

## CHAPTER 8

# Countering Terrorism and Violent Extremism: The Risks for Humanitarian Action

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### Introduction

Over the past three decades, the laws governing counterterrorism efforts have evolved dramatically. Counterterrorism laws were initially enshrined in a series of international treaties, and tackled specific questions such as the financing of terrorism or the hijacking of airplanes.<sup>1</sup> After the events of 9/11, the development of a flurry of laws and policies drastically changed the normative framework for counterterrorism. In particular, the United Nations Security Council almost immediately passed resolution 1373 (2001), requiring states to implement a series of measures to combat ‘threats to international peace and security caused by terrorist acts’. This resolution is often considered the cornerstone resolution of the UN’s counterterrorism efforts and paved the way for the new quasi-legislative role of the UN Security Council in the counterterrorism arena.<sup>2</sup> The UN Security Council has therefore had a strong direct influence on domestic counterterrorism legislation and policy.

The post-9/11 era also saw the development of the preventing and countering violent extremism (P/CVE) agenda, and the UN also played an important role in promoting this. Where counterterrorism is largely associated with reactive law enforcement measures or military responses, P/CVE is associated with a broader, more holistic set of policies. P/CVE is not a clearly-defined concept, but can be understood as also including ‘upstream efforts intended to improve structural conditions such as human rights, the rule of law, education, employment, governance, and community resilience.’<sup>3</sup>

Efforts to counter terrorism and violent extremism are often undertaken in areas where armed conflict is present, and in which humanitarian actors are also operating. This is the case in countries like Mali, Nigeria and Somalia, where designated terrorist groups are active, and where there are protracted humanitarian crises. When such crises occur, humanitarian actors respond to the needs of those affected in a neutral, independent and impartial manner. In particular, impartiality requires that humanitarian assistance and protection be provided without any distinction other than need.

Where an armed conflict is ongoing, international humanitarian law (IHL) applies and provides rules to protect and allow for humanitarian action in accordance with the above-mentioned humanitarian principles, as well as to protect medical activities and the principles of medical ethics. IHL also regulates the means and methods of warfare, with comprehensive rules on the conduct of hostilities. However, states are increasingly applying a counterterrorism framework to acts of violence committed during situations of armed conflict, instead of IHL.

While counterterrorism efforts are not necessarily at odds with the rules of IHL, existing counterterrorism frameworks have blurred the lines between armed conflict and ‘terrorism’, thereby challenging the application of IHL.<sup>4</sup> This has negatively impacted on the ability of humanitarian actors to operate in such contexts, including restricting humanitarian access to populations in areas controlled by non-state armed groups, criminalising any kind of support (including medical and humanitarian) to groups and individuals designated as ‘terrorists’, resulting in the harassment, arrest, and prosecution of medical and humanitarian workers. It also has had an overall chilling effect on humanitarian actors weary of violating over-broad counterterrorism laws and policies, and who therefore self-regulate at the expense of their neutrality and impartiality. The impact of P/CVE activities in contexts in which humanitarian actors operate has been explored less and may be even harder to quantify, but given the inherently political nature of such activities, they also present certain challenges for principled humanitarian action.

This chapter aims to explain some of the legal questions behind the tensions between counterterrorism and humanitarian action, and to look at how counterterrorism measures negatively impact humanitarian action, notably on the African continent. It will also explore the risks P/CVE narratives and initiatives pose to humanitarian action. Finally, it will conclude

with thoughts on the ways in which vital humanitarian spaces can be preserved in these complicated contexts.

## **The Legal Questions Behind the Tensions Between Counterterrorism and Humanitarian Action**

In theory, counterterrorism and IHL are not contradictory frameworks. In fact, at their core they both have the protection of civilian populations. They also, however, have fundamentally different underlying rationales and assumptions, and each has evolved in a different manner. IHL is a long-standing body of law that developed slowly over time, whereas counterterrorism frameworks have developed mostly in the past two decades, at a rapid pace. Tensions between counterterrorism and humanitarian action exist notably because of this rapid evolution, in the course of which states did not grapple with the ways in which counterterrorism laws and policies would interrelate with, or impact, IHL. The result is that contemporary counterterrorism frameworks and their implementation threaten to erode the normative commitments states have made under IHL.

There is no existing definition of ‘terrorism’ under international law. Efforts to negotiate a Comprehensive Convention on International Terrorism have been stalled for over 15 years, and the definition of what constitutes ‘terrorism’ is one of the major sticking points. As a result, designating individuals or groups as ‘terrorist’ has been a political decision made at regional, national or international level. What happens, however, when one of these individuals or groups is engaged in an armed conflict? The straightforward answer is that IHL applies – the rules it lays out for the conduct of hostilities, as well as its protective norms. However, states have tended to consider that designated terrorist groups cannot be parties to an armed conflict and that IHL therefore does not apply, choosing rather to defer to international or domestic counterterrorism frameworks in these cases.<sup>5</sup> They fear that recognising that there is an armed conflict may provide legitimacy, exposure or recognition to a non-state armed group. Even when states have accepted that IHL applies in their fight against terrorism, some have argued for a different, more relaxed application, notably of its protective norms.<sup>6</sup>

This application by states of a counterterrorism perspective to such matters is largely based on a misconception of how IHL deals with designated terrorist groups. In fact, IHL provides a strong legal framework to deal with non-state actors that may also be designated as ‘terrorists’.<sup>7</sup> Indeed, it

proscribes most acts that domestic legislation and international terrorism conventions criminalise as terrorist if committed in peacetime, such as attacks on places of worship,<sup>8</sup> the taking of hostages,<sup>9</sup> or direct attacks on civilians.<sup>10</sup> These acts can be prosecuted as national or international crimes in domestic courts. IHL also includes specific rules on terrorism, including prohibiting acts or threats of violence of which the primary purpose is to spread terror among civilian populations.<sup>11</sup> Recognising this, certain international conventions on terrorism even make clear that IHL continues to govern all attacks committed during an armed conflict.<sup>12</sup>

The reality is, however, that applying a counterterrorism framework is often more convenient and expedient, and less constraining for states. For example, acts of violence threatened or carried out by a designated terrorist group will be considered necessarily unlawful under a counterterrorism framework, whereas IHL authorises proportionate attacks by non-state armed groups if they are directed towards a military target. Under IHL there are conditions to be met, procedures to respect, and minimum standards to be respected regarding the treatment of detainees. In applying counterterrorism laws and policies, some states have bypassed these procedures, and restricted the rights of detainees. And IHL norms are not the only norms that are being threatened by the overbroad application of a counterterrorism framework. Indeed, much has been written about the ways in which counterterrorism measures have impacted human rights in numerous contexts.<sup>13</sup>

The growing trend to treat all those designated as ‘terrorist’ as criminals, without regard for internationally accepted legal protections, threatens to erode fundamental normative commitments to IHL. In particular, the use of counterterrorism frameworks in armed conflict settings directly threatens IHL rules that protect humanitarian organisations and the people they aim to assist. Although parties to armed conflict bear the primary obligation to provide for the basic needs of the population under their control, under IHL humanitarian organisations may offer to carry out impartial humanitarian activities.<sup>14</sup> States cannot unlawfully withhold this consent, and once it is obtained, parties to the conflict must allow and facilitate the unimpeded passage of humanitarian assistance, subject to their right of control.<sup>15</sup>

Many contemporary counterterrorism laws risk criminalising humanitarian acts and activities through overbroad and unqualified prohibitions of ‘material support to’, ‘services for’, ‘assistance to’, or ‘association with’ terrorist organisations. For example, under some counterterrorism laws, medically treating a designated terrorist could be interpreted to fall under criminally-prohibited support to terrorism.<sup>16</sup> Under IHL, all those who

are wounded and sick in an armed conflict are protected, and designating these persons as ‘terrorist’ does not weaken these protections. As mentioned above, this does not mean that they cannot be prosecuted for the crimes they have committed. Beyond providing medical services, other examples of humanitarian activities that – although protected under IHL – risk violating counterterrorism laws or policies can occur in armed conflict settings. For example, if during the delivery of relief goods to civilians living in areas controlled by designated terrorist groups they inadvertently fall into the hands of this group, or when incidental payments are made to a designated group to access certain civilian populations.

### **How Counterterrorism Hinders Humanitarian Action in Africa and Elsewhere**

States tend to over-rely on counterterrorism frameworks in armed conflict situations. This undermines IHL and, consequently, impartial humanitarian action. In many countries of Africa and elsewhere, a variety of counterterrorism laws and measures have had a direct negative impact on the ability of humanitarian actors to operate and provide neutral, independent and impartial aid. This, for example, has been noticeably true in the case of Somalia.

### **The Impact of Sanctions on Humanitarian Action: The Case of Somalia**

One key tool in states’ counterterrorism arsenal is the use of sanctions imposed by the UN Security Council, by regional organisations such as the European Union (EU), or individually by states. Sanctions can be imposed on individuals or groups publicly listed as ‘terrorist’, as well those considered to be associated with such individuals or groups. There are currently 13 UN Security Council sanctions regimes, including the Taliban, the ISIL (Da’esh), and Al-Qaeda. The UN’s other country-specific sanctions regimes are not specifically framed in terms of counterterrorism, but several of them apply to contexts in which designated terrorist groups or individuals operate. According to Chapter VII of the UN Charter, all member states are legally bound to adopt national laws that give effect to these sanctions. States can also, independently from the UN Security Council, create their own lists of designated terrorist groups or individuals and impose their own sanctions. The United States (US) is the country with the most extensive

bilateral sanctions regime. Being listed as a terrorist individual or group, or considered to be associated with such a group, can lead to asset freezes, travel bans, and other such measures. This can have – and has had – a serious impact on principled humanitarian action.

This played out in Somalia after the US listed Al-Shabaab as a terrorist organisation in 2008. The UN Somalia sanctions committee followed suit in 2010, listing Al-Shabaab as an entity subject to the UN Security Council Somalia sanctions regime. The inclusion of Al-Shabaab in these two sanctions regimes led to a decrease in humanitarian activities in Al-Shabaab-controlled areas. UN member states implemented the sanctions regime through a range of measures, including by criminalising the provision of resources and material support to Al-Shabaab. Al-Shabaab reportedly had a Humanitarian Coordination Office, with officers appointed to regulate access, including by collecting ‘registration fees’ and ‘taxes’.<sup>17</sup> As a result, some organisations suspended their activities for fear of violating the UN and US sanctions regimes. USAID – one of the major humanitarian donor agencies – stopped processing new grants for Somalia. Humanitarian actors were asked to put extensive mitigation measures in place, which increased operation costs and slowed down the response.<sup>18</sup> All of these consequences challenged the ability of humanitarian actors to provide impartial and neutral aid, and to reach people who were desperately in need. In fact, Al-Shabaab expelled the World Food Programme (WFP), the United Nations Children’s Fund (UNICEF) and other humanitarian aid agencies from their territory in 2009 due to alleged concerns about their neutrality.<sup>19</sup>

The effect these sanctions regimes had on humanitarian aid, in a context in which famine was threatening the Somali population, led to a strong mobilisation by humanitarian actors. Their concerted efforts led to the adoption of a provision within UN Security Council Resolution 1916 (2010) that exempted certain defined humanitarian actors from the impact of the UN Somalia sanctions regime. To this day, this provision is the sole example of an exemption for humanitarian action, not only in UN Security Council sanctions regimes, but more broadly in UN counterterrorism resolutions.

However, the exemption has its limits. Some criticised its scope, as it only exempted the UN, its partners, and organisations with UN observer status, excluding other humanitarian actors. Organisations that bear the brunt of the effect of counterterrorism measures are often local, smaller organisations, many of which are not covered by the exemption. Importantly, it did not make it mandatory for states to include the exemption in

their national laws. The US, for example, did not. As such, a 2018 report by the Norwegian Refugee Council (NRC) stated that the chilling effect of the sanctions regime on humanitarian actors remains, as they continue to excessively self-regulate in Al-Shabaab controlled areas at the expense of their neutrality and impartiality.<sup>20</sup> Indeed, the lack of clarity around the application of the sanctions regimes to humanitarian aid in that context forces organisations to continue to censor themselves.

Sanctions can impact and hinder humanitarian aid, as exemplified by the case of Somalia. Furthermore, in most cases, sanctions regimes do not have exemptions for humanitarian action. This amplifies the risk for humanitarian actors. Indeed, many sanctions regimes define the acts and activities that can lead to being listed as a sanctioned individual or entity extremely broadly. For example, under the ISIL (Da'esh) and Al-Qaeda sanctions regime, acts or activities that can lead to being on the sanctions list include not only supplying, selling or transferring arms but also 'otherwise supporting acts or activities of Al-Qaeda, ISIL, or any cell, affiliate, splinter group or derivative thereof'.<sup>21</sup> The risk is that these broad definitions are interpreted to encompass impartial humanitarian assistance or medical care.

## **Overbroad Counterterrorism Legislation: Examples from the United States and Nigeria**

Beyond the use of sanctions regimes, many states have also developed specific counterterrorism laws to tackle the security threats they face. Many such laws describe the acts and activities that are considered to be terrorist, and prohibit, in some way or the other, support to or funding of these acts and activities.

Following UN Security Council Resolution 1373 (2001), which required member states to criminalise all forms of support or services to designated terrorist groups, the trend has been to draft legislation that defines 'support to activities' in an overbroad and sweeping manner. Most counterterrorism laws do not contain an exception for humanitarian or medical activities. The risk for humanitarian and medical actors, therefore, is that their activities are considered to fall under such clauses. Furthermore, their activities can potentially not only be considered criminal under the laws of the country in which they are operating, but also under the laws of the country in which their organisation's headquarters is based, the country from which they are from, donor countries, and any country whose legislation has extraterritorial reach.<sup>22</sup>

The oft-referenced example of a broad counterterrorism clause is the US 'material support' clause, introduced in 1996.<sup>23</sup> It criminalises the provision of material support or resources to designated foreign terrorist organisations. Prosecution under this clause does not require knowledge of how the support will be used, but only requires knowledge that the group receiving support is a terrorist organisation or has engaged in 'terrorism' or 'terrorist activity'. Over the years, US courts have further broadened and blurred this definition. 'Material support' has been understood as including monetary resources and services, but also activities such as lodging, training, or expert advice or assistance. This clause has been used in the past to criminalise healthcare workers who provided or prepared to provide health services for the Taliban and Al-Qaeda.<sup>24</sup> There are also concerns that this clause could be used for prosecutions that could implicate issues or considerations directly related to humanitarian assistance.

The recently enacted Anti-Terrorism Clarification Act of 2018 (ATCA) expands the personal jurisdiction of US federal courts over foreign defendants in some terrorism-related civil cases, notably if they accept certain forms of US assistance.<sup>25</sup> This has particular consequences for Gaza and the West Bank, where USAID has closed its offices. Organisations like CARE and Catholic Relief Service report having to lay off staff as a result of the ATCA and because of budget cuts.<sup>26</sup> The Palestinian prime minister has also informed the US that Palestine no longer wishes to accept any form of assistance referenced in the ATCA.<sup>27</sup> For some experts, the ATCA, coupled with the US' broad 'material support' clause, will lead local partners across the world to refuse accepting certain kinds of US foreign assistance funds.<sup>28</sup> There have also been reports of lawsuits against non-governmental organisations operating in the occupied Palestinian territories, leading, in one case, to a multimillion-dollar pay out.<sup>29</sup> So far, to the author's knowledge, the US' 'material support' clause has not led to prosecutions directly impacting humanitarian actors on the African continent. However, it assuredly contributes to the general chilling effect that counterterrorism measures have had on humanitarian actors. Furthermore, because the US is an important humanitarian donor, its overbroad counterterrorism legislation has had a concrete impact beyond criminal prosecutions in some African countries, as explored in the next section.

Humanitarian actors increasingly face risks related to counterterrorism legislation of the countries in which they are operating. Legal experts, for example, have criticised Nigeria's counterterrorism legislation for having an expansive definition of terrorism and of material and non-violent support



to terrorism.<sup>30</sup> Nigeria's Terrorism (Prevention) Act of 2011 and Terrorism (Prevention) (Amendment) Act of 2013 contain a list of specific acts that qualify as terrorism.<sup>31</sup> Under the act, anyone who 'assists or facilitates the activities of persons engaged in an act of terrorism' is liable under the law. Of particular concern to medical and humanitarian actors, support to terrorism includes the provision of 'material assistance', 'transportation', 'information or moral assistance', and 'entering or remaining in a country for the benefit of [...] a terrorist group'. This could encompass a number of activities conducted by both medical and humanitarian actors, including the impartial provision of healthcare services, but also the simple presence of humanitarian actors in an area where the services they provide may be seen indirectly to benefit a designated terrorist group. The law criminalises the act of meeting with a terrorist group, which is problematic for humanitarian actors that may need to meet with such a group to negotiate access to areas where people are in need of assistance and protection. Financing of terrorism is also criminalised and includes making 'funds, property or other services' available 'by any means' to individuals or groups designated as 'terrorist'. The law is therefore extremely broad and contains no exception for medical care or humanitarian action. A new counterterrorism Bill is reportedly underway, to enable Nigeria to 'effectively implement international instruments on the prevention and combating of terrorism' and it remains to be seen whether these concerns will be addressed.<sup>32</sup>

There do not appear to be any specific terrorism charges brought under these laws against medical or humanitarian workers in Nigeria. However, there are reports that one doctor, a consultant for the World Health Organization (WHO), was arrested, detained, and accused of carrying medical equipment used to provide medical services to Boko Haram.<sup>33</sup> The government has declared the doctor missing and the status of his trial and release is unclear.<sup>34</sup> The Nigerian government has also prevented humanitarians from engaging with Boko Haram and has restricted humanitarian access to areas under the group's control. It has reportedly accused organisations attempting to access those areas of diverting aid and supporting terrorism, and threatened their staff with arrest and prosecution under its counterterrorism law.<sup>35</sup> In December 2018, the government went as far as briefly suspending UNICEF operations in Nigeria, accusing the organisation of spying for Boko Haram, and claiming that there was 'credible information' that foreign aid agencies and NGOs were training and deploying spies for Boko Haram.<sup>36</sup> These restrictions have deeply damaged principled humanitarian action, with few organisations even seeking to access areas that

Boko Haram controls. In addition to the security and logistics challenges associated with operating in those areas, this has deprived large parts of the population of vital humanitarian aid. Finally, there are also reports that individuals paying taxes to Boko Haram while living under the group's control are considered members of a terrorist organisation.<sup>37</sup> This could potentially extend to humanitarian organisations compelled to pay taxes to Boko Haram to access certain populations in need.

Overbroad counterterrorism laws and policies create serious challenges for humanitarian actors. In fact, IRIN news identified anti-terror compliance as one of the key trends for humanitarian action in 2019, highlighting that even minor infractions can put an aid agency on the wrong side of sweeping counterterrorism laws.<sup>38</sup>

### **Counterterrorism Clauses in Funding Agreements: The Onerous USAID Requirements**

A number of donor agencies have included counterterrorism clauses in their funding agreements as a result of broad counterterrorism legislation in donor countries. These are meant to ensure that designated terrorist groups do not receive funds, directly or indirectly, via donor-funded humanitarian projects. The wording of these clauses – and hence the obligations imposed on implementing partners – can vary. They can go from asking humanitarian organisations to use ‘reasonable efforts’ or ‘their best endeavours’ to prevent the diversion of aid to designated terrorist groups, to explicitly requiring organisations to vet staff, partners and even beneficiaries for links to such groups. In some cases, funding agreements will require organisations to ensure that any subcontract includes the same obligations. Those funding agreements that do not contain specific counterterrorism clauses still require compliance with relevant legislation, and donors will therefore expect organisations to mitigate the risk of contravening counterterrorism legislation, among other risks. The failure to comply with the funding agreement may lead to a termination of the contract.

Counterterrorism clauses in funding agreements are the result of legitimate concern over complying with domestic laws and ensuring that funding does not support designated terrorist groups. However, some funding agreements impose heavy and sometimes unrealistic compliance requirements. This, unfortunately, is increasingly the trend, with some major donors taking a zero-tolerance approach when it comes to counterterrorism and aid diversion.

Counterterrorism clauses in funding agreements can have a real impact on principled humanitarian action. Concern about violating counterterrorism clauses may force humanitarian organisations to modify or terminate their operations in certain areas. They may decide to limit their engagement with certain groups and modify or terminate operations to avoid violating their funding agreements. This challenges their ability to provide impartial aid, and risks depriving communities under the control of designated terrorist groups of the assistance they need. Some onerous measures may also give the impression that humanitarian actors are gathering intelligence and have been co-opted into the broader counterterrorism strategies of donor states.<sup>39</sup> This creates very real security risks, both for humanitarian actors and for the people with whom they engage.

The use of counterterrorism clauses in funding agreements allows government donors to place the bulk of the risk on their grantees. Humanitarian actors are saddled with all the necessary due diligence and compliance work. This creates increased administrative burdens for organisations to meet contractual requirements, which can slow operations and increase costs. Many big humanitarian organisations have developed policies, procedures and systems to minimise aid diversion and to ensure they are fulfilling their responsibilities. Smaller, often local, organisations, however, may not have the capacity or resources to put in place the measures necessary to ensure compliance. Some humanitarian actors have also raised the concern that the expectations and requirements in funding agreements are sometimes unclear – hindering their ability to make informed decisions and give clear guidance to their staff.<sup>40</sup>

USAID in particular has demanded notoriously broad and demanding counterterrorism clauses in its funding agreements. It requires a signed anti-terrorism certificate from grantees stating that ‘the recipient, to the best of its current knowledge, did not provide, within the previous 10 years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts.’<sup>41</sup> USAID has also published ‘proposal guidelines for risk mitigation for high-risk environments’, which include countries such as Libya, Nigeria, Chad, Niger, Cameroon, and Somalia.<sup>42</sup> These guidelines require those humanitarian organisations applying for USAID grants to operate in these countries to provide additional information regarding programme safeguards and risk-mitigation strategies. According to these

guidelines, humanitarian actors in Syria face additional hurdles. Humanitarian organisations have reportedly been required to obtain special permission to provide relief in areas controlled by designated terrorist groups in Syria.<sup>43</sup>

In north-east Nigeria, this has had a real impact on UNICEF's humanitarian operations. Because of the inclusion of a broad counterterrorism clause, the UN agency refused to sign the USAID funding agreement, previously one of its biggest donors. This clause was perceived as contradictory to UNICEF's commitment to provide impartial aid. Nonetheless, despite inclusion of the counterterrorism clause, other humanitarian organisations have signed USAID funding agreements. This has yet to have a broader impact on aid in the north-east of the country. Indeed, humanitarian actors currently do not have access to Boko Haram-controlled areas and are not operating there. However, for those operating under USAID grants, the counterterrorism clause will likely become a crucial issue if and when those areas become accessible, as aid organisations will have to decide whether they will take the risk of engaging in areas controlled by the non-state armed group.

### **Banking Regulations: Humanitarian Actors Perceived as High-risk and Low-profit**

Banks – like everyone else – must comply with counterterrorism measures, including sanctions, by ensuring that funds, financial assets, economic resources or financial and other related services do not directly or indirectly benefit designated terrorist groups. Indeed, many countries have increased their oversight of financial institutions, especially as they impose sanctions against individuals and groups for terrorism-related offences. Banks, therefore, have become extremely cautious in dealing with humanitarian organisations that operate in areas where designated terrorist groups are present. This has led them to engage in 'de-risking' practices such as unilaterally deciding to delay or suspend transactions, imposing onerous due diligence requirements, and preventing humanitarian organisations from opening bank accounts, or arbitrarily closing them. The procedures that banks put in place, as well as the measures they take, often go beyond the requirements of counterterrorism laws. Indeed, banks generally perceive humanitarian organisations to be high-risk and low-profit and therefore have little incentive to try and enable their work better.

Bank practices have impacted the ability of humanitarian actors to engage in financial transactions necessary for their operations, such as the payment of salaries or the purchase of essential goods. Restrictive banking measures can delay aid provision in certain areas, leading humanitarian organisations to scale back their operations or even terminate them. Again, this challenges the ability of humanitarian actors to provide impartial aid. It has also led to increased operating costs, due to the need to hire additional staff and/or seek expensive legal advice. They have also pushed humanitarian actors to make use of other ways of transferring funds – ways that are often less transparent, more expensive and sometimes more risky. The incentive to use cash and other informal and unregulated channels, such as money service bureaux, cash couriers or *hawala* (a traditional system of transferring money used in Arab countries and South Asia) makes it more difficult to monitor funds, and increases the risks of abuse that the counterterrorism measures are actually trying to prevent.

In the UK, a recent report found that 79% of the charities surveyed faced some kind of difficulty in accessing or using mainstream banking channels.<sup>44</sup> The challenges that bank de-risking measures create for humanitarian actors have principally been explored in the context of the crises in the Middle East. For example, a study found that bank de-risking has prevented Yemeni organisations from receiving much-needed funds for humanitarian assistance, especially following the onset of war in March 2015, and has contributed to the war economy and corruption in the country.<sup>45</sup> The ability of humanitarian organisations to arrange straight-line, direct bank-to-bank transfers to Syria or neighbouring states has also been affected by counterterrorism legislation and sanctions.<sup>46</sup> As a result, NGOs have had to reorganise programming priorities to focus on the least contentious areas, and projects that were less vulnerable to bank obstruction, in a direct challenge to humanitarian principles in a country in which aid is already too politicised.

## **Preventing and Countering Violence Extremism Initiatives: The Risks for Humanitarian Action**

Preventing and countering violent extremism (P/CVE) is a broader, whole-of-society approach to addressing the root causes of ‘violent extremism’, or acts of ‘terrorism’. P/CVE initiatives are intimately related to the broader counterterrorism agendas of states, and are, as such, inherently political. In fact, for the UN, which has played a key role in pushing the P/CVE agenda,

P/CVE is explicitly a part of its counterterrorism work. Given its nature, as well as the type of activities that are considered to fall under the P/CVE agenda, its rise in recent years in contexts in which humanitarian actors operate also creates challenges to principled humanitarian action. Indeed, the P/CVE agenda can have a direct impact on humanitarian operations, and on the security of humanitarian actors.

The main concern is that P/CVE activities could be perceived as overlapping with humanitarian activities. In 2016, the then UN Secretary-General, Ban Ki-moon, published his plan of action to prevent violent extremism, and that also provided recommendations for action. These included dialogue and conflict prevention; strengthening good governance, human rights and the rule of law; engaging communities; empowering youth; gender equality and empowering women; education; and skills development and employment facilitation. The recommended activities for PVE were, therefore, extremely broad and could easily be perceived as overlapping with humanitarian action.<sup>47</sup> For example, humanitarian actors disseminate international humanitarian law among armed forces and other authorities. Many work on education, protecting access to education in armed conflict, or provide training. They have programmes addressing the specific needs of women and of girls. All of these activities can potentially be associated with, or co-opted by, P/CVE programmes. The UN PVE plan of action recognises the need to respect humanitarian principles and the humanitarian space, but the secretary-general also called for breaking down the silos within the UN, including with humanitarian action.

The problem with such an association is that the motivations for P/CVE and humanitarian action are very different. Humanitarian action must be guided by the principles of humanity, impartiality, neutrality and independence. Humanitarian actors are concerned with preventing and alleviating human suffering, and basing response on the urgency of needs without taking sides and maintaining autonomy. P/CVE initiatives, however, are focused on dealing with an ideological phenomenon, and based on the perceived vulnerability of certain communities to 'violent extremism'. They are by nature opposed to certain groups or movements, and they are usually state-driven. As such, being perceived as engaging in P/CVE activities challenges the perception that humanitarian actors are neutral, impartial and independent. In Nigeria, for example, there are tensions between Muslim and Christian communities, and directing P/CVE programming towards one group could support a politically-driven narrative.<sup>48</sup> Principled humanitarian action should, therefore, be disassociated from such efforts.

In recent years, several major donors, such as the EC or USAID, have developed P/CVE strategies or included P/CVE in their policies and funding. This means that some activities previously funded under humanitarian or development aid packages may now be labelled as P/CVE. Australia's Department of Foreign Affairs and Trade has recognised the risk this carries for humanitarian partners, stressing that officers should 'take these [risks] into account in how activities are labelled and acknowledged.'<sup>49</sup> In the current context in which there is much competition for humanitarian funding and increased funding for P/CVE programmes, the risk can be borne out. Indeed, some organisations, notably in Nigeria, have reframed their activities or altered their programming to fit with the P/CVE agenda and access this type of funding.<sup>50</sup>

The concrete impact of P/CVE work on principled humanitarian action remains somewhat unexplored and deserves more attention. Indeed, because the main challenge is its impact on the perception that humanitarian actors are neutral, independent and impartial, the effect may not be immediate and difficult to quantify.

## **Conclusion: The Need to Preserve the Humanitarian Space**

Counterterrorism and P/CVE agendas have developed in response to very real and legitimate security concerns. This chapter does not aim to minimise existing threats, and humanitarian actors systematically condemn acts of terrorism, as well as other acts of violence against civilians. However, the counterterrorism agenda has encroached on well-established norms of international law, including international humanitarian law, thus threatening the space for principled humanitarian action. The development of the P/CVE agenda has further extended the reach of counterterrorism efforts.

There's an ongoing need for better awareness and understanding of the ways in which counterterrorism can impact principled humanitarian action. This chapter aims to be a small contribution to this endeavour. Most importantly, the relationship between contemporary counterterrorism frameworks and international humanitarian law needs to be clarified.

One of the ways in which this can be done is by including exemptions for humanitarian action in counterterrorism measures. There are still too few examples of such exemptions. The UN Security Council Resolution 1916 (2010) on the Somalia sanctions regime is the only UN resolution containing an exemption for humanitarian workers. At the regional level,

‘[t]he provision of humanitarian activities by impartial humanitarian organisations recognised by international law’ was excluded from the scope of EC Directive 2017/541 on combating terrorism. Most recently, the UK passed an amendment to a Counter-Terrorism and Border Security Bill, protecting aid workers from facing criminal charges for operating in certain ‘designated areas’.<sup>51</sup> These examples remain too few and far apart, and exemptions for humanitarian action should be systematically included in counterterrorism measures, while humanitarian actors should continue to conduct due diligence and risk management. As for P/CVE, efforts need to be made in clearly separating this agenda from principled humanitarian action, including in terms of funding.

The complexity and protracted nature of crises today make the work of humanitarian actors all the more vital. And the principles by which humanitarian actors aim to abide remain crucial in these contexts to reach the most vulnerable. The importance of preserving this humanitarian space should not be underestimated. The norms of international humanitarian law protect and allow for principled humanitarian action. But beyond the strong legal case, there is also a moral case to be made. Humanitarian actors, in many contexts, are the only lifeline that some populations have. Overbroad counterterrorism measures risk cutting off whole sections of populations for the only reason that they live in areas where designated terrorist groups are operating. Is the benefit of these measures, aimed at preventing aid being diverted, worth the cost? It should be noted here that marginalisation, poverty and lack of opportunity are often considered to be conditions conducive to ‘radicalisation’ and ‘violent extremism’.<sup>52</sup>

## Endnotes

- 1 States have adopted 19 specialised international conventions related to terrorism, including the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1999), and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). A Comprehensive Convention on International Terrorism has been in negotiation for over 15 years.
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