarded as the offence under the text of the convention was to be that of alluding & thus prosecuting the state. Regrettably, soon after, world war II was emerged & neither of the convention was enforced.

THE UNITED NATIONS & TERRORISM

The terrorism during the period of UN related to the issues of the terror attacks called as "*liberation fighters*" who claim to use the direct actions to follow their rights to the self-determination of the people as contended in the UN Charter, which proclaims to develop the healthy & friendly relations among the nations resting on the principles of equal rights & people's self-determination. On the issues of the self-determination, inclusive of the on air

freedom fighter v. terrorist enigma, the cruciality to understand is these issues will remain to be antagonistic & have the conclusion for the issues such as chronic failure of the international community to agree on the universal interpretation of the terrorism with the law making repercussions. The terrorist actions that took place post 1945 aren't linked with the self-determination principle. The recognised agent of the terrorism has ranged through the complete hue cycle of the human dissatisfaction inclusive of the socio, political, economic etc. factors with both short- & long-term objective of violence. In reciprocation, some in the international society, especially the scholars tagged the terrorist groups as per their principles & inspirations in terms of criminal actions within the UN system. The violence, threat used by the terrorist's ranges across a broad spectrum from individuals with military exercise & knowledge to what Whittaker has coined as 'throw away' operatives who are sent untrained on suicidal missions. This also portrays the slow & steady growth of the terrorist strategies & tactics including assassination, sabotage, hijacking, hostage etc. to the nuclear terrorism like concocting the heinous bomb, nuclear reactors etc. consequently devastating the whole human life & cultural heritage. Such issues have strongly boosted the framework of the international society to the universal anti-terrorism conventions. Anti-terrorism tools were embraced roughly in three aspects. Starting with the legislation shielding the safety of the aviation & shipping, then acts carried out during the liberation conflicts marked as exceptions to the crime & the newest phase reflecting the widening & division of the terrorist groups & included the groups like, *Taliban*, *Al-Qaida*, *ISIL* etc. & shows the imminent threat to the international society & are considered to be the UN designated terrorist groups.

"OUR MISSION YOUR SUCCESS"

1. HUMANITARIAN IDEOLOGIES & COUNTER-TERRORISM LAW

LAWS ON COUNTER-TERRORISM & HUMANITARIAN IDEOLOGIES & THEIR SIGNIFICANCE

The states in the International arena are expected to comply with the international law. A state has the foremost liability to fulfil the fundamental requirements of its populace. But there are some actions like *armed conflict* which obstructs the state to satisfy the demand of its population. In circumstances like this, the humanitarian assistors in line with the International Humanitarian Law (*IHL*) which is an international legal structure constantly endeavouring to control & regulate the warfare by the dint of rules, regulations & policies for *states*, *rebellious groups*, *fair & autonomous humanitarian agencies*, might step in to proffer the aid.

The character or nature of the armed conflict whether international or not international partially ascertains the apposite parts of IHL determining the rights & obligations of the parties, non-combatants & other actors. In the International armed conflict, the humanitarian assistors usually tries to haggle humanitarian aid with the states whilst the same is not the case in the non-international armed conflict, where the humanitarian assistors along with the *states (still being bound by state consensus for their existence & actions)* might need to negotiate & harmonize with the non-state actors too *viz. insurgent groups, agencies & organizations*. In pursuant of IHL, no acknowledgment & authenticity is granted to any of the parties by the virtue of the negotiation & cooperation between humanitarian assistors & the non-state actors. In fact, the act of negotiation functions as a promoter to obtain access & provide assistance by the neutral humanitarian assistors like UN, ICRC, International & Domestic NGOs etc. by entering a region at the time of armed conflict & providing the humanitarian backing in conjunction with observing & encouraging the inviolability of the human rights.

The fundamental foundations of the humanitarian assistance are the humanitarian ideologies of humankind, fairness, objectivity, & individuality. Abidance to these humanitarian ideologies helps the empowerment of the humanitarian bodies to give the efficacious aid to both the non-combatants who directly participate in the hostilities & also to those who aren't anymore partaking in the armed conflicts. These humanitarian ideologies serve as a matter of principle if not in practical terms, besides facilitating assistance & offering a forum for further assistance to protect the workers in the international field. However, notwithstanding the coherence to these ideologies, there exists certain circumstances which might impact the humanitarian institution's capability & competence to efficaciously negotiate the humanitarian assistance & aid to defend the non-combatant populace. Perhaps, these humanitarian institutions can be appreciated as organisations which are either politically driven or are representing the foreign interests, which might bring about the state & the not state actors to repudiate the humanitarian assistance.

REAL UNDERSTANDING OF COUNTER-TERRORISM LAW

In general connotation, the laws on counterterrorism incorporates the set of laws espoused by the inter-governmental agencies & states to dissuade & penalize the belligerent actors like terrorist organisations & their actions. Further, also to avert these non-state actors to access the funds that

will sustain their hostile acts. Before 2001, in several nations the 9/11 attacks & the Global community's immediate retort to it acted as the reagent for the states to establish & advance the novel measures & enhance the already prevailing laws. Post these attacks & other attempted attacks in the continents like *Africa, Asia, Europe & America*, these bolstered state's top priority isn't only to put a stop to the belligerent groups & their activities happening on their territory but also to fend off the folks to take up the alleged preliminary acts of terrorism like *taking part in the terrorist boot camps, fundraiser or money-laundering for belligerent activities, & goading the terrorist attacks* etc. The tagging of the specific terrorist groups or organizations is an important factor of the counterterrorism law. Various nations & the international organizations like UN have prepared the tagged terrorist groups & targeted sanctions that overtly recognizes & penalizes the individual or group involved in these bellicose activities.

2. DONOR STATES & HUMANITARIAN ORGANIZATIONS SUPPORT TO & RESPONSIVE OF COUNTERTERRORISM

COUNTER-TERRORISM MEASURES ESPOUSED BY (I) UNITED NATIONS (II) STATES(III) GENERAL MEASURES

(I) COUNTER-TERRORISM MEASURES ESPOUSED BY UN

On employing multiple measures on counterterrorism, several individuals & sets of people who have indulged in terrorism or the associated activities have been sanctioned by the UN. The *UNSC Resolution 1267*⁴, which was universally espoused on the conditions in Afghanistan, wherein the notorious terrorist *Osama Bin Laden* & the acquaintances have been tagged as the terrorists vis-à-vis running the terrorist organisation & also determined the sanction regime viz. the sanction committees of the Security Council to look into *Al Qaida, Taliban & ISIL* & the linked groups, actions & units, wherever have spread their mesh.⁵ In addition, the *UNSC Resolution 1373*⁶, which was universally espoused providing the counterterrorism measures passed post 9/11 attacks. This resolution was employed under *UN Charter*⁷ & is therefore binding upon all the UN member states. This resolution & the other affiliated resolutions

⁴ UN Security Council, SC Res 1267, SCOR, UN Doc S/Res/1267 (October 15, 1999).

⁵ UN Security Council, *List of Suspected Terrorist Organizations and Individuals, National Reports Continue to Play Crucial Role in Fight Against Terror*, UN Doc SC/8102 (May 25, 2004).

⁶ UN Security Council, SC Res 1373, SCOR, UN Doc S/Res/1373 (September 28, 2001).

⁷ The United Nations Charter, Ch. VII.

necessitates the states to enforce the laws & employ the measures to enhance their capability to avert the terrorist actions. These counterterrorism measures encompass incrimination of the terrorism funding, blocking the sources for terrorism fundraiser, repudiating the pecuniary assistance to the terrorist organizations, collaborating with the other governments to leak the confidential information, inspecting, tracking down, detaining & initiate proceeding against the folks & agencies engage in the belligerent activities.⁸

Several committees were also founded by the UNSC to supervise the application of the aforementioned & many more resolutions that were passed. Under the *UNSC Resolution 1267*, the committee established placed the people & the bodies in connection with the terrorist organisations on the open targeted list. These belligerent groups on insertion in the list are subjected to stern restrictions & sanctions like freezing of the funds, embargo on the travelling, ban on the procurement of the armaments which must be strictly executed by the UN member states. The committee established post *UNSC Resolution 1373* aka *Counter-Terrorism Committee (CTC)* evaluates the ability of each member state to combat terrorism & in furtherance, gives the states the practical support to advance & execute the laws on counterterrorism. This committee also establishes the report marking out the counterterrorism laws & several policies & guidelines of each state & evaluates the state's progression towards fulfilling the need of the resolutions of UN on counterterrorism.⁹

(II) COUNTER-TERRORISM MEASURES ESPOUSED BY STATES

A vital foundation of the measures on countering terrorism as determined by multiple UNSC resolutions should be executed by all the member states of UN without fail. Above & beyond these existing measures, if the states want, they can also come up with the execution of supplementary & robust measures. Numerous states, primarily the *humanitarian donor states* which provides assistance to a developing country or which have lately started to offer or expressively enlarge their role in *Official Development Assistance (ODA)* have also espoused certain measures on counterterrorism, however the specific room for these laws on counterterrorism might extensively differ state wise & this variation have resulted in certain propensities.

⁸*Supra* note 5.

⁹*Id.*; UN Security Council, SC Res 1624, SCOR, UN Doc S/Res/1624 (September 14, 2005).

The vigorous counterterrorism laws of certain *humanitarian donor states* not only castigate & sanction the terrorists & their activities but also outlaw the individuals & the organisations taking up the preliminary acts of terrorism. *For Instance*, In USA, an act believed to be in *substantial assistance* of terrorism is penalized by 15 years' incarceration. This law is applicable regardless of the nationality of the persons involved. The *substantial* or *material support* like *taking part in the terrorist boot camps, fundraiser or money-laundering for belligerent activities, & goading the terrorist attacks, travelling & accommodation, procurement of the armaments, expert guidance & aid, transmitters, other services, workers, & conveyance* etc.¹⁰ Under *substantial* or *material support* regulation, only the proviso of the *medicine & religious supplies* is allowed & an individual doesn't require to propose the promotion of the terrorist organisations actions to be ascertained blameworthy. For the humanitarian assistance, no This general exemption has been provided by this law. In the circumstances, where this *substantial* or *material support* regulation is impugned, the Supreme Court of US ruled that the extensive scope of the ostensibly peaceable activities like the training registered terrorist organisations on employing International law as the device to settle the dispute are barred under the law for the reason that any aid to the belligerents discharges the funds for the iniquitous actions.¹¹

Various states namely, *USA, UK, Canada, & Australia* etc. have prepared their own state listed terrorist groups & individuals along with the application of the UN tagged terrorist groups & the targeted sanctions. Due to the fact that, different states perceives the notion of terrorism distinctly, certain countries prepare their own listed terrorist organisations lists where the listed individuals or groups are put through different penalizations for the fact that the tagging of these individuals & groups might be reactive either to a particular or local menace confronting the state or any external policy attempt to segregate & put a specific individual or a group under strain. These lists of different states are diverse in nature with respect to the individuals & groups who are inserted in the list. It is each state government's choice to decide on the listing of the individuals or the groups & individuals as to who should be inserted in the list & who shouldn't. the process of listing the terrorists or their organisations is intrinsically political in nature

¹⁰ Charles Doyle, "Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B" *Congressional Research Service* 2, 13 (2010); J. Gurulé, "U.S. Supreme Court: Holder v. Humanitarian Law Project" 49(5) *International Legal Materials* 1238-1267 (2010).

¹¹ J. Gurulé, "U.S. Supreme Court: Holder v. Humanitarian Law Project" 49(5) *International Legal Materials* 1238-1267 (2010).

subjugated to multiple distinct concerns & peculiar definition of terrorists & notion of terrorism as employed by different states.

(III) GENERAL COUNTER-TERRORISM MEASURES

I. MEASURES TO ADDRESS THE CONDITIONS CONDUCTIVE TO THE SPREAD OF TERRORISM

1. To continue to strengthen, & make best possible use, of existing UN resources for the peaceful settlement of potential terrorism issues.
2. To continue to arrange, under the auspices of the UN, initiatives which promote the peaceful settlement of disputes which may escalate to acts of terrorism.
3. To promote a tolerant, accepting, & empathetic, culture which discourages the development of terrorist-like behavior.
4. To continue to adopt appropriate measures consistent with UN obligations under international law to mitigate terrorism.
5. To reiterate our demand for the timely attainment of the Millennium, & Sustainable, Development Goals, which have the effect of constraining terrorist behavior.
6. To scale up UN measures which assist countries improve the fields of rule of law, human rights, good governance, & sustained economic & social development, all of which have proven effects on reducing terrorism.
7. To consider putting in place a voluntary system of inter-State assistance for the adoption of measures to counter terrorism.

II. MEASURES TO PREVENT & COMBAT TERRORISM

1. To refrain from encouraging in any way, directly or indirectly, measures of terrorism.
2. To cooperate fully in the fight against terrorism, consistent with the UN's international law obligations.
3. To assist in the effective apprehension, extradition, & prosecution, of terrorist suspects, consistent with international law.
4. To intensify investigative, & intelligence, cooperation.

5. To encourage member-States to become party to the UN Convention on Transnational Crime.
6. To take appropriate due diligence measures to ensure that asylum-seekers are not terrorists.
7. To encourage regional transnational organizations to strengthen counter-terrorism measures.
8. To work on the proposal of creating an international nodal authority to coordinate the global fight against terrorism.
9. To strengthen UNSC recommended measures to choke existing designated terrorist organizations.

III. MEASURES TO BUILD STATES' CAPACITY TO PREVENT & COMBAT TERRORISM & TO STRENGTHEN THE ROLE OF THE UNITED NATIONS SYSTEM IN THIS REGARD

1. To encourage States to make voluntary contributions to the UN to assist its counter-terrorism measures.
2. To take full advantage of the framework of counter-terrorism provided by existing international law.
3. To consider establishing appropriate mechanisms to rationalize the terrorism-related reporting obligations of States.
4. To encourage more informal measures to strengthen the fight against counter-terrorism.
5. To encourage the UN, its organs, & allied international organizations, to strengthen their existing counter-terrorism initiatives.

IV. MEASURES TO ENSURE RESPECT FOR HUMAN RIGHTS FOR ALL & THE RULE OF LAW AS THE FUNDAMENTAL BASIS OF THE FIGHT AGAINST TERRORISM

1. To reaffirm that counter-terrorism measures must always take place with due respect to human rights.
2. To reaffirm that all State counter-terrorism measures must be consistent with their obligations under international law.
3. To encourage States to consider becoming parties, without delay, to core international human rights instruments.
4. To encourage States to develop effective systems of human rights protection, & to ensure the rule of law.
5. To support the UNHRC, & other international human rights organizations, in their functions.

SOURCES OF COUNTER-TERRORISM POLICY

Along with municipal & international sources of the laws on counterterrorism, several inter-governmental agencies may also propagate the drafting of the counter-terrorism policies. The *Financial Action Task Force (FATF) & the Global Counter-Terrorism Forum (GCTF)* have the membership, capital, assistance to substantially persuade the advancement of local, municipal, global laws on counterterrorism. These bodies directives range from extensive issues of counterterrorism laws to more precise concerned areas, *for instance* terrorist funding, etc.

The suggestions of these bodies operating at the global level can affect a broad spectrum of assistors like the humanitarian assistors & the organisations. Taking up the case of FATF, it has prepared proposals on the terrorist funding which also entails a suggestion concerning civil organizations for the reason that FATF upholds that a continuing crusade against terrorist funding has inopportunately established that both the terrorists as individuals & the terrorist organizations exploit the non-commercial sectors. *FATF's Recommendation No. 8* recommends nations to analyse the competency of the laws, rules & regulations that have to do with bodies that can be battered for the terrorism funding.¹² As stated by FATF, the regimes to avert the abuse of the civic organizations should also be espoused for the reason that these organizations are specifically susceptible to be abused by the terrorists & the belligerent organisations. The strategies & approaches of the organisations together with the agreement between the humanitarian assistors & donor/donor states or various agencies of UN, may also have an impact on the day-to-day actions of the humanitarian assistors. In an agreement with the donor/donor states or various agencies of UN, a humanitarian organisation might need to ascertain that the funds are not being utilized or flowed to the terrorists or the terrorist groups. In other case, a humanitarian organisation might get the capitals subject to the necessity that it assesses regional associates, sellers, & contractors counter to many designated terrorists' lists.¹³ It has also been specified by several covenants that these compulsions also pertain to partners, contractors, subrecipient etc. enforcing bodies.¹⁴ Several other organisations have also espoused the

¹² FATF, "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation" *Financial Action Task Force*, Paris, France (2010-2020).

¹³ Counterterrorism and Humanitarian Engagement Project, "Partner Vetting in Humanitarian Assistance: An Overview of Pilot USAID and State Department Programs" *Research and Policy Paper* 1-18 (2013).

¹⁴ Kate Mackintosh & Patrick Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action" *UNOCHA & NRC Report* 69 (2013).

procedures & approaches to the risk management & internal strategies formulated with regards to virtuous humanitarian aid that tackle the divisive issues of counterterrorism or voices out the dedication of the organisation to avert its capitals from backing the belligerent activities & groups.¹⁵

INFLUENCE OF COUNTER-TERRORISM ON HUMANITARIAN AID

There have been common grounds found between virtuous humanitarian assistance & counterterrorism laws regarding working on dodging the detraction to NSAGs, pressure in the major areas poses the challenges for the humanitarian assistors. The humanitarian organisations might need to sustain the intensified inspection concerning the constant threat of the exploitation or misuse of the humanitarian assistance by the individual terrorists or terrorist groups. In addition to the FATF recommendation on controlling the civil organisations as deliberated above, the ban on the material or substantial support in the states like USA & others, seemingly imitates the increasing concern that humanitarian access can be anytime distorted or misused by or transferred to the terrorist organisations. Also, it can be highly perceived that counterterrorism laws & strategies must be implemented to a wide array of actions above & beyond those conventionally acknowledged as assisting vicious actions like terrorism fundraiser, training boot camps, armed training etc. as a result, the prevailing laws on counterterrorism could be construed significantly through rules & agreements to implement to the kinds of accidental or concomitant diversion that might happen where the humanitarian assistance bodies functions in the regions dominated by the designated terrorists organisations. The commendations of FATF & employment of the other measures for the operation of the civil organisations propose that states must invoke combined efforts to avert the humanitarian assistance exploitation & abuse.¹⁶

These laws on counterterrorism also influences, in fact limit the humanitarian assistors' capability to function in some severe threatening settings, possibly establishing novel multifaceted legal & operative tasks to humanitarian agencies and their donors. NSAGs may be labelled as the terrorist & could be found their name inserted on the UN or the regional listed terrorists or terrorists' groups. Insertion in these lists fetches several proscriptions. Certain

¹⁵ Counterterrorism and Humanitarian Engagement Project, "An Analysis of Contemporary Anti-Diversion Policies and Practices of Humanitarian Organizations" *Research and Policy Paper* 1-33 (2014).

¹⁶*Supra* note 2& 15; Alice S. Debarre, "Countering Terrorism and Violent Extremism: The Risks for Humanitarian Action" *2 Extremists in Africa* 201-216 (2019).

embargos can have an impact on the operational capacity of the humanitarian assistors in the listed NSAGs dominated regions.¹⁷ The humanitarian organisations might disapprove on the other necessities of the counterterrorism laws such as *Pilot Partner Vetting System (PVS) of USAID* which on enforcement will necessitate the humanitarian bodies in five states to give the comprehensive private intelligence about the regional partners & subrecipients to the government of USA for supplementary screening through confidential intellect data bank. PVS & the other associated programmes might prima facilely looks to compromise with the humanitarian organization's objectivity & individuality by forcing that the info is collected by the organisation for the governments.

3. CONSORTIUM OF CURRENT CHALLENGES TO GLOBAL LEGAL STRUCTURE

There has been consortium of challenges faced by the anti-terrorism laws vis-à-vis the humanitarian assistors & the affiliated organisations. However, there have been probable solutions to overcome them to an extent if not completely¹⁸.

SOME OF THESE CHALLENGES ARE: -

- *Hitches in deliberating pragmatic consequences of Counterterrorism Law.*
- *The upshot of sanctions rules on the fiscal sector.*
- *Effect of terrorist funding policies advanced by intergovernmental bodies.*
- *Dearth of exemptions for humanitarian aid in prevailing laws.*
- *Outlawing an action fundamental of International Humanitarian Law (IHL).*

Other than the aforementioned challenges, there are certain contemporary challenges that are encountered like,

The augmented correlation between asylum & refugee ideologies & other legal prescripts framing the fundamental global legal structure within which counterterrorism retorts should take place. Nonetheless, these regimes come with certain challenges to be overcome.

¹⁷ Chatham House, "Humanitarian Engagement with Non-state Armed Groups" *The Royal Institute of International Affairs* 5-53 (2016).

¹⁸ *Supra* note 3; Rebecca Barber, "Humanitarian access and international law: A symposium for humanitarian practitioners, researchers, trainers and policy-makers" *Centre For Humanitarian Leadership* 4-15 (2019).

One of the essential subjects is that the *International Refugee Law (IRL) & IHL* wasn't framed primarily to curb the menace of terrorism or to be beseeched as the apparatus for combating the terrorism. By itself, its acknowledgment as a vital legal rule within the global counterterrorism legal structure has the capability to influence badly on the defense of asylum seekers & refugees, allowing such individuals less instead of equal or supplementary protection.

The UNHCR in retort to augmented counterterrorism measures subsequent to 9/11 terrorist attacks stated that it is legitimately wrong to consider asylum as the safe haven for the terrorists, it gives the wrong impression to the public at large about the asylum seekers or the refugees who have taken the shelter therein & encourages the singulation of the persons of specific races or beliefs for discernment & aggressive molestation. Since 9/11 attacks, a lot of migrants & refugee communities have sustained attacks & persecutions on the basis of sensed nationality or belief, which led to social unrest. As said by *United Nations, High Commissioner for Refugees, 2015*¹⁹.

There are certain asylum seekers & refugees who were, related with grave offence, nevertheless, this doesn't mean that the most of them should be darned by affiliation with the few.

The other issue on the basis of UN & EU designated terrorists & terrorists organisations list instead of the discrete assessment, some of the states have employed an *opt-out clause* for the terrorists conjointly. From the standpoint of rule of law, such methods are not always escorted by fundamental level of due process of law & can be problematic to impugn effortlessly including in the court. The other problem is that such a method doesn't tackle the underpinning matters but instead transfers the problem from one state to another state.

These multiple challenges & menaces could be accounted as the partly countervailed by the advantages of the integrating IRL within the global legal structure. The compromise of the nation's security interests with that of the distinct rights to be defended from forced persecution or refoulement is best attained when there is an amalgamation of distinct kinds of laws. the combined application of the humanitarian law, refugee law, extradition law, criminal law etc. could be means at its best to accurately ascertain that the terrorists & the belligerent groups demand for the asylum seeking or refugee protection should be declined. Contrarywise, shielding the state security interests by trying the persons in line with the due process of law, protecting the

¹⁹UNHCR, "Global Trends: Forced Displacement In 2015" *The UN Refugee Agency* 6-64 (2015).

rights & the most susceptible individuals & espousing the other suitable measures to defend the fundamental humanitarian rights, preserves the rule of law at the core of counterterrorism laws²⁰.

4. REPUTATIONAL TERRORIZATIONS & INJURY IN THE LIGHT OF THESE CHALLENGES

Seeing that the International society continues to constantly dwell on the attempts made by the counterterrorism laws, states & its officials, reports etc. have paid due regard to ensure the acquiescence with the counterterrorism laws & regimes. One of the several methods by which the humanitarian assistors could encounter the impacts of this increased consciousness about divisive issues of the counterterrorism involving the inspection of the humanitarian organization's activities especially for the activities taken place in the severe milieu or the listed belligerents vis-à-vis the terrorist groups dominated regions. The analytical exertions by the states, governments, designated bureaucrats, & reporters, aid to confirm the liability & openness of the community sector. These communal platforms could be beseeched by others too. Nevertheless, to beseech the extensive & supranationally apposite counterterrorism laws like one of the provisions of *substantial or material support* (US proviso) read above²¹ with the purpose of making the unsubstantiated & unexplored allegations that could harm the reputation & financing of the humanitarian organizations without the organisation ever being officially suspect of any offence, inspected for any challenging actions, or alleged by their donors of violating the necessities of the agreement.

Putting these sought of allegations have become the child's play & there are assortment of strategies to allure the groups or others whomsoever interested to *name & shame* the person or the organisations. *For example*, in USA the interested groups or the state officials might demand for parliamentary review to inspect the conceivable offence or employ non-legal, communal relations-based strategies like publishing the statement of the press within the naming & shaming campaign associating others with the deleterious activities.²² Similarly, in 2012 an Israel Law Centre named Shurat *Hadin*, *accused* the Australian NGO for financing the Gaza Strip based

²⁰Office of the United Nations High Commissioner for Human Rights, "Human Rights, Terrorism and Counterterrorism" 32 *United Nations*, Geneva 3-46 (2008).

²¹*Supra* note 11.

²² Counterterrorism and Humanitarian Engagement Project, "Congressional Inquiries" *Draft Background Briefing* 2-5 (2013).

terrorist organisation.²³ However, no evidence could be found against the alleged offence of the NGO & the same accusation was also repudiated by the NGO, but this whole event has impacted the NGO functions & the reputation of the organisation. It is to be noted that, once these detrimental accusations are put, it leaves the scars forever regardless the falsified allegations. With these injurious accusations, some degree of reputational harm to humanitarian assistors appears unavoidable, irrespective of whether the accusations are correct. The menace inflicted to the humanitarian assistors necessitates them to mull over how they would be going to tackle the communal relations crusade condemning them of desecrations of counterterrorism law, like backing the terrorists with the public money. Reputational harm may lead to the diminishing of the assurance of the donor state & forfeiture of finances., as benefactors might be hesitant to finance the organisations that may be engrossed in purportedly careless or wrongful action.²⁴

5. CONCEIVABLE COURSE TO SUBJUGATE THESE CHALLENGES

The constant strain between the laws on counterterrorism & humanitarian assistance & the concerned ideologies led to several notable challenges for the humanitarian assistors & the organisations. Due to the constant tension between the two, the actions of the humanitarian assistors have to undergo severe scrutinization than before. However, there have been proposed certain conceivable courses to subjugate these challenges that might help the assistors to confront & overcome these challenges & other difficulties.²⁵

1. Taking in account the advisability & possibility of the recording evidence of the hostile or constructive influences of counter-terrorism measures

The humanitarian assistors might desire to take in account the documenting the hostile or constructive influences of counter-terrorism measures, laws, regimes, policies etc. The recording of all these evidences could serve as the foundation for increasing the awareness & endorsing the deliberations on these challenges inside & outside the humanitarian aid agencies particularly encompassing issues like *partner vetting systems (PVS)* in USAID assistance²⁶ & other supervisory mechanisms. In 2011, *InterAction*, the biggest coalition of the humanitarian &

²³ Ibid; *Supra* note 3.

²⁴ Rosemary Foot, "Human Rights and Counterterrorism in Global Governance: Reputation and Resistance" 11(3) *Global Governance* 291-310 (2005).

²⁵ *Supra* note 2&3.

²⁶ Federal Register, "Partner Vetting in USAID Assistance: Rules & Regulations" 80 (123) *Agency for International Development* 36693 (2015).

International developmental NGOs & partners in US wrote to the government of USA about the probable adversative impact of USAID's pilot PVS.²⁷ According to the coalition, PVS would compromise with the acuity of an organization's individuality & neutrality, it would place the workers & the partners at higher jeopardy & would also dampen the international & regional partners from working with US established & US subsidized establishments. This letter of the InterAction acted as good source to cull out the conceivable hostile or constructive influences of counter-terrorism measures, laws, regimes, policies etc.

2. To determine whether the functional area is subjugated to the sanctions or not

The functioning of the humanitarian access in the targeted sanction areas, the organisation might take in account whether it has any inner mechanism to supervise & abide by the sanction rules or not. Furthermore, the humanitarian assistors might desire to assure that the humanitarian organisations employ certain methods to ascertain the consistent supervision of the novel targeted sanctions & the listing of the terrorist organisations. Various large humanitarian agencies have at least one member being employed for this purpose who is working on it 24*7 to confirm that the organisation is in complete acquiescence with the anti-deflection policies & affiliated guidelines. For the better results, the staff could be increased as well. *For Instance:* an INGO had six members staff to carry out the aforementioned task as to ensure the humanitarian organisations conformity with the anti-deflection laws. Out of those 6 members staff, 2 people were primarily employed to invest their time covering prospective & present associates against the counterterrorism laws, regimes, policies et al. & other designations.²⁸

3. To determine whether the planning of the humanitarian organizations is conditional upon any fiscal sanctions

The humanitarian organisations might desire to acknowledge the planning of the organisations if they are subjugated to any fiscal rules or sanctions. *For Instance:* All the UN bodies are subjugated to the compliance of UNSC sanctions, although the other fiscal proscriptions could be implemented by the individual donors on their donorships. It is vital that humanitarian agencies realize whether & how monetary sanctions could & do influence their function, due to the extensive possible operative impact of any fiscal rules or sanctions.

²⁷ Kimberly Darter, "Partner Vetting Independent Assessment: Insufficient Justification for a Global Rollout" *InterAction Policy Paper* 12-31 (2016).

²⁸*Supra* note 16.

4. To evaluate whether the humanitarian organizations activities are eligible for humanitarian exceptions

The humanitarian organisations might desire to acknowledge whether any of the activities of the organisations are eligible to be subjected to any exception rule under the pertinent laws & policies. If any exemptions exist, the possibility of such exceptions differs considerably among different states. Acknowledging the possible exceptions would give the staff of the organizations in-depth insight of which activities are permitted that or else would be barred.

5. Take in account the input to the deliberations that make an effort to establish the way ahead

The humanitarian assistors can partake to deliberate within & beyond their humanitarian organizations counting at the position of *Inter-Agency Standing Committee (IASC)* for the purpose of acknowledging if there any way ahead is possible concerning the discourse & meeting with donor/ donor states & intergovernmental bodies regarding licensing, exceptions, & other focus areas. The deliberation could be a good source to engross & tutor the donors for the necessity of exceptions & to let them know about the challenges levelled against the humanitarian assistance by the counterterrorism laws, regimes, policies etc.

6. Evaluate & retort to the possible menace.

The humanitarian assistors might desire to contemplate developing a risk profile of the activities performed by the organisations & the milieu in which they function. This risk profile could also tackle the possible *reputational injury* & pursue to sweep the other substantial issues entailing recipient communities, donors & donor states, intergovernmental agencies & other participants. The humanitarian agencies can also consider the idea of drafting the internal synopsis of their rules, policies & approaches with respect to management of the risk, which provides as the easily accessible resources in circumstances where these organisations are exhorted to clarify its policies & approaches to the risk management.

6. IMPACT OF TERRORISM ON INTERNATIONAL RELATIONS IMPOSING CRITICAL GLOBAL THREAT

ENHANCED GLOBAL SECURITY & THE GLOBALIZATION EFFECT VIS-A-VIS COMPARATIVELY CHANGED WORLD POST TERRORISM WAR

The world has changed a lot in a thoughtful way after the incident of 9/11. A small group of terrorists, tiny percent of the fraction of the global population have successfully changed our lives. Not only just the security measures are taken into consideration but also how they get financially aided. For instance, *Jemaah Islamiyah*, the Indonesia-based Terrorist Organisation (*hereinafter TO*), has created at least 50 commercial businesses in Asia that provide a plethora of sources of finance for its operations. Hence, law enforcement & intelligence agencies must now recognize these sources of funding in order to deteriorate their ability to operate.

TO has harvested the method of globalization to improve their method of working, abstain themselves from using any kind of factory-made explosives & locally produced goods are used in abundance to achieve their aim. Further, there is a probable risk that smaller TO will be furnished to carry out the actions causing the mass death likely to happen in Bali & Mombasa & suicidal attacks frequency to be increased in US & Europe. For instance, there are 22 million antiaircraft missiles in existence, many of which are dated & are sold relatively expensively in the black market. An unfathomable reality is that anyone who flies on a commercial airplane is at risk, as the failed attempt to take down an Israeli aircraft demonstrated in Mombasa. The world reach of AQ is great point of concern.

How the nations fight against the terrorism will decide the IR. The stakes are high in Iraq for several reasons. If UNSC will not reach the majority consensus for the elimination of the destructive weapons, it stands a little chance of achieving the same objective in North Korea. UN has pledged number of times for disarmament from Iraq but every time Iraq disappointed (over 12 years). When the UN failed to impose an effective, acceptable solution to the atrocities in Rwanda & Bosnia, the organization risks becoming irrelevant in determining the course of international affairs today. Already a shift has been witnessed between bilateral relations between US & Europe & China & Russia as an outcome on the contention of the war in Iraq.

The issue of NATO has also been raised. By thwarting the NATO's ability to protect the Turkey (one of the NATO member) against the attack in the war, France & Germany have broken the central dogma of the NATO charter, that attack against one NATO member is an attack against all the NATO members. While trying to create a counterweight to the US power, France & Germany may successfully shatter the alliance that USSR couldn't able to destroy. This may result on the serious effects on NATO & west's ability to wage a war on terrorism & enhanced role of the individual European countries in the International affairs, & role of NATO would be reduced.

GLOBAL SECURITY POWERED BY RESOLUTION OF UN COUNTER TERRORISM STRATEGY

The UNGA has adopted the global counter terrorism strategy on September 8, 2006 in order to enhance the national, regional & international efforts. For the first time, all the members states have agreed to a common tactic & mode of operation to fight against the terrorism. Not only proclaiming that terrorism in any form is not acceptable but also took practical steps to prevent & combat it & acknowledge the people about it in order to strength the position of the state. The strategy is reviewed in every 2 years for the smooth functioning of the states & to counter the terrorism.

4 PILLARS

The global counter terrorism strategy in the form of a resolution & adjoin plan of action, comprises 4 pillars:

1. *Addressing the conditions favourable for the spread of terrorism.*
2. *Preventing & combating the terrorism.*
3. *Building states capacity & smoothening the role of UN.*
4. *Ensuring the Human Rights & rule of law.*

PLAN OF ACTION

1. To consistently, unequivocally & strongly castigate terrorism in all the forms & manifestations committed by whom, where, whatever purposes as it poses great threat to the global security.
2. To take the immediate actions & curb the terrorism

- a. *To consider becoming parties without procrastinating it to the existing international conventions & protocols against terrorism, & implementing them, & to make every exertion to reach an accord on & conclude a comprehensive convention on international terrorism;*
 - b. *To enforce all General Assembly resolutions on measures to eliminate international terrorism, & relevant General Assembly resolutions in order to prevent the human rights & fundamental freedoms while combating the terrorism;*
 - c. *To carry out all the resolutions of the Security Council related to international terrorism & to assist fully with the counter-terrorism subsidiary bodies of the Security Council in the fulfilment of their tasks, recognizing that many States continue to require aid in carrying out these resolutions.*
3. To recognize that international assistance & any measures that we undertake to prevent & curb terrorism must comply with our obligations under international law, including the Charter of the United Nations & relevant international conventions & protocols, in particular human rights, refugee law & international humanitarian law.

7. CONCLUSION & RECOMMENDATIONS

Wide range of divisive issues that have bridged due to the constant strain between the laws on counterterrorism & humanitarian assistance. these tensions have also impacted the humanitarian access in several circumstances. Since the very beginning, majorly the donor states & humanitarian actors have more & more indulged in various deliberations & cooperation on this matter. Also, a constant attempt to tackle & overcome the difficulties & challenges occasioned by the counterterrorism laws vis-à-vis its interplay with the humanitarian action are in progress. In defiance of these relentless endeavors & imperative necessity of the humanitarian access amid the concerned non-combatants who directly participate in the hostilities & also to those who aren't anymore partaking in the armed conflict, the menace of injury or the criminal liability have instigated several humanitarian assistors to inhibit or cease their work in some of the areas. With the increasing severity of the humanitarian crisis, these challenges & difficulties becomes more obstructive, destructive & grave. A lot of related instances could be seen formerly in the least developed countries like *Somalia, Mali, Syria & Gaza Strip* etc. The severe happening in these countries, the armed conflicts et al. poses a great menace & notable challenges for the humanitarian assistors, particularly for those who are functioning in the region of where the

listed terrorist organisations are established or working from. It is imperative that the humanitarian actors should be acknowledged about day-to-day challenges & also the impending difficulties that might come their way on the convergence of the counterterrorism laws with the humanitarian assistance in the continually fluctuating atmosphere. It is quite challenging to anticipate the propensities in long run especially when the legal structure & the reaction to the same is still in preparation. A persuasive amalgamation of distinct factors proposes that at least for some time, the problem accentuated in this paper will endure to have an impact on the operation of the donor states vis-à-vis the humanitarian aid. We have primarily focused on the criminal liability capacity of the people & groups indulged in terrorist & affiliated activities & supporting it either overtly or indirectly.

There have been various factors when taken in conjunction appears to suggest substantial & conceivably persistent, changes in the approaches of the chief donor states to risk & control the state financed humanitarian access in the circumstances of armed conflict including the particular non-state actors as well.

First factor is a seeming elevation in the insertion of the listed terrorist groups that have the certain international objectives. These terrorist organisations have moved from focusing on the attacks from the surreptitious locations to a thrust monitoring the territory & exercise the administrative dominance. This possible tendency observed during addressing the fire going on in *Yemen, Syria, & Iraq* may result in compelling situation for the government donors to control the inflow of their assistance money to these listed terrorist organisations even more stringently & concurrently coercing the humanitarian agencies to contrive the plan to engross these listed terrorist organisations in the most straightforward way in terms of broadened cooperation.

Second factor is the augmented cooperation on the methods to counterterrorism laws amongst the primary donor states all the more extensively. The dominant authorities are exercising pressure to ascertain that all the states have the uniform counterterrorism felonious & supervisory rules prepared. Additionally, the governments of these states should also be capable enough to effortlessly share the information, implementation policies, supervisory mockups cross-borders.

Third factor is that the states & the governments are gradually conscious of public display of the deviation & misuse of the humanitarian assistance by the listed terrorist organisations & also the

counterterrorism laws, policies, measures may be soon known to these listed terrorist groups. This would definitely inflict the pressure on the government to be more prohibiting in contract drafting & regulation of the funds. This increasing awareness amid the government, states vis-à-vis the listed terrorist organisations offshoots partially from coverage by conventional & non-conventional media on counterterrorism laws , listed terrorist groups & possible deviation along with the prompt information circulation & accusations on these issues on several social media networks such as YouTube, Twitter, Facebook etc. in this milieu, humanitarian bodies & assistants might face tougher difficulties to show the non-state armed actors that their agencies are neutral & autonomous of government safety strategies.

Fourth factor, as the counterterrorism laws administration internationally amplifies & within the discrete state governments also, the counterterrorism laws administration is conceivable to grow within the humanitarian assistance community per se. Little short while later, well see the humanitarian agencies will employ the *counterterrorism advisors*, involving in both internal & external inspection of their observances associating to the counterterrorism & also participating in the methods for the managing the menace.

Almost all the factors deliberated above proposes the increasingly advancement of the counterterrorism laws, regimes, distinct policies gradually in every area starting from the criminal jurisprudence to the fiscal rules to private sector reform.

Meantime, the enlarging domestic & international counterterrorism administrations pursue to elevate & build up their authoritative & execution capacity respectively. The internationally or locally identified terrorist organisations seems to achieve proficiency & experience in regulating the territory & assistance to non-combatants. For major, transnational humanitarian organisations that heavily depends on the if not completely on the on-government sustenance for their actions, counter-terrorism laws will possibly endure to adopt more & more strategizing, programming, & framework in the course of planning the resources. On one perspective, the counterterrorism laws represent one of the persisting & deeply ingrained fundamental quandaries to the humanitarian ideologies of individuality & objectivity in multifaceted skirmishes that encompass terrorist organisations. From another perspective, the counterterrorism laws, regimes, policies et al. might necessitate the humanitarian ideologies vis-à-vis the organisations to confront the novel not less than the imperative, options to choose whether to receive the public money for rescue & relief operations or not particularly as it looks conceivable. The concerns of the donor states about the

susceptibility of the humanitarian access, organisations, assistors to be deflected & misused by the listed terrorist individuals & organisations keep growing.



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